

# What is minor misconduct?

## Reporting minor misconduct

*This fact sheet has been prepared to assist people to understand, in practical terms, what behaviours and circumstances might constitute minor misconduct.*

### Minor misconduct in context

Minor misconduct, as defined in the [Corruption, Crime and Misconduct Act 2003](#) (CCM Act) is actually not that minor. To meet the definition, the misconduct should be so significant that it could reasonably lead to termination of a public officer's employment if proved. However, conduct matters involving public officers that are not misconduct under the CCM Act are not required to be notified and are to be dealt with as before. These matters (such as discipline, grievance or performance management) are considered to be matters that can be appropriately dealt with, without referring to the PSC.

### Minor misconduct defined

Section 4(d) of the CCM Act defines minor misconduct.

Minor misconduct occurs if a public officer engages in conduct that:

- i. adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer, whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct; or
- ii. constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or
- iii. constitutes or involves a breach of trust placed in the public officer by reason of his or her office or employment as a public officer, or
- iv. involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person

### and constitutes, or could constitute -

- vi. a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the *Public Sector Management Act 1994* (**whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct**).

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## Applying the definitions

In making judgments about suspected misconduct, the two factors that should be considered are:

- a. The significance of the harm, potential harm, benefit or detriment associated with the alleged misconduct.
- b. The behavioural context and the apparent, or potential, culpability of the officer that allegations are about. Does the alleged misconduct appear naïve, ill-informed or careless or negligent or wilful, or planned and deliberate?

The following comparisons show how these factors influence whether a matter might be considered minor or serious misconduct.

A junior officer delaying the processing of a license application from a citizen that offended them would, in most cases, not satisfy the termination threshold for minor misconduct. However, if they had been formally sanctioned beforehand for not acting impartially, the matter may be considered as minor misconduct.

Falsifying a time sheet is dishonest behaviour. However, the notification of that behaviour as misconduct will be influenced by evidence of whether it was accidental or deliberate and the value of time falsely claimed. (i.e. reasonable grounds for termination).

- If the officer concerned was the Chief Finance Officer it would be considered to be at least minor (and possibly serious if the value of the claims was very high).
- If the officer concerned was a front line employee (or even a supervisor) and the overall claim low, it should still be dealt with as a disciplinary issue and may even result in a penalty or sanction. However, depending on an agency's own policy, it would be unlikely to meet the notification threshold for minor misconduct (i.e. reasonable grounds for termination).

## Further advice

To gain a legal understanding of minor misconduct, refer to the *Corruption, Crime and Misconduct Act 2003* available from State Law Publisher at [www.slp.wa.gov.au](http://www.slp.wa.gov.au)

Please contact the PSC for advice on whether matters are required to be notified to the PSC.

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