



GOVERNMENT OF
WESTERN AUSTRALIA

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Commission

‘Your silence gives consent’ – Plato



Don't be afraid to speak up

Guide for disclosers

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A copy of this guide is available on the Public Sector Commission website at [www.
publicsector.wa.gov.au](http://www.publicsector.wa.gov.au).

Disclaimer

This guide has been developed to assist individuals who are thinking about making a public interest disclosure. However, it is a guide only and should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases.

The Public Sector Commission gratefully acknowledges the contribution of the Queensland Crime and Corruption Commission, the Ombudsman Western Australia, the Australian Capital Territory Commissioner for Public Administration and the Ombudsman New South Wales during the revision of this guide.

Accessibility

Copies of this guide are available in alternative formats upon request.

The *Public Interest Disclosure Act 2003* (PID Act) encourages people to come forward with information about wrongdoing without fear of reprisal.

If you're thinking about making a public interest disclosure, seek advice first.

About public interest disclosures

The PID Act enables people to make disclosures about wrongdoing in the State public sector, local government and public universities without fear of reprisal. It aims to ensure openness and accountability in government by encouraging people to make disclosures and protecting them when they do.

We should all speak up

This guide contains information about making a disclosure under the PID Act. If you are thinking about making a disclosure, be sure to first speak with the relevant proper authority (refer page 5).

What is a public interest disclosure?

A public interest disclosure is a report of wrongdoing made under the PID Act. A disclosure must relate to a matter of public interest information and show or tend to show wrongdoing by a public authority, public officer or public sector contractor performing a public function.

A public interest disclosure can be made by anyone who believes on reasonable grounds their information is or may be true. It is an offence under the PID Act to deliberately make a false or misleading disclosure.

What is the difference between a public interest disclosure, a grievance and a complaint?

The public interest disclosure process enables people to disclose certain types of wrongdoing covered by the PID Act, and where required, ensures that someone investigates the information and takes action. It is a process within government to deal with matters of a serious nature which, if resolved, would serve the public good.

A public interest disclosure is more than a general complaint or dissatisfaction with a product, service or decision of government. It is also more than a personal grievance that can be resolved by agreement.

A public interest disclosure must relate to wrongdoing, not be trivial and must be made to the right person (being a proper authority). A public interest disclosure must be managed according to the PID Act and, once made, the person making the disclosure cannot withdraw it.

Why should I speak up and make a public interest disclosure?

By making a public interest disclosure you could help to stop or prevent:

- wrongdoing
- others being disadvantaged or advantaged by the wrongdoing
- danger to the health and safety of the community
- damage to the environment.

Your disclosure could inform a public authority about a larger problem and it may lead to better work practices. You can be satisfied you did what you could to improve the situation.

I have heard the term ‘PID Officer’, what is that?

The ‘Public Interest Disclosure (PID) Officer’ is the person who holds the specified position as the proper authority to receive public interest disclosures within the sphere of responsibility of the public authority. This person is designated by the Principal Executive Officer (PEO) under section 23(1)(a) of the PID Act

Generally, the disclosures about a public authority or its officer or contractors need to be made to the PID Officer of the public authority concerned. However, depending upon the nature of the matter, it may need to be made to a proper authority as identified in section 5(3) of the PID Act.

For more information on to who a disclosure can be made refer to the ‘To who is a disclosure made?’ section on page 8.

I have information about wrongdoing in a public authority. Could I make a public interest disclosure?

If you know about wrongdoing, you could make a public interest disclosure if your information meets all of the following criteria:

- the information is ‘public interest information’ covered by the PID Act (explained in the next section)
- you disclose the information to a proper authority (a PID Officer in a public authority or a person or authority named in the PID Act as being able to receive disclosures)
- you believe on reasonable grounds your information is or may be true
- the information is not protected by legal professional privilege.

What is public interest information?

‘Public interest information’ is information that shows or tends to show wrongdoing by a public authority, public officer or public sector contractor when performing a public function.

The information in your disclosure must tend to show the public authority, public officer or public sector contractor’s involvement in one or more of the types of wrongdoing on the next page.

