



## **Public Interest Disclosure (PID)**

Supporting information for Principal  
Executive Officers and PID Officers  
(proper authorities)

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**Note:**

**All references to sections in this document relate to the PID Act, unless stated otherwise.**

# Overview of the *Public Interest Disclosure Act 2003*

## Introduction

This supporting information has been prepared by the Public Sector Commission (PSC) to assist Principal Executive Officers (PEOs) and/or a Proper Authority to understand their obligations under the *Public Interest Disclosure Act 2003* (PID Act). This information is not exhaustive and should be read in conjunction with the PID Act and *Public Interest Disclosure Regulations 2003* (PID Regulations).

## Purpose of the PID Act

The PID Act aims to ensure openness and accountability in government by encouraging people to speak up about public interest information without fear of reprisal. The PID Act provides a system for matters disclosed to be investigated and for appropriate action to be taken. It does not provide public authorities with any additional powers to investigate or take action in relation to public interest disclosures. The PID Act provides protections for people who make disclosures.

## Application of the PID Act

The PID Act applies to public authorities, as defined by s. 3 of that Act. Public authorities include:

- a. a department of the Public Service established under s. 35 of the *Public Sector Management Act 1994*
- b. an organisation specified in column 2 of schedule 2 to the *Public Sector Management Act 1994*
- c. a non-SES organisation within the meaning of that term in s. 3(1) of the *Public Sector Management Act 1994*
- d. a local government or a regional local government
- e. a body that is established or continued for a public purpose under a written law
- f. a body that is established by the Governor or a Minister
- g. any other body or the holder of an office referred to in subsection (2) that is declared by the regulations to be a public authority.

## Important note for public authorities

While information provided in these guidelines and the supporting information for principal executive officers and proper authority (PID Officer) reflects the requirements of the PID Act, there will be, from time to time, circumstances that raise complex questions of law, where there is a real possibility of litigation or where the matter is otherwise highly contentious. In these cases, further legal or other professional advice should be sought before taking action.

# Terminology for the purposes of this document

## Public Interest Disclosure (PID) Officer

The PSC, for the purposes of this document, has used the term ‘Public Interest Disclosure (PID) Officer’. This term has been created to identify the person within a public authority with the **sphere of responsibility** as identified in s. 5(3)(h). This is the person who holds the specified position as the proper authority designated under s. 23(1)(a) by the Principal Executive Officer (PEO).

The use of the term PID Officer enables further distinction between the list of proper authorities identified in s. 5(3) and the person holding the specified position within an agency who is designated to receive disclosures about the public authority.

Generally, disclosures about a public authority or its officers 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 be made to the relevant proper authority as identified in s. 5(3).

The terms proper authority and PID Officer are not interchangeable when referenced in this document. A proper authority when mentioned in this document references all the authorities identified in s. 5(3) of the Act ([listed on page 17](#)).

## What is ‘sphere of responsibility’?

Under s. 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.

# Key aspects of the PID Act

## Part 1 – Preliminary

Part 1 of the PID Act defines some of the terms used in the PID Act, such as ‘public authority’, ‘public interest information’, ‘public officer’ and ‘public sector contractor’. These terms are important in understanding parts 2 (‘Public interest disclosures’) and 3 (‘Protection’) of the PID Act.

## Part 2 – Public interest disclosures

Part 2 of the PID Act is concerned with making appropriate disclosures of public interest information. It outlines the obligations of a proper authority when a complying disclosure is made, including the requirement to investigate, take action and notify the discloser. Part 2 also outlines how a public interest disclosure may be made to a journalist.

## Part 3 – Protection

Part 3 of the PID Act outlines protections for people who make disclosures. It provides a number of protections for disclosers and outlines when a discloser may lose these protections. Part 3 also provides limited circumstances in which the identity of the discloser and subject of the disclosure may be revealed.

## Part 4 – Role of the Public Sector Commissioner

Part 4 sets out the role of the Public Sector Commissioner, which is to:

- monitor compliance with the PID Act and the code of conduct and integrity (ss. 19 and 20)
- assist public authorities and public officers to comply with the PID Act and the code of conduct and integrity (s. 19)
- establish a code of conduct and integrity setting out the minimum standards of conduct and integrity with which all PID Officers must comply (s. 20)
- prepare and publish guidelines on internal procedures relating to the functions of a PID Officer under the PID Act and ensure all proper authorities have copies of the guidelines (s. 21)
- report annually to the Parliament on the performance of his/her obligations and the compliance or non-compliance with the PID Act and the code of conduct and integrity (s. 22)
- report at any time to the Parliament on any matter arising in connection with the exercise of his/her functions under the PID Act (s. 22).

## Part 5 – Miscellaneous

Part 5 includes the responsibilities of a public authority’s Principal Executive Officer (PEO) and the offence of making a false or misleading disclosure. The offence of making a false or misleading disclosure is discussed on [page 41](#).

# Information for the Principal Executive Officer

The PID Act applies to all ‘public authorities’, as defined by s. 3, and include (refer page 7 for details):

- departments
- SES organisations
- non-SES organisations
- local governments
- boards and committees
- government trading enterprises.

## **Is every government board or committee required to have a PID Officer?**

Yes, every government board or committee is required to have a PID Officer, provided the government board or committee is a ‘public authority’ as defined by s. 3 of the PID Act.

In most cases the PEO of a board or committee will designate an employee or officer within their public authority as the person responsible for receiving public interest disclosures (commonly referred to as the PID Officer (s. 23(1)(a)).

Generally speaking, however, it remains open to the PEO of a board or committee to designate an occupant of a specified position who is not necessarily an employee of their public authority, where the occupant of the position has a sufficient association with that board or committee. This is despite the position holder not being an employee or an office holder (that is, board or committee member). For example, an officer employed by a portfolio department whose job includes providing administrative (executive officer, registrar or secretarial) support to a board or committee within that portfolio might have sufficient association for the position to be characterised as being one with the authority.

There is no restriction on a person being designated as PID Officer for two or more public authorities provided there is a sufficient association between the occupant of the position and each of those authorities.

## **My Role as the Principal Executive Officer**

PEO's include, but are not limited to, Chief Executive Officers, Chief Employees, Directors General, Vice Chancellors and Board and Committee Chairs. Section 23 of the PID Act outlines the duties of the PEO who must:

- designate the occupant of a specified position with the authority as the person responsible for receiving public interest disclosures (designate a PID Officer for their public authority)
- provide protection from detrimental action or the threat of detrimental action for any employee of their public authority who makes an appropriate disclosure of public interest information
- ensure their public authority complies with the PID Act and PID Officers' code of conduct and integrity established by the Public Sector Commissioner under s. 20 of the Act
- prepare and publish internal procedures relating to their authority's obligations under the PID Act that are consistent with the guidelines published by the Public Sector Commissioner under s. 21 of the Act
- report annually to the Public Sector Commissioner on
  - the number of disclosures made to their public authority under the PID Act
  - the outcome of investigations conducted as a result of disclosures
  - the action taken as a result of the investigation
  - any other matters as prescribed.

## **Designating a position to receive public interest disclosures**

As the PEO, you are required to designate the occupant of at least one specified position within your authority to receive public interest disclosures (s. 23). The position undertaking this role is a 'proper authority' as outlined in s. 5(3)(h) and for the purposes of this document is referred to as a PID Officer.

You may designate more than one proper authority. This is advisable for reducing the likelihood of a conflict of interest situation and it can increase the accessibility of PID Officers in large or regionally dispersed authorities. It can provide for a range of skills and knowledge to be utilised, for example, HR, audit and investigations, and allow for continuity should a PID Officer be unavailable or cease working for the authority. You may also decide to undertake this role.

If you have multiple PID Officers, you may consider designating a 'Principal PID Officer', who is responsible for supporting and advising other PID Officers and coordinating any reporting requirements. However, it is important to note that just because an individual is a PID Officer it does not provide them with automatic access to all public interest disclosures within the authority. The confidentiality requirements provided within s. 16 still apply and information can only be released through one of the mechanisms found in s. 16.

In deciding which position(s) to designate, consider the skills and knowledge required to best fulfil the role of PID Officer. This may include the branch/position with the authority, and the occupant's knowledge of the PID Act and other relevant legislation and policies. You may also consider their seniority and standing with the authority, and experience in managing similar types of processes.

You can use the Public Sector Commission (PSC) PID Officer Declaration Form to designate your authority's PID Officer(s) and assist with good record keeping. Forward a copy of completed form(s) to the PSC so the name and phone number of the relevant officer(s) can be added to the PSC PID Officer Contact Directory. This directory assists potential disclosers to identify who to contact for disclosures related to your authority. It also assists the PSC to contact PID Officers about training and any other relevant information.

## **As the PEO, can I become a PID Officer?**

There is nothing in the PID Act that prevents you, as a PEO, from also becoming a PID Officer. Consider whether employees or members of the public would feel comfortable making a public interest disclosure to you as a PEO.

## **Am I entitled to know about the disclosures received by my authority?**

A PEO is not necessarily entitled to know about the disclosures received by their authority. This is why it is important to designate PID Officers within your authority that have the power, skills and experience to receive, assess and manage disclosures, investigate or cause an investigation and initiate the taking of action where appropriate.

The PID Officer may need to notify you that a disclosure has been made to initiate an investigation and/or take other appropriate action to meet the requirements of s. 9. Because of the confidentiality provisions in the PID Act, you may never end up knowing the discloser's identity (refer s. 16 (1) for exemptions), but as a result of the investigation being completed you may find out the subject's identity through s. 16(3), if there is a requirement to take action under s. 9.

The PID Officer may also need to provide you with general information about the existence of a disclosure to enable you to provide reasonable protection from detrimental action in the workplace or for reporting purposes. The PID Officer would usually ask the discloser to consent to their identity being revealed to you in this type of circumstance.

