

Crime and Misconduct Commission

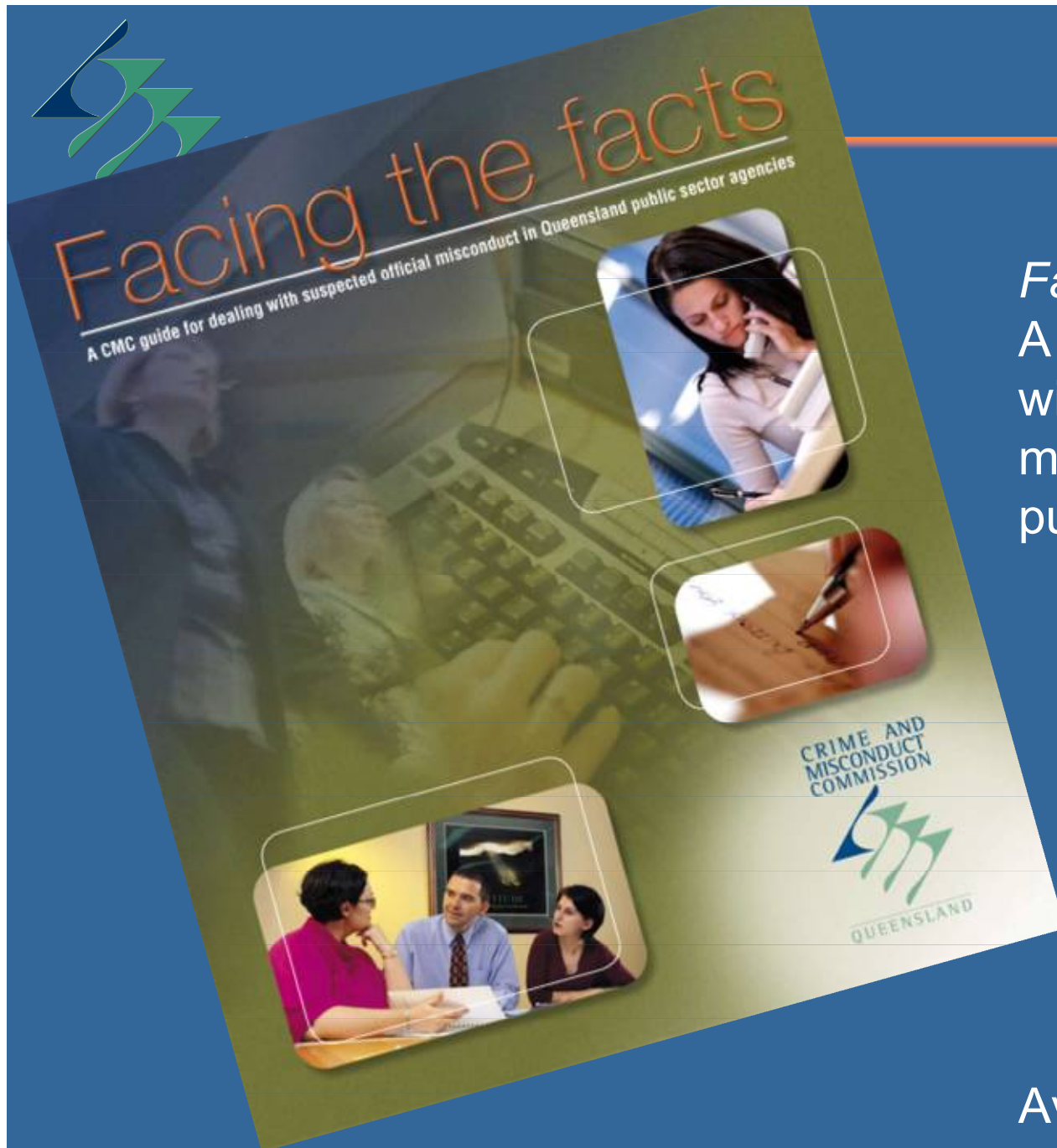


Facing the Facts

A CMC Guide for dealing
with suspected official
misconduct in
Queensland public
sector agencies

Local Government

2009



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misconduct in Queensland
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Available at:
www.cmc.qld.gov.au



Local government and the CMC

**A guide for CEOs, senior managers and
councillors in local government**

module

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Workshop overview

The workshop will cover:

- the role of the CMC
- the role of local government managers
- the definition of the term 'official misconduct'
- a CEO's obligation to report official misconduct to the CMC

A stylized graphic on the left side of the slide. It features a dark blue hand holding a pen, with the pen nib pointing towards the right. The hand and pen are rendered in a simplified, geometric style. The background is a solid blue color.

