

Overview of serious misconduct

Quarter Three FY 2022/23

5
Indicator 2



94%

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Summary

The number of reports received from the public and notifications by Western Australia (WA) government sector entities remains consistent with previous reporting levels.

Government Sector Serious Misconduct (excluding WA Police)

During the quarter, the Commission received information (excluding WA Police) relating to 464 matters/incidents of alleged serious misconduct.

- During assessment of those 464 matters, 736 specific allegations were identified.
- Following assessment, a reasonable suspicion that serious misconduct MAY have occurred was formed for 268 allegations (35%).
- Of those 268 allegations, 87 allegations (32%) were referred back to WA government entities for action and outcome. Allegations referred mostly related to unauthorised use of computers systems, frauds such as timesheet fraud and creating or altering records to favour associates.

Police Misconduct

During the quarter, the Commission received information relating to 341 matters/incidents of alleged police misconduct

- During assessment of those 341 matters, 821 specific allegations were identified.
- Following assessment, a reasonable suspicion was formed for 255 allegations (31%). The breakdown is as follows:
 - 20 allegations assessed as Police Misconduct;
 - 198 allegations assessed as Reviewable Police Action; and
 - 37 allegations assessed as serious misconduct.
- Of those 255 allegations, 92 allegations (36%) were referred back to WA Police for action and outcome. Just over half of the allegations referred related to unauthorised use of computers, breach of procedure/policy, neglect of duty and unprofessional conduct.
- At the point of assessment, WA Police had already concluded taking action into 76 of the 255 allegations (29%). The Commission recorded the outcome and took no further action.

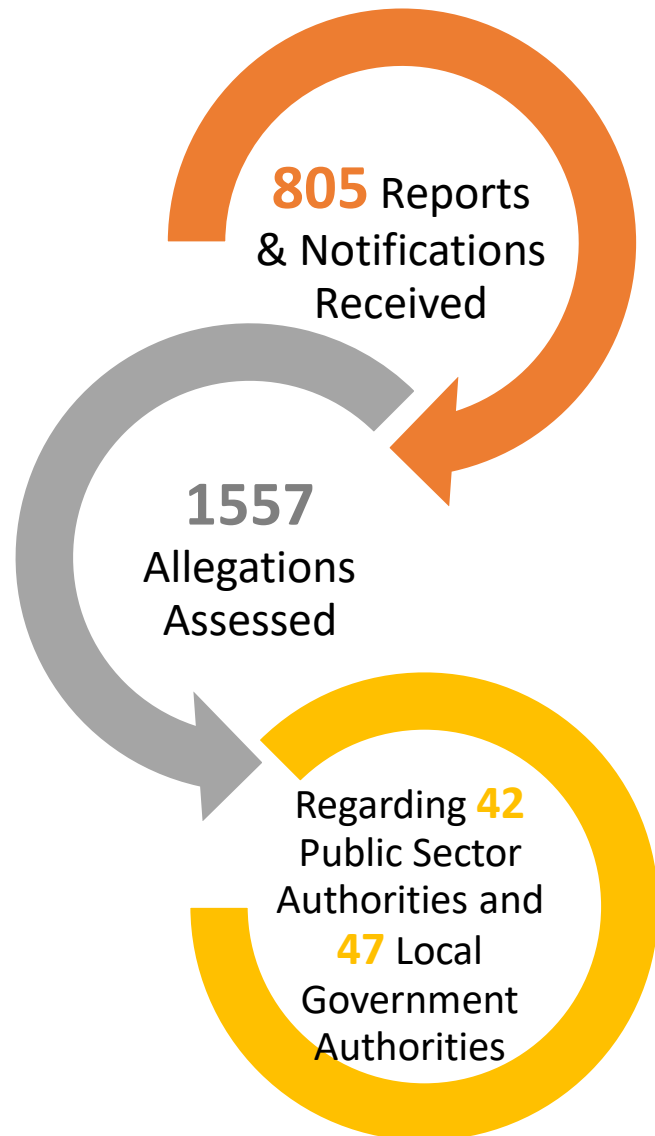
Outcomes Reported by Government Sector entities and WA Police Force

- WA Government sector entities reported 31 sustained allegations, resulting in 4 dismissals, 9 formal warning letters, 12 local management/improvement actions and 6 other sanctions.
- WA Police reported 73 sustained allegations resulting in 12 formal warning letters, 45 local Management/improvement actions and 16 other sanctions.