## **How does my role as a notifying authority under the *Corruption, Crime and Misconduct Act 2003* relate to my role as a PEO under the PID Act? What about the PID Act's confidentiality requirements?**

As PEO for your public authority you may become aware of public interest disclosure matters involving suspected misconduct made pursuant to the PID Act in the following circumstances:

- you are also a PID Officer (s. 23) who has received the disclosure
- you are consulted in your capacity as a PID Officer (as well as being PEO) by another PID Officer of your public authority
- you become involved to enable the matter to be investigated under s. 8(1)
- you are advised of the matter to enable action to be taken under s. 9

Where you are made aware of a disclosure by a PID Officer, the identity of the discloser and/or subject should only be revealed in accordance with s. 16.

On 1 July 2015 the *Corruption, Crime and Misconduct Act 2003* (CCM Act) was proclaimed making the PSC responsible for the oversight of minor misconduct of public officers and for misconduct prevention and education programs. The CCM Act enables the Corruption and Crime Commission (CCC) to focus its attention and efforts on corruption and serious misconduct, including police misconduct.

Previously PEO's notified all instances of suspected misconduct to the CCC. Now principal officers are required to:

- notify the PSC of all reasonable suspicions of minor misconduct (s. 45H of the CCM Act)
- notify the CCC of all reasonable suspicions of serious misconduct (s. 28 of the CCM Act).

PEO's must now make an informed decision about whether a matter may constitute minor or serious misconduct as defined in the CCM Act and notify either the PSC or the CCC accordingly. To assist PEO's notify the appropriate Commission notification guidelines have been developed. [Notification of misconduct in Western Australia](#) is a joint information resource prepared by the PSC and the CCC on misconduct as defined by the CCM Act. For further information about notification by PEO's please refer to additional resources and facts sheets located on the PSC and CCC websites.

As a PEO you would not provide the identity of the discloser when notifying the CCC or PSC unless:

- the discloser is involved in the alleged misconduct
- the discloser consents to the disclosure of public interest information that might identify or tend to identify him or her [Note: PID Officers may wish to discuss with the discloser their wishes regarding the release of their details to the CCC or PSC as part of any discussion with those seeking to lodge a public interest disclosure.]
- it is necessary to facilitate effective investigation [Note: This may come following notification, where the CCC effectively determines that the identity of the discloser is required for the investigation, with a separate notice issued under s. 94 of the CCM Act.], in which case the PID Officer managing the disclosure must take all reasonable steps to advise the discloser that an identifying disclosure is to be made (s. 16(2)) and the PID Act permits this to occur
- the disclosure is made in accordance with an order of a court or any other person or body having authority to hear, receive and examine evidence, which includes the CCC
- the identifying disclosure is made in accordance with s. 152 or s. 153 of the CCM Act.

## **What protection do I need to provide employees?**

The protections provided by the PID Act (Part 3) are often a reason why people choose to make a public interest disclosure. Under the PID Act you are required to provide protection from detrimental action or the threat of detrimental action for any employees who make appropriate disclosures of public interest information (s. 23(1)(b)).

‘Detrimental action’ (defined by s. 3) includes action causing, comprising, or involving: a reprisal; injury, damage or loss; intimidation or harassment; or adverse discrimination, disadvantage, or adverse treatment in relation to a person’s career, profession, employment, trade, or business. Depending on the circumstances this protection may be facilitated through the PID Officer instead of you directly.

Protections may include ensuring an employee, as a result of making a public interest disclosure, is not:

- subject to disciplinary action (s. 13)
- dismissed (s. 13)
- having their services dispensed with or otherwise terminated (s. 13)
- threatened with action by your public authority for breaching any duty of secrecy or confidentiality (s. 13)
- harassed or intimidated by another employee (s. 15(1)), for making or intending to make a public interest disclosure.

Disclosers have a number of avenues available to them if they believe detrimental action has occurred or may occur as a result of making a disclosure. These are covered in Part 3 and include applications for relocation (only applies to certain employees identified in the PID Act), applying to the Supreme Court for an injunction or seeking remedies for acts of victimisation through the Equal Opportunity Commission or a civil court.

You may take other action to protect an employee. However, in providing protection, be mindful to not inadvertently disadvantage the employee who made the disclosure.

If you become aware of an incident that may be considered 'detrimental action', it is in your public authority's best interests to ensure your authority makes and keeps a detailed record of the incident and the action taken to prevent this detrimental action. File it appropriately on the public interest disclosure file. Ensure the record is sufficiently detailed and accessible, should your public authority be required to defend any action.

## **How do I ensure compliance with the PID Act and the code of conduct and integrity?**

You must ensure your public authority complies with the PID Act and the code of conduct and integrity established under s. 20, by the Public Sector Commissioner. You may use a number of strategies to do this, such as:

- familiarising yourself with the PID Act, in particular as it relates to your role under Part 5
- designating an occupant of a specified position as the person responsible for receiving PID matters (PID Officer)
- ensuring PID Officer(s) are familiar with the requirements of the PID Act and code of conduct and integrity
- ensuring PID Officer(s) attend any information sessions provided by the PSC
- ensuring that front desk staff, employees working in mail centres and online services are aware of the possibility of 'discovering' a public interest disclosure and the correct process for how it should be handled by the authority
- organising secure filing systems for records related to public interest disclosures.

You will also be responsible for addressing any issues of non-compliance with the PID Act or code of conduct and integrity that may be raised with you.

## **Should I ensure that internal procedures are prepared and published?**

Under s. 23(1) you must ensure your authority prepares and publishes internal procedures about how your authority will handle public interest disclosures. These internal procedures relate to your authority's obligations to manage disclosures in accordance with the requirements of the PID Act. Your authority's internal procedures must be consistent with the guidelines prepared by the Public Sector Commissioner (s. 23(2)).

The procedures will assist your authority to communicate how disclosures can be made and the rights and responsibilities of those involved in the process. You should ensure your authority's internal procedures are also regularly reviewed so they can meet the needs of your authority in responding appropriately to disclosers and any significant changes in your operating environment. See the *Public Interest Disclosure (PID): Guidelines for public authorities*, if you are developing or reviewing your authority's internal procedures.

## **Are there any PID annual reporting requirements?**

As part of the Public Sector Commissioner's annual survey program you will be asked to provide information on the number of public interest disclosures received by your authority, the results of any investigations conducted, and action, if any, taken. You will also be asked about your authority's compliance with the PID Act and PID Officer's code of conduct and integrity.

Your survey responses assist you to meet your obligations under s.23 (1) (f) of the PID Act and also assist the Commissioner to monitor compliance and report to Parliament under sections 19 and 22 of the PID Act.

As PEO, you may delegate this reporting responsibility to the PID Officer within your authority.

To assist with maintaining information related to the management of a public interest disclosure your PID Officer/s may choose to use the Register available from the Commission's Public interest disclosure (PID) resource page. This register needs to be kept in a secure location within your authority to ensure confidentiality is maintained in accordance with the PID Act.

# Information for the Proper Authority/Public Interest Disclosure Officer

## Who or what is a ‘proper authority’?

To be covered under the PID Act and for the protections of the PID Act to apply, a public interest disclosure must be made to a proper authority. The proper authority for a disclosure will depend on the information or ‘matter’ in the disclosure. In some cases, a public interest disclosure may be made to an external ‘named’ proper authority, as outlined in s. 5(3) and below.

## Proper authorities for receiving disclosures of public interest information

When the disclosure relates to...	The proper authority is...
Offences under State law	A police officer or the Corruption and Crime Commission (s. 5(3)(a))
Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources	Auditor General (s. 5(3)(b))
Matters of administration affecting someone in their personal capacity falling within the jurisdiction of the Parliamentary Commissioner (Ombudsman Western Australia)	Ombudsman Western Australia (s. 5(3)(c)) or the PID Officer of the public authority concerned (s. 5(3)(h))
A police officer	Commissioner of Police or the Corruption and Crime Commission (s. 5(3)(d))
A judicial officer	Chief Justice (s. 5(3)(e))
A Member of the Legislative Council	President of the Legislative Council (s. 5(3)(f))
A Member of the Legislative Assembly	Speaker of the Legislative Assembly (s. 5(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 (s. 5(3)(g))
The sphere of responsibility of a public authority (matters about the public authority or its officers, or which the public authority has the function of investigating)	The PID Officer of that public authority (s. 5(3)(h))
A person or a matter of a prescribed class	A person declared by the regulations to be a proper authority (s. 5(3)(i))

## Do I have to tell the Commission I've been designated as a Proper Authority (PID Officer)?

To ensure your role as a proper authority is appropriately recorded, complete a [PID Officer Declaration Form](#) from the PSC website and have it signed by your PEO to confirm your designation. Keep a copy of this form in your authority and forward a copy to the PSC so your contact details can be published on the [PID Officer Contact Directory](#). This directory assists potential disclosers to identify who to contact within an authority. It also assists the PSC to contact you about training and other information.

## Do I have to do any training before I become a Proper Authority?

The PID Act does not require you to complete formalised training before becoming a proper authority. The PID officer should nonetheless familiarise themselves with the PID Act and relevant guidelines. A newly appointed proper authority is encouraged to attend a PID Officer information session ('Navigating the PID Act'), presented by the PSC, as soon as possible after being designated.

The PSC offers regular information sessions as part of its responsibility to assist public authorities to comply with the PID Act.

## Your role in managing disclosures

As a proper authority your role is a positive and important one. You have been entrusted with this role by your PEO. You will contribute to the accountability of your authority and the broader public sector by facilitating the process for people to raise issues of wrongdoing. This may allow your authority to investigate and act upon those matters that may have otherwise gone unreported.

