



Evaluation report

**Arrangements to manage misconduct
and notify minor misconduct**

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Executive summary

Background

The *Corruption, Crime and Misconduct Act 2003* (CCM Act) defines misconduct and requires public authorities to manage and notify misconduct. Serious misconduct must be notified to the Corruption and Crime Commission (CCC), while notification of minor misconduct must be made to the Public Sector Commission (Commission or PSC).

After a year of operation under revised notification and reporting arrangements, the Commission considered it appropriate to evaluate aspects of the culture, leadership, systems and processes used within public authorities to manage misconduct.

An evaluation was undertaken to build an understanding about the nature and maturity of controls as they are applied across a range of different types of public authorities. The evaluation was designed to support the prevention and education aspects of the Commission's role under the CCM Act.

The objectives of the evaluation were to assess, make observations, and provide advice to the Commissioner and public authorities with respect to the CCM Act Part 4A, Division 1 functions in relation to misconduct, specifically:

- i. the general arrangements used by public authorities to manage and combat misconduct (CCM Act s.45A(2)); and
- ii. the methods used by public authorities to notify minor misconduct to the Public Sector Commissioner (CCM Act Subdivision 3 – Duty to Notify).

Through the course of the evaluation process, assistance was provided to participating authorities to help them enhance policies and processes and to refine controls and ways of recording misconduct information.

Suggested improvements

During the evaluation there was a high level of consistency in the nature of suggested improvements that were made to increase the capacity of public authorities to prevent and respond to misconduct. Through the publication of the observations and these improvements, all public authorities should be able to benefit from the process.

The improvements outlined in this report can be applied as a checklist to ensure that:

- expected standards of conduct are clear
- avenues for reporting misconduct are available, known and trusted
- integrity performance and misconduct risks are monitored and acted on by the executive leadership group
- there is a consistent and proper assessment and tracking of matters dealt with by the public authority.

The Commission will continue to analyse the systems and processes used by public authorities to manage particular integrity risks and also the means by which they manage misconduct and their notification responsibilities.

Leadership and culture

If not already in place, public authorities should:

1. Introduce periodic reporting to the CEO/leadership group or relevant oversight committee of all conduct-related matters, including information on notifications made to the CCC or PSC, to ensure knowledge and oversight of all relevant matters.
2. Initiate periodic messages or presentations to employees on expectations about integrity and conduct and the importance of reporting misconduct. These can be included in any general staff information bulletins.
3. Update codes of conduct to reflect current CCM Act legislation and external notification and reporting mechanisms, including the option for employees to report direct to the CCC or PSC.
4. Include reference to conduct management and external notification obligations and compliance requirements of the CCM Act in the position description forms of relevant employees/managers.
5. Make reference in procurement and other operational policies, such as risk management or complaints management policies, to external reporting obligations that may be relevant in the case of breaches of these operational policies.
6. Incorporate in periodic organisational culture surveys questions assessing employee confidence in using internal misconduct reporting arrangements.

7. Ensure their code of conduct includes information on how employees can report misconduct internally and, if circumstances require report misconduct externally to the CCC or PSC.
8. Include information on intranet sites, where information on identifying and reporting suspected misconduct can be easily accessed by employees. Information on this page may include links to the CCC and PSC websites and the CCC-PSC *Notification of misconduct in Western Australia* joint information resource, a copy of the public authority's code of conduct, as well as other misconduct information as considered relevant by the authority.
9. Provide general misconduct prevention, detection and reporting information on the external webpage.
10. Introduce an accountable and ethical decision-making course for employees which covers identifying and reporting misconduct.
11. Include information about identifying and reporting misconduct in current ethics and conduct training modules.
12. Ensure employees with primary responsibility for arrangements to manage misconduct have appropriate experience and training, as well as support employees who deal with the management of misconduct issues to enable them to effectively carry out these functions.
13. In taking into account the extent to which relevant expertise and experience is available, consider nominating officers to participate in future sessions of the Commission's centrally coordinated investigation training program. This is a nationally accredited Certificate IV in Government (Investigation), for public officers involved, or likely to be involved, in investigating allegations of misconduct.

Systems and processes

If not already in place, and in consideration of the size and complexity of their authority, public authorities should:

1. Develop a high level Misconduct Control Policy or Plan, with a clearly stated objective and purpose. This document should contain definitions of serious and minor misconduct in the CCM Act, high-level misconduct prevention and reporting information, and the policy's application and relationship to other relevant policies and procedures, such as corporate guidelines on discipline.

This policy or plan could be incorporated with misconduct management procedures suggested below.

2. Develop misconduct management procedures that include the following:
 - 2.1. Information about separating matters of grievance, complaints and misconduct and provide guidance on assessing and dealing with serious and minor misconduct to ensure all matters are dealt with in a consistent way.
 - 2.2. Refer to the requirements in the CCM Act, CCC Notification Guidelines and CCC-PSC *Notification of misconduct in Western Australia* joint information resource, including:
 - how to receive and register allegations
 - guidance to determine whether an allegation is considered serious or minor misconduct
 - guidance to determine what a 'suspicion on reasonable grounds' means
 - explain when notification is required to the CCC or PSC.
3. If the obligation to notify serious and minor misconduct under s.28 and s.45H of the CCM Act is delegated by the officer referred to in the CCM Act, record this in the authority's delegations manual or schedule or other relevant document.
4. Include misconduct-specific risks in their risk management framework and identify relevant controls to detect, prevent and manage those misconduct risks.
5. Establish a specific case register for all conduct-related matters, including misconduct matters, that forms the official corporate record of the public authority. It is suggested at a minimum the register include the following information:
 - date of allegation/complaint
 - description of the allegation
 - corporate file reference
 - conduct type (e.g. serious or minor)
 - notification date to the CCC or PSC (if notification made)
 - current status
 - outcome
 - date matter finalised
 - other comments.
6. If the case register is not maintained or held within the specified misconduct assessment/integrity area, it is suggested access to the register be provided to this area to assist in ensuring all cases that may constitute serious or minor misconduct are adequately assessed and notified to the CCC or PSC.
7. For conduct-related matters, including misconduct matters, maintain a corporate record of all relevant documentation, and keep all records in a central location, to ensure the integrity of the recordkeeping process is maintained.

Assessments and notifications

If not already in place, public authorities should record and keep an 'audit trail' covering detail about:

1. How the CCM Act s.4(d) (and sub-section) definitions of minor misconduct were applied to each case, with evidence supporting this application.
2. The authority's deliberation and determination when applying the 'suspicion on reasonable grounds' requirement (CCM Act s.45H(2)(a)).

If not already in place, public authorities should:

3. Ensure any delegation to notify that occurs within the authority is recorded in relevant procedures or the corporate delegations register.
4. Where possible, include in all notifications the points listed on page 10 of the CCC-PSC *Notification of misconduct in Western Australia* joint information resource, including a brief analysis of why the events in question may be minor misconduct.

Public authority responses

The Commission appreciates the cooperation of the public authorities involved in the evaluation, and the support of the CCC, that was consulted at each step of the process.

The 12 public authorities involved in the evaluation were each provided with observations and suggested improvements arising from the Commission's work conducted in their authority. All of the authorities generally agreed with the observations and suggested improvements made, and intend to take appropriate action where required to improve arrangements to manage misconduct and notify minor misconduct.

Approach

Basis and authority for the evaluation

The proclamation of the *Corruption, Crime and Misconduct Act 2003* (CCM Act) on 1 July 2015 transferred responsibility for the oversight of 'minor misconduct' of public officers, and for misconduct prevention and education programs to the Commission.

The Commission receives allegations about minor misconduct via:

- reports of minor misconduct (s.45E)
- initiating allegations of minor misconduct by way of propositions (s.45F)
- matters notified by certain officers (s.45H).

