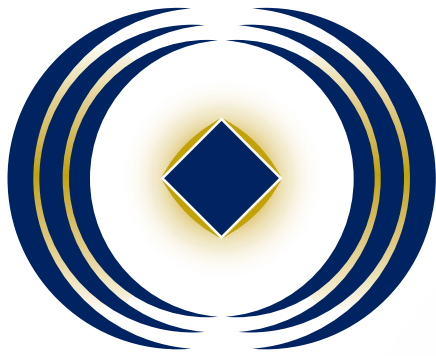


July 2007



**CORRUPTION  
AND CRIME  
COMMISSION**

**NOTIFICATION GUIDELINES**  
FOR  
**PRINCIPAL OFFICERS OF PUBLIC AUTHORITIES**

**BUILDING INTEGRITY**  
REDUCING MISCONDUCT

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## FOREWORD

This is a revised edition of the *Corruption and Crime Commission Notification Guidelines for Principal Officers of Public Authorities*, first published in 2005.

Under the *Corruption and Crime Commission Act 2003* principal officers, who are usually the Chief Executive Officers (CEOs) of agencies, are required to notify the Corruption and Crime Commission (the Commission) if they reasonably suspect that misconduct may have occurred. These Guidelines clarify the definition of misconduct, the notification requirements and the legislation protecting those who report suspected misconduct.

The Commission has responsibility to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector. The integrity of an agency is the responsibility of the CEO. The provision of these Guidelines will assist CEOs to meet their responsibilities in this regard.

One of the Commission's important functions is to support and assist agencies to deal appropriately with misconduct matters. If you need either assistance or advice on how to deal with misconduct, do not hesitate to contact the Commission.

Contact details for the Commission are detailed on the last page of these Guidelines.

I look forward to working with you to ensure the public sector is free of misconduct.



The Hon Len Roberts-Smith RFD, QC  
**COMMISSIONER**

## 1. ABOUT THE CORRUPTION AND CRIME COMMISSION

The Commission was established under the *Corruption and Crime Commission Act 2003* (the Act). Section 7A of the Act describes the main purposes of the Act as being:

- (a) *to combat and reduce the incidence of organised crime; and*
- (b) *to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.*

The latter purpose of the Act is achieved through the establishment of the Commission to:

*...help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly serious misconduct.*

The Corruption and Crime Commission (the Commission) undertakes the above by conducting investigations and examinations, providing corruption prevention advice and by monitoring and reporting on the effectiveness of investigations into misconduct carried out within the public sector.

Most of the work of the Commission arises from notifications by public sector agencies and from information provided by the public.

## 2. THE DUTY TO NOTIFY

The duty for certain officers to notify the Commission in writing of suspected misconduct is imposed by Section 28 of the Act. This duty is paramount, despite competing obligations under other legislation (including the *Public Interest Disclosure Act 2003*) or other obligations to maintain confidentiality.

### 2.1 Who is Required to Notify the Commission of Suspected Misconduct?

Section 28 of the Act applies to the Parliamentary Commissioner, the Inspector of Custodial Services, the principal officer of a notifying authority, and an officer who constitutes a notifying authority. Section 3 of the Act defines the principal officer of a *notifying authority* in very wide terms. It means:

- (a) The chief executive officer or chief employee of a department or organisation as defined in the *Public Sector Management Act 1994*;

- (b) an entity in respect of which a declaration is in effect under section 56(2) of the *Financial Management Act 2006*;
- (c) in the case of a contractor and any subcontractor, the holder of the office specified in the contract is deemed to be the principal officer; and
- (d) in any other case
  - (i) the person specified in the regulations as the principal officer of that notifying authority or,
  - (ii) if no person is specified, the most senior officer who is head of that notifying authority.

If you are uncertain about whether or not you or your organisation is a notifying authority, please contact the Commission to discuss the matter.

### 3. WHAT IS MISCONDUCT?

Section 4 of the Act outlines the meaning of misconduct. It effectively describes misconduct in two ways.

‘Serious misconduct’ occurs when a public officer:

- **corruptly acts or corruptly fails to act** in the performance of the functions of the public officer’s office or employment;
- **corruptly takes advantage to obtain a benefit or to cause a detriment to another**, i.e., a public officer corruptly takes advantage of the public officer’s office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; or
- **commits an offence in official capacity**, i.e., a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years imprisonment.

‘Simple misconduct’ requires two things to occur. These must be improper conduct (the conduct test) resulting in adverse consequences for the public officer involved (the consequence test). The improper conduct associated with the conduct test occurs when a public officer engages in conduct that:

- adversely affects, or could adversely affect, the honest or impartial performance of the functions of a public authority or public officer whether or not acting in their official capacity at the time;
- was not honest or impartial;
- constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or
- involves the misuse of information for personal benefit or the detriment of another person.