You are your authority's contact person for all matters and questions related to public interest disclosures, which means you should actively promote awareness of the PID Act within your authority. Your contact details will be accessible to employees and members of the public wanting to discuss the public interest disclosure process, including people thinking about making a disclosure.

You will manage the public interest disclosure process in your authority in accordance with the PID Act, PID Regulations and the code of conduct and integrity established by the Public Sector Commissioner, as well as your authority's internal procedures. It is in your best interests to be familiar with all legislation and procedures, and any information produced by the PSC.

Your responsibility in managing disclosures includes:

- providing information to potential disclosers about their rights and responsibilities in accordance with the code of conduct and integrity established under s. 20(1)
- receiving and managing public interest disclosures in accordance with the PID Act (s. 5(3))
- assessing the disclosure to ensure it contains **public interest information** to which the PID Act applies (s. 3)
- where appropriate, investigating, or causing an investigation of, the matters disclosed (s. 8(1))
- where appropriate, providing information to potential subjects of a disclosure about their rights, responsibilities, duties and the potential offences (s. 9(2), s. 14, s. 15 and s. 16)
- where appropriate, taking such action as is necessary and reasonable and within your functions and powers in accordance with s. 9
- maintaining confidentiality of the identity of the discloser and subject(s) of disclosures, in accordance with the requirements of the PID Act (s. 11 and s. 16)
- providing progress reports where requested and final reports to disclosers in accordance with s. 10
- creating and maintaining proper and secure records in relation to disclosures in accordance with the code of conduct and integrity established under s. 20(1) and the *State Records Act 2000*
- completing the PID register for each disclosure lodged (s. 23(1)(f))
- acting in accordance with the rules of natural justice (s. 9(2) and s. 16(1)(b))
- acting in accordance with the code of conduct and integrity established by the Public Sector Commissioner (s. 20(1)) and any applicable authority-specific code of conduct, established separately to the PID Act.

A large part of your role in managing disclosures centres on the human aspect of the process, by maintaining good communication with all people involved. It is your role to ensure that the links in the communication chain do not break down and that disclosures are investigated when they should be. You ensure appropriate action is taken in response to a disclosure and maintain the effective administration of the process. You will be adaptable and flexible in your approach according to the circumstances.

Even if the disclosure is not an appropriate disclosure, you can encourage the discloser to find the appropriate pathway to report the matter. In some cases you may be able to assist an employee by identifying an internal person to whom to refer their concerns.

## Recordkeeping and corporate records

Recordkeeping is an essential part of the public interest disclosure process. Proper records enable you to account for your decisions and actions, as well as those of your public authority. While you may receive a disclosure in varied formats, your internal procedures will provide for recording the information disclosed, which clearly identifies the disclosure as having been made under the PID Act.

Once documents about a public interest disclosure exist request a separate file to store them securely. In addition to the public interest disclosure register, it is prudent to make other, comprehensive and contemporaneous records of any discussions and interviews and also store these on file. Ensure all files relating to a public interest disclosure, whether paper or electronic, are stored securely and are accessible only by authorised persons.

All corporate public interest disclosure files should have the following text clearly marked on the front:

### **CONFIDENTIAL**

**The material in this file relates to a public interest disclosure made under the *Public Interest Disclosure Act 2003*.**

**Disclosure of information that might identify or tend to identify either the discloser or the subject of the disclosure is an offence, unless the disclosure occurs in accordance with the PID Act.**

**Penalty: \$24 000 or imprisonment for two years**

Keep comprehensive and secure records for each disclosure you receive. This is necessary for public interest disclosures to be clearly identified:

- as information to which the protection and confidentiality provisions of the PID Act apply, as distinguished from ordinary complaints made to your public authority for reporting purposes.

Each year your public authority must report to the Public Sector Commissioner about the number of disclosures received, investigations conducted and any actions taken.

Consult the *State Records Act 2000* for further information about the period that you need to retain records and the appropriate disposal manner.

## Public interest disclosure register

Although there is no legislative requirement within the PID Act to maintain a formal PID register, it is good practice to maintain a PID register. Operating a PID register will assist with meeting the annual reporting requirements to the Public Sector Commissioner under s. 23(1). Template registers are available from the PSC [website](#).

If you operate a PID register, ensure you assign a unique register number to each disclosure and record key information about the disclosure, the investigation and any outcomes. Keep this register (paper and/or electronic formats) strictly confidential and maintain it in a secure location.

## Informing employees about the public interest disclosure process

You may increase the likelihood of being contacted by making yourself known as the PID Officer for your public authority. You should inform employees and stakeholders that you are the point of contact for all matters relating to public interest disclosures. You can raise awareness and ensure information is available through avenues such as:

- your authority's webpage and intranet
- a broadcast email or newsletter from your PEO
- team meetings and staff information sessions.

You may also do this using the publications that your authority develops or by accessing the PSC's range of products including:

- *Don't be afraid to speak up* (guide for disclosers)
- *When someone speaks up* (guide for managers)
- *Speaking up: A guide to making a public interest disclosure* (video)
- PID awareness poster (A3)
- Awareness raising presentation. (You can brand this with your authority's logo and present to your colleagues to increase their knowledge of the PID Act).

## Informing potential disclosers

Ideally, people thinking about making a disclosure will seek information about the process before making one. Consider keeping initial discussions about the process broad and limited in detail, in case the potential discloser decides not to make a disclosure.

During these initial discussions you may conclude that the information is not within the **sphere of responsibility** of your public authority or that the information is not a public interest disclosure for the purposes of the PID Act.

If the information seems to be public interest information but you do not have the functions or powers to investigate or take action, you may wish to direct the potential discloser to speak with the correct proper authority before they make a disclosure. A list of proper authorities and the public interest information they can receive is outlined on [page 17](#).

You can provide potential disclosers with a copy of *Don't be afraid to speak up*. This outlines the rights and responsibilities of disclosers and the requirements for their information to be considered as a public interest disclosure under the PID Act. You may wish to guide the (potential) discloser through the brochure or use it as a base for your discussions.

You should also ascertain if the person has previously made a disclosure about these matters to the PID Officer for this authority or another proper authority able to accept a disclosure under s. 5(3).

***Public interest information tends to show that a public authority, a public officer or a public sector contractor is, has been, or proposes to be, for example, involved in:***

- *improper conduct; or*
- *a substantial unauthorised or irregular use of, or substantial mismanagement of, public resources; or*
- *an act done or omission that involves a substantial and specific risk of injury to public health, prejudice to public safety, or harm to the environment; or*
- *an act or omission that constitutes an offence under a written law.*

Leaving your potential discloser with some written material allows them to refer back to the information you have provided. Experience has shown that people in stressful situations can misinterpret, misunderstand or simply forget information they receive during these times.

During your discussion, convey the following information:

- The definition of a public interest disclosure – s. 3 of the PID Act
- How a disclosure is made in your authority – refer to your authority’s internal procedures
- Roles and responsibilities of the discloser – explained on [page 33](#)
- Protections available to disclosers – explained on [page 50](#)
- What a discloser can expect from the process – refer to your authority’s internal procedures.

Providing this information upfront to the potential discloser may help to reduce any misunderstandings about the process and offer them realistic expectations from the outset.

It is important that people understand their rights and responsibilities under the PID Act before they make a disclosure. In addition to your discussions with them you can also suggest that they seek their own legal advice before making a disclosure given that a disclosure cannot be withdrawn once it has been made.

Potential disclosers should also understand that if they discuss the disclosure with someone who is not the appropriate proper authority, they may forfeit the protections of the PID Act. Disclosers may seek advice from their own legal representative.

## **Receiving and assessing a public interest disclosure**

You may receive disclosures in varied formats, as the PID Act does not specify a format in which an appropriate disclosure must be made. Regardless of the format, the discloser must clearly demonstrate that they are making a public interest disclosure in a voluntary and conscious manner.

For the purposes of accountability and certainty, persons wishing to make a disclosure of public interest information under the PID Act are encouraged to do so in writing. A disclosure of public interest information to which the PID Act applies is not required to be made in writing. As most disclosures will be made in writing, the Commission has developed a form which can be used for the purposes of making such a disclosure. There is no requirement to use the form.

Consult your public authority’s internal procedures outlining the preferred method for a person to make a disclosure (including anonymous disclosures) and how to record any disclosures which you receive in an alternative format.

On receiving a disclosure assess it to ensure it contains information to which the PID Act applies and that it is an appropriate disclosure of public interest information. To be a disclosure to which the PID Act applies, a disclosure:

- must be made consciously and voluntarily as a public interest disclosure
- must be made by anyone who believes on reasonable grounds that their information is or may be true. It is an offence under the PID Act for a person to knowingly provide false or misleading information (s. 24)
- must be of public interest information – information that shows or tends to show past, present or proposed wrongdoing by a public body in the exercise of public functions, including events that happened before July 2003
- must be made to a proper authority as designated by s. 5(3)
- cannot contain information that is the subject of legal professional privilege
- can be made anonymously.

Disclosures often contain a number of matters, so it can be useful to thoroughly consider the information you have received and separate out the main issues. You may need to clarify these separate matters with the discloser, if they have provided their contact details.

If you have completed your assessment and you are satisfied the disclosure is an appropriate disclosure, progress the disclosure. Ensure you make and keep appropriate records of your assessment process and determination, as making good notes from the start of the process will establish a sound practice and help you to defend any decisions, if you are questioned. Also remind yourself of the confidentiality requirements and protections provided by the PID Act and secure any records accordingly.

While the PID Act provides for the protection of all public interest disclosures, not every PID Officer will have the obligation or power to investigate and take action in relation to the disclosure or matters within it. In some cases you may need to refer the discloser or information to another proper authority to enable an effective response.

