



**PSC** | Public Sector  
Commission

**CCC** | Corruption and  
Crime Commission

## Notifying misconduct

A guide for Principal Officers of  
Notifying Authorities

August 2018



## Introduction

This guide has been issued by the Corruption and Crime Commission (CCC) and Public Sector Commission (PSC) to provide Principal Officers with important information about:

- their obligations under the [Corruption Crime and Misconduct Act 2003](#) (the CCM Act);
- practical information about what should be contained in a notification; and
- steps that public authorities should take in processing allegations of misconduct raised with or within the authority.

This document supersedes the *Notification of misconduct in Western Australia: A joint information resource* and also revokes the *CCC Guidelines for Notification of Serious Misconduct* (the Guidelines) issued under [the CCM Act](#), section 30, on 1 July 2015.

The revocation of the Guidelines removes the categories of serious misconduct, with notifications to be made as soon as reasonably practicable.

## Who has a duty to notify?

A duty to notify arises when the Principal Officer acting in their official capacity suspects, on reasonable grounds, that a matter concerns or may concern either serious or minor misconduct.

The Principal Officer of a notifying authority must notify the appropriate agency of suspected serious or minor misconduct as soon as reasonably practicable after becoming aware of the matter.

Principal Officer is defined in the [CCM Act](#), section 3 and may include the Chief Executive Officer or Chief Employee of a department or organisation, or a specified person holding the office of Principal Officer.

## What does 'suspicion on reasonable grounds' mean?

'Suspicion on reasonable grounds' is not a high threshold. It means a Principal Officer has formed a suspicion of the existence of serious or minor misconduct after making an assessment that is fair, sensible and based on sound judgment.

Information about the alleged misconduct does not have to be in the direct knowledge of the Principal Officer, who should give consideration to the reliability of the information sources.

Suspicion on reasonable grounds requires some factual basis but does not require definitive proof, it merely requires a stronger level of knowledge than mere speculation, rumour, gossip or innuendo.

## What is serious misconduct?

Serious misconduct is conduct by a public officer who:

- acts corruptly or corruptly fails to act in the course of their duties; or
- corruptly takes advantage of their office or employment to obtain a benefit or to cause a detriment to any person; or
- acting in the course of their duties or while deliberately creating the appearance of acting in the course of their duties, commits an offence punishable by two or more years imprisonment.

Corrupt conduct tends to show a deliberate intent for an improper purpose or an improper motivation.

Corrupt conduct may involve an exercise of a public power or function but for private benefit. It may involve conduct such as the deliberate failure to perform the functions of office properly, or the exercise of a power or duty for an improper purpose.

For the types of criminal offences that may amount to serious misconduct, please refer to Schedule 1 on pages 6 and 7 of this publication.

### What is minor misconduct?

Minor misconduct is actually not that minor.

To meet the test under the [CCM Act](#) definition, the misconduct should be so significant that, if proved, it could reasonably lead to termination of a public officer's employment.

Minor misconduct is conduct by a public officer that:

- adversely affects 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 official capacity at the time of engaging in the conduct;
  - involves the performance of functions in a manner that is not honest or impartial;
  - involves a breach of the trust placed in the public officer; or
  - involves the misuse of information or material that is in connection with their 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, a disciplinary offence providing reasonable grounds for termination of a person's office or employment.

### What is not misconduct?

Matters that are outside of the definitions of either serious or minor misconduct do not need to be notified to the CCC or the PSC.

Matters of general low-level discipline, misbehavior or employee relations issues are outside the definitions of serious and minor misconduct and are to be managed by individual employing authorities.

Examples could include general human resources and performance management issues, grievances around employee relationships and minor infractions of policies and procedures.

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 compliance assessments on their management arrangements for misconduct generally.

## Who is a public officer?

Only public officers are within the CCC's and PSC's jurisdiction. A full definition of the term 'public officer' is found in the [Criminal Code Act 1913](#), section 1.

The term 'public officer' includes all public sector employees; members of government boards and committees; local government elected officials and employees; employees of public universities; employees of public utilities and some volunteers.

It should be noted that only the CCC has jurisdiction over Western Australia Police Force officers and elected members of Local Governments.

Allegations of serious misconduct against elected members of Local Governments, and both serious and minor misconduct allegations against Western Australia Police Force officers, must be directed to the CCC.

## How do I make a notification?

Notifications must be made in writing and, where possible, electronically.

Serious misconduct		Minor misconduct	
<b>Online</b>	Using the online form at <a href="http://www.ccc.wa.gov.au">www.ccc.wa.gov.au</a>	<b>Online</b>	Using the online form at <a href="http://www.publicsector.wa.gov.au">www.publicsector.wa.gov.au</a>
<b>Email</b>	<a href="mailto:info@ccc.wa.gov.au">info@ccc.wa.gov.au</a>	<b>Email</b>	<a href="mailto:minormisconduct@psc.wa.gov.au">minormisconduct@psc.wa.gov.au</a>
<b>Post</b>	PO Box 330, NORTHBRIDGE WA 6865	<b>Post</b>	Locked Bag 3002, WEST PERTH WA 6872

Do not notify both agencies as this will cause unnecessary duplication and effort.

