

Notification by principal officers

Reporting minor misconduct

This fact sheet has been prepared for principal officers who are required to notify the Public Sector Commission (PSC) of all reasonable suspicions of minor misconduct. It should be read in conjunction with the joint information resource, [Notifying misconduct - A guide for principal officers of notifying authorities](#).

Legislative changes

On 1 July 2015 the [Corruption, Crime and Misconduct Act 2003](#) (CCM Act) was proclaimed making the PSC responsible for the oversight of minor misconduct of public officers and for misconduct prevention and education programs.

Previously principal officers notified all instances of suspected misconduct to the CCC. Now principal officers are required to:

- notify the PSC of all reasonable suspicions of minor misconduct (s.45H of the CCM Act)
- notify the CCC of all reasonable suspicions of serious misconduct (s.28 of the CCM Act).

What the changes mean in practice

Principal officers must now make an informed decision about whether a matter may constitute minor or serious misconduct as defined in the CCM Act, and notify either the PSC or the CCC accordingly.

Principal officers should feel confident to make informed decisions based on relevant facts and circumstances. If principal officers notify incorrectly, but carefully and in good faith, the PSC and the CCC will collaborate and refer the matter between them as appropriate. Principal officers will be advised about any referral between the PSC and the CCC and provided with an explanation as to why a different conclusion was drawn about the allegation and a referral made.

Where a matter includes both serious and minor allegations that are directly related or cannot be separated, it should be notified to the CCC. Principal officers should not notify both the PSC and the CCC about the same matter as this will cause unnecessary duplication and effort.

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 -

- v. 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**).

To further assist principal officers to understand what matters might constitute minor misconduct, the PSC has prepared [Fact sheet 1: What is minor misconduct?](#) It contains examples and commentary that principal officers may find useful.

Section 45I of the CCM Act makes it paramount that principal officers notify the PSC as soon as practicable after forming a reasonable suspicion of minor misconduct.

Matters that are not minor misconduct

Principal officers do not need to notify the PSC of matters that do not meet the minor misconduct definition. Many conduct matters raised within public authorities will not meet the statutory definition (s.4(d) of the CCM Act) of minor misconduct. Conduct matters, such as discipline, grievance and performance management issues, should be dealt with through each public authority's own internal mechanisms. This is the most efficient and effective way to manage such issues.

However, records of such matters should be retained for internal monitoring and for reporting to the PSC on an annual basis. Public authorities may also be subject to periodic audit and/or review of their integrity controls, misconduct management arrangements and reporting practices.

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Making an informed decision

Principal officers should consider the matter at hand in light of the definitions of serious and minor misconduct as defined in the CCM Act. Principal officers may also find the joint information resource, [Notifying misconduct - A guide for principal officers of notifying authorities](#) useful in making a decision.

Further preliminary investigation at the public authority level might be required to determine if a matter is minor or serious misconduct. When exercising judgment about notifying, public authorities need to balance the duty to notify 'as soon as is practicable' with the need to understand enough about the matter raised to establish a reasonable suspicion of minor misconduct.

Access to advice

The PSC welcomes telephone enquiries from principal officers and senior integrity officers about minor misconduct prior to notification. Contact the PSC's Advisory service on 08 6552 8888. This may reduce the time and resources involved for both the authority and the PSC.

Making a notification

Notifications to the PSC should be made in writing, and where possible, electronically.

Online: [online form](#) or www.publicsector.wa.gov.au

Email: minormisconduct@psc.wa.gov.au

Post: Locked Bag 3002, WEST PERTH WA 6872

What to include in a notification

Principal officers should include the following information in the notification:

- How and when the principal officer became aware of the matter, name and contact details of the notifier
- Relevant details including the names, positions and contact details of the public officer/s who may be involved or who are aware of the matter
- A brief description of the alleged or suspected events and any dates, times and places in which the events occurred
- The approximate values of goods or amounts of money that may be involved
- Any detriment, risk or danger to any persons or the public
- A brief analysis of why the events in question may be minor misconduct
- Any evidence that supports the suspicion, including the details of witnesses, any documents, emails and other materials (if available)
- What action has been taken to date, and what further action is proposed

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What the PSC does when a notification is received

The PSC is required under the CCM Act to assess every notification it receives. When assessing the matters notified and considering further action, issues taken into consideration include:

- Whether the matter falls within the PSC's jurisdiction – if not the PSC may refer it to another appropriate authority or take no further action
- The seniority of the public officer allegedly involved and the position the public officer holds
- Whether the matter has system level implications within the agency concerned, or for the broader sectors
- Whether the public authority has the resources and capability to investigate the matter itself
- Whether the matter raised is of particular interest to the PSC or the CCC in relation to broader patterns of conduct or particular themes in ongoing prevention and education work.

Importantly, principal officers and employing authorities are not prevented from commencing disciplinary or taking other remedial actions while the PSC assesses the matters notified. However, prudence is recommended where a matter involves officers in the first or second tier of management.

There are a number of options available to the PSC following assessment:

- Taking no further action in relation to the matter
- Referring the matter back to the public authority for it to manage
- Referring the matter back to the public authority for it to manage, with the PSC monitoring the process undertaken and/or the outcome
- Investigating the matter using review, investigation or inquiry powers that are available to the Commissioner
- Investigating cooperatively with the CCC, or another appropriate authority
- Referring the matter to the CCC, or to another appropriate authority.

The PSC aims to assess notifications and reports as quickly as possible. This process is assisted by detailed reports and notifications that reference any available evidence. Principal officers will be informed of progress throughout the assessment process. Principal officers are encouraged to call the PSC if they have questions about the process.

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Benefits of making a notification

Principal officers who make appropriate notifications are meeting their obligations under the CCM Act. The PSC uses the information in notifications, among other things, to build a picture of the integrity landscape in Western Australian public authorities. The PSC and the CCC also share information, data and statistics in the interests of efficiency and effectiveness.

While information in a single notification may not necessarily be significant, combined with other intelligence, it may point to areas of weakness, risk or more serious misconduct. This information allows the PSC to better target its prevention and education efforts, to ensure public authorities have robust and effective systems and ultimately instil public confidence in public authorities.

Further advice

For the legal definitions of public authority or public officer, see section 1 of the CCM Act available from State Law Publisher at 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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