WA Government Sector Spotlight

- The topic of this quarter's spotlight is the reporting and notification of alleged serious misconduct to the Commission.

Reports and Notifications



Reports from members of the public **321**

Notifications from WA Police **246**

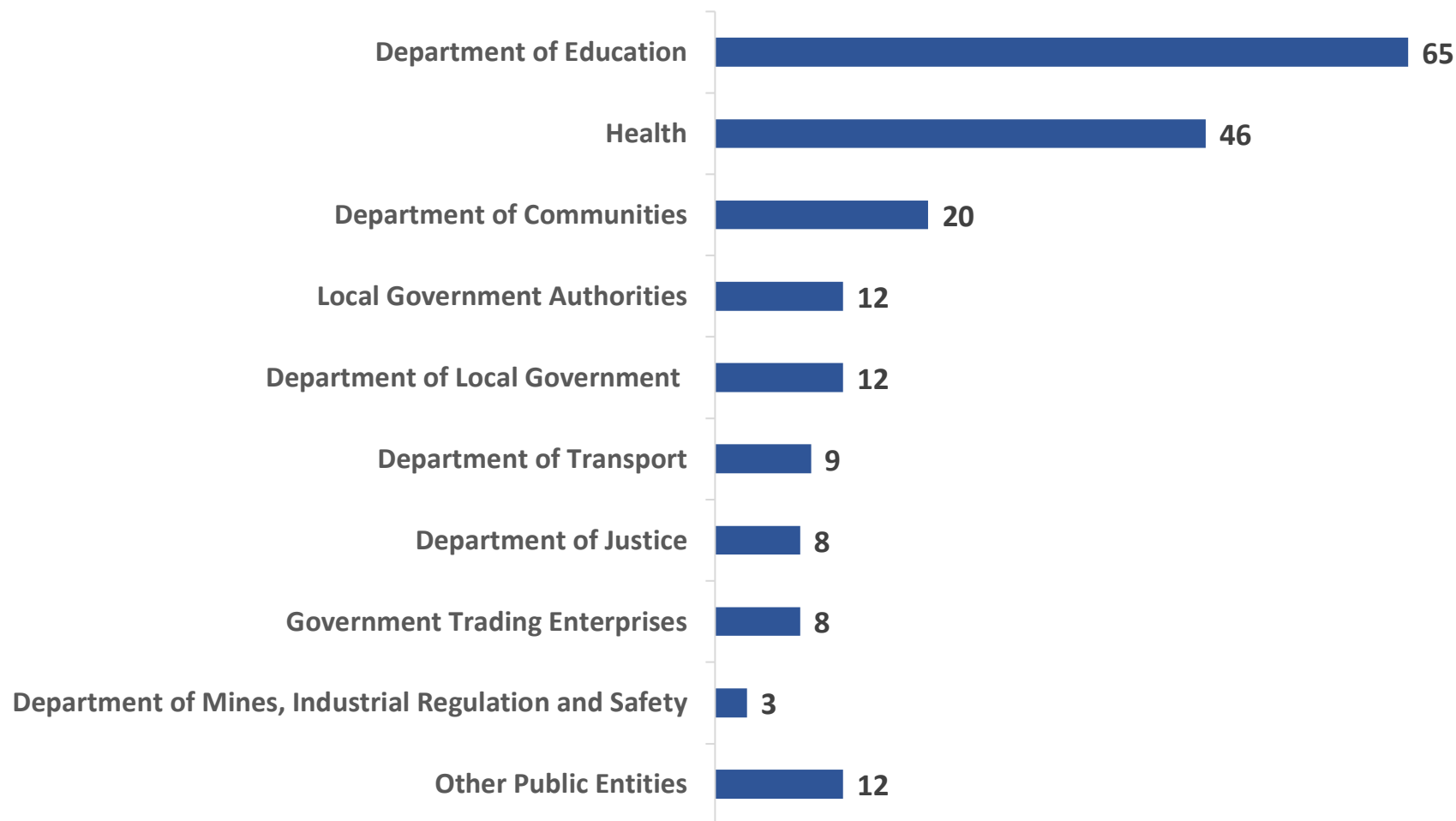
Notifications from public authorities **183**