The consideration and oversight of matters notified under s.45H of the CCM Act to the Commission about allegations involving minor misconduct forms an important part of its role under the CCM Act. Under the CCM Act the notification of minor misconduct is paramount, and must occur as soon as is reasonably practicable after an authority becomes aware of a matter. If, where required, a public authority does not notify the Commission about an allegation of minor misconduct, annual reporting to parliament will not be accurate with respect to activity in this area. In addition to this, if individual matters are not adequately dealt with by public authorities, the integrity and reputation of the relevant authority and wider public sector could be compromised.

Given the Commission has been responsible for the oversight of minor misconduct since 1 July 2015, it was considered appropriate and timely that an evaluation be conducted of the general arrangements used by public authorities to manage and combat misconduct, and the notification of minor misconduct by public authorities.

Scope

The evaluation covered a sample of 12 public authorities (refer to Appendix) that are subject to the misconduct provisions established in the CCM Act.

This sample included a selection of metropolitan and regional local governments, public universities, government trading enterprises and public sector bodies covered by the legislative provisions in the *Public Sector Management Act 1994* (PSM Act) and/or CCM Act.

The evaluation included qualitative and quantitative methods of assessment and supported analysis at two levels:

1. Sector-level analysis based on:
 - survey of notifying officers' confidence in categorising conduct as minor misconduct under the CCM Act and fulfilling subsequent notification responsibilities (refer to Appendix). The results of the survey are reported in the relevant sections in this report
 - analysis of website information for 53 public authorities.
2. Detailed authority-level analysis for 12 selected public authorities involving:
 - interviews with key officers responsible for the operational management of misconduct arrangements within the authority
 - assessment of internal policies and procedures for coverage against criteria addressing relevant CCM Act requirements and good practice management of misconduct
 - consideration of actions and activities designed to promote knowledge and understanding about conduct obligations
 - consideration of employee perception data (where available) as it relates to employee knowledge of, and confidence in, misconduct management and reporting regimes
 - review of recent conduct-related matters for consistency of application of internal policy and statutory obligations.

Limitations of the evaluation

The evaluation did not involve an assessment of all conduct-related matters occurring in the authorities and could not validate all notification decisions.

Observations and suggested improvements of this evaluation are not intended to be definitive or cover all matters in relation to arrangements to manage misconduct in public authorities.

Assessments are formed from a consideration of information and cases that are indicative rather than conclusive. This approach is considered appropriate in addressing the purpose of advising and building capability in public authorities.

Presentation of evaluation results

The results of the evaluation are presented in the following three sections, according to three focus areas:

- Focus area 1: Leadership and culture
- Focus area 2: Systems and processes
- Focus area 3: Assessment and notifications

Within these three focus areas information is structured under a number of factors.

Focus areas and factors

- Focus area 1: Leadership and culture:
 - Oversight of integrity and conduct by the CEO and senior leadership
 - Accountability and responsibility for reporting misconduct
 - Training and awareness-raising about identifying and reporting misconduct
 - Appropriate experience and training of relevant employees
- Focus area 2: Systems and processes:
 - Policy and procedures about misconduct
 - Managing misconduct risks
 - Managing conduct related and misconduct information
- Focus area 3: Assessment and notifications:
 - Assessment of conduct related matters
 - Notification of minor misconduct

At the beginning of each section, 'Context' provides an introduction to the section. 'Observations' include a graphical representation of results, and 'Suggested improvements' are provided at each factor level.

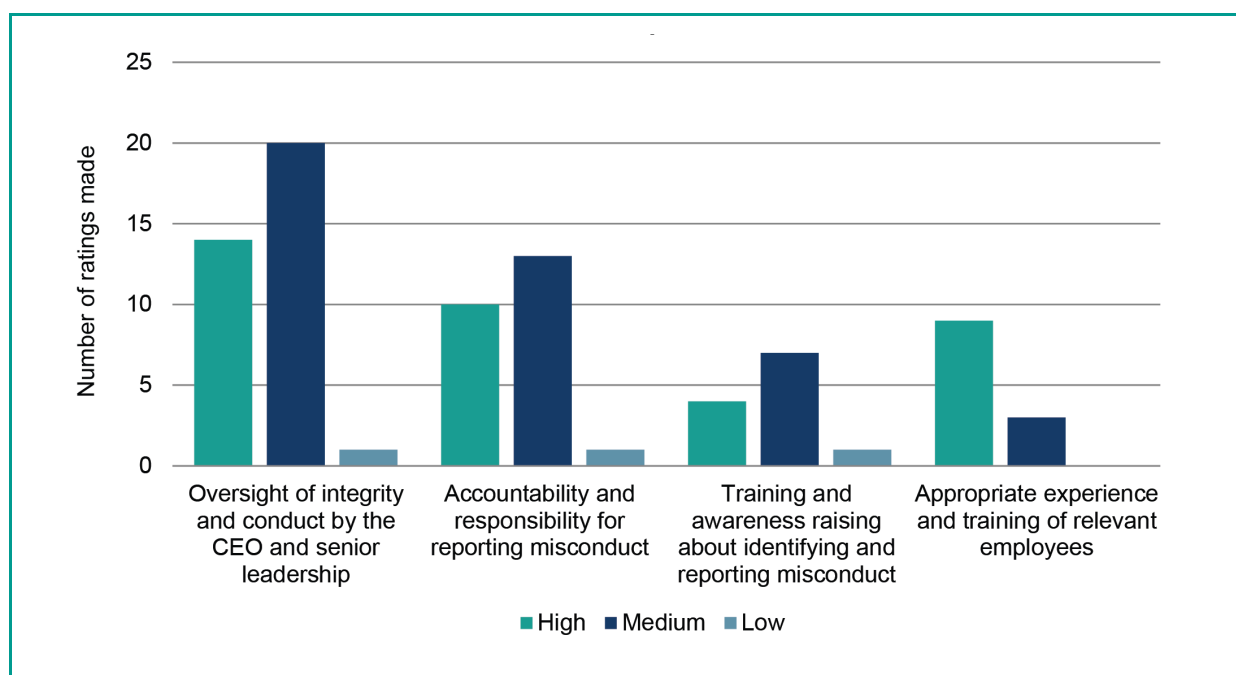
Focus area 1: Leadership and culture

Context

The leadership and culture of public authorities with respect to communicating to employees what misconduct is, and promoting accountability and responsibility for reporting misconduct, is pivotal to the effective management of misconduct. The evaluation considered the following factors in assessing the leadership and culture applying to managing misconduct:

- oversight of integrity and conduct by the CEO and senior leadership
- accountability and responsibility for reporting misconduct
- training and awareness raising about identifying and reporting misconduct
- appropriate experience and training of relevant employees.

Figure 1: Summary of the number of ratings across the four leadership and culture factors



Oversight of integrity and conduct by the CEO and senior leadership.

Observations

For this factor the criteria assessed were:

- The CEO/leadership group oversee how integrity and conduct is managed.
- The authority has strategies in place to monitor the integrity culture and leadership environment.
- Relevant data from misconduct cases is analysed and periodically reported to the CEO/leadership group.