The Crime and Misconduct Act 2001



Crime and Misconduct Act

➤ Purpose:

– To continuously improve the integrity of, and reduce the incidence of misconduct in, the public sector

s4 Crime and Misconduct Act

➤ Joint responsibility of the CMC and the public sector



Jurisdiction

- Public Sector includes:
 - Local government
 - Queensland Police Service
 - State Departments
 - Statutory authorities
 - Public sector agencies
 - Boards, tribunals
 - Universities



Public sector integrity

Integrity is core business of the CMC and the public sector

A strong culture of integrity requires:

- Public sector managers accepting responsibility
- Support of managers in that responsibility
- Accountability



Misconduct Principles

Four key principles

- Cooperation
- Capacity Building
- Devolution
- Public Interest



Misconduct Functions

- Raise standards of integrity and conduct
- Ensure misconduct is dealt with appropriately

Section 33 (a) & (b), *Crime and Misconduct Act*



What's Misconduct?

- *Crime and Misconduct Act 2001 - Means:*
 - *Official misconduct*
Crime and Misconduct Act ss 14 & 15
(and ss 16 – 19)
 - and**
 - *Police misconduct*
Crime and Misconduct Act Schedule 2
- *Local Government Act 2009 – section 176.*



'Official misconduct'

Conduct that is or involves:

- the performance of functions or exercise of powers that is dishonest or lacks impartiality; or
- a breach of the trust placed in the person as the holder of the appointment [ie by virtue of their position]; or
- a misuse of officially obtained information or material



'Breach of the trust ...'

- There must be a breach of the trust pertaining to the exercise of the powers, functions, duties or responsibilities attaching to the office of the holder of the appointment in the unit of public administration:
Re Mullen [1995] 2 Qd R 608.
- Mere breaches of personal conduct principles do not constitute 'a breach of the trust ..'



‘Breach of the trust ...’

- the trust reposed in the officer by virtue, or reason, of the position held, not merely that which relates to society’s expectations of the officer as a private citizen
- some connection between the conduct and the particular office held must be shown
- conduct which, in a broad sense, relates to the powers, functions, duties or responsibilities which arise out of the office



Official Misconduct cont..

AND could, if proved, be

- a criminal offence

OR

- a disciplinary breach providing reasonable grounds for dismissal



Official Misconduct cont'd

Criminal offences

Not limited to offences contained in the Criminal Code

e.g. Offences under various Acts –
Whistleblower Protection Act 1994, Freedom of Information Act 1992, Local Government Act 1993, Environmental Protection Act 1994, Corrective Services Act 2000, Health Services Act 1991, Child Protection Act 1999.

Any offence other than a regulatory offence (specified in the Regulatory Offences Act) is a criminal offence.



Official misconduct

- ❖ for a Councillor
 - a criminal offence
- ❖ for a Council employee
 - a criminal offence **OR**
 - a disciplinary breach providing reasonable grounds for termination



When is conduct capable of being dealt with as 'official misconduct'

- **Includes conduct even if :**
 - The person is no longer a public official;
 - The person was not at the time but is now a public official;
 - The conduct occurred outside of Queensland.