Notifications from local government authorities **12**

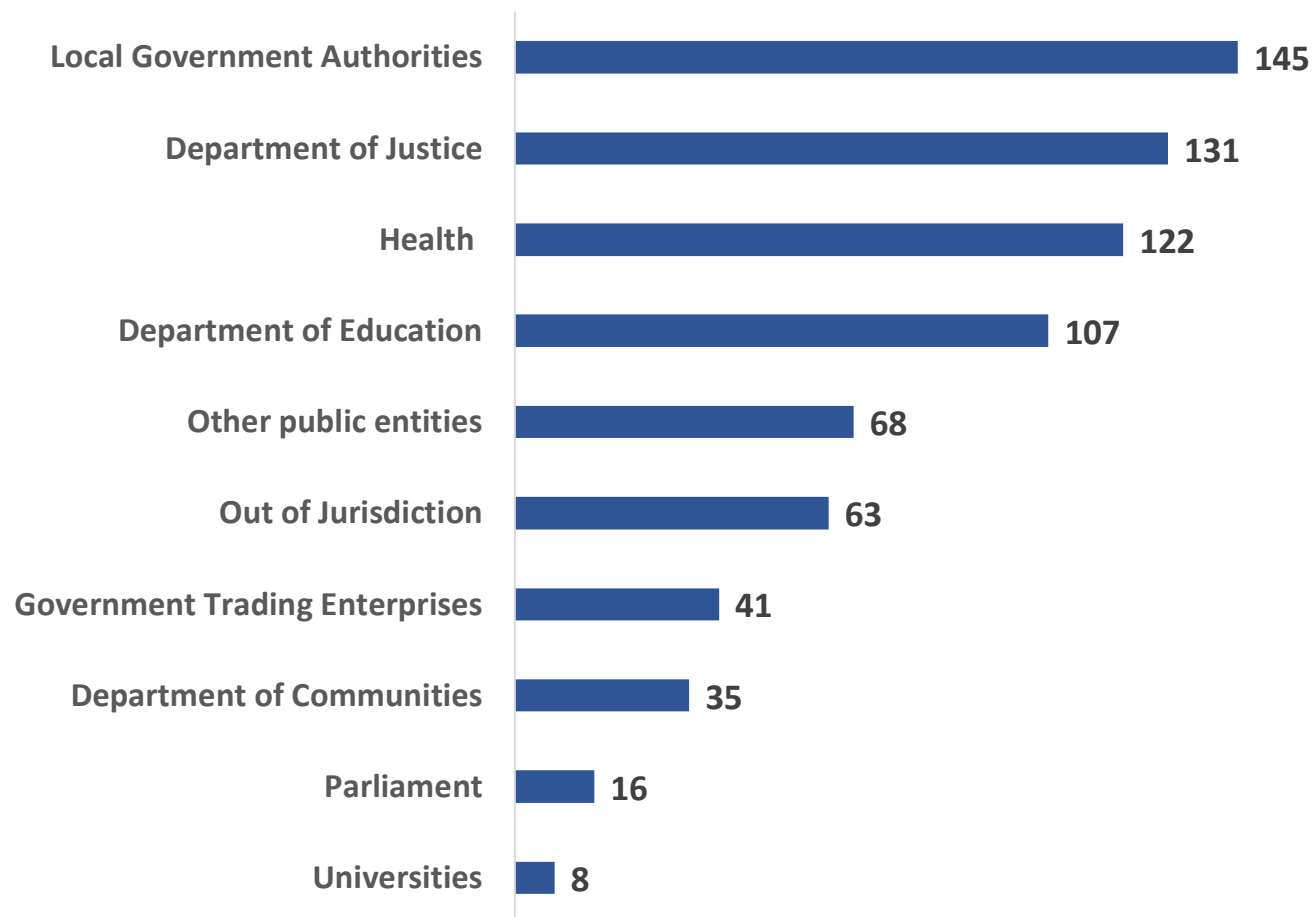
Referrals from the Public Sector Commission **18**