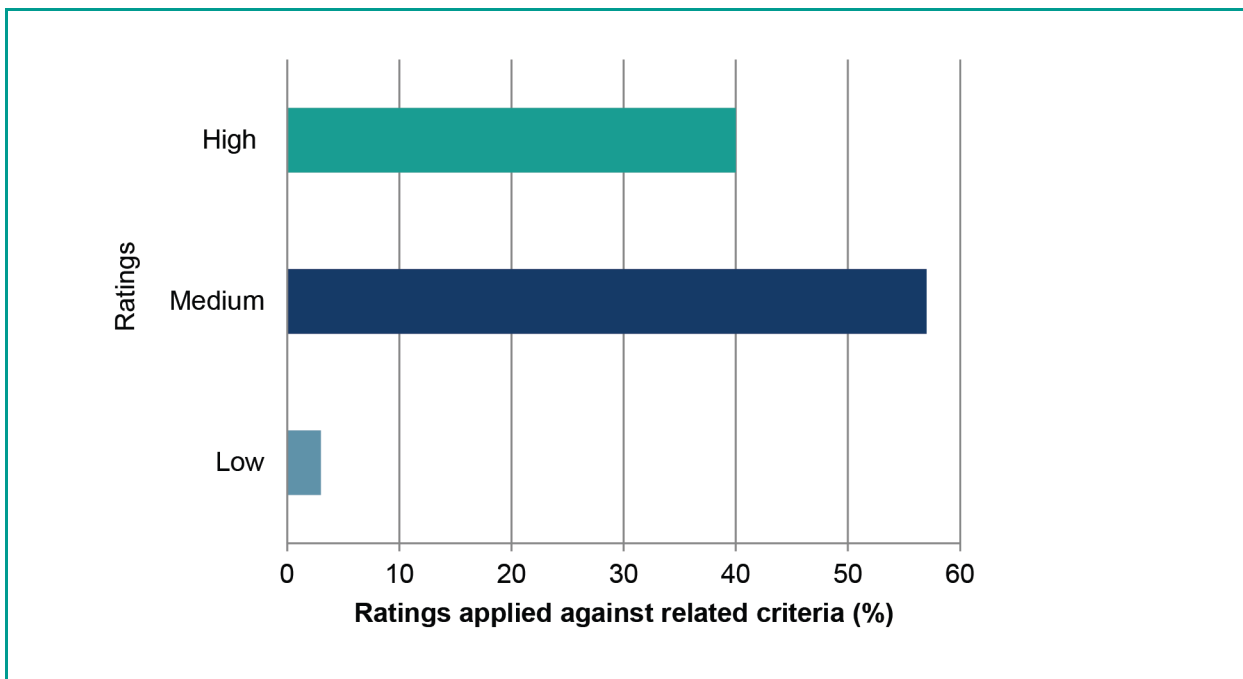
Considered collectively, the distribution of ratings for the above criteria was 40% high, 57% medium and 3% low.

Examples of good practice strategies to support this factor in the leadership and culture focus area included the following:

- Curtin University's Integrity and Standards Unit (ISU) is overseen by a Steering Committee (ISU Steering Committee). The ISU produces a quarterly 'Complaints Analysis Report' that includes information on complaint trends, complaint categories and the number of complaints received by the University, as well as the number of notifications made to the CCC and PSC and the status of current complaints. These quarterly management reports are also provided to the Vice Chancellor and members of the Senior Executive Team, to provide updates and oversight of complaints and conduct-related matters.
- The Department of Corrective Services produces a monthly statistical 'Performance Report' generated from the register of all matters reported and provides it to the Department's Senior Executive Team. The report contains analysis of the number of matters received, how they are handled or where they have been referred, and provides lists of work sites from which the misconduct reports emanate and the categories of behaviour.
- The City of Stirling's Chief Executive Officer periodically briefs employees on recent topical issues, with employee conduct included in these briefings. The City's 'Team Stirling Brief' is a monthly publication distributed to all employees and is used to promote key messages and information. It periodically refers to the City's hotline to report suspected misconduct, corruption or fraud and provides the details for this.

- Curtin University distributes, via email and Curtin's internal social media, quarterly information sheets to staff. These include information explaining Curtin's complaints procedures and the difference between serious and minor misconduct. The information sheets are also posted on the ISU website which is available to the University community.
- Curtin's 'Your Voice Staff Satisfaction Culture Survey', which is administered every two years, comprises over 140 agree/disagree, open ended and demographic questions and asks for perceptions of the statement: 'At Curtin, I can safely report a complaint'.

Figure 2: Distribution of assessment results for criteria about the oversight of integrity and conduct by the CEO and senior leadership



Suggested improvements

If not already in place, public authorities should:

1. Introduce periodic reporting to the CEO/leadership group or relevant oversight committee of all conduct-related matters, including information on notifications made to the CCC or PSC, to ensure knowledge and oversight of all relevant matters.
2. Initiate periodic messages or presentations to employees on expectations about integrity and conduct and the importance of reporting misconduct. These can be included in any general staff information bulletins.
3. Update codes of conduct to reflect current CCM Act legislation and external notification and reporting mechanisms, including the option for employees to report direct to the CCC or PSC.

4. Include reference to conduct management and external notification obligations and compliance requirements of the CCM Act in the position description forms of relevant employees/managers.
5. Make reference in procurement and other operational policies, such as risk management or complaints management policies, to external reporting obligations which may be relevant in the case of breaches of these operational policies.
6. Incorporate in periodic organisational culture surveys questions assessing employee confidence in using internal misconduct reporting arrangements.

Accountability and responsibility for reporting misconduct

Observations

For this factor the criteria assessed were:

- Accountability and responsibility for reporting misconduct.
- Information and policies for recognising, reporting and dealing with misconduct.

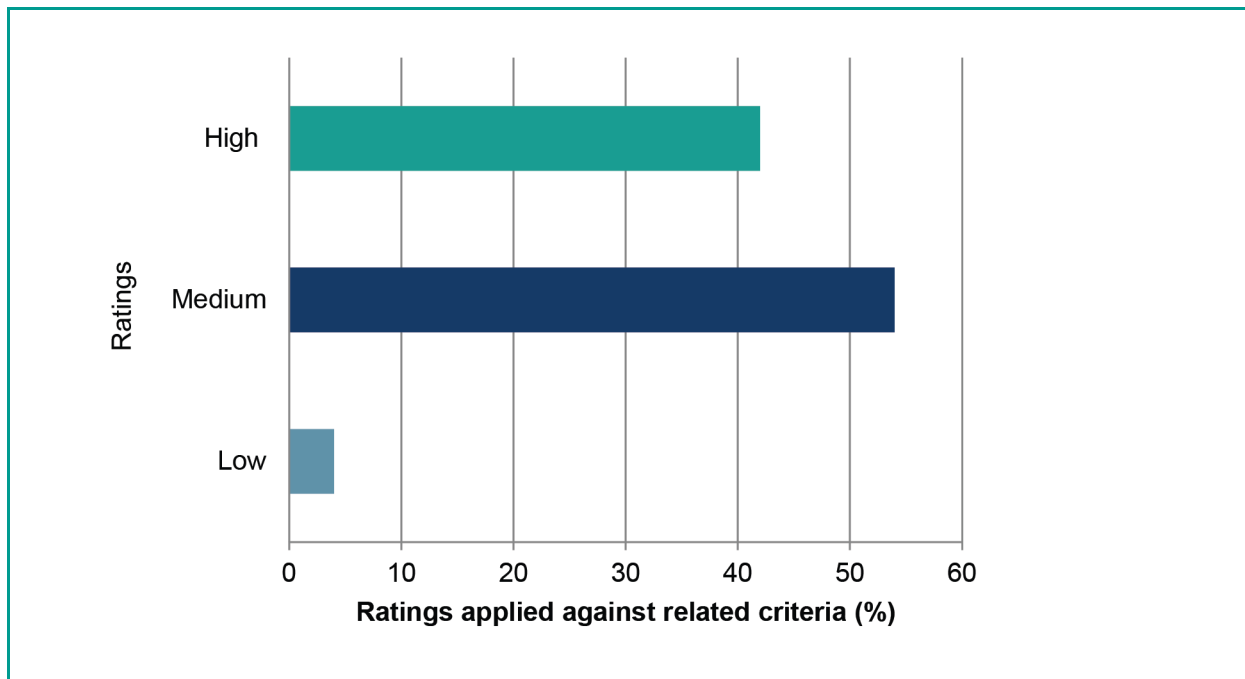
Considered collectively, the distribution of ratings across the criteria was 42% high, 54% medium and 4% low.