If you have completed the assessment and you have determined the disclosure is not an appropriate disclosure, notify the discloser as soon as is practicable that their disclosure is not a public interest disclosure. Explain the reasons why you will not be treating it as such under the PID Act to the discloser. Ensure you make appropriate records of your assessment process and your reasons for determining the disclosure is not an appropriate disclosure.

Even if the disclosure is not an appropriate disclosure, you can encourage the discloser to find the appropriate pathway to report the matter. In some cases you may be able to assist an employee by identifying an internal person to whom to refer their concerns.

## I have received an appropriate disclosure, what should I do next?

As soon as you determine the disclosure is an appropriate disclosure, it is important you uphold the confidentiality requirements (s. 16), having regard to the rules of natural justice and be aware of the protections prescribed by the PID Act (Part 3). Consider undertaking the following actions:

- conduct a desk top review of the matters listed in the disclosure
- notify the discloser of your assessment (within three months) and what you plan to do
- establish a communication plan or schedule with the discloser
- undertake a risk assessment to identify any risk of reprisal.

## Investigating the disclosure

The PID Act allows for three potential pathways during an investigative process:

- investigate or cause to be investigated the matters in the disclosure
- refuse to investigate or discontinue the investigation
- refer a matter to another proper authority for investigation.

These pathways will be discussed in greater detail in the following segments. In most instances you will be required to investigate, or cause to be investigated, information disclosed under the PID Act (s. 8) where:

- the disclosure relates to your public authority, its officers or contractors or
- the disclosure relates to a matter or person that your authority has a function or power to investigate.

The PID Act does not give you, as a PID Officer, any investigative powers you do not otherwise have. You must look to the legislation under which your public authority operates for your investigative powers. This may include the *Public Sector Management Act 1994*, *Financial Management Act 2006* and *Local Government Act 1995*.

As a PID Officer, you may already have skills as, or seek training to become, an investigator, but this is not essential. You may **cause** the disclosure to be investigated by another agency, a person within your agency or an external investigator. Your authority may have an existing arrangement with an investigator who will take this role or you may explore this option as the need arises.

If you **cause** the matter to be investigated, the provisions of s. 16 still apply. Consider whether the investigator needs to be informed that the matter is a public interest disclosure. If so, ensure you brief the investigator about the PID Act and ideally have them acknowledge in writing that they understand the confidentiality requirements. If the investigator is external to your authority, you may include this acknowledgement as part of the terms of their engagement. Remember that you cannot provide information about the discloser's identity without their consent, unless it is in accordance with s. 16.

As you have obligations under ss. 8–11 of the PID Act, it is important to maintain ultimate control of, and generally oversee, the investigation. You should ensure that the investigator regularly reports back to you and that they do not reveal any information that could identify or tend to identify the discloser or subject of the disclosure unless it is in accordance with s. 16. You should discuss the most appropriate approach to any matter before allowing the investigator to proceed along an investigative pathway.

As the PID Officer to whom the original disclosure was made, it will be important to continue to update the discloser on any progress being made with the investigation. It is your role to have a thorough knowledge of the process for dealing with disclosures so you and your authority comply with the PID Act.

The process used to investigate the matter of a disclosure depends on the nature of the matter. The following approaches may be appropriate.

- Arrange for a routine internal audit of an area, program or activity that covers but does not focus solely on the issues disclosed.
- Treat the discloser in the same manner as any other person during the investigation.
- Allude to a range of possible triggers for an audit or investigation without confirming any particular one or acknowledging that a public interest disclosure has been made.

Where you do not have sufficient power to investigate a matter, you may refer the matter to another person, body or organisation with the appropriate powers to investigate. For example, you may need to refer an allegation of a criminal offence, supported by evidence, to the Police for investigation.

## Refusing to investigate or discontinuing the investigation

You may refuse to investigate or you may discontinue the investigation of a matter raised by the disclosure where you consider:

- the matter is trivial or
- the disclosure is vexatious or frivolous or
- there is no reasonable prospect of obtaining sufficient evidence due to the time that has elapsed since the occurrence of the matter or
- the matter is being or has been adequately or properly investigated by another PID Officer to whom a public interest disclosure has been made in accordance with s. 5(3).

Where you refuse to investigate or you discontinue an investigation you must give the discloser your reasons for doing so. Be aware that while the PID Act provides for you to refuse or discontinue an investigation on the above grounds, the discloser may still be able to make a protected disclosure to a journalist (s. 7A). As such, be thorough when you consider the matters, make decisions and create records, should you need to defend your decisions.

Ideally, the system you use to manage investigations should be flexible. Keep communication with the parties clear and unambiguous and use a multi-disciplinary team approach where relevant to the matters. You may compromise the outcome of an investigation, if certain procedural steps are not followed, so it may be appropriate to seek external appropriately qualified expertise.

## Joint action in investigating a disclosure

The PID Act also allows for a disclosure to be made to more than one proper authority (for example, you and another proper authority). In such a case the protections and obligations of the PID Act will apply to each disclosure. Regulation 3 of the PID Regulations provides that you may enter into a written arrangement with the other proper authority as is necessary and reasonable to:

- avoid duplication of action
- allow an efficient and effective use of resources
- achieve the most effective results
- ensure a record of a disclosure is securely kept.

The obligations in relation to investigations do not apply to the CCC or the Ombudsman Western Australia where they have functions in relation to the disclosure under their own legislation (s. 12).

## Taking further action

There are several options available when taking action under s. 9:

- take action to prevent the matter from occurring in the future
- refer the matter to the Commissioner of Police or another person, body or organisation having power to investigate the matter
- take disciplinary action or commence proceedings against a person responsible for the matter.

These options are not mutually exclusive and you may take more than one of the above steps.

Where multiple matters have been disclosed, in addition to taking the above actions, you may also undertake the following actions:

- provide a progress report to the discloser
- provide a final report to the discloser
- advise the discloser that there will be no action taken where an opinion is formed that there has been no improper conduct.

If you form the view following an investigation that a person or authority may be, may have been or may in the future be involved in improper conduct to which the PID Act applies, you must take action.

In taking action you and your public authority remain limited by the powers and functions that are conferred by the legislation under which the authority operates. The PID Act does not provide any additional powers to take action and any action taken must be necessary and reasonable.

If you propose to take preventative or disciplinary action, you must observe the principles of natural justice. This includes affording any person against whom, or in respect of whom, the action is to be taken the opportunity to make a verbal or written submission about the matter.

If you determine not to take further action at the completion of the investigation, you must advise the discloser of your decision and reasons for not taking any action. Thorough records of the investigative process and outcomes will assist in providing a transparent and defensible reason for your decision. The final report required under s. 10(4) may be an appropriate mechanism to communicate this decision. Be aware that while the PID Act provides for no action to be taken following an investigation, the discloser may still be entitled to make a protected disclosure to a journalist under s. 7A(2)(c) as a last resort.

## Providing reports to the discloser

Section 10 states that a discloser must receive information about action taken, or proposed, on their disclosure, unless they made an anonymous disclosure. The proper authority needs to provide the discloser with information about:

- the action taken or proposed to be taken in relation to the disclosure (within three months) under s. 10
- the outcome of the investigation and any action that has been taken or is proposed to be taken under s. 10 (4)(a) (finalising the investigation within six months under s. 7A(2)(b)) and
- the reason for taking the action that has been taken or is proposed to be taken under s. 10 (4) (b).

The proper authority may also provide the discloser with reports about the progress of dealing with or investigating the disclosure, either of their own initiative or the request of the discloser under ss. 10 (2) and (3).

Section 11 limits the information a proper authority can provide to an informant where, for example, providing information may adversely affect:

- any person's safety or
- the investigation of an offence or possible offence or
- necessary confidentiality about the existence or likely identity of a person who has made a public interest disclosure, other than the person being given the information.

Section 11 also limits information being provided that is not to be disclosed under ss. 151, 152 or 153 of the CCM Act.

The PID Act does not provide for a discloser to appeal against your decisions or the decisions of another appropriate authority about any investigations or subsequent action taken. Dissatisfaction with your decision or action you propose to take is not necessarily sufficient reason to entitle a discloser to make a protected disclosure to a journalist. The requirements of s. 7A must still be met.

A discloser may be able to make a further disclosure of the information to another proper authority, if their information falls within the other proper authority's sphere of responsibility. For example, where a discloser is dissatisfied with the response to a public interest disclosure about a matter of administration made to a PID Officer of a department, they may disclose the information to the Ombudsman Western Australia.

However, the next PID Officer (or named authority) does not necessarily have to investigate the matter if they consider that the disclosure is being or has already been adequately or properly investigated as a public interest disclosure. In deciding whether this is the case, the proper authority may need to contact you to confirm that you have already dealt, or you are already dealing, with the information in the new disclosure.

## **Do I have any protections available to me as a Proper Authority during a PID process?**

The PID Act does not explicitly provide any protections for you as a proper authority. You can minimise the likelihood of something going wrong during the process by abiding by the PID code of conduct and integrity at all times.

You can demonstrate you take your role seriously, act in good faith and conduct yourself professionally by creating and keeping clear records that are capable of being reviewed, if required. Good record keeping, including file notes of telephone conversations and face-to-face meetings, is a practical means of showing good governance of the PID process.

Research and reported experiences have also identified some common areas to avoid throughout the process. You can achieve the best outcome from the process by ensuring:

- investigations are completed in a timely manner and you advise parties of any significant delays
- you have a good awareness of all relevant legislation, regulations, procedures and guidance material
- you and others maintain confidentiality in accordance with s. 16
- you appropriately manage any potential, perceived or actual conflicts of interest
- witnesses are not given the opportunity to collude
- you or anyone investigating the matter pursues all obvious lines of enquiry
- investigation reports are completed to a high standard and all findings are substantiated
- you or anyone investigating the matters have sound experience in conducting investigations.

