



**CORRUPTION  
AND CRIME  
COMMISSION**

**GUIDELINES FOR NOTIFICATION  
OF SERIOUS MISCONDUCT  
FOR  
PRINCIPAL OFFICERS  
OF NOTIFYING AUTHORITIES**

**BUILDING INTEGRITY  
REDUCING SERIOUS MISCONDUCT**

**1 JULY 2015**



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### **Corruption and Crime Commission**

<b>Postal Address</b>	PO Box 7667 Cloisters Square PERTH WA 6850
<b>Telephone</b>	(08) 9215 4888 1800 809 000 (Toll Free for callers outside the Perth metropolitan area.)
<b>Facsimile</b>	(08) 9215 4884
<b>Email</b>	<a href="mailto:info@ccc.wa.gov.au">info@ccc.wa.gov.au</a>
<b>Office Hours</b>	8.30 a.m. to 5.00 p.m., Monday to Friday.

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## Introduction

From 1 July 2015, under the *Corruption, Crime and Misconduct Act 2003* (“the CCM Act”), requirements for notifying authorities regarding notification of suspected misconduct will change.<sup>1</sup>

If there is a reasonable suspicion that a matter concerns **serious misconduct**, the notifying authority must notify the Corruption and Crime Commission (“the CCC”).<sup>2</sup> The notification must be in writing and be made as soon as reasonably practicable after the notifying authority becomes aware of the matter.

The *Guidelines for Notification of Serious Misconduct* (“the Guidelines”) have been issued by the CCC under section 30 of the CCM Act. The Guidelines change the notification obligations for public authorities and set out the categories of serious misconduct. They replace the notification obligations for public authorities issued in October 2011.<sup>3</sup>

These Guidelines only apply to the Principal Officer of a notifying authority. They do not apply to:

- WA Police;<sup>4</sup>
- the Director of Public Prosecutions;
- the Inspector of Custodial Services; or
- the Parliamentary Inspector.

## Who has a duty to notify?

The Principal Officer of a notifying authority has a compulsory duty to notify the CCC of suspected **serious misconduct**.<sup>5</sup>

Principal Officer is defined in section 3 of the CCM Act and may include the chief executive or chief employee of a department or organisation, or a specified person holding the office of Principal Officer.

The duty to notify arises when the Principal Officer acting in their official capacity suspects on reasonable grounds that a matter concerns or may concern serious misconduct.<sup>6</sup>

## What does “suspicion on reasonable grounds” mean?

“Suspicion on reasonable grounds” means a Principal Officer has made an assessment that their suspicion about the alleged serious misconduct is

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<sup>1</sup> Section 3 of the CCM Act provides a definition of “notifying authority” which includes a department, an organisation of the public sector, a statutory authority or a public officer.

<sup>2</sup> Refer sections 28(1) and 28(2) of the CCM Act.

<sup>3</sup> *Notification Guidelines for Principal Officers of Public Authorities* issued October 2011.

<sup>4</sup> Suspected criminal conduct should be reported to WA Police, as these Guidelines do not affect the requirement to comply with statutory obligations under any other Act.

<sup>5</sup> The duty of a Principal Officer to notify does not apply to members of the public or a public officer. Members of the public or a public officer may report serious misconduct to the CCC under section 25 of the CCM Act.

<sup>6</sup> Section 28(2) of the CCM Act.

well-founded. Information about the alleged serious misconduct does not have to be in the direct knowledge of the Principal Officer but should be obtained from reliable sources.

Suspicion on reasonable grounds requires some factual basis, and 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
- who corruptly takes advantage of their office or employment to obtain a benefit or to cause detriment to any person and/or organisation; OR
- who, in the course of their duties, commits an offence punishable by two or more years imprisonment.<sup>7</sup>

Corrupt conduct tends to show a deliberate intent for an improper purpose and motivation and may involve conduct such as: the deliberate failure to perform the functions of office properly; the exercise of a power or duty for an improper purpose; or dishonesty.

For the types of criminal offences that may amount to serious misconduct, please refer to Schedule 1.

### Categories of serious misconduct

The information below sets out the categories of serious misconduct dealt with by the CCC and obligations for a Principal Officer in relation to each category.