Examples of good practice noted in the evaluation for this factor included:

- The Department of Fisheries' 'Conduct and Behaviour policy and procedures' have detailed information about how to report suspected misconduct and any breaches of discipline. The procedures mention internal and external reporting avenues for employee reporting, as well as the notification obligations to the CCC or PSC in the CCM Act.
- The Main Roads Western Australia code of conduct contains information about internal reporting avenues and requires employees to report potentially fraudulent, corrupt or illegal activities to the manager or to the Legal and Commercial Services branch. It also makes specific reference to the CCM Act and to Main Roads' obligation to notify the CCC or PSC. Other relevant policies are referenced in the code. The scope of application of the code is also articulated: it applies to all employees, those employed on a contract or temporary basis, consultants and others working for or on behalf of Main Roads.

- The Curtin University 'Reporting Misconduct' webpage provides information on the distinction between serious and minor misconduct and provides a link to Curtin's Complaints portal. The portal allows allegations of misconduct to be reported internally to the ISU, and the webpage provides information on how staff and members of the public can report allegations of misconduct directly to the CCC or PSC. The webpage also provides links to the CCC and PSC websites and all CCC and PSC fact sheets. In addition, a link to the CCM Act is provided for reference purposes.
- The City of Stirling is considered by the Commission to have a very accessible path on its intranet to information about how to recognise, report and deal with misconduct. The misconduct awareness documents have information about business ethics, conflicts of interest, fraud, managing and reporting misconduct and web links to the CCC, PSC and the City's whistle-blower hotline.

Figure 3: Distribution of assessment results for criteria about how accountability, responsibility and information for reporting misconduct is managed



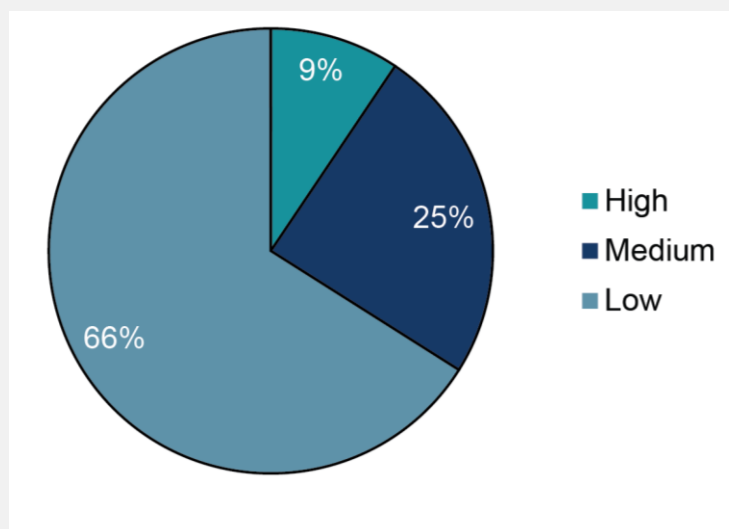
Websites assessment

Information for recognising, reporting and dealing with misconduct

Outside the sample of 12 public authorities, the evaluation conducted a wider desktop analysis of the websites of a further 53 public authorities to assess whether they provided members of the public with basic information related to misconduct. Websites were given a rating of 'high', 'medium' or 'low' based on the information assessed. Assessment was made using the following criteria:

- High – website contains easily accessible, up to date information on misconduct as defined in the CCM Act. Better examples will include explanations of the role played by the CCC and PSC in managing misconduct.
- Medium – website contains some reference to misconduct-relevant information. Information may still refer to the now repealed CCC Act.
- Low – website contains little or no reference to misconduct-relevant information.

Figure 4: Results from an assessment of website information about dealing with misconduct across 53 public authority websites



Observations

In relation to the assessment of 53 authority websites, the Commission observed little or no reference to misconduct-relevant information. The Commission considers it important that members of the public have easy access to information regarding identifying and reporting misconduct when dealing with public authorities. Public authority websites provide the best platform to do this.

This desktop analysis suggests public authorities should review their websites to provide information about misconduct and how to raise any concerns of misconduct.

Suggested improvements

If not already in place, public authorities should:

1. Ensure their code of conduct includes information on how employees can report misconduct internally and, if circumstances require report misconduct externally to the CCC or PSC.
2. Include information on intranet sites, where information on identifying and reporting suspected misconduct can be easily accessed by employees. Information on this page may include links to the CCC and PSC websites and the CCC-PSC *Notification of misconduct in Western Australia* joint information resource, a copy of the public authority's code of conduct, as well as other misconduct information as considered relevant by the authority.
3. Provide general misconduct prevention, detection and reporting information on the external webpage.

Training and awareness raising

Observations

One criterion was applied in the assessment of this factor; the training and awareness raising provided to employees about identifying and reporting misconduct. The distribution of ratings across this criterion was 33% high, 58% medium and 9% low.

Examples of good practice noted in the evaluation for this factor included:

- The City of Stirling conducts a Corporate Orientation induction program that covers reporting misconduct, fraud, corruption, access to a misconduct hotline, and public interest disclosure (PID) and PID Officer information. The City also requires all employees to complete the annual Code of Conduct e-learning training.
- Curtin University has recently developed four new training workshops; 'Avoiding conflicts of interest'; 'Managing complaints'; 'Fact finding' and 'Fraud and corruption - detect, prevent, respond.' It also intends to develop workshops on the CCM Act, *Public Interest Disclosure Act 2003* (PID Act) and Code of Conduct.
- The Department of Fisheries developed and delivered a two day training program for managers which included a module on misconduct, a misconduct resistance course and an online ethical decision making course, which is compulsory for new starters.

The Commission has developed the 'Accountable and ethical decision making' (AEDM) program customised for local government that assists their employees to better understand expected standards of conduct and their obligations in serving the public interest. The AEDM program for local governments comprises a guide for developing a code of conduct and supporting accountable and ethical decision making workshop materials.

Suggested improvements

If not already in place, public authorities should:

1. Introduce an accountable and ethical decision making program for employees that covers identifying and reporting misconduct.
2. Include information about identifying and reporting misconduct in current ethics and conduct training modules.

Appropriate experience and training of relevant employees

Observations

The criterion applied in the assessment of this factor was; the experience and training of employees with primary responsibility for managing misconduct.

The distribution of ratings for this factor was 75% high and 25% medium.

Examples of the experience and training of some of the employees from the 12 public authorities with primary responsibility for arrangements to manage misconduct included:

- experience and qualifications in internal audit, fraud and corruption prevention and professional standards.
- over 8 years' experience in the relevant sector dealing with misconduct notification compliance under the CCM Act, as well as experience in risk assessment and the assessment of misconduct and conduct-related matters.
- extensive experience in receiving and assessing conduct-related allegations, and completion of the *Certificate IV in Government (Investigation)*. Employees in the authority's human resources and procurement areas are also either completing or have previously completed the Certificate IV qualification.

Suggested improvements

If not already in place, public authorities should:

1. Ensure employees with primary responsibility for arrangements to manage misconduct have appropriate experience and training, as well as support employees who deal with the management of misconduct issues to enable them to effectively carry out these functions.
2. In considering the extent to which relevant expertise and experience is available, public authorities may consider nominating officers to participate in future sessions of the Commission's centrally coordinated investigation training program. This is a nationally accredited *Certificate IV in Government (Investigation)*, for public officers involved in, or likely to be involved in investigating allegations of misconduct.