Types of wrongdoing

An offence under State Law	Substantial unauthorised or irregular use of public resources
Conduct relating to matters of State and local government administration affecting you (and can be investigated by the Ombudsman Western Australia)	Substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment
Substantial mismanagement of public resources	Improper conduct*

*Generally, improper conduct is a breach of the standards of conduct that a reasonable person would expect of a person or body, knowing their duties, powers and authority, in the circumstances of the case.

What is a public authority, a public officer and a public sector contractor?

- A 'public authority' includes a State Government organisation (including some boards and committees), local government, regional local government or a public university.
- A 'public officer' includes a State public service officer, an employee of a public authority, a Minister, a Member of Parliament, a judicial officer, a police officer, a holder of office under the State or an officer of the Commonwealth exercising a function on behalf of the State.
- A 'public sector contractor' includes a person or organisation engaged by a public authority, or a subcontractor of this person or organisation, for the supply of goods and services or to perform a public function.

What is a public function?

Your information must relate to a public authority, officer or contractor performing a public function. For example, the PID Act would not apply to information that a public officer engaged in criminal behaviour unconnected with their employment.

To who is a disclosure made?

A public interest disclosure cannot be made to just anyone. It must be made to a proper authority, otherwise it will not be covered by the PID Act. The proper authority for receiving your public interest disclosure depends on your information.

Category of public interest information	Appropriate proper authority (pursuant to the PID Act)
Offences under State law	A police officer or the Corruption and Crime Commission (s5(3)(a))
Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources	Auditor General (s5(3)(b)) or the PID Officer of the public authority concerned (s5(3)(h))
Matters of administration affecting someone in their personal capacity falling within the jurisdiction of the Ombudsman Western Australia	Ombudsman Western Australia (s5(3)(c)) or the PID Officer of the public authority concerned (s5(3)(h))
A police officer	Commissioner of Police or the Corruption and Crime Commission (s5(3)(d))
A judicial officer	Chief Justice (s5(3)(e))
A Member of the Legislative Assembly	Speaker of the Legislative Assembly (s5(3)(f))
A Member of the Legislative Council	President of the Legislative Council (s5(3)(f))
A public officer who is not a Member of Parliament, a Minister, a judicial officer or a commissioned or other officer specified in schedule 1 of the <i>Parliamentary Commissioner Act 1971</i>	Ombudsman Western Australia or the Public Sector Commissioner (s5(3)(g)) or the PID Officer of the public authority concerned (s5(3)(h))
A public authority or an officer of the public authority	PID Officer of the public authority (s5(3)(h))

Are there other reporting avenues for my information?

The PID Act places restrictions on to whom you can speak and what you can say about the matter once you have made a disclosure. Before you make a disclosure under the PID Act you may wish to think about whether you can lawfully bring your concerns to light in another way.

Even if you could make a public interest disclosure using your information, there might be other reporting avenues that you may wish to use.

You may choose these avenues if, for example, you think it would be hard to keep your information confidential among friends or colleagues or you want an outcome that is not possible using the public interest disclosure process. Making a public interest disclosure usually limits you from providing the same information in other circumstances.

Some of the other avenues for reporting your information include:

- Corruption and Crime Commission for serious misconduct
- Public Sector Commission for minor misconduct
- Western Australia Police for criminal matters
- Ombudsman Western Australia for matters governing administration affecting individuals
- Equal Opportunity Commission Western Australia for matters regarding discrimination
- public authority involved in the matter.

How does the PID Act protect me?

The PID Act protects you if you make an appropriate disclosure to a proper authority.

Protections under the PID Act include immunity from civil or criminal liability, disciplinary action, dismissal and termination of employment for any breach of duty of secrecy or confidentiality that may apply to you as a result of you making the disclosure.

However, be aware that, if you make a disclosure under the PID Act, you are still liable for any wrongdoing you may have been involved in, for which you may face disciplinary action or criminal charges.

If you are employed by a public authority, it will take all reasonable steps to protect you from detrimental action or the threat of detrimental action because you made a disclosure. If you are concerned about detrimental action, make this clear when you disclose.

Additionally, your identity will only be revealed in accordance with the PID Act. This includes where you consent or where it is necessary for the matter to be effectively investigated. All reasonable steps will be taken to advise you that your identity will be revealed.

