

Complaints about the Ombudsman and Inspector of Detention Services: section 48A of the *Crime and Corruption Act 2001*

1. Objective

The Ombudsman is the ‘public official’ of the Office of the Ombudsman (the Office) under the *Crime and Corruption Act 2001* (CC Act) and the Inspector of Detention Services (Inspector) is the public official of the Inspector of Detention Services (the IDS) under the CC Act.¹

The Office and the IDS are both ‘units of public administration’ (UPAs) under the CC Act.²

Under section 48A of the CC Act, a UPA that is headed up by a public official must have a policy that states how the UPA will deal with a complaint of corrupt conduct that involves or may involve the UPA’s public official.

Because the one person is appointed as both the Ombudsman and the Inspector³, this single policy sets out how the Office and the IDS will deal with complaints about the Ombudsman and/or Inspector.

2. Policy rationale

The policy is designed to assist the Office and the IDS to:

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

3. Definitions

Crime and Corruption Commission (CCC)	the Commission continued in existence under the CC Act
CC Act	<i>Crime and Corruption Act 2001</i>
Complaint	includes information or matter: see definition provided by s 48A(4) of the CC Act
Contact details for Nominated person	Deputy Ombudsman (07) 3005 7000
Corruption	see Schedule 2 (Dictionary) of the CC Act

¹ Under schedule 2 (Dictionary) of the CC Act, the meaning of ‘public official’ includes the Ombudsman as well as the Inspector.

² See the definition of “unit of public administration” in s 20 of the CC Act.

³ See s 58 of the *Ombudsman Act 2001*.

Corrupt conduct	see s 15 of the CC Act
Deal with	see Schedule 2 (Dictionary) of the CC Act
Nominated person	see clause 5 of this policy
Public Official	As noted above, this policy is about two “public officials”: the Ombudsman and the Inspector. See also the definition of “public official” in Schedule 2 (Dictionary) and s. 48A of the CC Act.
Unit of public administration (UPA)	see s 20 of the CC Act

4. Policy application

This policy applies:

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

For the purpose of this policy a complaint includes information or matter.⁴

5. Nominated person

Having regard to section 48A(2) and (3) of the CC Act, this policy nominates the Deputy Ombudsman as the nominated person to notify⁵ the Crime and Corruption Commission (CCC) of the complaint and to deal with the complaint under the CC Act.⁶

The provisions of the CC Act that regulate how the Ombudsman and Inspector as the public official of their respective UPA are to notify or deal with a complaint also apply to the nominated person.⁷

6. Complaints about the Ombudsman and Inspector

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

- the nominated person, or
- a person to whom there is an obligation to report under an Act⁸ (this does not include an obligation imposed by sections 37, 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.

⁴ See s 48A(4) of the CC Act.

⁵ Under s 38 of the CC Act.

⁶ Under Chapter 2, Part 3, Division 4, Subdivision 2 of the CC Act.

⁷ See s 48A(3) of the CC Act.

⁸ See s 39(2) of the CC Act.

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

- (a) notify the CCC of the complaint;⁹ and
- (b) deal with the complaint, subject to the CCC's monitoring role, if the CCC refers the complaint back to the Deputy Ombudsman to deal with.¹⁰

If the Ombudsman or Inspector receives a complaint, and 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.

7. Recordkeeping requirements

Should the nominated person decide that a complaint, or information or matter, about alleged corrupt conduct of the Ombudsman or Inspector is not required to be notified to the CCC under section 38 of the CC Act, the nominated person must make a record of the decision that complies with section 40A of the CC Act (in accordance with the Office's *Prevention and management of fraud and corruption policy and procedure*).

8. Resourcing the nominated person

If pursuant to section 46 of the CC Act, the nominated person has responsibility to deal with the complaint:¹¹

- (i) the Office will ensure that sufficient resources are available to the nominated person to enable them to deal with the complaint appropriately;¹² 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, or
 - the consent of the nominated person responsible for dealing with the complaint
- (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;¹³
 - the importance of promoting public confidence in the way suspected corrupt conduct in the Office and/or the IDS is dealt with;¹⁴ and

⁹ Under s 38 of the CC Act.

¹⁰ The complaint may be referred back to the Deputy Ombudsman under s 46 of the CC Act to deal with. Where this occurs, it should be dealt with under ss 43 and 44 of the CC Act.

¹¹ Under ss 43 and 44 of the CC Act.

¹² See the CCC's corruption purposes and function set out in ss 4(1)(b), 33, 34, 35 of the CC Act and the Office's *Prevention and management of fraud and corruption policy and procedure*.

¹³ See s 57 of the CC Act and the CCC's corruption purposes and function set out in ss 4(1)(b), 33, 34, 35 of the CC Act.

¹⁴ See s 34(c) of the CC Act.

- the Office's and/or the IDS's statutory, policy and procedural framework (including the Office's *Prevention and management of fraud and corruption policy and procedure*).

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

- are delegated the same authority, functions and powers as the Ombudsman and/or Inspector to direct and control staff of the Office as if the nominated person is the public official of the Office for the purpose of dealing with the complaint only;
- are delegated the same authority, functions and powers as the Ombudsman and/or Inspector to enter into contracts on behalf of the Office for the purpose of dealing with the complaint; and
- do not have any authority, function or power that cannot — under the law of the Commonwealth or the State — be delegated by the Ombudsman or Inspector, to the nominated person.

9. Liaising with the CCC

The Ombudsman and the Inspector must keep the CCC and the nominated person informed of:

- the contact details for the Ombudsman, Inspector and Deputy Ombudsman; and
- any proposed changes to this policy.


10. Consultation with the CCC

The Ombudsman and the Inspector will consult with the CCC when preparing any policy about how the Office and the IDS will deal with a complaint that involves or may involve corrupt conduct of the Ombudsman or the Inspector.¹⁵

11. Statutory references

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

12. Approval

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Authorised by:	 Anthony Reilly, Ombudsman and Inspector of Detention Services

¹⁵ s 48A of the CC Act.

Authorisation date:	14 November 2023
Review date:	Three years from date of approval

13. Document control

Version	Effective date	Review date	Amendment history
001	14 November 2023	16 November 2026	New Policy – incorporates IDS and on new CCC template.

Previous Policy (Historical – doc # 38446)

Version	Effective Date	Amendment History
V1	November 2016	Final