

‘Your silence gives consent’ – Plato



When someone speaks up

Guide for managers

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A copy of this guide is available on the Public Sector Commission website at 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 know someone who is thinking about making a public interest disclosure, encourage them to speak to the Public Interest Disclosure (PID) Officer in the relevant authority 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 has been developed by the Public Sector Commission (Commission) to assist managers to recognise whether their employees' concerns may be a public interest disclosure (PID) in accord with the PID Act, so that they can refer them to the correct proper authority for further advice (refer page 5).

If you know someone who is thinking about making a public interest disclosure, encourage them to speak to the relevant proper authority prior to doing so.

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 must be made to a proper authority. A 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.

How is it different from a grievance or complaint?

The public interest disclosure process is a process within government to deal with serious matters, which if resolved, would serve the public good.

As such, 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.

The public interest disclosure process enables people to disclose certain types of wrongdoing to the right person (being a proper authority), and where required, ensures that someone investigates the information and takes action in accordance with the PID Act. Once made, a disclosure cannot be withdrawn.

The PID Act protects people who make disclosures and also places some obligations on them. For further information about these protections and responsibilities, refer to *Don't be afraid to speak up*.

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

The 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, 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.

What is ‘sphere of responsibility’?

Under 5(3)(h) the PID Officer for a public authority can receive information relating to a matter which falls within the ‘sphere of responsibility’ for their public authority. ‘Sphere of responsibility’ is not defined in the PID Act but may include:

- the PID Officer’s public authority or
- a public officer or public sector contractor of the PID Officer’s public authority or
- a matter or person that the PID Officer’s public authority has a function or power to investigate.

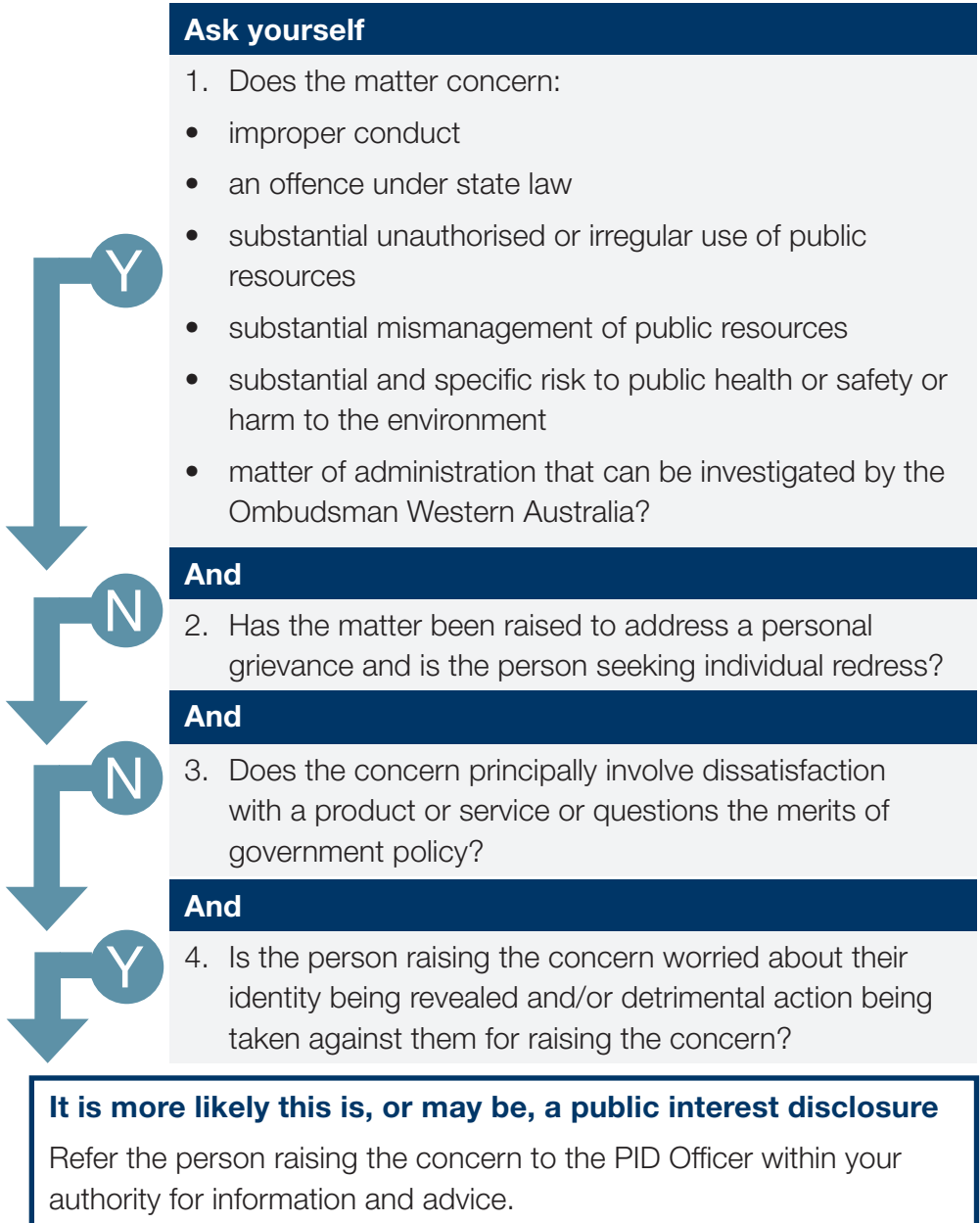
What are the benefits of making a public interest disclosure?