# Good practice guidelines for managing public interest disclosures in public authorities

Section 23 of the PID Act outlines your obligations as a PEO of a public authority. These are the minimum requirements with which your authority must comply. As part of a good practice approach, you and your authority are encouraged to ensure your public interest disclosure program demonstrates:

- good administration and governance
- strong organisational commitment
- protection for disclosers and integration into your authority's broader policy framework.

The following good practice checklist will assist you to evaluate your public interest disclosure program and could provide benefit for improving its approach.

<b>Good administration and governance</b>	<b>Yes</b>	<b>Partially</b>	<b>Under development</b>	<b>No/ No plans</b>
Is there a person(s) designated under s. 23(1)(a) as the proper authority – or PID Officer – in your authority?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have your PID Officer(s) completed the PSC PID Officer Declaration Form and forwarded it to the PSC?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have your PID Officer(s) undertaken any training in the last 12 months, for example, 'Navigating the PID Act' offered by the PSC?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have your employees been given any awareness raising information about public interest disclosures in the last 12 months?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has your authority prepared and published internal procedures as required under s. 23(1)(e)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are your procedures clear and easy-to-read, and easily accessible for employees and members of the public?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your authority have a PID register set up in the event that a public interest disclosure is received?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your authority have record keeping procedures in place to ensure information is stored securely and confidentially?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Organisational commitment and policy integration</b>	<b>Yes</b>	<b>Partially</b>	<b>Under development</b>	<b>No/ No plans</b>
Is reporting, including public interest disclosures as a pathway, embedded in your authority's code of conduct and/or policy framework?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your authority have the human and financial resources to undertake the public interest disclosure?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do managers communicate the benefits of a positive reporting culture and their support for making public interest disclosures to employees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Organisational commitment and policy integration</b>	<b>Yes</b>	<b>Partially</b>	<b>Under development</b>	<b>No/ No plans</b>
Are line managers familiar with the authority's public interest disclosure procedures and offered information so they can refer employees to a PID Officer if needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are reports of wrongdoing, including disclosures, reviewed regularly to identify possible integrity risks and administrative improvements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Proper process</b>	<b>Yes</b>	<b>Partially</b>	<b>Under development</b>	<b>No/ No plans</b>
Does your authority and PID Officer(s) clearly understand its sphere of responsibility in relation to disclosures?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your authority have an appropriate framework of reporting pathways available to deal with different types of reports?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are your authority's PID Officer(s) available to consult with potential disclosers at the beginning of the process, to advise them of their rights and responsibilities under the PID Act?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your authority clearly explain to potential disclosers how they should make a public interest disclosure?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your authority and your PID Officer(s) effectively manage disclosers' expectations about the process and possible outcomes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do your PID Officer(s) observe the principles of procedural fairness, particularly for the subject of the disclosure, before taking action?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Protecting disclosers</b>	<b>Yes</b>	<b>Partially</b>	<b>Under development</b>	<b>No/ No plans</b>
Do your internal procedures provide clear information on how your authority protects disclosers who are employees.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is everyone in your authority aware of the importance of the PID Act's confidentiality and protection provisions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are the sanctions for breaching these provisions clearly communicated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your authority have appropriate systems and strategies to minimise the risk of detrimental action taken against someone for making, or proposing to make, a public interest disclosure?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your authority have appropriate systems and strategies to take action against anyone who takes, or threatens to take, detrimental action against someone for making a disclosure?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# Table 1: Checklist/summary of information for discussion with potential disclosers

Matters for discussion with potential disclosers	Discussed
You must believe on reasonable grounds that the information to be disclosed is or may be true.	<input type="checkbox"/>
Making a false or misleading disclosure, or being reckless about whether the information is false or misleading could result in a fine of \$12 000 or one year imprisonment (s. 24).	<input type="checkbox"/>
Your information must not be the subject of legal professional privilege.	<input type="checkbox"/>
Have you previously reported this matter as a Public Interest Disclosure to the PID Officer for this authority or another proper authority able to accept a disclosure under s. 5(3).	<input type="checkbox"/>
You should be provided with a copy of materials to read (including <i>Don't be afraid to speak up</i> ) and be directed to where you can access further information, for example, the <a href="#">PSC website</a> .	<input type="checkbox"/>
You must make your disclosure to a proper authority. I will now discuss the types of information that are deemed to be public interest information (s. 3) and the various proper authorities that are able to accept a disclosure (s. 5(3)). As a PID Officer, I can only accept information that relates to a matter that falls within the sphere of responsibility for this public authority.	<input type="checkbox"/>
If the disclosure relates to your authority, you will be advised of the process for making a disclosure and the information you should provide.	<input type="checkbox"/>
Your identity will not be disclosed except in accordance with s. 16 of the PID Act. See <i>Don't be afraid to speak up</i> for further information.	<input type="checkbox"/>
You will not, as a result of having made the disclosure: <ul style="list-style-type: none"> <li>• incur any civil or criminal liability</li> <li>• be liable to any disciplinary action under a written State law</li> <li>• be liable to be dismissed or have your services dispensed with or otherwise terminated</li> <li>• be liable for any breach of a duty of secrecy or confidentiality or any other applicable restriction on disclosure.</li> </ul>	<input type="checkbox"/>
You may commit an offence, if you disclose information that might identify or tend to identify the person(s) who are the subject of the disclosure after making the PID.	<input type="checkbox"/>
You may forfeit the protections provided by the PID Act, if you disclose the information otherwise than under the PID Act or if you fail, without reasonable excuse, to assist a person investigating your disclosure by supplying any information requested.	<input type="checkbox"/>
There are a number of remedies available, if you are subject to detrimental action as a result of making the disclosure, as outlined below. <ul style="list-style-type: none"> <li>• You may have the right to take civil proceedings.</li> <li>• You may be able make a complaint to the Equal Opportunity Commission.</li> <li>• You can apply to the Supreme Court for an injunction or order.</li> <li>• You can apply to your employer to be relocated within or outside your authority. Note: Relocation provisions apply to 'public service employees', defined as employees of a department, SES organisation or non-SES organisation in the <i>Public Sector Management Act 1994</i>.</li> </ul>	<input type="checkbox"/>
You can request to be informed of the progress into the current status of the investigation and any action taken as a result, provided you do not make an anonymous disclosure.	<input type="checkbox"/>
Having made a disclosure under the PID Act you may make a disclosure to a journalist of substantially the same information that was the subject of the disclosure already made provided a number of conditions have been met (s. 7A).	<input type="checkbox"/>

# Overview of the roles and responsibilities of people involved in a public interest disclosure

A typical public interest disclosure process will involve a number of people with different roles and responsibilities. An overview of these roles and responsibilities is provided in the table below. Some responsibilities are prescribed by the PID Act. Others relate to general activities supporting compliance with the PID Act.

Person	Role and responsibilities
Principal Executive Officer (s. 23)	<ul style="list-style-type: none"> <li>• Designates the occupant of a specified position (a PID Officer) to receive disclosures of public interest information related to their authority (s. 23(1)(a)).</li> <li>• Provides protection from detrimental action or the threat of detrimental action for any employee of the public authority who makes an appropriate disclosure (s. 23(1)(b)).</li> <li>• Ensures their public authority complies with the PID Act and the code of conduct and integrity established by the Public Sector Commissioner (s. 23(1)(c)(d)).</li> <li>• Prepares and publishes internal procedures, consistent with those prepared by the PSC, relating to their authority's obligations under the PID Act (s. 23(1)(e)).</li> <li>• Provides information to the PSC on (s. 23(1)(f)):               <ul style="list-style-type: none"> <li>– number of disclosures received</li> <li>– results of any investigations conducted as a result of the disclosures</li> <li>– action, if any, taken as a result of each investigation</li> <li>– any other matters as prescribed.</li> </ul> </li> <li>• May have a role in enabling an investigation, or disciplinary action against individuals, to be undertaken under functions and powers separate to the PID Act.</li> </ul>
The proper authority (s. 5(3), s. 7 and s. 18) or PID Officer (s. 23(1)(a))	<ul style="list-style-type: none"> <li>• As is designated by ss. 5(3)(a-g) or by the PEO of a public authority (PID Officer, s. 5(3)(h)) under s. 23(1)(a) to receive disclosures related to their authority.</li> <li>• Provides information to potential disclosers about their rights and responsibilities in accordance with the code of conduct and integrity established under s. 20(1).</li> <li>• Receives and manages public interest disclosures in accordance with s. 5(3).</li> <li>• Notifies the discloser within three months of the disclosure being made about what action they plan to take in dealing with the disclosure (s. 10(1)).</li> <li>• Where appropriate, investigates, or causes an investigation of, the matters in disclosures (s. 8(1)).</li> <li>• Where appropriate, provides information to potential subjects of a disclosure about their rights, responsibilities, duties and potential offences (s. 9(2), s. 14, s. 15, s. 16 and s. 24).</li> <li>• Where appropriate, takes such action as is necessary and reasonable and within their functions and powers in accordance with s. 9.</li> <li>• Maintains confidentiality of the identity of the discloser and subject(s) of disclosures, in accordance with the requirements of s. 11 and s. 16.</li> <li>• Provides progress reports where requested and final reports to disclosers in accordance with s. 10.</li> <li>• Creates and maintains proper and secure records in relation to disclosures in accordance with the code of conduct and integrity established under s. 20(1) and the <i>State Records Act 2000</i>.</li> <li>• Completes a PID register for each disclosure lodged (s. 23(1)(f)).</li> <li>• Acts in accordance with the rules of natural justice (s. 9(2) and s. 16(1)(b)).</li> <li>• Acts in accordance with the code of conduct and integrity established by the Public Sector Commissioner (s. 20(1)) and any applicable authority-specific code of conduct, established separately from the PID Act.</li> </ul>