Focus area 2: Systems and processes

Context

The CCM Act places certain requirements on public authorities to ensure that misconduct is effectively managed within each authority, and that appropriate notifications of misconduct are made to either the CCC or PSC. The evaluation assessed the following factors in the 12 public authorities:

- Policy and procedures define misconduct and describe how it is effectively managed.
- Managing misconduct risks.
- Managing conduct-related and misconduct information.

Policy and procedures about misconduct

Observations

For this factor, the criteria assessed were:

- The public authority has a policy on the management (including notification) of misconduct that (a) clearly states its purpose and (b) clearly outlines its scope and application.
- The public authority has procedures on the management of conduct-related or misconduct matters.
- If notification responsibility is delegated from the principal officer, this delegation is clearly documented in the delegations manual or similar relevant document.
- The public authority has documented guidance in procedures setting out what 'suspicion on reasonable grounds' means.

Considered collectively, the distribution of ratings for this factor was 21% high, 42% medium and 37% low.

Curtin University and the City of Stirling were considered to have well developed policy and procedure documents that describe misconduct and how it is effectively managed in their authority. These policies and procedures are well structured and provide good guidance to ensure appropriate action is taken if misconduct is detected. These policy and procedure documents include:

Curtin University

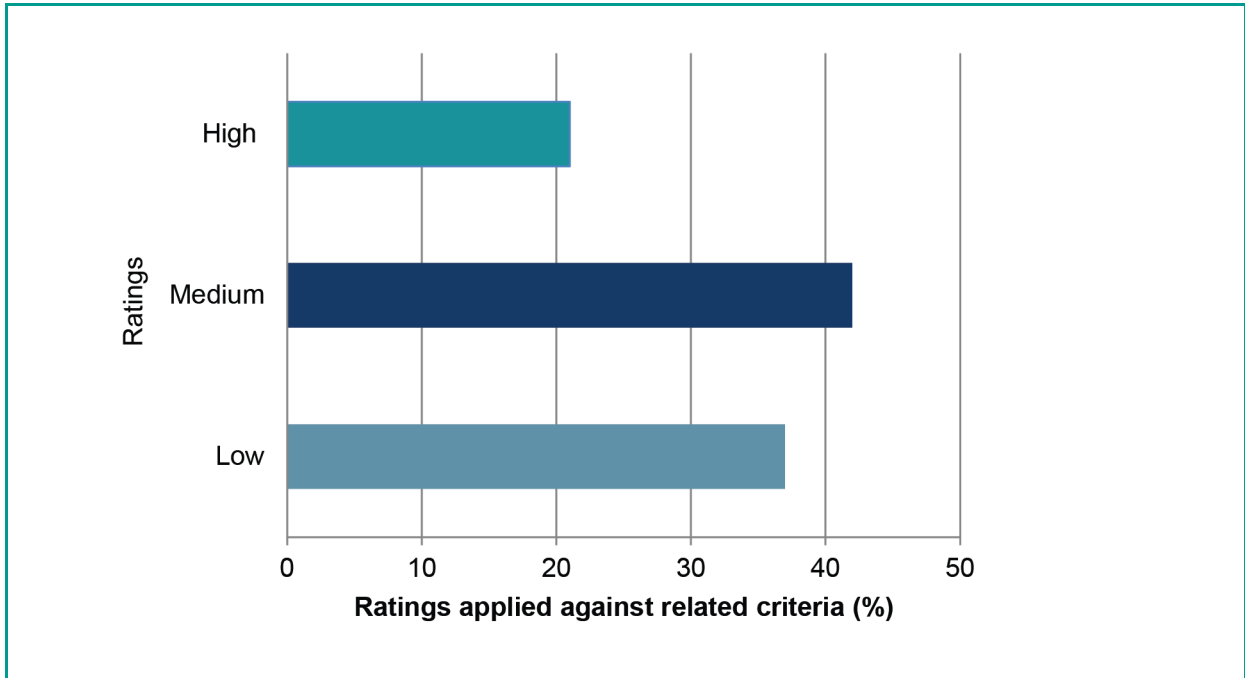
- A Compliance Management Plan which sets out obligations under the CCM Act and the risks of non-compliance. The plan identifies the key compliance provisions of the CCM Act, including the Duty to Notify (s.28 & s.45H CCM Act), the compliance obligations of the CCM Act in Curtin's operational context, and what Curtin needs to do to meet its compliance obligations.
- An Operations Manual which sets out the high level tests to be applied when determining whether a notification should be made to either the CCC or the PSC, including identifying the type of matter (i.e. grievance/service complaint/misconduct) and applying the CCC notification guidelines to determine whether serious misconduct may have occurred, and if not then applying the PSC minor misconduct definition and characteristics (as stated in the CCC-PSC *Notification of misconduct in Western Australia* joint information resource).
- A Complaint Triage Table which provides procedures to be followed when triaging a complaint. This includes assessing whether the officer has a reasonable suspicion that the matter concerns serious misconduct or minor misconduct, and also includes information on the categories of serious misconduct.
- A Complaint Handling Flowchart, which sets out the roles of all parties relevant to a complaint (Complainant, Complaint Management Consultant, Director ISU, Line Manager) and each procedural step to be followed by those parties when a complaint is lodged.
- A Complaints Procedure, which sets out the high level procedures to be followed when a complaint is made.

City of Stirling

- The City has a Misconduct Control Plan (MCP) of which the objectives are to:
 - provide a statement to employees that misconduct is not acceptable and will not be tolerated
 - ensure that management and employees are aware of and implement their responsibilities for establishing controls and procedures for the prevention and detection of misconduct
 - ensure that management and employees are aware of and implement their responsibilities for reporting suspicions of misconduct and how reports should be made and dealt with
 - build an organisational culture that supports employees to report misconduct
 - ensure appropriate action is taken if misconduct is detected
 - protect the reputation of the City by controlling misconduct risk.

- In support of the MCP, the City also has:
 - A Misconduct Control Management Practice (MCMP)
 - Misconduct Investigations Management Practice (MIMP).

Figure 5: Distribution of results of the Commission’s assessment of policy and procedures for managing misconduct



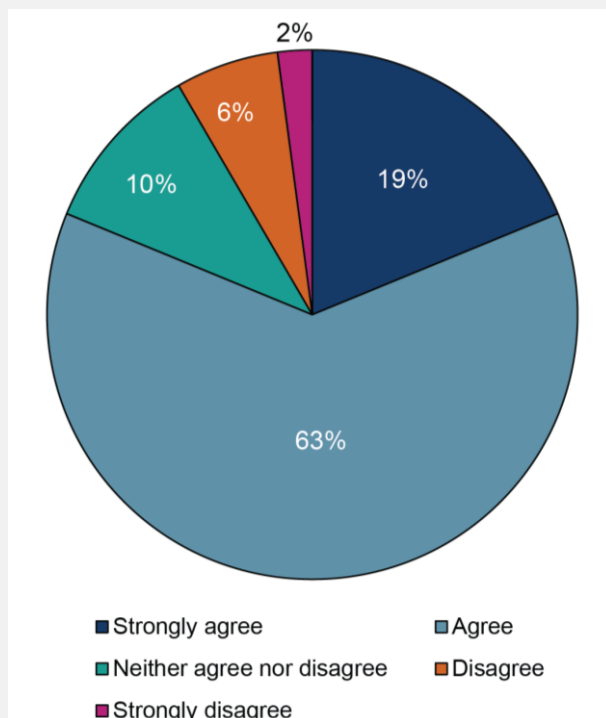
Perceptions of survey respondents

As part of the evaluation, the Commission conducted a survey of more than 80 individuals that had made a notification to the PSC on behalf of an authority to ascertain:

- the level of confidence that notifying authorities had in applying the definitions and characteristics of serious and minor misconduct (48 respondents) and
- understanding obligations to notify the CCC and PSC about serious and minor misconduct (47 respondents).