Referrals from Aboriginal Legal Services WA **25**

Notifications Received from Government Sector Entities



Allegations Identified from Notifications



Allegations Assessed from Reports by Members of the Public

Government Sector (excl WA Police)			
Rank	Allegation Category	Count	%
1	Benefit / Detriment - 4(b)	141	37.5%
2	Out of Jurisdiction	123	32.7%
3	Corrupt Conduct - 4(a)	39	10.4%
4	Criminal Conduct	25	6.7%
5	Unlawful Disclosure	13	3.5%
6	Assault	10	2.7%
7	Neglect of Duty	6	1.6%
8	Computer - Unlawful Use (s. 440A)	5	1.3%
9	Judicial Corruption	3	0.8%
10	Unprofessional Conduct	3	0.8%
11	Failure to Declare	2	0.5%
12	Fraud / Falsification	2	0.5%
13	Breach of Procedure or Policy	1	0.3%
14	Drugs (Illicit)	1	0.3%
15	Failure to Lodge	1	0.3%
16	Other	1	0.3%
Grand Total		376	100%

WA Police			
Rank	Allegation Category	Count	%
1	Neglect of Duty	87	24.9%
2	Benefit / Detriment - 4(b)	82	23.4%
3	Unprofessional Conduct	51	14.6%
4	Assault	43	12.3%
5	Corrupt Conduct - 4(a)	16	4.6%
6	Breach of Procedure or Policy	15	4.3%
7	Out of Jurisdiction	15	4.3%
8	Unlawful Arrest / Search	11	3.1%
9	Criminal Conduct	10	2.9%
10	Unlawful Disclosure	6	1.7%
11	Computer - Unlawful Use (s. 440A)	5	1.1%
12	Other	4	1.1%
13	Fraud / Falsification	3	0.9%
14	Drugs (Illicit)	1	0.3%
15	Improper Association - Undeclared	1	0.3%
Grand Total		350	100%

Allegations Assessed from Notifications by Government Sector Entities

Government Sector (excl WA Police)			
Rank	Allegation Category	Count	%
1	Assault	67	20.6%
2	Benefit / Detriment - 4(b)	63	19.3%
3	Out of Jurisdiction	49	15.0%
4	Computer - Unlawful Use	44	13.5%
5	Fraud / Falsification	29	8.9%
6	Criminal Conduct	21	6.4%
7	Unlawful Disclosure	19	5.8%
8	Failure to Declare	13	4.0%
9	Failure to Lodge	11	3.4%
10	Corrupt Conduct - 4(a)	6	1.8%
11	Drugs (Illicit)	2	0.6%
12	Breach of Procedure or Policy	1	0.3%
13	Other	1	0.3%
	Grand Total	326	100%

WA Police			
Rank	Allegation Category	Count	%
1	Breach of Procedure or Policy	84	17.8%
2	Neglect of Duty	80	17.0%
3	Unprofessional Conduct	74	16.7%
4	Assault	53	11.2%
5	Out of Jurisdiction	35	7.4%
6	Other	26	5.5%
7	Benefit / Detriment - 4(b)	24	5.1%
8	Criminal Conduct	21	4.5%
9	Unlawful Disclosure	18	3.8%
10	Improper Association	12	2.5%
11	Computer - Unlawful Use	11	2.3%
12	Corrupt Conduct - 4(a)	10	2.1%
13	Unlawful Arrest / Search	10	2.1%
14	Fraud / Falsification	7	1.5%
15	Drugs (Illicit)	5	1.1%
16	Secondary Employment -unauthorised	1	0.2%
	Grand Total	471	100%

Allegations Referred to Government Sector Entities: Finalised with Outcomes

Government Sector Entities (excl WA Police) Allegation Result		
Result	Count	%
Sustained	31	25.0%
Not sustained	8	6.5%
Unfounded	2	1.5%
Administratively closed	4	3.0%
Pending return	78	63%
Grand Total	123	100%