The discloser	<ul style="list-style-type: none"> <li>• Makes a public interest disclosure to a proper authority/PID Officer (s. 5(1)).</li> <li>• Believes on reasonable grounds their information is, or may be, true (s. 5(2)).</li> <li>• Does not disclose information subject to legal professional privilege (s. 5(6)).</li> <li>• Does not knowingly or recklessly make a false or misleading disclosure (s. 24(1)).</li> <li>• Maintains confidentiality of the information disclosed and the identity of the persons to whom the information relates, in accordance with the requirements of s. 16 and s. 17(1)(b).</li> <li>• Assists the person investigating the matter to which the disclosure relates by supplying the person with any information requested (s. 17(1)(a)).</li> </ul>
The subject of the disclosure	<ul style="list-style-type: none"> <li>• Is afforded the opportunity to make a submission, either orally or in writing, in relation to the matter (s. 9(2)).</li> <li>• Maintains confidentiality of the identity of the discloser, in accordance with the requirements of s. 16(1).</li> <li>• Is afforded treatment in accordance with the rules of natural justice (s. 16(1)(b)).</li> <li>• Does not take or threaten to take detrimental action (defined by s. 3) against a person because they have made or intend to make a disclosure (s. 14(1)).</li> <li>• Does not incite another person to take detrimental action against another because they have made or intend to make a disclosure (s. 14(2)).</li> <li>• Does not commit an act of victimisation by taking or threatening to take detrimental action against a person making or intending to make a disclosure (s. 15(1)).</li> </ul>
An investigating officer	<ul style="list-style-type: none"> <li>• May investigate matters of public interest information on behalf of a proper authority, in accordance with the terms of reference given to them.</li> <li>• Maintains confidentiality of the identity of the discloser, and any persons subject to the disclosure, in accordance with the PID Act (s. 16).</li> <li>• Makes, and keeps secure, comprehensive records of any investigation undertaken.</li> </ul>

# Frequently asked questions

## Part 1 – Preliminary

### What is ‘public interest information’?

The PID Act only applies to disclosures of public interest information (defined by s. 3). Public interest information means information that:

- relates to a public authority, public officer or public sector contractor
- relates to the performance of a public function, by a public authority, public officer or public sector contractor (either before or after the commencement of the PID Act) and
- shows or tends to show that a public authority, a public officer, or a public sector contractor is, has been or proposes to be involved in
  - improper conduct or
  - an act or omission that constitutes an offence under a written (State) law or
  - substantial unauthorised or irregular use of, or substantial mismanagement of, public resources or
  - an act done or omission that involves a substantial and specific risk of -
    - injury to public health or
    - prejudice to public safety or
    - harm to the environment or
  - a matter of administration that can be investigated by the Ombudsman Western Australia.

### What is a ‘public function’ to which public interest information must relate?

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 an employee of a public authority engaged in criminal behaviour unconnected with their employment.

## **What is a ‘public authority’?**

‘Public authority’ is defined by s. 3. Public Authorities include:

- public service and public sector departments and agencies
- local governments or regional local governments
- bodies established or continued under a State written law for a public purpose (for example, public universities, port authorities, and some government boards and committees)
- bodies established by the Governor or a Minister (for example, some government boards and committees, some incorporated associations and some corporation Act Companies).

Public authorities are those authorities covered by the PID Act (that is, they may be the subject of a public interest disclosure) and also have obligations under the PID Act (the PEO ensures these are fulfilled).

## **Who is a ‘public officer’?**

‘Public officer’ is defined by s. 3. Public Officers include:

- Ministers, Parliamentary Secretaries and Members of Parliament
- judicial Officers
- police Officers
- officers such as a bailiff serving or executing the process of a court or tribunal for remuneration
- members, officers and employees of public authorities
- public service officers
- holders of an office that is established for a public purpose under a State written law
- holders of an office that is established by the Governor or a Minister.

The PID Act does not apply to Commonwealth Government bodies, apart from officers of the Commonwealth exercising functions for the State under State law, for example, a Commonwealth officer seconded to work in a State agency.

## **What is a ‘public sector contractor’?**

‘Public sector contractor’ is defined by s. 3. A public sector contractor is a person who, other than as an employee, contracts with a public authority or the State of Western Australia to supply goods or services or perform public functions. It also includes a subcontractor or employee of this contractor.

## Part 2 – Public interest disclosures

### Who can make a public interest disclosure?

Anyone can make a public interest disclosure to a proper authority. This includes employees of public authorities and members of the public. A person can make a disclosure anonymously.

### Should people thinking about making a disclosure seek advice first?

It is important that people thinking about making a disclosure understand:

- what constitutes a public interest disclosure
- the process for making a disclosure
- their rights and responsibilities under the PID Act.

Before discussing the details of the matter a person can make enquiries with the appropriate proper authority or with the PID Officer of the public authority where the wrongdoing occurred. This will ensure they know what to expect from the outset of the process.

It is important that people understand their rights and responsibilities under the PID Act before they make a disclosure. In addition to your discussions with them you can also suggest that they seek their own legal advice before making a disclosure given that a disclosure cannot be withdrawn once it has been made,

The PSC brochure *Don't be afraid to speak up* contains key information about public interest disclosures and assists potential disclosers to understand the process. The brochure is available from the [PSC website](#)

### A person has sent me a PID lodgement form without seeking advice first. What should I do?

You are required to assess the matter to ensure that it meets the definition of public interest information (s. 3). If the matter is public interest information, it has now been formally disclosed and cannot be withdrawn. You will also need to investigate or cause the matter to be investigated.

If you have not communicated already with the discloser, do not delay to contact them to ensure they are familiar with their role and responsibilities under the PID Act.

Information provided on [page 33](#) may assist with this conversation. You may also wish to provide the discloser with a copy of *Don't be afraid to speak up* and any other appropriate awareness raising material.

## Could any complaint be a public interest disclosure?

A person must make their public interest disclosure voluntarily and consciously, to a proper authority. A person must also make their disclosure in a way that enables it to be identified as one to which the PID Act applies, and their disclosure needs to contain public interest information (defined by s. 3).

## So, what is a public interest disclosure?

Not every issue or concern disclosed in relation to a public authority, public officer or public sector contractor will be a public interest disclosure. To be a disclosure to which the PID Act applies, it must be:

- made by a person who believes on reasonable grounds that their information is or may be true (s. 5(2))
- about **public interest information** (s. 3)
- made to a **proper authority** (s. 5(3))
- not subject to legal professional privilege (s. 5(6)).

A discloser's information must be more than a mere suspicion. The discloser does not necessarily need to be able to identify any person whom the disclosure concerns.

## Can a disclosure be made anonymously?

Yes, a disclosure can be made anonymously (s. 5(6A)). A public authority's internal procedures should outline how anonymous disclosures are made, to ensure they are made to a proper authority and they are clearly identified as a public interest disclosure to which the PID Act applies.

A person who makes an anonymous disclosure will not receive any notification or updates about what happens to their disclosure.

## Can a disclosure be made to more than one proper authority?

Yes, a disclosure can be made to more than one proper authority where the matter or sphere of responsibility is applicable under s. 5(4).

Regulation 3 of the PID Regulations provides that where a disclosure is made to more than one proper authority they can enter into written arrangements with each other as is necessary and reasonable to:

- avoid duplication of action
- allow an efficient and effective use of resources
- achieve the most effective results
- ensure a record of a disclosure is securely kept.

### **Can a disclosure be made by more than one person?**

Yes, a disclosure can be made and signed by more than one person. However, the proper authority receiving the disclosure will treat each person separately for the purposes of providing reports and protections under the PID Act.

### **Is there a time limit on making a disclosure?**

There is no time limit on making a disclosure and a disclosure may relate to matters that occurred before the PID Act commenced on 1 July 2003 (s. 5(5)(a)). Claims of alleged victimisation cannot be made in relation to victimisation alleged to have occurred prior to the PID Act coming into effect (s. 15(6)).

### **Can information that is protected by legal professional privilege be disclosed?**

No, the PID Act does not entitle a person to disclose information protected by legal professional privilege (s. 5(6)). Legal professional privilege protects confidential communication between public authorities and their legal advisors and associated documents. Legal professional privilege exists where the communication was made or document created for the dominant purpose of obtaining or giving legal advice, or with reference to current or contemplated litigation.

### **How must a disclosure be made?**

The PID Act does not prescribe the format in which a disclosure must be made. A public authority should communicate, in its internal procedures, how disclosures can readily be made.

Any process for making a disclosure should ensure information can be provided discreetly and confidentially. The process also needs to provide for the disclosure to be made in a manner that enables the disclosure to be identified as one to which the PID Act applies (including for anonymous disclosures). This is for reporting purposes, to distinguish them from other communications or complaints, and for the purposes of confidentiality and protections applying under the PID Act.

Authorities may wish to adopt the template form for lodging a public interest disclosure, included in the *Public Interest Disclosure (PID): Guidelines for public authorities*.

### **Once made, can a public interest disclosure be withdrawn?**

No, once a discloser makes a public interest disclosure a proper authority is required to progress it in accordance with the PID Act (s. 8) regardless of the subsequent attitude of the discloser.

A discloser may forfeit the protections provided under s. 13 of the PID Act, if they fail, without reasonable excuse, to assist a person investigating a matter to which the information relates by supplying any information requested. A court can make an order relieving the person in whole or part from the forfeiture (s. 17 (2)).