What is detrimental action?

Detrimental action is action arising from your public interest disclosure, such as dismissal or disciplinary action. It includes any action that causes you injury, damage or loss, intimidates or harasses you, or discriminates against or disadvantages you in your employment.

Making a disclosure does not stop any disciplinary or substandard performance processes or actions that are unrelated to your disclosure. These unrelated processes are not considered detrimental action.

What if someone takes detrimental action against me? Are there remedies available?

Once you have made the disclosure, if you believe someone has taken or is threatening to take detrimental action against you, advise the proper authority (PID Officer) you made the disclosure to. This will allow them to consider what action they may be able to take.

The proper authority can also discuss other options to stop or prevent detrimental action, including you:

- applying to the Supreme Court for an order or injunction
- applying to your employer to be relocated, if you are employed in a State public sector agency
- making a complaint to the Equal Opportunity Commission
- taking action through a civil court as a tort.

Does the PID Act also protect the subject of a public interest disclosure?

The identity of the subject of the disclosure can only be revealed in accordance with the PID Act. The PID Act also requires that natural justice, that is, procedural fairness, is afforded to those who are the subject of a disclosure.

What are my responsibilities?

In addition to providing protection, the PID Act imposes some responsibilities on you. Comply with the responsibilities outlined below to maintain your protection.

You must believe on reasonable grounds your information is or may be true.

It must be more than a mere suspicion, and show, or tend to show, that wrongdoing is occurring, has occurred or is about to occur. It is an offence to knowingly or recklessly make a false or misleading disclosure. The penalty for doing so is \$12 000 or imprisonment for one year (section 24 of the PID Act).

You must assist the investigator where you can.

You need to supply information at the investigator's request where you can. If you do not, you may lose your protections (section 17(1)(a) of the PID Act). Remember, it is not your role to investigate the matter, as you may affect the integrity of any ongoing investigation.

You must keep your disclosure completely confidential otherwise you may forfeit your protections.

You may speak with the PID Officer, or another person investigating the matter, but you cannot speak to anyone else about your disclosure. If you believe you need to speak to someone else about it, discuss this with your PID Officer first. You must also keep the information confidential after the process is complete, including information arising throughout the process and the outcome (section 17(1)(b) of the PID Act).

You must not reveal the identity of the person about whom your disclosure is made.

Subject to some exceptions, you can speak about this only with the proper authority who is dealing with your disclosure or anyone investigating the matter. If you speak to others, you may commit an offence which carries a penalty of \$24 000 or imprisonment for two years (section 16(3) of the PID Act).

How do I make a public interest disclosure?

What should I do first?

Make sure you seek advice.

Before making a disclosure, contact the [PID Officer](#) in the relevant authority to find out:

- how to make the disclosure and to whom you should make it
- your rights and responsibilities, including your protections
- the types of information the PID Act covers
- whether making a public interest disclosure is the best avenue for you to use.

Knowing this information, consider whether it is something you think is important to disclose because it is in the public interest.

If you decide to go ahead, be clear you are making your disclosure under the PID Act. The PID Officer will usually have a lodgement form for you to complete.

If you make a disclosure under the PID Act, you must not discuss the matter with anyone other than the PID Officer or the person investigating the matter. Otherwise you may lose your protections under the PID Act and incur a penalty.

Is there a time limit for making a disclosure?

No, you can make a disclosure at any time, including about matters that occurred before the PID Act commenced in 2003. However, the sooner you make a disclosure, the easier it will be for the proper authority to act on it.

Should I make my disclosure to the PID Officer?

You must make your disclosure to the proper authority (PID Officer or a person or body named in the PID Act) for it to be a public interest disclosure and for you to be protected under the PID Act.

Generally, you should make disclosures about a public authority or its officers or contractors to the PID Officer of that public authority. For some specific types of information you may make a disclosure to another proper authority named in the PID Act. You may also be able to make a disclosure to more than one proper authority (refer page 8).

Can I make a disclosure to someone other than a proper authority?

Not if you want protections under the PID Act. If you make a disclosure to someone who is not a proper authority (PID Officer), it will not be treated as a public interest disclosure. The PID Act will not apply and you will not be afforded the protections of the PID Act.