Survey results – Confidence in applying the definitions and characteristics of minor misconduct

Figure 6: Confidence in applying the definitions and characteristics of serious and minor misconduct when assessing and categorising conduct-related matters.

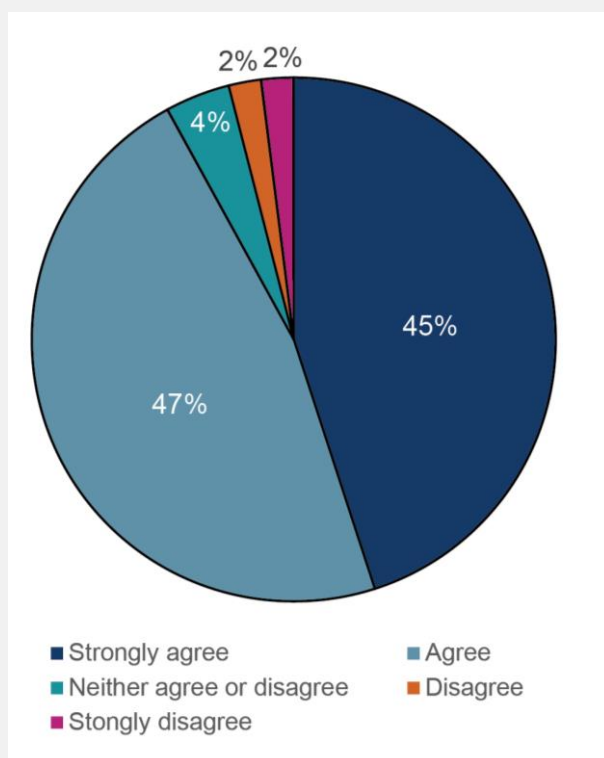


Discussion

The survey results indicate a high level of confidence expressed by respondents in regard to their confidence in applying the definitions and characteristics of serious and minor misconduct when assessing and categorising conduct-related matters, with 19% strongly agreeing and 63% agreeing.

Survey results – Obligations to notify the CCC and PSC about serious and minor misconduct

Figure 7: Confidence in understanding obligations to notify the CCC and PSC about serious and minor misconduct.



Discussion

The survey results indicate a high level of confidence expressed by respondents in regard to their understanding about what their obligation is to notify serious and minor misconduct, with 45% strongly agreeing and 47% agreeing.

Observations

For many of the smaller public authorities with low numbers of conduct-related matters occurring, the CCC-PSC *Notification of misconduct in Western Australia* joint information resource, PSC facts sheets on dealing with misconduct and CCC Guidelines for notification of serious misconduct are adequate points of reference for understanding what misconduct is and making appropriate decisions about making notifications of misconduct.

For medium and particularly larger sized public authorities with the potential for high numbers of conduct-related allegations to occur, the Commission considers there is a need for these authorities to articulate their position on dealing with misconduct (including fraud and corruption) through their own policy and procedures.

The evaluation noted examples of good practice in relation to policy and procedures for assisting in the effective management of misconduct. Notwithstanding these, the overall analysis of the 12 public authorities indicates there is clear scope for a number of those authorities, and likely many other public authorities, to make improvements to their current arrangements in this area.

Suggested improvements

If not already in place, and in consideration of the size and complexity of their authority, public authorities should:

1. Develop a high level Misconduct Control Policy or Plan, with a clearly stated objective and purpose. This document should contain definitions of serious and minor misconduct in the CCM Act, high level misconduct prevention and reporting information, and the policy's application and relationship to other relevant policies and procedures, such as corporate guidelines on discipline.

This policy or plan could be incorporated with misconduct management procedures suggested below.

2. Develop misconduct management procedures that include the following:
 - 2.1. Information about separating matters of grievance, complaints and misconduct and provide guidance on assessing and dealing with serious and minor misconduct to ensure all matters are dealt with in a consistent way.
 - 2.2. Refer to the requirements in the CCM Act, CCC Notification Guidelines and CCC-PSC *Notification of misconduct in Western Australia* joint information resource, including;
 - how to receive and register allegations
 - guidance to determine whether an allegation is considered serious or minor misconduct
 - guidance to determine what a 'suspicion on reasonable grounds' means
 - explain when notification is required to the CCC or PSC.
3. If the obligation to notify serious and minor misconduct under s.28 and s.45H of the CCM Act is delegated by the officer referred to in the CCM Act, this delegation should be recorded in the authority's delegations manual or schedule or other relevant document.

Managing misconduct risks

Observations

The criterion applied in the assessment of this factor was: the approach used in the management of misconduct risks.

The distribution of ratings for this factor was 42% high and 58% medium.

Examples of good practice noted in the evaluation included the following:

- The City of Stirling's Risk Management Framework developed in April 2015 provides an overview of the application of relevant policies and processes to enable the identification, analysis, treatment and monitoring of risk. The framework identifies employee-level 'misconduct' risks in the Risk Breakdown Structure, and notes the role of the Executive management team and Audit Committee in providing oversight of the risk framework.
- Curtin University's Risk Management Policy and Risk Management Procedures set out the high-level policy purpose, procedures and definitions when considering risk management at Curtin. This policy has been approved by University Council. The ISU, which manages misconduct processes for the University, has an operational risk register that contains risks, controls, control owners and risk ratings specific to ISU.
- The City of Perth has a Risk Management Program comprising a policy, framework document, risk software system, procedures, guidelines, risk information and a system of risk review, reporting and audit. The City's operational and strategic risk register has misconduct risks identified and states they are to be monitored as stated in the City's Risk Management Framework. The City's 'risk register' lists a number of risks under the category 'Ethical - Fraud and misconduct'.

Suggested improvements

If not already in place, public authorities should:

- 1 Include misconduct-specific risks in their risk management framework and identify relevant controls to detect, prevent and manage those misconduct risks.

Managing conduct-related and misconduct information

Observations

For this factor, the criteria assessed were:

- The public authority maintains a register of conduct-related matters (including misconduct), which details allegations, actions taken, final outcomes and notifications made.
- The public authority holds corporate records of conduct-related matters (including misconduct).

Considered collectively, the distribution of ratings across the criteria was 67% high, 21% medium and 12% low.

As part of the evaluation, authority conduct registers were examined. Depending on public authority size and context, these registers can take the form of a case management system from which reports can be extracted or in smaller agencies may be a spreadsheet of conduct issues. The evaluation noted that the location of the registers in authority organisational structures varied, and it was sometimes held in the area managing conduct cases, or in other areas such as human resources or the legal area. The Commission considers that the location of the register is a matter for the public authority to determine.

In terms of the content of the register, this also varied depending on authority systems and included matters such as discipline, performance, grievances, service complaints, OSH, general management issues and recruitment issues. The content of the register is also a matter for the public authority to determine.