The adverse consequences associated with the consequence test are that the improper conduct constitutes or could constitute:

- an offence against the *Statutory Corporations (Liability of Directors) Act 1996*;
- an offence against any other written law; or
- a disciplinary offence providing reasonable grounds for the termination of employment under the *Public Sector Management Act 1994*, whether or not that person is employed under that Act.

It is not always clear where the cut-off between misconduct and minor disciplinary infractions lies. This question is best answered by observing that each case must be considered on its own merits.

Importantly, the duty to notify occurs when you suspect on reasonable grounds that the matter concerns or **may concern** misconduct. That is, the duty to notify arises on something less than a substantive suspicion of misconduct. If there is any doubt, contact the Commission and seek advice.

### 3.1 Who is a Public Officer?

Misconduct under the Act can only be committed by public officers. This term also has a special meaning, as defined by section 1 of the *Criminal Code*, and means any of the following:

- (a) a police officer;
- (aa) a Minister of the Crown;
- (ab) a Parliamentary Secretary appointed under section 44A of the *Constitution Acts Amendment Act 1899*;
- (ac) a member of either House of Parliament;
- (ad) a person exercising authority under a written law;
- (b) a person authorised under a written law to execute or serve any process of a court or a tribunal;
- (c) a public service officer or employee within the meaning of the *Public Sector Management Act 1994*;
  - (ca) a person who holds a permit to do high-level security work as defined in the *Court Security and Custodial Services Act 1999*;
  - (cb) a person who holds a permit to do high-level security work as defined in the *Prisons Act 1981*;
- (d) a member, officer or employee of any authority, board, corporation, commission, local government, council of a local government, council or committee or similar body established under a written law; or

*(e) any other person holding office under, or employed by, the State of Western Australia, whether for remuneration or not.*

This definition extends to volunteers who might not be employed in Government, but nevertheless exercise authority under a written law. If clarification is required, please contact the Commission.

### 3.2 What Does Acting Corruptly Mean?

The term 'corruptly' is not defined and is given its ordinary and natural meaning. Acting corruptly commonly signifies actions which exhibit an impairment of integrity, lack of virtue, or a departure from what is correct. However, even where an act done by a public officer is within lawful authority, that act may still be corrupt if it is done for an improper purpose.

A police officer, for example, who parks his road patrol vehicle near licensed premises where his daughter has been dismissed from her employment, with the intent of causing a detriment to the owners of the premises. The officer may have acted corruptly even though the officer had discretion to organise the placement of those patrol vehicles.

## 4. WHEN MUST YOU NOTIFY?

Section 28(3) of the Act requires you to notify reasonably held suspicions about matters that concern or **may concern** misconduct **as soon as is reasonably practicable** after you become aware of them. The Act contains no provision permitting delay. The duty to notify is paramount. This means that you must notify your suspicions as soon as you are practically able.

Not only are you obliged to notify of suspected misconduct in your agency, you are also obliged to notify the Commission of matters that concern or **may concern** misconduct that you become aware of in other public authorities when the matter is of relevance or concern to you in your official capacity.

If there is any doubt, it is safer to notify. It is never wrong to notify.

### 4.1 False or Malicious Reporting

While we have said 'it is never wrong to notify' anyone who knowingly makes a false or malicious report commits a serious offence under section 25(5) of the Act. The penalty is 3 years imprisonment and a \$60 000 fine.

## 4.2 Internal Reporting Systems

Agencies need to develop internal reporting systems so that principal officers are made aware of information and allegations about misconduct in a timely and efficient way. It is important that staff are aware of these systems, do not fear victimisation, are confident about confidentiality and believe that management will take effective action in response to their reports of misconduct. It is also important that these systems provide principal officers with accurate, as distinct from sanitised, information.

The Commission can assist you to develop and maintain effective internal reporting systems.

## 4.3 Maintaining Confidentiality

Maintaining confidentiality when dealing with suspected misconduct is critical for a number of reasons.

- Breaching confidentiality is likely to undermine subsequent inquiries into the matter.
- Breaching confidentiality places informants at risk of reprisal, which may include acts of violence towards them.
- It is an offence under section 151 of the Act to disclose information provided to the Commission, except in certain circumstances.
- Breaching confidentiality may cause unnecessary stress and hardship to the people and the families of the people associated with the matter.

## 4.4 Protection

Section 29(1) of the Act protects you when notifying reasonably suspected misconduct to the Commission by ensuring that no offence is committed when you comply with the duty to notify. There are a number of other protections under the Act, including the following offences.

- **Victimisation** of any person who has given evidence to or helps the Commission (section 175).
- **Dismissal** of any person for having appeared before or having given evidence to the Commission (section 174).
- **Injury or detriment** to any person for having appeared before or having given evidence to the Commission (section 173).

## 5. HOW TO NOTIFY

Generally notifications should be made in writing. However, serious matters may need urgent attention and it may be advisable to initially notify, or at least seek advice about the matter, by telephone.