Can I make a disclosure to a journalist?

You can do so **only** if you have first made substantially the same disclosure to a proper authority or PID Officer and that public authority has:

- refused to investigate or discontinued the investigation of a matter you raised in your disclosure or
- not completed an investigation within six months of you raising the matter or
- completed an investigation but did not recommend that action be taken or
- not provided you with a report stating the outcome of their investigation and any actions proposed or taken and the reasons for those actions within the time allowed in section 10(1) and section 10(4) of the PID Act.

Be sure the actions of the PID Officer or authority dealing with your disclosure meets one of the above criteria before making a disclosure to a journalist. If you don't know the status of your disclosure, contact the PID Officer to find out prior to disclosure to a journalist.

It is important that people understand their rights and responsibilities under the PID Act. In addition to discussing the matter with the PID Officer, it is suggested that you seek your own legal advice before taking any action.

Can I make an anonymous disclosure?

The likelihood of a successful outcome is greatly increased if you share your identity with the proper authority when you make your disclosure.

However, you can make an anonymous disclosure as long as you make it to a proper authority and clearly indicate you are making a disclosure under the PID Act, for example, by stating at the top of your letter 'this is a public interest disclosure'.

Anonymous disclosures can be hard to investigate as the PID Officer cannot contact you for more information. If you are thinking about making an anonymous disclosure, consider whether:

- you can include enough information that wrongdoing has occurred, is currently occurring or will occur
- information or documents in your disclosure fully explain the matter and need no further explanation
- your identity may be inadvertently revealed during any subsequent investigation.

If you make an anonymous disclosure, it will be difficult for you to be protected under the PID Act. You will also not receive any information about what happens to your disclosure.

Do I need to provide evidence to support my disclosure?

When you make your disclosure you must believe on reasonable grounds your information is or may be true. It is an offence to make a false or misleading disclosure. Your information must be more than a mere suspicion and show, or tend to show, wrongdoing is occurring, has occurred or is about to occur. Supporting documents, names of witnesses and relevant dates when the alleged conduct occurred are useful, if you can supply them.

When making your disclosure, be clear, factual and accurate.

What happens after I make a disclosure?

What will the proper authority do first?

The proper authority will decide if the information in your disclosure is covered by the PID Act. If your information does not constitute a public interest disclosure, the proper authority will let you know and explain why (unless you made an anonymous disclosure). You may consider another avenue to report your concerns (refer page 8).

Will my disclosure be investigated?

If your disclosure is a public interest disclosure, the proper authority must investigate, or cause to investigate the matter, if they have the power to do so.

‘Cause to investigate’ means the proper authority may have another person with the right skills investigate the matter. They may be from within the authority or someone external. If another person investigates the matter, the proper authority who you made the disclosure to remains your point of contact throughout the process.

Your disclosure may not be investigated if the proper authority considers:

- the matter is trivial
- the disclosure is frivolous or vexatious
- there is no reasonable prospect of obtaining enough evidence due to the time that has passed since the wrongdoing occurred
- the matter is or has been properly investigated under the PID Act by another proper authority.

If the proper authority decides not to investigate your disclosure, they will let you know why, unless you made an anonymous disclosure.

Where a proper authority does not have sufficient power to investigate your disclosure under their legislation, they may refer your disclosure (or matter(s) within it) to another authority with the power to investigate. They will let you know, if they are referring a matter to another authority.

Will action be taken if my disclosure is substantiated?

If your disclosure is substantiated, the proper authority must take action that is necessary, reasonable and within its functions and powers to:

- stop or prevent the matter from continuing or occurring in the future
- start disciplinary action against a person responsible for the matter and/or
- refer the matter to the Commissioner of Police or another person, body or organisation having power to investigate the matter.

The action taken is a decision of the proper authority and will depend on the matters substantiated. Sometimes a change to policy or a practice may be all that is required.

The proper authority will give you a report on the action taken or proposed to be taken, within the time allowed by the PID Act, unless you made an anonymous disclosure. The proper authority will also provide a final report at the completion of the investigation, if requested.

Can I withdraw my disclosure once I have made it?