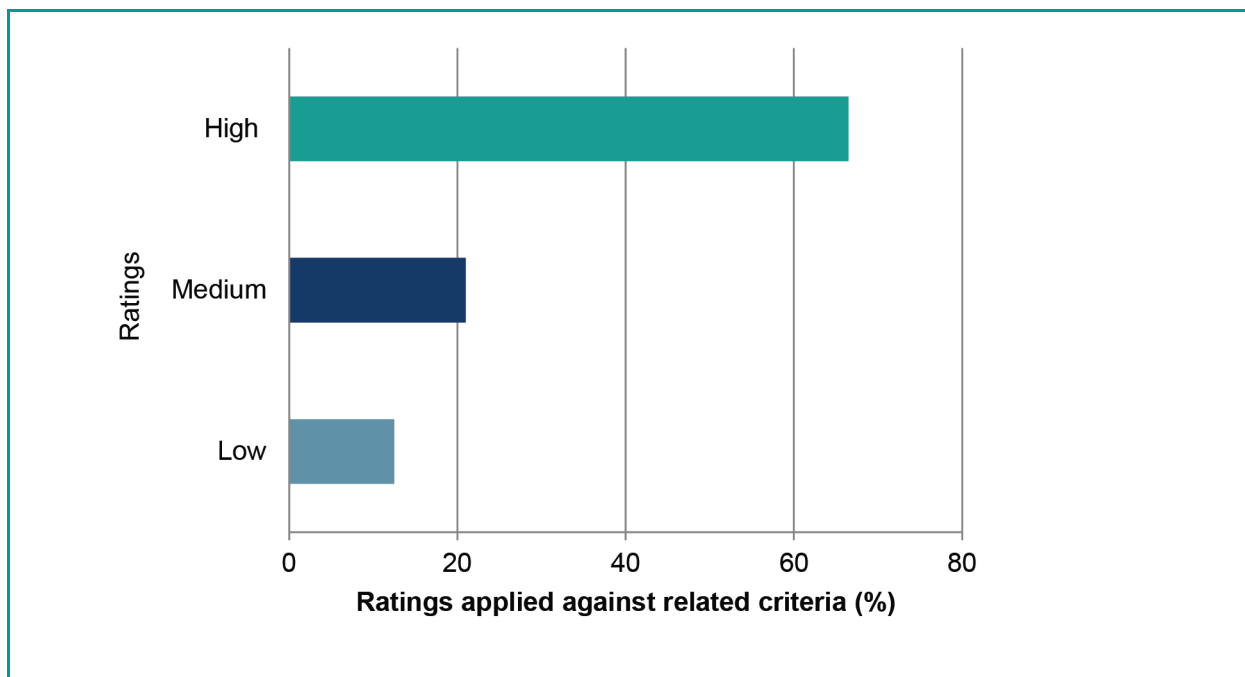
Ten of the 12 public authorities evaluated held a register for the central recording of conduct cases.

Examples of good practice noted in the evaluation for this factor included the following:

- The Department of Corrective Services has a dedicated area to which all reports of suspected misconduct are referred and the following occurs:
 - Each matter is recorded on a separate spreadsheet.
 - All reports of suspected misconduct are loaded onto a database and given a reference number.
 - The database is utilised to retain all information.
 - All documentation is retained onto a related TRIM folder.
 - Additionally, all documentation is retained in a hard copy folder and stored internally in accordance with State Records Policy.

- The City of Stirling maintains corporate records (electronic and hard copy) for conduct related matters relating to employees.
- Curtin University maintains the following information for recording and tracking conduct-related matters, including misconduct matters:
 - Electronic complaint records are held in a central location overseen by the ISU.
 - A ‘Complaint Classification’ register contains details of all complaints received by the ISU. Details on the register include complaint identification information, first and second level complaint categories, ISU classified complaint type, complaint description and whether the complaint was notified to the CCC or PSC.
 - A summary register of CCC and PSC notifications contains complaint identification, date received, date notified, complaint category, complaint description, current status, outcome and comment regarding possible systemic issues identified.

Figure 8: Results of an assessment of the management of conduct-related information (including misconduct) through formal corporate records and the use of a register



Suggested improvements

If not already in place, public authorities should:

1. Establish a specific case register for all conduct-related matters, including misconduct matters, that forms the official corporate record of the public authority. It is suggested at a minimum the register include the following information:
 - date of allegation/ complaint
 - description of the allegation
 - corporate file reference
 - conduct type (e.g. serious or minor)
 - notification date to the CCC or PSC (if notification made)
 - current status
 - outcome
 - date matter finalised
 - other comments.
2. If the case register is not maintained or held within the specified misconduct assessment/integrity area, it is suggested access to the register be provided to this area to assist in ensuring all cases that may constitute serious or minor misconduct are adequately assessed and notified to the CCC or PSC.
3. For conduct-related matters, including misconduct matters, maintain a corporate record of all relevant documentation, and keep all records in a central location, to ensure the integrity of the recordkeeping process is maintained.

Focus area 3: Assessments and notifications

Context

Conduct requiring notification to the PSC as ‘minor misconduct’ occurs when a suspicion on reasonable grounds is formed that a public officer engages in conduct that meets the following elements of s.4(d) of the CCM Act:

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 the 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 -

- vi. 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).*

Under s.45H(2) of the CCM Act certain officers are obliged to notify minor misconduct if that person suspects on reasonable grounds any matter concerns or may concern minor misconduct.

The evaluation assessed the following factors in the 12 public authorities:

- assessment of conduct-related matters
- notifications of minor misconduct.

Assessment of conduct-related matters

Observations

For the purpose of ensuring that required notifications of misconduct occur it is important that all conduct-related matters received by public authorities are assessed in a consistent and complete manner against the requirements of the CCM Act, and in consideration of relevant guidance¹ provided by the CCC and PSC.

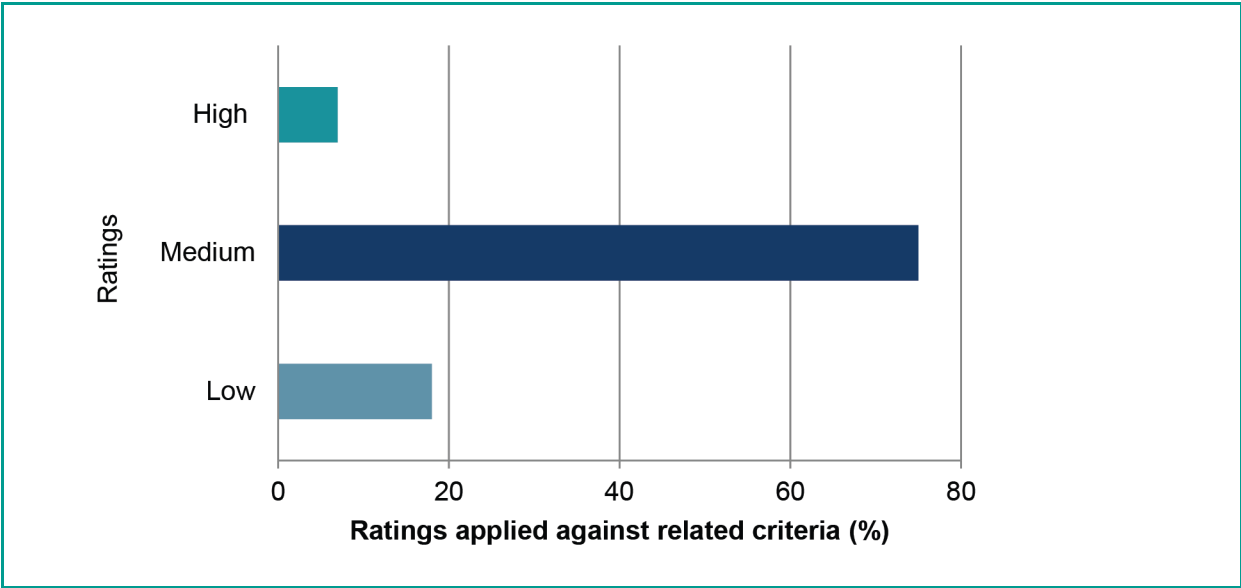
For this factor, the evaluation was informed from:

- a survey (refer to Appendix) of notifiers of minor misconduct for 2015/16 and
- an assessment of more than 50 conduct-related cases in 10 public authorities against the following criteria:
 - internal assessment of allegations follows a considered and consistent process, with the same or similar allegations following established precedent where applicable
 - the public authority applies the s.4(d) (and sub-section) definitions of minor misconduct to each case, with evidence supporting this application
 - evidence shows the authority's deliberation and determination when applying the 'suspicion on reasonable grounds' requirement and the public authority notifies the PSC of allegations once a 'suspicion on reasonable grounds' is reached.