### **If a person who makes a public interest disclosure is involved in the wrongdoing, does it affect their liability?**

No (s. 6), if someone has made a disclosure and was also part of the wrongdoing, they are still responsible and liable for their part in the wrongdoing.

### **What happens if the disclosure is false or misleading?**

A person who makes a statement purporting to be a public interest disclosure commits an offence where they:

- know the information to be false or misleading in a material particular or
- are reckless about whether the information is false or misleading about a material particular (s. 24).

The penalty for this offence is \$12 000 or imprisonment for one year.

### **Do the protections of the PID Act apply if disclosures are made to a journalist?**

For the protections of the PID Act to apply a number of conditions must be met (refer s. 7A and s. 18A).

The discloser must have made their disclosure to a proper authority in the first instance and it must have been accepted as a public interest disclosure by the proper authority under the PID Act.

Subsequently, a person can make a protected disclosure to a journalist of substantially the same information as their original disclosure, as a last resort, if the proper authority or the person to whom a matter raised by the disclosure was referred under s. 9(1)(b):

- refused to investigate, or discontinued the investigation of, a matter raised by the disclosure or
- did not complete an investigation of a matter raised by the disclosure within the period ending six months after the disclosure was made or
- completed an investigation of a matter raised by the disclosure but did not recommend action be taken or
- did not comply with the notification requirements of s. 10(1) or s. 10(4).

You can advise your discloser that before they make a disclosure to a journalist they should be certain that your actions or those of another authority dealing with their disclosure meet one or more of the above circumstances. You can also advise your discloser that you are the contact person for all matters about public interest disclosures and they may wish to speak with you before they make a disclosure to a journalist.

You may suggest that disclosers consider seeking legal advice about whether making a disclosure to a journalist would ensure they remain protected, as a journalist might not keep the information they receive confidential. Disclosers may be uncomfortable with their identity potentially becoming public knowledge.

## What are the obligations of a proper authority?

The proper authority has overall responsibility for managing the public interest disclosure process. The proper authority's responsibilities include:

- abiding by the code of conduct and integrity under s. 20(1)
- assessing the disclosure to ensure it contains information to which the PID Act applies and investigating, or causing to be investigated, the information disclosed under the PID Act, unless certain conditions apply under s. 8
- taking such action as is necessary, reasonable and within their functions and powers under s. 9
- notifying the discloser and providing reports as required by s. 10 and s. 11
- maintaining appropriate and confidential records in accord with the *State Records Act 2000* and s. 23(1)(f)
- completing the PID register for annual reporting purposes as required by s. 23(1)(f).

## Can I tell my Principal Executive Officer that I have received a disclosure?

It is unlikely you will need to tell your PEO about receiving a disclosure in the early stages of the process. However, you may need to consult with your PEO, for example, to commence an investigation, to assist in protecting the discloser from detrimental action or when taking action.

Before speaking with your PEO consider whether you need to provide any identifying information about the discloser. Any discussions you have are still subject to the confidentiality requirements (s. 16). This means that you cannot disclose any information that may identify or tend to identify the discloser or the subject of the disclosure, unless in accordance with s. 16.

## Must disclosures be investigated?

Under s. 8(1) a proper authority must investigate, or **cause to be investigated**, the disclosure if it relates to:

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

A proper authority is not obliged to investigate every matter they receive under s. 8(2). The PID Act does not give a proper authority/PID Officer investigative powers they would not otherwise have. The proper authority/PID Officer must look to the legislation under which they operate for their investigative powers.

If a PID Officer lacks sufficient investigative powers to effectively investigate the matter, but the information they receive causes them to believe the subject of the disclosure may have engaged in wrongdoing, the PID Officer may refer the matter to another person, body or organisation that can investigate appropriately under s. 9(1)(b). For example, a PID Officer may refer an allegation of a criminal offence, supported by sufficient information, to the Police for investigation.

If the matter referred was the only matter in the disclosure then this brings the PID to an end. The PID Officer should complete the appropriate report and notify the discloser of the outcome. The matter is now in the hands of the relevant proper authority and it is no longer a PID.

### **What does ‘cause to be investigated’ mean?**

A proper authority/PID Officer does not have to undertake the investigation themselves. They may engage a person within their authority or an external investigator. Sometimes a PID Officer may engage an external investigator to assist with both the perception and reality of objectivity in an investigative process.

However, the PID Officer to whom the original disclosure was made must maintain ultimate control of, and generally oversee, the investigation and management of the disclosure. If a PID Officer engages someone else to conduct the investigation, the provisions of s. 16 still apply regarding whether disclosure of the identities of the discloser or the subject may be revealed.

Alternatively, as mentioned above in ‘Must disclosures be investigated?’ under s. 9 (1)(b), the matter may be referred to another proper authority.

### **Can a proper authority refuse to investigate a public interest disclosure?**

Yes, a proper authority can refuse to investigate a disclosure or they may discontinue the investigation of a matter raised by the disclosure under s. 8(2) where they consider that:

- the matter is trivial or
- the disclosure is vexatious or frivolous or
- there is no reasonable prospect of obtaining sufficient evidence due to the time that has elapsed since the occurrence of the matter or
- the matter is being or has been adequately or properly investigated by another person to whom an appropriate disclosure of public interest information has been made (that is, already dealt with as a public interest disclosure).

If refusing to investigate or discontinuing the investigation, the proper authority must give the person who made the disclosure a reason for this (s. 8(3)), unless they made an anonymous disclosure (s. 8(4)).

If the proper authority refuses to investigate a disclosure or discontinues the investigation of a matter raised by the disclosure, the discloser may be able to make a protected disclosure, substantially the same as the original disclosure, to a journalist (s. 7A) as a last resort and retain the protections of the PID Act.

### **A person has made a disclosure about a matter that has already been investigated as part of another process. Do I need to do another investigation under the PID Act or can I just rely on the outcome of the other investigation?**

If a person has made an appropriate disclosure under the PID Act, then you are required to investigate or cause the matter to be investigated in accordance with s. 8(1). You cannot refuse to investigate or discontinue an investigation under the PID Act simply because the matter has previously been investigated through a different mechanism, such as a grievance process or other internal review.

An investigation under the PID Act is a separate and distinct process. As part of your public interest disclosure investigation you may consider information obtained during the previous investigation or review. If no new information is raised by the disclosure, then the scope of the PID investigation may be limited. However, an investigation under the PID Act may expose matters that were overlooked. It may also highlight other deficiencies in the previous investigation process that you need to consider.

If refusing to investigate or discontinuing an investigation in accordance with s. 8(2), you must provide the discloser with reasons for your decision. Ensure your reasons are transparent and defensible, as refusing to investigate or discontinuing an investigation are circumstances where a discloser may make a protected disclosure to a journalist.

### **The discloser has broadcast their intentions to make a disclosure under the PID Act or has raised the same concerns in a different context. How can I maintain confidentiality in these circumstances?**

The confidentiality provisions still apply and you will need to cautiously approach any investigation into the matters raised. If the discloser's identity is believed to be known, consider strategies for protecting them from detrimental action. Developing a risk management plan may assist to minimise this risk. If the subject's identity is known, it may be appropriate to remind employees of the PID Act's confidentiality provisions and any requirements about communication and official information in your authority's code of conduct.

### **Can the PID Officer refer a matter raised in a disclosure to another person, body or organisation?**

The PID Officer cannot refer the whole disclosure. However, the PID Officer may refer a matter within the disclosure to another person, body or organisation, if they do not have the powers or functions to adequately investigate or take action (s. 9) or in order to cause the matter to be investigated (s. 8(1)).

In referring a matter to another person, body or organisation the proper authority can only disclose the discloser's identity or the subject's identity in accordance with s. 16.

The PID Officer will usually advise the discloser (s. 10) they are referring a matter to another person, body or organisation. Section 11 outlines certain circumstances where a proper authority cannot provide this information to the discloser.

### **What are my responsibilities, if I have referred the matter to another authority?**

By referring a matter to another authority this closes that component of the disclosure (if there are multiple components). However, you are still responsible for investigating any other matters raised within the original disclosure. Once you have completed investigating all the other matters in the disclosure, you can prepare the final report and provide a copy of the report to the discloser. The report would indicate that one of the matters has been referred to another proper authority to investigate, provided the circumstances in s. 11 are not present.

### **What action does the proper authority need to take?**

If the proper authority forms the view that a person may be, may have been or may in the future be the subject of a disclosure, they must take such action as is necessary, reasonable and within their functions and powers to (s. 9):

- prevent the matter to which the disclosure relates from continuing or occurring in the future or
- refer the matter to the Commissioner of Police or another person, body or organisation having power to investigate the matter or
- take disciplinary action or commence or enable disciplinary proceedings to be commenced against a person responsible for the matter.

If the proper authority does not form this opinion, they are not required to take further action other than reporting to the discloser under s. 10 (unless they received an anonymous disclosure), including the reasons why they are not taking action, and thoroughly recording the outcome.

The options above are not mutually exclusive. A proper authority may take more than one action depending on the circumstances.

In taking action, the proper authority is limited by the powers and functions that are conferred by the legislation under which their public authority operates. The PID Act does not give the PID Officer additional powers to take action.

Before taking any action under s. 9(2) the proper authority must afford natural justice to the person against whom, or in respect of whom, the action is to be taken. They must have the opportunity to make a submission, either verbally or in writing, in relation to the matter.

The above actions do not apply to the CCC or the Ombudsman Western Australia, where they have functions in relation to a disclosure under their own legislation.

### **Is there a time limit on investigating the disclosure?**

Whilst there is not a specified time limit in which to complete an investigation stemming from a public interest disclosure, as a PID Officer you need to be aware that an investigation should be completed within six months of receiving the disclosure. Failure to meet these timeframes may allow a discloser to make a protected disclosure to a journalist (s. 7A). This does not mean the investigation should cease. The investigation will continue until completed, even if it does take longer than six months.