If the CCC or the PSC assesses the matter differently to the public authority, referral powers in the legislation will be used to direct the matter appropriately and advise the principal officer of reasons for that referral.

Where a matter includes both serious and minor allegations that are directly related or cannot be separated, notify the CCC.

## What information should a notification contain?

The CCC and PSC recognise that it is not always practicable to provide all the required information at the time of initial notification.

However, the notification should contain as much of the following information as possible.

### Details of the person(s) involved:

- the name of the Principal Officer, details of the relevant business unit(s) or public authority affected and where applicable the nominated contact person;
- the name and position of the public officer against whom the allegation is made;
- any previous history of misconduct allegations against the public officer(s) and the outcome(s) of any investigations (if known); and
- the name(s) of any person(s) who witnessed and/or are affected by the alleged serious or minor misconduct.

### Details of the matter(s):

- the date the allegation became known to the Principal Officer;
- a summary of the allegation(s) (include date(s), location, value of any goods / property loss, and risk or danger to any person or the public); and
- explanation / rationale of why allegations are considered to fall within the scope of serious or minor misconduct identifying which subsection of the [CCM Act](#) Section 4 is relevant.

### Actions by the notifying authority:

- provide details of any assessment made or preliminary enquiries undertaken;
- describe any action being taken, or proposed actions or processes (for example, disciplinary decisions or sanctions); and
- provide details of relevant policies and procedures, including supporting procedures and any supporting documents, electronic records or data (for example, relevant correspondence, CCTV footage or statements taken).