Considered collectively, for the cases assessed the distribution of ratings for this factor across the criteria was 7% high, 75% medium and 18% low.

¹ Such as the CCC-PSC's *Notification of misconduct in Western Australia* joint information resource and CCC 'Guidelines for Notification of Serious Misconduct'.

Figure 9: Results of an assessment of the consideration and assessment of conduct-related matters



The cases chosen for assessment were those where the description in the case register potentially met the definition of minor misconduct and no notification to the PSC had occurred. The Commission considered that the alleged conduct in up to 15 cases may have met the definition of minor misconduct and could have been considered for notification.

Survey results referenced earlier indicate reasonably high levels of confidence by public authorities in applying the definitions and characteristics of minor misconduct and understanding the obligations to notify the CCC and PSC about serious and minor misconduct. However, the case files assessed and discussions held by the PSC with other organisations that have involvement with public authorities accountable for notifying misconduct, indicate some over-confidence based on notification decisions made.

From the sample of cases tested it appears some authorities, operating with the best of intentions, are possibly under-notifying cases of minor misconduct based on views and approaches that include:

- an investigation must have determined that the termination of a person's office will occur, rather than applying the CCM Act s.4(d) provisions, that the matter 'constitutes or could constitute a disciplinary offence providing reasonable grounds for the termination of their office' and
- if *prima facie* a public officer has engaged in conduct that meets the conditions of s.4(d) of the CCM Act and resigns prior to investigative action being completed, this abrogates any requirement to make a notification.

While some examples of good practice were noted in the evaluation for this factor, overall improvements are required to address weaknesses identified from the assessment.

Suggested improvements

If not already in place, public authorities should record and keep an 'audit trail' covering detail about:

1. How the CCM Act s.4(d) (and sub-section) definitions of minor misconduct were applied to each case, with evidence supporting this application.
2. The authority's deliberation and determination when applying the 'suspicion on reasonable grounds' requirement. (CCM Act s.45H(2)(a)).

Notifications of minor misconduct

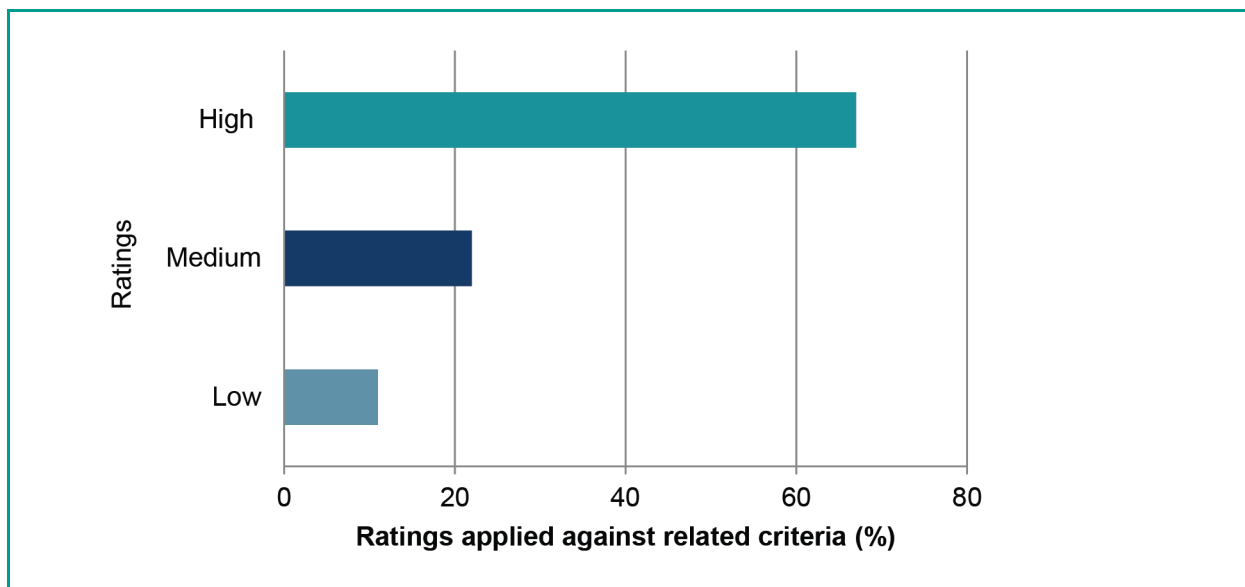
Observations

For this factor, the criteria assessed were:

- Notifications made to the PSC are authorised by the officer identified in s.45H(1), which includes principal officers, or an officer delegated this responsibility.
- Notifications made to the PSC contain sufficient information, based on the requirement of the PSC-CCC *Notification of misconduct in Western Australia* joint information resource.

Considered collectively, the distribution of ratings across the criteria was 67% high, 22% medium and 11% low.

Figure 10: Distribution of results of an assessment of notifications made to the PSC



Suggested improvements

If not already in place, public authorities should:

1. Ensure any delegation to notify that occurs within the authority is recorded in relevant procedures or the corporate delegations register.
2. Where possible, include in all notifications the points listed on page 10 of the CCC-PSC *Notification of misconduct in Western Australia* joint information resource, including a brief analysis of why the events in question may be minor misconduct.

Appendix

Evaluation sample of public authorities

More than 250 public authorities are subject to the CCM Act requirements applying to minor misconduct.

The sampling approach for this evaluation was judgemental, and took into account the following factors in the selection of the sample of public authorities for inclusion in the evaluation:

- the number of notifications lodged by each authority with the Commission
- adequate contextual representation across the types and number of public authorities subject to the CCM Act requirements
- practicality with respect to performing the evaluation.

Public authorities excluded from consideration were those authorities that:

- participated in the Commission's assurance validation of 2015 Public sector entity survey responses (A1 2015); or
- participated in the recent past or will, in the near future, participate in agency reviews by the Commission involving significant agency resources.

Public authorities participating in the evaluation

Metropolitan local government

City of Perth

City of Stirling

Regional local government

City of Bunbury

City of Greater Geraldton

University

Curtin University of Technology

University of Western Australia

Government trading enterprises

Racing and Wagering WA

Synergy

Western Power

Public sector body²

Department of Corrective Services

Department of Fisheries

Main Roads Western Australia

² In this instance, the Departments of Education (DoE) and Health (DoH) were not included in the sample. This was due to DoH currently undergoing a significant restructure and DoE considered to have mature processes in place.

Survey of notifiers of minor misconduct in 2015/16

At the commencement of the evaluation, the Commission conducted a survey to gauge perceptions about some of the information resources which have been provided to public authorities about the new misconduct notification arrangements, and also about their own public authority practices.

An invitation to participate in the survey was sent by email to over 80 people who had made notifications or reports of minor misconduct to the Commission from 1 July 2015, when the new notification arrangements commenced, until early June 2016, when the survey was undertaken. Most of these were notifications arising from the public authority's obligation to notify, with only a few reports, which can be made by any person.

Forty eight responses were received to the survey, a response rate of 52%. Almost all of these 48 respondents answered each of the six questions in the survey.

The results from the survey provide some indication of how agencies are managing the transition to the new notification arrangements.