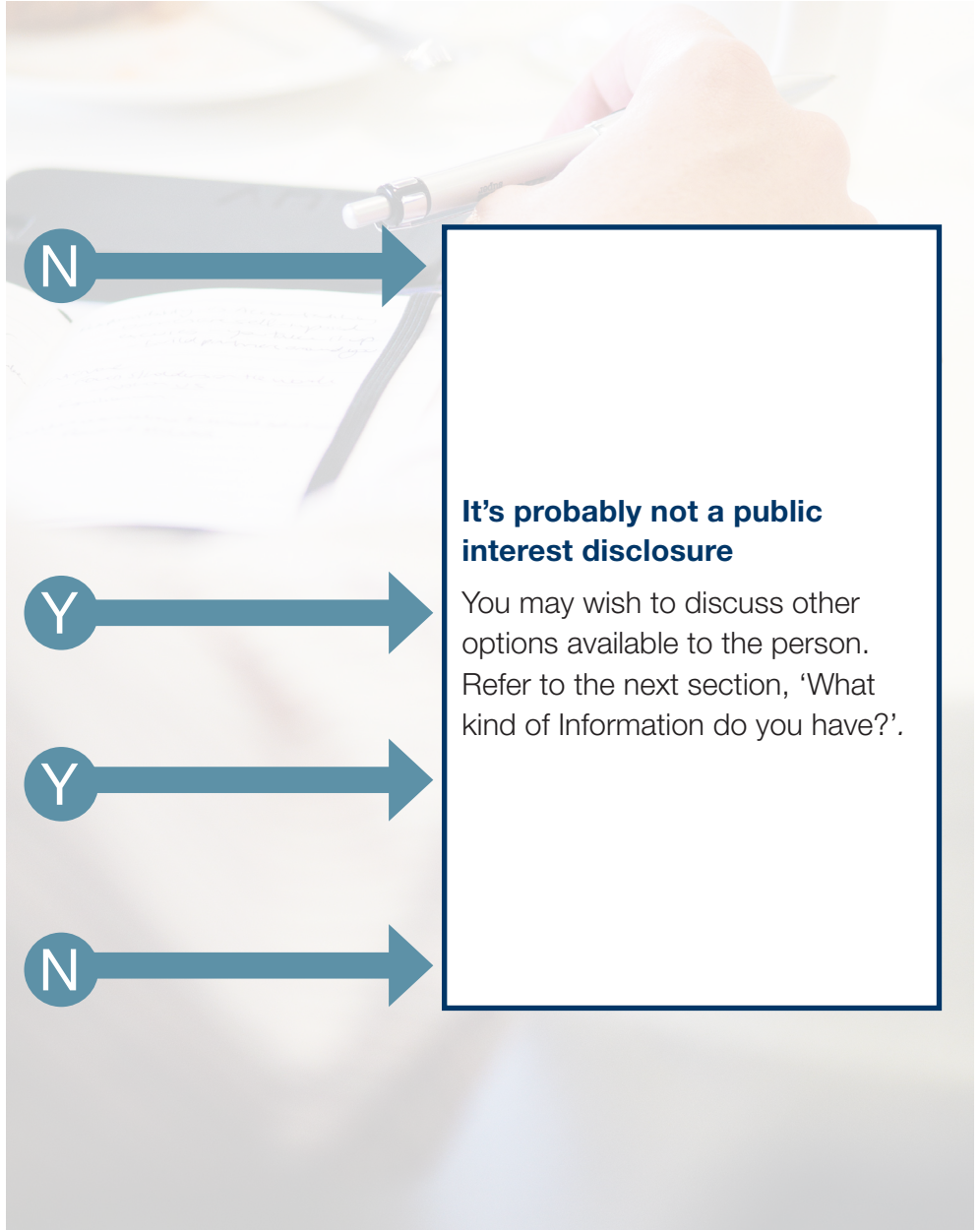
By making a public interest disclosure a person could help to stop or prevent:

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

A disclosure could assist a public authority to identify a larger problem and it may lead to more efficient and effective work practices. Figure 1 provides a decision tree to determine if the matter is a PID.