<b>CATEGORY 1 (HIGH LEVEL)</b>	
A Category 1 matter must meet the definition of <i>serious misconduct</i> AND include facts that relate to at least one of the seriousness indicators (below).	
<b>CHARACTERISTICS</b>	<b>REQUIREMENTS</b>
<p><b>Public officer</b></p> <ul style="list-style-type: none"> <li>• A public officer with decision-making powers; OR</li> <li>• a Member of Parliament; OR</li> <li>• elected members; OR</li> </ul> <p><b>Conduct alleged</b></p> <ul style="list-style-type: none"> <li>• a conspiracy or plan by one or more public officers to commit serious misconduct; OR</li> </ul>	<p><b>Timing</b></p> <p>A notification must be made to the CCC as soon as is practicable.</p> <p><b>Information required</b></p> <p>The notification must contain the information set out in the example notification in Schedule 2.</p> <p>The CCC may contact the notifying authority to request further information at any time.</p>

<sup>7</sup> Sections 4(a), (b) and (c) of the CCM Act.

<ul style="list-style-type: none"> <li>• attempts have been made to conceal the serious misconduct and its benefits; OR</li> </ul> <p><b>Impact of the conduct alleged</b></p> <ul style="list-style-type: none"> <li>• the financial loss is significant and as a matter of good administration it is in the public interest to expose the conduct; OR</li> <li>• the corrupt conduct has a significant monetary benefit or has the potential to cause damage to government; OR</li> <li>• the conduct could result in a miscarriage of justice; OR</li> <li>• the conduct results in a denial of rights or entitlements; OR</li> <li>• the conduct threatens to undermine the community's trust in, or viability of, the notifying authority, agency or government; OR</li> <li>• the conduct constitutes an immediate threat to public safety.</li> </ul>	<p><b>Actions</b></p> <p>The notifying authority is to ensure that any actions taken in relation to the allegation(s):</p> <ul style="list-style-type: none"> <li>• maintain the integrity of any possible evidence;</li> <li>• consider Public Interest Disclosure (if relevant); and</li> <li>• meet statutory obligations under another Act, including referral of the allegation(s) to police.<sup>8</sup></li> </ul> <p>The CCC will assess the allegation(s) and may issue the notifying authority with written notice not to take action pending CCC investigation.<sup>9</sup></p>
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**CATEGORY 2 (MID-LEVEL)**

A Category 2 matter must meet the definition of *serious misconduct* but does NOT include any of the characteristics listed in Category 1 (above).

<b>CHARACTERISTICS</b>	<b>REQUIREMENTS</b>
<ul style="list-style-type: none"> <li>• The conduct does not include any of the characteristics listed in Category 1 (above); AND</li> <li>• the impact of the conduct is confined to the notifying authority or agency; OR</li> <li>• the allegation(s) include multiple instances of serious misconduct relating to the same public officer or multiple public officers.</li> </ul>	<p><b>Timing</b></p> <p>The notifying authority must notify the CCC by way of a monthly notification.</p> <p><b>Information required</b></p> <p>The notifying authority is required to provide a notification regarding all Category 2 matters on the last day of each calendar month for matters relating to the previous month. For</p>

<sup>8</sup> Suspected criminal conduct should be reported to WA Police, as these Guidelines do not affect the requirement to comply with statutory obligations under any other Act.

<sup>9</sup> Section 42 of the CCM Act gives the CCC power to direct an authority not to take action or to stop an investigation into a misconduct matter.

	<p>example, provide a notification on 31 August 2015 for all matters known between 1 July 2015 and 31 July 2015.</p> <p>This notification must contain the information set out in the example notification in Schedule 2.</p> <p><b>Actions</b></p> <p>The notifying authority can commence dealing with the allegation(s) immediately. Actions taken may be subject to monitoring and review by the CCC.<sup>10</sup></p>
<p><b>CATEGORY 3 (LOW LEVEL)</b></p> <p>Category 3 matters must meet the definition of <i>serious misconduct</i>.</p>	
<p><b>CHARACTERISTICS</b></p>	<p><b>REQUIREMENTS</b></p>
<ul style="list-style-type: none"> <li>All other serious misconduct that does not meet the Category 1 or Category 2 characteristics.</li> </ul>	<p><b>Information required</b></p> <p>The notifying authority is required to notify at the conclusion of dealing with the allegation(s).</p> <p>The notifying authority must keep accurate records of the facts and details of the allegation(s). Any actions taken by the notifying authority may be subject to review.<sup>11</sup></p> <p><b>Actions</b></p> <p>The notifying authority can deal with the allegation(s).</p>

### What should a notification contain?

When a notification of suspected serious misconduct is made to the CCC it must be in writing. 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 and details of the relevant business unit(s) or public authority affected;
- the name of the informant;

<sup>10</sup> Sections 40 and 41 of the CCM Act give the CCC power to monitor the actions taken and review the way an appropriate authority has dealt with serious misconduct.