No time limitations

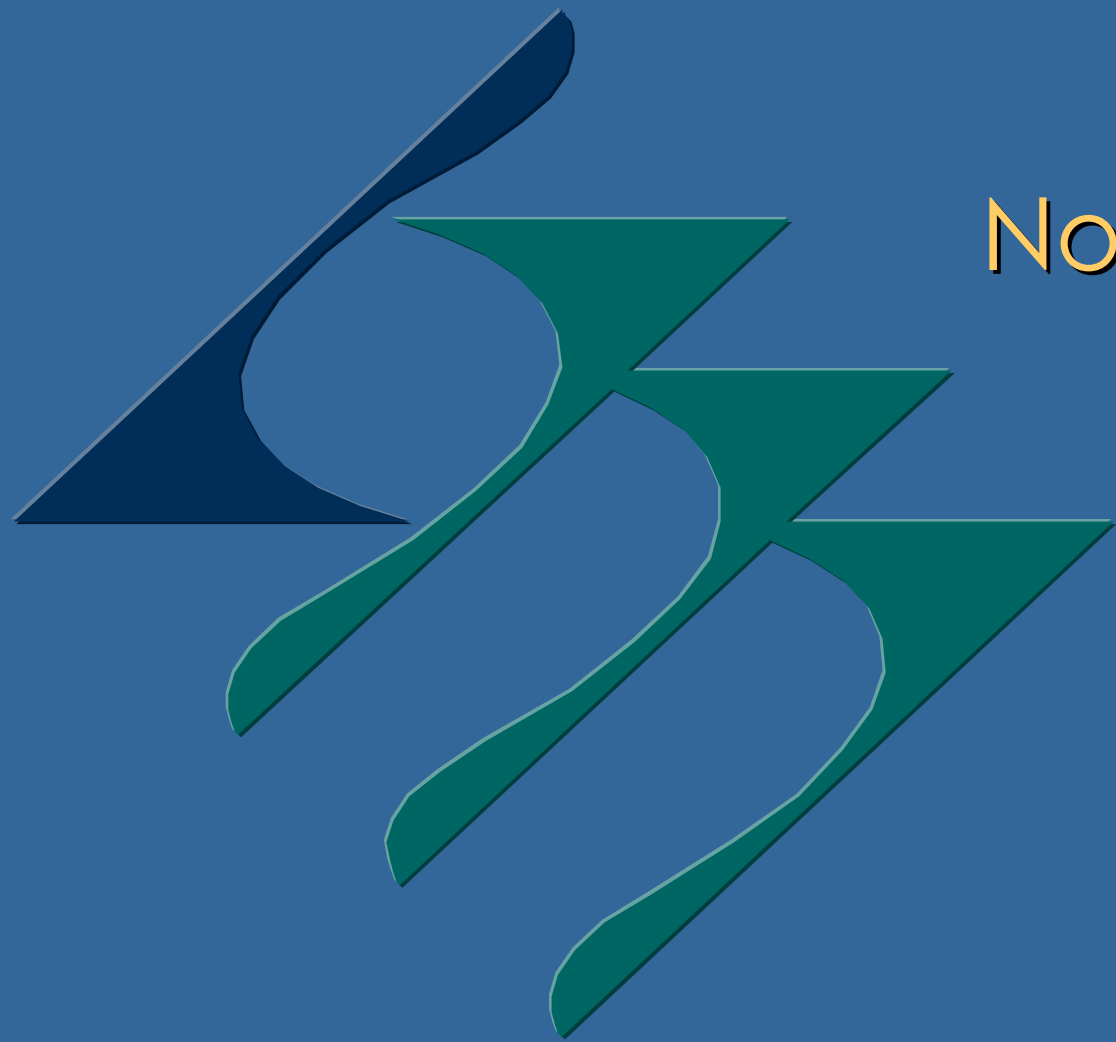


Official misconduct

Can be:

- ❖ on the part of a member of the public
 - ❖ a councillor or council employee in a private capacity
- Conduct that adversely affects or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers by:
- an agency; or
 - a public official

Example: trying to influence a public official to act improperly



Notification of complaints



Sources of complaints to the CMC?

- Direct to the CMC or to the council from:
 - Members of the public
 - public sector employees [whistleblowers]
- Newspaper articles
- CMC own activities
- Other oversight bodies; eg Ombudsman
- Public sector agencies



Who can report official misconduct?