No, you do not 'own' a public interest disclosure and once you have made a disclosure you cannot withdraw it. The proper authority must investigate your disclosure once they receive it, unless the disclosure is declined for one of the reasons provided by the PID Act (refer page 17).

How long will the process take?

A straightforward disclosure may be completed quickly, while more complex issues can take months to complete.

Each proper authority will have their own process to follow. They may be able to give some indication of timeframes at the start of the process.

Will I be kept informed about my public interest disclosure?

Yes, as long as you do not make an anonymous disclosure, you will be notified about your disclosure throughout the process.

The proper authority will notify you within three months of making your disclosure about what they have done or intend to do about your disclosure. If the investigation is ongoing, you can ask for a progress report. You will also receive a report on the outcome of the investigation and any action taken, or proposed to be taken, as well as the reasons for these actions.

Reports will not contain any information likely to adversely affect any person's safety, privacy or other rights.

What if my disclosure is not substantiated?

An investigation into your disclosure may reveal that no wrongdoing has occurred. There could be a number of reasons why your disclosure is not substantiated, including a reasonable explanation or lack of evidence.

It is important you understand these reasons. If you do not feel they are clear or you do not have enough information, you can ask. Talk to the proper authority or PID Officer who managed your disclosure.

Even if your disclosure is not substantiated it could help the authority to identify broader problems or prevent a similar occurrence. You will still be protected by the PID Act where the disclosure is unsubstantiated and you uphold your responsibilities.

Can I appeal against the findings?

You cannot appeal against the findings. If you are dissatisfied with the outcome of the investigation, you may be able to make a disclosure to another appropriate proper authority (refer page 8).

However, this other proper authority may refuse to investigate your disclosure if they are satisfied it has already been properly investigated.

Important things to remember

- Check your information is or may be true. Knowingly and recklessly making false or misleading disclosures is an offence under the PID Act and carries a penalty.
- Keep your intentions to yourself and do not broadcast that you are going to make or have made a disclosure. Provide your information discreetly.
- Seek advice from the proper authority responsible for the public interest information, or call the Public Sector Commission Advisory Line on (08) 6552 8888 or 1800 676 607 before making a disclosure. The advisory line provides general advice about the public interest disclosure process.
- Don't breach confidentiality after you have made a disclosure or after the process is complete. You may lose your protections under the PID Act and you may incur a penalty.
- Be aware, that to be protected under the PID Act, you must make your disclosure to a proper authority. A disclosure to a journalist can only be made in certain circumstances (refer pages 14-15).

For further information about public interest disclosure visit www.publicsector.wa.gov.au

For further information on making a public interest disclosure, contact the authority where the wrongdoing occurred, is occurring or will occur and ask for the PID Officer.

A list of PID Officers for a range of public authorities in Western Australia is available at www.publicsector.wa.gov.au

Alternatively, contact the Public Sector Commission Advisory Line on (08) 6552 8888 or 1800 676 607, which provides general advice about the public interest disclosure process.

Useful contacts

For advice about the *Code of Ethics*, minor misconduct and public sector standards in human resource management

Public Sector Commission
Phone: (08) 6552 8888
Outside metro: 1800 676 607
Email: admin@psc.wa.gov.au
Website: www.publicsector.wa.gov.au

For advice on matters of State and local government administration

Ombudsman Western Australia
Phone: (08) 9220 7555
Outside metro: 1800 117 000
Email: mail@ombudsman.wa.gov.au
Website: www.ombudsman.wa.gov.au

For advice on public authorities' accountability and performance requirements

Office of the Auditor General
Phone: (08) 6557 7500
Email: info@audit.wa.gov.au
Website: www.audit.wa.gov.au

For advice about serious misconduct, Police misconduct and corruption

Corruption and Crime Commission
Phone: (08) 9215 4888
Outside metro: 1800 809 000
Email: info@ccc.wa.gov.au
Website: www.ccc.wa.gov.au

For advice on offences under a State law

Western Australia Police
Phone: (08) 9223 1000
Website: www.police.wa.gov.au

For advice on remedies for acts of victimisation under the *Equal Opportunity Act 1984*

Equal Opportunity Commission
Phone: (08) 9216 3900
Email: eoc@eoc.wa.gov.au
Website: www.eoc.wa.gov.au



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