Figure 1 – PID decision-tree





N

It's probably not a public interest disclosure

Y

You may wish to discuss other options available to the person. Refer to the next section, 'What kind of Information do you have?'.

Y

N

To who is a disclosure made?

A public interest disclosure cannot be made to just anyone. It must be made to your agency PID Officer or another appropriate proper authority or otherwise it will not be covered by the PID Act. The proper authority for receiving the disclosure depends on the 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))
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))
A public authority or an officer of the public authority	PID Officer of the public authority (S5(3)(h))

Public interest disclosures are one reporting pathway

Sometimes, even if a person could make a public interest disclosure, there might be other reporting avenues they may wish to use.

A person may choose these avenues if, for example, they think it would be hard to keep their information confidential among friends or colleagues or they want an outcome that isn't possible using the public interest disclosure process. Making a public interest disclosure usually limits people 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.

If someone is unsure about the best reporting avenue, encourage them to speak with the proper authority or PID Officer in the relevant authority for further advice.

Actions for managers

If an employee raises a serious concern with you, consider the diagram on pages 6-7 of this guide. Sometimes an employee will go ahead and make a public interest disclosure. Outlined below are some tips about public interest disclosures generally and the disclosure process.

Tips about public interest disclosure

Model expected behaviour

As a manager generally you should lead by example and model expected behaviour. You should be clear about the types of conduct that are unacceptable. Encourage employees to raise issues with you by being visible and approachable as well as communicating openly.

Know your authority's processes and raise the awareness of your employees

Encourage increased awareness for your employees about the benefits of reporting wrongdoing and the different internal reporting policies and pathways. You need to be familiar with the various complaints mechanisms and the correct person within the authority who can deal with matters your employees may raise.

Respond appropriately

If an employee raises a concern with you, you have a responsibility to:

- take the person seriously and treat them respectfully
- support the person through the process
- not dismiss information from a disgruntled staff member who may be perceived as a troublemaker without considering the basis of their complaint
- offer guidance on the appropriate officer in your authority to deal with their concern.

Maintain confidentiality and be impartial

If you suspect a person has made an appropriate disclosure as a result of you having referred them to your authority's PID Officer or for any other reason, you need to keep it confidential. You must not reveal any information that would identify or tend to identify the person who made the disclosure or the subject of the disclosure unless authorised under the PID Act. There are penalties under the PID Act for revealing information. You also need to remain impartial.

Assist the investigation process

Where you can, you should assist someone investigating a disclosure by supplying them with any information they request.

Manage the workplace

Under the PID Act PEOs need to protect employees who make public interest disclosures from detrimental action or the threat of detrimental action. You can assist your PEO to fulfil this role by:

- being vigilant in preventing gossip, innuendo and speculation amongst staff who find out something is going on
- ensuring the workplace continues to be a safe environment, free of harassment or reprisals.

If you suspect detrimental action is occurring, be sure to inform your authority's PID Officer.

As a manager you will naturally want to act on information indicating issues in your area, although it can be best for you to allow the process to be finalised before you do. The PID Officer will usually liaise with you regarding any issues to be addressed.

Value the experience

Don't react negatively, if you know or suspect a disclosure has been made in your area. Public interest disclosures can contain valuable information that could be used to improve your authority. If, after a PID process is complete, you are tasked with implementing changes it is important you do so.

Consider if your work area may benefit from education

Consider whether you and your employees would benefit from education about the PID process. For further information about available education tools, speak to your authority's PID Officer or contact the Public Sector Commission.

Useful contacts

For advice about the <i>Code of Ethics</i>, minor misconduct and public sector standards in human resource management	For advice on matters of State and local government administration
Public Sector Commission Phone: (08) 6552 8888 Outside metro: 1800 676 607 Email: admin@psc.wa.gov.au Website: www.publicsector.wa.gov.au	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	For advice about serious misconduct, Police misconduct and corruption
Office of the Auditor General Phone: (08) 6557 7500 Email: info@audit.wa.gov.au Website: www.audit.wa.gov.au	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	For advice on remedies for acts of victimisation under the <i>Equal Opportunity Act 1984</i>
Western Australia Police Phone: (08) 9223 1000 Website: www.police.wa.gov.au	Equal Opportunity Commission Phone: (08) 9216 3900 Email: eoc@eoc.wa.gov.au Website: www.eoc.wa.gov.au

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. The Advisory Line provides general advice about the public interest disclosure process.



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