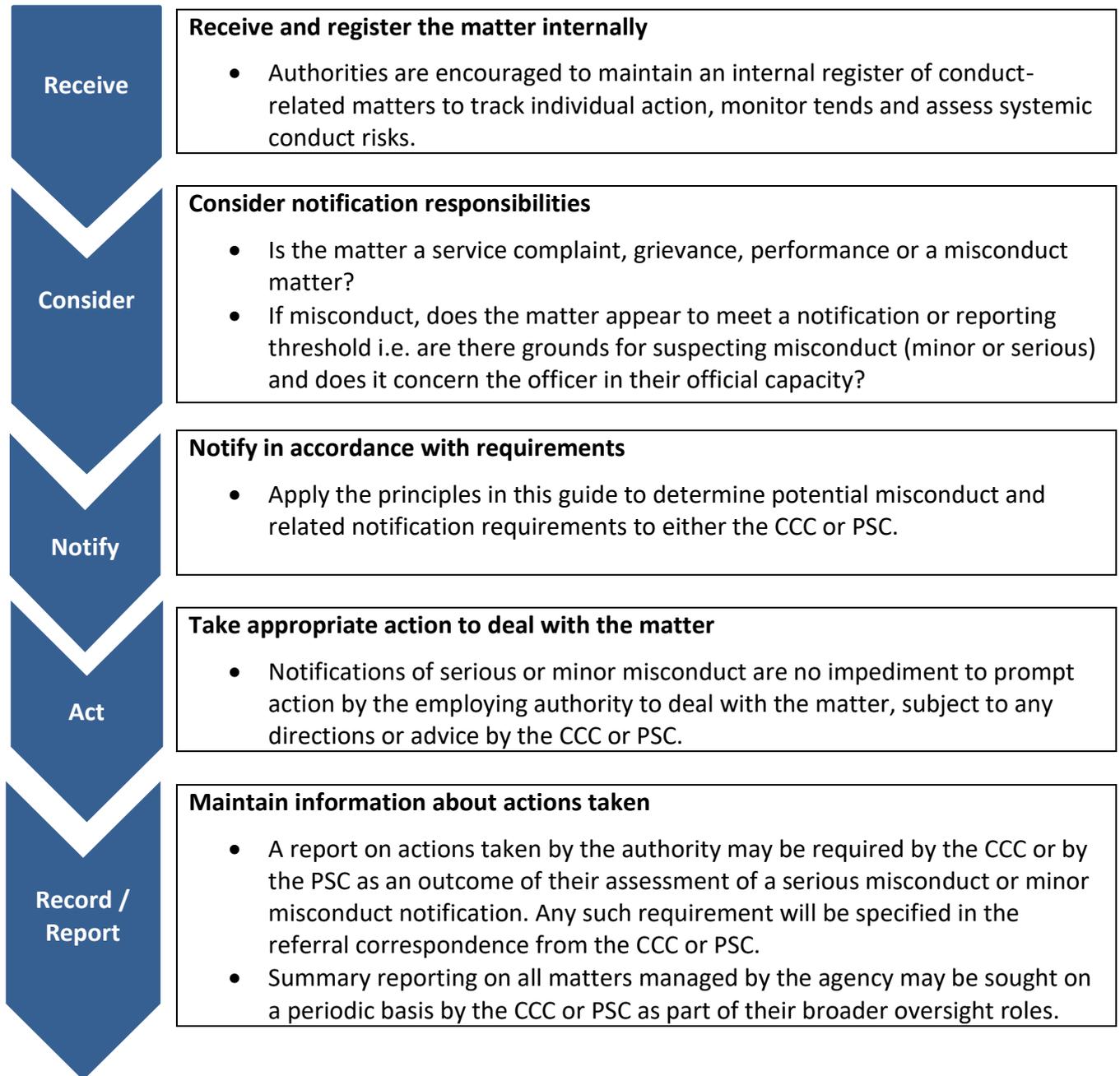
## General obligations

The duty to notify the CCC of serious misconduct or the PSC of minor misconduct does not affect any obligations under the [Public Interest Disclosure Act 2003](#) or the requirement to comply with statutory obligations under any other Act, including reporting allegations to the WA Police Force.

If a Principal Officer does not comply with the duty to notify a matter relating to serious misconduct to the CCC, or a matter relating to minor misconduct to the PSC, the relevant Commission may report the non-compliance to a person who, or body which, has the power to take disciplinary action against the notifying authority.

## Making it work

The following diagram summarises the steps that public authorities should take in processing allegations of misconduct raised with or within the authority.



## Schedule 1

### Offences that may constitute serious misconduct

Serious misconduct includes conduct by a public officer who, in the course of their duties, commits an offence that imposes a penalty of 2 or more years imprisonment.

The following is a guide to some of the offences that meet this criterion. However, it is not an exhaustive list. Please refer to the [Criminal Code Act 1913](#).

Act	Description	Section(s)
<b><i>Criminal Code Act Compilation Act 1913 (WA)</i></b>		
Offences against public order	Racist harassment, incitement to racist harassment	Sections 77 - 80D
Offences against the administration of law, justice and public authority	Disclosing official secrets, bribery, corruption, falsification of records, perjury, electoral offences, giving false evidence, conspiracy to pervert the course of justice, destroying evidence, escape from lawful custody	Sections 81 - 83, 85 - 88, 96, 121 - 125, 127 - 136, 139, 141 - 151
Other offences against public authority	False statements, obstructing a public officer, refusing to perform a duty	Sections 169 - 173
Sexual offences and child exploitation	Producing, possessing or distributing child exploitation material, sexual offences including indecent assault, rape, sexual servitude	Sections 181, 186 - 187, 190 - 192, 199, 202 - 204B, 214 - 215, 217 - 220, 320 - 330, 331B - 331D
Criminal organisation offences	Participating in activities of criminal organisation	Sections 221E - 221F
Offences against liberty and threats	Kidnapping, deprivation of liberty, threats with intent, create false apprehension of threat, demands with threats, threats to extort, producing acts by threat with intent to defraud	Sections 332 - 333, 336 - 337, 338A - 338C

Stealing and like offences	Stealing, concealment, fraudulent dealing, robbery, burglary, fraud, receiving/possession stolen property, acts with intent to defraud (director), false statement or falsification of record (company official)	Sections 378 - 386, 388 - 390A, 392 - 393, 396 - 399, 401, 407, 409, 414, 416 - 417A, 419 - 421, 424
Unauthorised use of computer systems	Unlawful use of computer systems	Section 440A
Offences against property	Damaging property, acts with intent to cause damage or explosion (mine, railway, aircraft, marine, navigation)	Sections 445, 449, 451 - 451B, 454 - 458
Forgery and identity crime	Forgery, false representations as to status, personation	Sections 473 - 474, 488, 490 - 492, 510 - 514
Offences relating to trade, breach of contract, corruption	Fraudulent dealings, corruptly receiving reward, corruptly offering reward, false receipts, secret commissions, acting without authority	Sections 527, 529 - 532, 533 - 536
Conspiracy, accessories after the fact	Attempting/incitement to commit indictable offence or criminal act, conspiracy to commit indictable offence, accessory after the fact, property laundering	Sections 552 - 553, 556 - 558, 562, 563A - 563B
<b>Misuse of Drugs Act 1981</b>		
Drugs offences	Occupier permit use of premises for manufacture of prohibited drug/plant, possess, cultivate or sell/supply prohibited drug/plant, sell drug paraphernalia to a child, trafficking, manufacture or supply prohibited drug	Sections 5, 6, 7(1)(a), 7(1)(b), 7B(4)