Management of corrupt conduct complaints involving the Director-General

1 Introduction

The Crime and Corruption Act 2001 outlines the scope and process for the reporting of alleged corrupt conduct by the Director-General.

2 Scope

This guideline applies to all Department of Health (the department) employees, volunteers, contractors, consultants and others who exercise power or control resources for or on behalf of the department.

Compliance with this guideline is not mandatory, but sound reasoning must exist for departing from the recommended principles within a guideline.

3 Purpose

To inform department employees, volunteers, contractors, consultants and others who exercise power or control resources for or on behalf of the department, as well as members of the public, of the following:

- The contacts to make a complaint of alleged corrupt conduct by the Director-General.
- The role and resourcing for the nominated persons.

3.1 Complaints about the Director-General

Under section 48A(2) and (3) of the Crime and Corruption Act 2001 (CC Act), the Director-General 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 Director-General.

The policy nominates:

- the Chief Human Resources Officer, Department of Health
- the Director, Ethical Standards Unit, Department of Health

as the ‘nominated persons’ to notify the CCC of a complaint and to deal with the complaint under the CC Act (on the occasions where the CCC refers the complaint to the nominated person to deal with).

To make a complaint, or report information or matter, involving alleged corrupt conduct about the department’s Director-General, please contact:

**Chief Human Resource Officer**

*Strictly Private and Confidential*

Chief Human Resource Officer

Human Resource Services

Department of Health

**Director, Ethical Standards Unit**

*Strictly Private and Confidential*

Director

Ethical Standards Unit

Department of Health
If there is uncertainty about whether or not a complaint should be reported, it should be reported to the nominated person i.e. Chief Human Resources Officer or Director, Ethical Standards Unit.

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

### 3.2 Role of nominated person

Where there is more than one nominated person:

- the nominated persons will, with or without consulting with the CCC or Minister for Health, decide who will be the nominated person for a particular complaint
- the nominated person for that particular complaint will inform the CCC and the Minister for Health that they are the nominated person for the particular complaint.

Once the department 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 involves, or may involve, an allegation of corrupt conduct by the Director-General, they are to:

(a) notify the CCC of the complaint
(b) deal with the complaint, subject to the CCC’s monitoring role, when:
   - directions issued by the CCC to the department under section 40 of the CC Act\(^1\) apply to the complaint (if any)
   - pursuant to section 46, the CCC refers the complaint to the nominated person to deal with.

If the Director-General reasonably suspects that a complaint involves, or may involve, alleged corrupt conduct on their part, and there is a nominated person, the Director-General must:

(a) report the complaint to the nominated person as soon as practicable and may also notify the CCC
(b) take no further action to deal with the complaint unless requested to do so by the nominated person in consultation with the Minister for Health.

Where there is a nominated person, and if directions issued by the CCC to the department under section 40 of the CC Act apply to the complaint:

\(^1\) The department’s ESU are the custodian of the department’s section 40 directions from the CCC.

**Guideline – Management of corrupt conduct complaints involving the Director-General**

Human Resources Branch
Chief Human Resources Officer
January 2020

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(a) the nominated person is to deal with the complaint
(b) the Director-General is to take no further action to deal with the complaint unless requested to do so by the nominated person in consultation with the Minister for Health.

3.3 Resourcing for the nominated person

If pursuant to sections 40 or 46 of the CC Act, the nominated person has a responsibility to deal with the complaint:

- the Director-General will ensure that sufficient resources are available to the nominated person to enable them to deal with the complaint
- the Director-General or nominated person is to ensure that consultation, 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
  - 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 alleged corrupt conduct in the department is dealt with
  - the department’s statutory, policy and procedural framework.

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

- are delegated the same authority, functions and powers as the Director-General to direct and control employees of the department as if the nominated person is the Director-General of the department for the purpose of dealing with the complaint only
- are delegated the same authority, functions and powers as the Director-General to enter into contracts on behalf of the department for the purpose of dealing with the complaint (e.g. the engagement of an investigator)
- do not have any authority, function or power that cannot – under the law of the Commonwealth or the State – be delegated by either the Minister for Health or the Director-General to the nominated person.

3.4 Public interest disclosures

When a complaint is made by a public officer that raises allegations of corrupt conduct, it may be a public interest disclosure pursuant to the Public Interest Disclosure Act 2010 (PIDA).

The PIDA ensures the specific obligations to keep information confidential, such as the complainant's identity and personal information, unless it becomes necessary for the purpose of dealing with the disclosure, which includes to investigate, and ensuring procedural fairness/natural justice to any person the subject of the disclosure under section 65 of the PIDA.

Importantly, a purpose of the PIDA is to provide protections for a person who makes a public interest disclosure, including from reprisal, as far as reasonably practicable. Under Section 40 of the PIDA, a person must not reprise against another person, by causing detriment, because a public interest disclosure has been made.

Schedule 4 of the PIDA defines ‘detriment’ and includes such actions as intimidation or harassment; or adverse discrimination, disadvantage or treatment about a person’s career.
Refer to Public interest disclosure HR Policy I5 for further information.

3.5 Liaising with the CCC

The Director-General, through the department’s CCC Liaison Officer (Director, Ethical Standards Unit), will keep the CCC and the nominated person informed of:

- the contact details for the Director-General and the nominated person
- any proposed changes to the policy.

4 Legislation

- Crime and Corruption Act 2001
- Human Rights Act 2019
- Public Interest Disclosure Act 2010

Version control

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