Government Sector Entities (excl WA Police) Sustained Allegations: Disciplinary Action	
Disciplinary Action	Count
Dismissal	4
Formal warning letter	9
Local management/improvement action	12
Discretion exercised - no further action	3
Other sanction	3
Grand Total	31

Government Sector Entities (excl WA Police) Dismissal Misconduct	
Behaviour	Count
Falsified report relating to workplace incident	1
Undertook duties while under the influence of illicit drugs	1
Falsified timesheets relating to start/finish times	1
Used agency assets for private purposes	1

Allegations Referred to WA Police Force: Finalised with Outcomes

WA Police Allegation Result		
Result	Count	%
Sustained	73	30.2%
Not sustained	11	4.5%
Exonerated	26	10.7%
Unfounded	23	9.5%
Administratively closed	26	10.7%
Pending return	83	34.3%
Grand Total	242	100%

WA Police Sustained Allegations: Disciplinary Action	
Disciplinary Action	Count
Formal warning letter	12
Local management/improvement action	45
Other Sanction	16
Grand Total	73

Spotlight: Reporting/Notifying Serious Misconduct

Reports and notifications of serious misconduct to the Commission need to share a number of common characteristics, to enable the Commission to assess and take action, as per *the Corruption, Crime and Misconduct Act (2003)*. They must:

- Relate to Western Australian public officers carrying out their duties of office.
- Involve behaviours/activities that constitute serious misconduct.
- Contain sufficient detail to suspect the occurrence of serious misconduct.
- In the case of public authorities, be notified to the Commission as soon as is reasonably practicable.

The following explanation and case studies highlight some of these characteristics.

What is Serious Misconduct?

Serious misconduct must involve public officer corrupt conduct as described in the CCM Act, sections 4(a) and (b), or criminal conduct as described in section 4(c).

When someone acts corruptly, they tend to show a deliberate intent, an improper purpose or motivation, and may involve conduct such as:

- 1) deliberately failing to perform the functions of office properly;
- 2) exercising power or duty for an improper purpose; or
- 3) dishonesty.

Some examples include blackmail, bribery, fraud or stealing, extortion, forgery, perverting the course of justice and collusion.

Criminal conduct involves a public officer while acting in their official capacity, committing an offence punishable by two years or more imprisonment. Examples include assaults, unlawful access of computer systems and unlawful disclosure of official information.

Suspicion of Serious Misconduct

When the Commission receives information about a matter, an assessment is conducted to establish whether there are reasonable grounds to suspect serious misconduct MAY have occurred. This assessment involves consideration about the particular behaviours and activities of a public officer within the operating context to form a common-sense conclusion.

These grounds can be based upon first-hand or reported observations and/or experiences. However, it must be more than more than a mere hunch, gossip or gut feeling. It is more than a generalised suspicion but less than something which requires certainty/proof that misconduct has occurred.

Any allegation of serious misconduct should be accompanied with any further information known, such as the public officer/public authority involved, examples of the particular behaviours/activities and the connection to their duties/role in public office.

Reports from Members of the Public

Members of the public can report suspected serious misconduct to the Commission in the following ways:

- online at ccc.wa.gov.au or by email report.corruption@ccc.wa.gov.au (preferred);
- by telephone;

- by mail; or
- in-person.

Reports can be made anonymously. Regardless of the method of report, it is vital that sufficient information and/or detail is provided in order for the Commission to take any further action.

Notifications from WA Government Authorities

For those who are obligated to notify the Commission of suspected serious misconduct, the principal notifying officer or delegate must do so as soon as is reasonably practicable after they become aware of the matter. In other words, the Commission should be notified immediately following a common-sense conclusion being made.

Importantly, authorities must continue to progress their inquiries/investigations into the alleged conduct and not wait for a Commission response before progressing. Following its own assessment of the matter, the Commission will decide whether any further action is required, in accordance with its legislated functions and other considerations, such as public interest.

Case Studies

Below are some examples of information received by the Commission to explain:

- The types of information notified to the Commission.
- Whether the information was originally notified as minor or serious misconduct.
- Whether the Commission had sufficient information to suspect serious misconduct MAY have occurred.
- The type of serious misconduct, as described in the CCM Act, suspected to have occurred.

