



CROYDON SHIRE COUNCIL POLICY

Dealing with complaints about the public official: section 48A of the *Crime and Corruption Act 2001*

1 Objective

The Chief Executive Officer (CEO) is the public official of the Croydon Shire Council.

The objective of this policy is to set out how the Croydon Shire Council will deal with a complaint (also information or matter) that involves or may involve corrupt conduct of its CEO as defined in the *Crime and Corruption Act 2001* (CC Act).

2 Policy rationale

The policy is designed to assist the Croydon Shire Council to:

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

3 Definitions

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|---------------------------------------|---|
| Crime and Corruption Commission (CCC) | the Commission continued in existence under the <i>Crime and Corruption Act 2001</i> |
| CC Act | <i>Crime and Corruption Act 2001</i> |
| Complaint | includes information or matter. See definition provided by s48A(4) and s36(5) of the <i>Crime and Corruption Act 2001</i> |
| Contact details | should include a direct telephone number, email address and postal address to enable confidential communications |
| Corruption | see Schedule 2 (Dictionary) of the <i>Crime and Corruption Act 2001</i> |
| Corrupt conduct | see s15 of the <i>Crime and Corruption Act 2001</i> |
| <i>Corruption in Focus</i> | http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus ; see chapter 2, page 2.5 |
| Deal with | see Schedule 2 (Dictionary) of the <i>Crime and Corruption Act 2001</i> |
| Nominated person | see item 5 of this policy |
| Public Official/CEO | see Schedule 2 (Dictionary) and also s48A of the <i>Crime and Corruption Act 2001</i> |
| Reasonably Suspects | see Schedule 2 (Dictionary) of the <i>Crime and Corruption Act 2001</i> |
| Unit of public administration (UPA) | see s20 of the <i>Crime and Corruption Act 2001</i> |

4 Policy application

This policy applies:

- if there are grounds to suspect that a complaint may involve corrupt conduct of the CEO of the Croydon Shire Council
- to all persons who hold an appointment in, or are employees of, or are contractors of, or are volunteers at the Croydon Shire Council

For the purpose of this policy a complaint includes information or matter.¹

5 Nominated person

Having regard to s48A(2) and (3) of the CC Act, this policy nominates the Mayor as the nominated person/s to notify² the Crime and Corruption Commission (CCC) of the complaint and to deal with the complaint under the CC Act.³

Once the Croydon Shire Council nominates a person, the CC Act applies as if a reference about notifying or dealing with the complaint to the CEO is a reference to the nominated person⁴.

6 Complaints about the CEO

If a complaint may involve an allegation of corrupt conduct of the CEO of the Croydon Shire Council, the complaint may be reported to:

- the nominated person, or
- a person to whom there is an obligation to report under an Act⁵ (this does not include an obligation imposed by ss37, 38 and 39(1) of the CC Act).

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 suspects⁶ the complaint may involve corrupt conduct of the CEO, they are to:

- (a) notify the CCC of the complaint⁷, and
- (b) deal with the complaint, subject to the CCC's monitoring role, when —
 - directions issued under s40 apply to the complaint, if any, or
 - pursuant to s46, the CCC refers the complaint to the Mayor to deal with⁸.

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

- (i) report the complaint to the nominated person as soon as practicable and may also notify the CCC, and

1 See s48(4) CC of the CC Act

2 Under ss37 or 38 of the CC Act

3 Under Chapter 2, Part 3, Division 4, Subdivisions 1 & 2 of the CC Act

4 See s48A(3) CC Act

5 See s39(2) of the CC Act

6 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 some evidence sufficient for a reasonable person to suspect corrupt conduct.

You do 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 you to subjectively decide that someone is or is not capable of the alleged conduct. You do not have to have sufficient evidence to *prove* the corrupt conduct allegation, 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*) You do not have to notify the CCC if you do not hold a reasonable suspicion. For example, you do not need to notify the CCC if there is something about the allegation — including any direct knowledge you might have — which shows beyond doubt that it is not correct.

7 Under ss37 or 38, subject to s40 of the CC Act

8 Under ss41 and 42 and/or ss43 and 44 of the CC Act

- (ii) take no further action to deal with the complaint unless requested to do so by the nominated person in consultation with the Elected Council.

If directions issued under s40 apply to the complaint:

- (i) the nominated person is to deal with the complaint, and
(ii) the CEO is to take no further action to deal with the complaint unless requested to do so by the nominated person in consultation with the Elected Council.

Both the CEO and the nominated person are obligated to preserve confidentiality under all circumstances.

7 Resourcing the nominated person

If pursuant to ss40 or 46, the Mayor has responsibility to deal with the complaint⁹:

- (i) the Croydon Shire Council will ensure that sufficient resources are available to the Mayor to enable them to deal with the complaint appropriately¹⁰, and
(ii) the Mayor 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 Mayor must, at all times, use their best endeavours to act independently, impartially and fairly having regard to the:
- purposes of the CC Act¹¹
 - the importance of promoting public confidence in the way suspected corrupt conduct in the Croydon Shire Council is dealt with¹², and
 - the Croydon Shire Council's statutory, policy and procedural framework.

The Mayor:

- is delegated the same authority, functions and powers as the CEO to direct and control staff, contractors, and volunteers of the Croydon Shire Council as if the nominated person is the CEO of the Croydon Shire Council for the purpose of dealing with the complaint only
- is delegated the same authority, functions and powers as the CEO to enter into contracts on behalf of the Croydon Shire Council for the purpose of dealing with the complaint
- does not have any authority, function or power that cannot — under the law of the Commonwealth or the State — be delegated by either the Elected Council to the nominated person; and
- need only follow the established complaints management process and use discretion about who needs to know and when.

8 Liaising with the CCC

The CEO is to keep the CCC and the nominated person informed of the contact details for the CEO and the nominated person and any proposed changes to this policy.¹³

Nominated person: Mayor, Croydon Shire Council, PO Box 17, Croydon QLD 4871
M: 0427 456 188 E: mayor@croydon.qld.gov.au

⁹ Under ss41 and 42 and/or ss43 and 44 of the CC Act

¹⁰ See the CCC's corruption purposes and function set out in ss4(1)(b), 33, 34, 35 and the Croydon Shire Council's relevant statutory, policy and procedural framework which help inform decision making about the appropriate way to deal with the complaint

¹¹ See ss57 and the CCC's corruption purposes and function set out in ss4(1)(b), 33, 34, 35 of the CC Act

¹² See s34(c) CC Act

¹³ See ss42 and 44 of the CC Act

9 Consultation with the CCC

The CEO will consult with the CCC when preparing any policy about how the Croydon Shire Council will deal with a complaint that involves or may involve corrupt conduct of the CEO.¹⁴

10 Statutory references

Unless otherwise stated, all statutory references are to the *Crime and Corruption Act 2001*.

11 Approval

This policy is authored by Robert Holmes, Acting CEO Croydon Shire Council.

This policy is approved by Croydon Shire Council at the Ordinary Meeting of Council on 17 April 2019.

Review date - 31 March 2021



Robert Holmes

Acting Chief Executive Officer