If your agency deals with many minor misconduct matters, you may wish to explore more efficient ways of notifying (for example, electronic methods). The Commission encourages agencies to discuss and negotiate with the Commission the development of individual agency guidelines to cover such matters.

### 5.1 What to Include in the Notification

The notification should highlight your suspicions. Please do not simply describe suspicions in terms like 'alleged assault' or 'alleged theft' etc. A concise description of the events in question, which highlights their relative seriousness and nature, is much more useful.

The notification could also include a brief analysis of why it is believed that the events in question may concern misconduct and the basis on which the reasonable suspicion was formed. If this analysis is not included in the notification, the Commission recommends that it be documented internally.

**The Corruption and Crime Commission recommends the use of the following checklist as a guide to compiling the notification.**

- A concise description of the alleged or suspected events in question.
- The dates, time frames and places in which the events in question may have occurred.
- A brief analysis of why the events in question may be misconduct.
- A brief analysis of the basis for forming a reasonable suspicion about the events in question.
- The name, position and contact details of the public officers who may be involved.
- The name, position and contact details of the informant.
- The name, position and contact details of any witnesses.
- Details of relevant documentation or other evidence.
- How and when you became aware of the matter.
- What action has been taken to date, and what further action is proposed.

- The approximate amount of money or value of goods (if any) involved.
- The investigation report, or interim report, about the matter (if conducted).
- The names, positions and contact details of all officers who are aware of the notification, including their status as witnesses, informants or suspects.

## **6. WHAT DOES THE CORRUPTION AND CRIME COMMISSION DO WITH NOTIFICATIONS?**

The Act requires the Commission to deal with notifications in a particular way. There is a requirement for the Commission to assess notifications and form opinions about whether misconduct has or may have occurred; is or may be occurring; is or may be about to occur; or is likely to occur. Having formed an opinion, the Commission may decide to take any of the following courses of action.

- Investigate or take other action about the matter alone.
- Investigate or take other action about the matter in cooperation with other agencies (for example, the Ombudsman).
- Refer the matter to another agency for action – most likely the agency making the notification.
- Take no action.

Unless there are exceptional circumstances, the Commission will provide a written explanation of the decision and the reasons for the decision. Occasionally there may, for operational reasons, be a significant delay in the provision of reasons. Decisions made by the Commission can be discussed on a case-by-case basis with the Commission

## 7. EXAMPLE OF NOTIFICATION

Commissioner  
Corruption and Crime Commission  
PO Box 7667  
Cloisters Square  
PERTH WA 6850

Dear Commissioner

### **NOTIFICATION OF SUSPECTED MISCONDUCT SECTION 28 CORRUPTION AND CRIME COMMISSION ACT 2003**

On 1 May 2007 an audit of our credit records revealed that the credit card allocated to Mr John Citizen appears to have been used to purchase personal clothing. I attach copies of the relevant credit card records, which reveal the following transactions.

- 01.03.07 Purchase of shoes \$275.00
- 14.03.07 Purchase of suit \$864.75
- 21.03.07 Purchase of jeans \$123.00
- 14.04.07 Purchase of silk tie \$102.40
- 15.04.07 Purchase of suede boots \$186.24

Mr Citizen is not authorized to purchase personal clothing with the departmental credit card. He signed an acknowledgment to that effect when the card was issued to him on 28 February 2007 (copy of the acknowledgement is attached).

I suspect that misconduct may be involved because the unauthorized purchases may involve offences against the *Criminal Code (W.A.)*. I understand the offences in question carry a penalty in excess of two years.

There are no witnesses to the purchase, however, further details can be obtained from me by phoning 9213 4567 or our internal auditor Mr Bill Ticker on 9890 1234.

At this time we have taken the credit card away from Mr Citizen and asked him to explain the purchases. Mr Citizen subsequently reported in sick and is on sick leave today. We have yet to take further action, pending your advice.

Only myself, Mr Ticker and Mr Citizen are currently aware of the matter.

Yours Sincerely

**Ian Boss**  
**CHIEF EXECUTIVE OFFICER**

## 8. CONTACTING THE CORRUPTION AND CRIME COMMISSION

To obtain further information and assistance about notifying misconduct, or any of the issues raised in these guidelines, please contact:

**Investigations Review and Complaints Assessment Unit,  
Operations Directorate of the Commission, by telephoning  
9215 4888.**

To obtain advice on corruption prevention, internal reporting systems, or assistance with seminars or training, please contact:

**Corruption Prevention, Education and Research Directorate of the  
Commission by telephoning 9215 4888.**

Postal Address

**Corruption and Crime Commission of Western Australia  
PO Box 7667 Cloisters Square  
PERTH WA 6850**

Other Contact Details

**Telephone: (08) 9215 4888  
Toll Free: 1800 809 000  
Facsimile: (08) 9215 4884  
E-mail: [info@ccc.wa.gov.au](mailto:info@ccc.wa.gov.au)  
Website: [www.ccc.wa.gov.au](http://www.ccc.wa.gov.au)**



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