CASE STUDY 1 - Notified as Minor Misconduct to Public Sector Commission	Comment: Should be notified as Serious Misconduct to the CCC
<p>Confidential files stored on a department's network inadvertently became accessible to all staff.</p> <p>A staff member (Person A) is alleged to have taken advantage of this opportunity and accessed and downloaded various files to their work computer.</p> <p>The files mostly related to Person A's related holdings across a number of departmental functions. However, some HR files did not directly relate to Person A.</p>	<p><i>Suspected Serious Misconduct</i></p> <p>s4(c) Person A <u>MAY</u> have unlawfully accessed records stored on a restricted-access computer system (criminal offence) when not properly authorised to do so.</p> <p>(Section 440A of the Criminal Code relates to Unlawful Use of Computer.)</p>
CASE STUDY 2 - Notified as Minor Misconduct to Public Sector Commission	Comment: Should be notified as Serious Misconduct to the CCC
<p>Person A was part of a recruitment interview panel at a public authority where they worked. Person B was an internal applicant for the position. Person B was shortlisted for an interview.</p> <p>Prior to the scheduled interview, it was alleged that Person A disclosed the interview questions to Person B so they could prepare in advance. Person B was successful in securing the position.</p>	<p><i>Suspected Serious Misconduct</i></p> <p>s4(b) Person A <u>MAY</u> have corruptly taken advantage of their employment to obtain a benefit for Person B through provision of the interview questions.</p> <p>s4(a) Person B <u>MAY</u> have corruptly acted in the performance of their employment by willingly receiving the interview questions in advance.</p>
CASE STUDY 3 - Reported as corruption to the Commission	Comment: Reported as Serious Misconduct to the CCC but insufficient information
<p>A Local Government Authority president was alleged to be in a relationship with an unnamed Local Government senior executive. This was alleged to be impacting upon the LGA governance and operational activity.</p>	<p><i>No suspicion of Serious Misconduct</i></p> <p>Although the LGA president was named, no details were provided regarding the alleged impact of their relationship.</p> <p>The report was made anonymously, so the Commission was unable to contact the person and make further inquiries, which could have ascertained more detail.</p> <p>On the information available, there were no reasonable grounds for a suspicion of any alleged corrupt or criminal conduct.</p>

CASE STUDY 4 - Notified as Serious Misconduct to the Commission	Comment: Correctly notified as Serious Misconduct to the CCC
<p>Person A was a departmental manager who was alleged to consistently favour use of a particular contractor to provide services to the Department.</p> <p>Person A would directly award and allocate contract work to the contractor and in the process, ignore Departmental procurement policy and procedures.</p> <p>The contractor was an approved and current Departmental panel supplier.</p>	<p><i>Suspected Serious Misconduct</i></p> <p>s4(b) Person A <u>MAY</u> have corruptly taken advantage of their employment to obtain a benefit for a particular contractor by repeatedly engaging in their services for departmental work.</p>
CASE STUDY 5 - Notified as Serious Misconduct to the Commission	Comment: Correctly notified as Serious Misconduct to the CCC
<p>Person A was employed by a public authority with approval to conduct secondary employment.</p> <p>Person A was alleged to have engaged in fraudulent activities relating to their secondary (approved) employment.</p> <p>Inquiries by the public authority suggested that Person A was likely committing timesheet fraud in their primary employment. That is to say, Person A was creating and submitting false records claiming they were at work for the public authority when they were not.</p>	<p><i>Suspected Serious Misconduct</i></p> <p>s4(b) Person A <u>MAY</u> have corruptly taken advantage of their employment to obtain a benefit for themselves by carrying out secondary employment activities when being paid to perform their primary employment.</p>
CASE STUDY 6 - Notified as Serious Misconduct to the Commission	Comment: Correctly notified as Serious Misconduct to the CCC
<p>Person A took on a senior role which involved liaison and negotiation with the private sector.</p> <p>Person A remained employed with a private sector company with a direct conflict to their new role and had failed to declare their secondary employment.</p>	<p><i>Suspected Serious Misconduct</i></p> <p>s4(a) Person A <u>MAY</u> have corruptly failed to act in the performance of the functions of their public office in not declaring their secondary employment and potential conflict of interest.</p>