➤ to the Council

For e.g.-

- A member of the community may complain to a Council officer
- A staff member may report conduct to the CEO in accordance with council's internal reporting system or grievance procedures
- An internal report may cause a manager to report concerning conduct; or
- A councillor may mention to the CEO concerning conduct on the part of a staff member or another councillor; or
- Council may receive a letter from a local contractor



Sources of complaints

Complaints may be made:

- verbally
- anonymously
 - anonymity is a factor to take into account in determining how to deal with a complaint, but not a basis to refuse to accept a complaint



Obligation to notify CMC

- The duty to notify applies to a complaint, information or a matter
- It is not limited to a formal complaint by an aggrieved person
- *Local Government Act 2009* sets up reporting and referral arrangements but they don't detract from the *Crime and Misconduct Act*



CEO's obligation to notify

Section 39 Duty to notify is paramount

- (1) The duty of a public official to notify the commission of a complaint under section ...38 must be complied with despite -
 - (a) the provisions of any other Act, other than the Police Service Administration Act 1990, section 7.2(3); 7 or
 - (b) any obligation the person has to maintain confidentiality about a matter to which the complaint relates.
- (2) Subsection (1) does not affect an obligation under another Act to notify misconduct.

The CEO is the 'public official' for the purpose of sections 38 and 39.



When should the CMC be notified?

- If a CEO suspects a complaint, information or matter involves or may involve official misconduct they are obliged to notify the CMC.

s38 Crime and Misconduct Act 2001



CEO's obligation to notify

- The CEO obliged to notify the CMC if there is a mere suspicion that the 'complaint' (not any actual conduct that may have lead to the complaint) involves or may involve official misconduct
- ie the complaint alleges conduct which could constitute official misconduct – eg alleges corruption



CEO's obligation to notify

- A CEO may be charged with official misconduct themselves if they fail to notify the CMC in accordance with their obligation.
- CEO not required to receive any approval (by Council, Mayor or any other party) to notify.
- The CMC can be contacted to discuss an issue to assist with the determination as to whether an allegation needs to be reported to the CMC.



Complaints against the CEO

It is suggested that:

- the CEO has a delegation in place to allow another officer of Council to meet the reporting requirements of S.38 of the CM Act for complaints against the CEO (or related person)
- the Council has policies and procedures and delegations in place for the Mayor and/or the Chairman of a relevant committee to handle complaints involving the CEO.



When should the CMC be notified? Cont'd

- Low threshold -
 - in the public interest
 - about accountability and transparency
 - to facilitate independent oversight



Inquiries before reporting?

- In determining whether there is the requisite suspicion may have regard to:
 - information already in the direct knowledge of the CEO or relevant manager
 - records in the possession of the Council



Can CEO make inquiries before notifying?

The purpose of having regard to information in the possession of the CEO is:

- to determine whether the alleged conduct could not have occurred beyond any doubt
- NOT to determine if the alleged conduct may have occurred

Can only rely on knowledge or on departmental records if satisfied that the information is absolutely accurate.

- Care must be taken in accepting information at face value



Making a report
to the CMC



Sections 38 and 40

- Obligation to notify under section 38 is immediate on case by case basis
- Obligation to notify under section 40 is determined by the directions issued to the department:
 - certain categories of complaints on schedule basis
 - monthly reporting
 - ability to commence to deal with immediately



Timeliness of reporting

- Importance of timely reporting
 - Limitation periods for criminal prosecutions
 - To minimise impact upon those concerned, including workplace
- To facilitate timely response to complaint
 - Section 40 directions
 - Contact CMC by telephone
- Face to face meetings – particularly sensitive matters



What is the best way to report?

- Pro forma referral notice available on CMC website.
- Provide:
 - Précis of complaint
 - Other relevant information:
 - ❖ Context / background information
 - ❖ Any suggested ways to deal with complaint
 - ❖ Capacity of the agency to deal with
- **Full information assists expeditious and appropriate assessment**

Thank you for your participation

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QUEENSLAND

Questions?