<sup>11</sup> Section 41 of the CCM Act gives the CCC power to review the way an appropriate authority has dealt with serious misconduct.

- the name and position of the public officer against whom the allegation is made; and
- the name(s) of any person(s) who witnessed and/or are affected by the alleged serious misconduct.

*Details of the allegation(s):*

- the date the allegation became known to the Principal Officer;
- a summary of the allegation(s) and description of alleged serious misconduct (include date(s), location, value of any goods/property or loss, and risk or danger to any person or the public); and
- any previous history of misconduct allegations against the public officer(s) and the outcome(s) of any investigations (if known).

*Actions by the notifying authority:*

- describe any action being taken, or proposed actions or processes (for example, disciplinary decisions made, investigation plan and report);
- provide details of any assessment made; and
- provide details of relevant policies and procedures, including supporting procedures and any supporting documents or electronic records or data (for example, relevant correspondence, statements of witnesses, record of interview, CCTV footage, emails and photographs).

## **General obligations**

The duty to notify the CCC of a **serious misconduct** matter does not affect any obligations under *Public Interest Disclosure Act 2003* or the requirement to comply with statutory obligations under any other Act, including reporting allegations to WA Police.

If a Principal Officer does not comply with the duty to notify a matter relating to serious misconduct to the CCC, the CCC may report that non-compliance to a person who, or body which, has the power to take disciplinary action against the notifying authority.<sup>12</sup>



Hon. John McKechnie, QC  
**COMMISSIONER**

1 July 2015

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<sup>12</sup> Section 31 of the CCM Act.

## 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 Compilation Act 1913* (WA) or other statute (e.g. *Misuse of Drugs Act 1981* (WA)), as appropriate.

Act	Description	Section(s)
<b><i>Criminal Code Act Compilation Act 1913</i> (WA)</b>		
Offences against public order	Racist harassment, incitement to racial 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, procuring act by threat with intent to defraud	Sections 332 - 333, 336 - 337, 338A - 338C, 396 - 399
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

Act	Description	Section(s)
<b><i>Criminal Code Act Compilation Act 1913 (WA) continued.</i></b>		
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 dealing, 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 - 557, 558, 562, 563A - 563B
<b><i>Misuse of Drugs Act 1981</i></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)

## SCHEDULE 2

### Example of Notification

<b>DETAILS OF THE PERSON(S) INVOLVED</b>	
<b>Notifying authority</b>	
Name of Principal Officer:	
Organisation:	
Principal Officer's Business Unit:	
<b>Details of the Public Officer(s) involved</b>	
Name of Public Officer allegation(s) relate(s) to:	
Title/Position of Public Officer:	
Organisation:	
Business Unit of Public Officer:	
<b>Details of any person(s) who witnessed and/or are affected by the allegations</b>	
Name(s):	
Title/Position:	
Organisation:	
<b>DETAILS OF THE ALLEGATION(S)</b>	
<b>Date allegation(s) became known</b>	
<b>Summary</b>	<i>(Include date(s), location, value of any goods/property or loss, and risk or danger to any person or the public.)</i>
<b>History (if any)</b>	<i>(Any previous history of misconduct allegations against the public officer and the outcomes of any investigation.)</i>
<b>CATEGORY OF SERIOUS MISCONDUCT</b>	
<input type="checkbox"/>	Category 1
<i>Reason(s):</i>	
<input type="checkbox"/>	Category 2
<i>Reason(s):</i>	
<input type="checkbox"/>	Category 3
<i>Reason(s):</i>	

**ACTIONS TAKEN/PROPOSED**

<b>Description</b>	<i>(Describe any action being taken, or proposed actions or processes, for example, disciplinary decisions, investigation plan and report.)</i>
<b>Details of any assessment</b>	
<b>Relevant policies or procedures</b>	<i>(If possible, list and include any policies, procedures or documents.)</i>

**SUPPORTING DOCUMENTS/RECORDS PROVIDED**

*(List any documents provided with this notification.)*

<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
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**Other:**

*(Provide further notes, if needed.)*

**SIGNATURE:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**POSITION:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