### **What advice can I give the subject of the disclosure?**

At an appropriate time you will need to inform the subject of the disclosure about the nature of the allegations made against them. This does not necessarily need to happen immediately after you receive the disclosure. Generally, you should make some preliminary inquiries to ascertain whether there is a case to answer before approaching the subject, although natural justice requirements depend on the circumstances of the case. You may need to seek legal advice as to an appropriate course of action.

You can advise employees who may be the subject of a public interest disclosure to:

- keep the matter confidential and only discuss it with the PID Officer (s. 16)
- assist those dealing with the matters, including supplying information on request
- not take any detrimental action against another person whom they know or suspect has made the disclosure, and that doing so would be a criminal offence
- notify the PID Officer, if they suffer any detrimental action as a result of being the subject of a disclosure
- if necessary, seek support as appropriate which may include their authority's employee assistance provider, keeping s. 16 in mind.

## **How do I ensure natural justice in the process?**

The PID Act provides for natural justice in the process. The principles of natural justice are designed to ensure that decision-making is fair and reasonable. It involves informing people of the case against them, giving them a fair hearing, not being biased and ensuring findings and decisions are based on logical and relevant information.

If:

1. an investigation substantiates certain matters
2. you decide to take action to prevent the matter occurring again or
3. you (or your employing authority) are contemplating disciplinary action,

you must provide the subject with natural justice before proceeding. Section 9(2) allows the subject of the disclosure an opportunity to make a verbal or written submission about the matter before you take action under s. 2 and s. 3.

Natural justice can also help you or any other person investigating the matter to:

- identify major issues
- check facts
- expose any weaknesses in the investigation
- demonstrate any areas where the investigation may be criticised once it is finalised.

Natural justice, however, does not require you to advise the subject of the identity of the discloser in all circumstances. You should seek legal advice if you are unsure.

## **What is different about disclosures made to the CCC, Ombudsman Western Australia and other 'declared persons'?**

For disclosures made to the CCC, the Ombudsman Western Australia or other 'declared persons' s. 12 allows for these disclosures to be treated in the same way as these authorities would usually handle a complaint under their enabling legislation. Sections 8, 9 and 10 do not apply.

## **How does the *Corruption, Crime and Misconduct Act 2003* interact with my responsibilities under the PID Act, especially around the confidentiality provisions?**

As you may deal with a number of matters in a disclosure, you may need to refer one or more matters in the disclosure to the Commissioner of Police or another person, body or organisation having the power to investigate. If you refer a matter in a disclosure for investigation under s. 9, the confidentiality provisions of s. 16 still apply, as you refer the subject matter, not the disclosure itself.

If a disclosure contains an allegation of misconduct, you may need to contact the CCC or the PSC. On 1 July 2015 the *Corruption, Crime and Misconduct Act 2003* (CCM Act) was proclaimed making the PSC responsible for the oversight of minor misconduct of public officers and for misconduct prevention and education programs. The CCM Act enables the CCC to focus its attention and efforts on corruption and serious misconduct, including police misconduct.

Previously PEO's notified all instances of suspected misconduct to the CCC. Now principal officers are required to:

- notify the CCC of all reasonable suspicions of serious misconduct (s. 28 of the CCM Act)
- notify the PSC of all reasonable suspicions of minor misconduct (s. 45H of the CCM Act).

PEO's must now make an informed decision about whether a matter may constitute minor or serious misconduct as defined in the CCM Act, and notify either the PSC or the CCC accordingly. For further information about notification by PEO's please see the additional resources and facts sheets located at [publicsector.wa.gov.au/conduct-integrity/minor-misconduct](http://publicsector.wa.gov.au/conduct-integrity/minor-misconduct).

A disclosure made under the PID Act does not negate the obligations on the PEO notifying the CCC or PSC regarding misconduct. The duty to notify under the CCM Act is paramount (s. 28 and s. 45H).

While your PEO holds this obligation, that duty does not extend to you as a PID Officer. However, you may feel given the nature of the matter it is appropriate to report the matters of misconduct. Any person can report any reasonable suspicion of misconduct involving a public officer to the:

- CCC for all reasonable suspicions of serious misconduct (s. 25 of the CCM Act)
- PSC for all reasonable suspicions of minor misconduct (s. 45E of the CCM Act).

You would not provide the identity of the discloser when notifying the CCC or PSC unless:

- the discloser is involved in the alleged misconduct
- the discloser consents to the disclosure of public interest information that might identify or tend to identify him or her [Note: PID Officers may wish to discuss with the discloser their wishes regarding the release of their details to the CCC or PSC as part of any discussion with those seeking to lodge a public interest disclosure.]
- it is necessary to facilitate effective investigation [Note: This may come following notification, where the CCC subsequently determines that the identity of the discloser is required for the investigation, with a separate notice issued under s. 94 of the CCM Act. In such circumstances, the PID Officer managing the disclosure must take all reasonable steps to advise the discloser that an identifying disclosure is to be made (s. 16(2)) and the PID Act permits this to occur.]
- the disclosure is made in accordance with an order of a court or any other person or body having authority to hear, receive and examine evidence, which includes the CCC
- the identifying disclosure is made in accordance with s. 152 or s. 153 of the CCM Act.

For further information about notification by PEO's or reporting as a PID Officer, please refer to additional resources and facts sheets located at [publicsector.wa.gov.au/conduct-integrity/minor-misconduct](https://publicsector.wa.gov.au/conduct-integrity/minor-misconduct)

### **Is the discloser given details of the investigation and action taken?**

The level of detail to which a discloser is entitled, about the investigation and action taken (or not taken) is not prescribed by the PID Act. Generally, the proper authority will provide enough information for disclosers to understand what happened and why, within the limits on providing information prescribed by s. 11. This helps to:

- finalise the matter
- ensure the proper authority meets their requirements under s. 10
- minimise the likelihood that a discloser will make a protected disclosure to a journalist in the future.

### **What if a discloser does not agree with the action taken or proposed?**

The PID Act does not provide for a discloser to appeal against decisions of a proper authority about any investigations or subsequent action.

A discloser may be able to make a further disclosure of the information to another proper authority where the information falls within the criteria set out in s. 5 (3). For example, where a discloser is dissatisfied with the response to a public interest disclosure about a matter of administration made to a PID Officer of a Department, the discloser may then disclose the information to the Ombudsman Western Australia.

However, this new proper authority may not need to investigate the matter, if they consider it has been adequately or properly investigated by the other authority (refer s. 8 (2) (d)). In deciding whether this is the case, the second proper authority may need to contact the PID Officer that has already dealt, or is already dealing, with the information in relation to its investigation.

## Part 3 – Protections

### What protections do disclosers receive?

Generally, the PID Act protects disclosers from detrimental action because they have made or propose to make a PID.

When a discloser makes an appropriate disclosure to a proper authority, the PID Act:

- provides immunity for the discloser for making the disclosure (s. 13)
- makes it an offence for others to take detrimental action against another because anyone has made, or intends to make, a public interest disclosure (s. 14)
- allows a person who has made a disclosure and believes they have or will be subject to detrimental action in reprisal for making a disclosure, to apply to the Supreme Court for either an order remedying the detrimental action or an injunction (s. 15A)
- requires public authorities to provide protection from detrimental action for disclosers who are their employees, including by relocating a public service employee if they request (s. 15B). [Note: ‘Public service employee’ is defined by s. 15B as a public service officer or an employee employed in an organisation (as defined by s. 3(1) of the *Public Sector Management Act 1994*).]
- provides civil remedies or for complaints to be made under the *Equal Opportunity Act 1984* for acts of victimisation (detrimental action) that occur because, or substantially because, the person has made a disclosure (s. 15)
- provides for the identity of the discloser to be kept confidential, subject to some exceptions (s. 16)

### What is immunity?

Immunity is set out in s. 13. If the disclosure is an appropriate disclosure, for making the disclosure a discloser will **not**:

- incur any civil or criminal liability
- be liable to any disciplinary action under State law
- be liable to be dismissed or have their services dispensed with or otherwise terminated
- be liable for any breach of a duty of secrecy or confidentiality or any other applicable restriction on disclosure.

The discloser is not, however, protected from having action taken against them for wrongdoing in which they may have been involved (s. 6).

## What is detrimental action?

'Detrimental action' (defined by s. 3) includes action causing, comprising or involving:

- injury, damage or loss
- intimidation or harassment
- adverse discrimination, disadvantage, or adverse treatment in relation to a person's career, profession, employment, trade or business or
- a reprisal.

## What is the offence of detrimental action?

Section 14 creates the offence of detrimental action. It states that a person must not take, or threaten to take, detrimental action against another person because they have made, or intend to make, a disclosure under the PID Act.

A person who attempts to commit the offence of detrimental action, or incites another to commit that offence, is also guilty of this offence. The maximum penalty is a fine of \$24 000 or imprisonment for two years.

## What remedies are available to a discloser who believes they have been the subject of, or threatened with, detrimental action?

The PID Act provides that disclosers who are subject to detrimental action, or who believe they may be subject to detrimental action, can:

- apply to the Supreme Court for an order or injunction (s. 15A)
- where they are a public service employee (see definition below), request to be relocated by their employer (s. 15B)
- commence either civil proceedings for damages or make a complaint under the *Equal Opportunity Act 1984* s. 15.

Commencing civil proceedings for damages or making a complaint under the *Equal Opportunity Act 1984* are mutually exclusive options (s. 15(4)). Instituting one of these avenues for relief prevents you from commencing the other.

A 'public service employee' for the purposes of relocation (s. 15B) includes a public service officer or an employee employed in an organisation as defined by s. 3(1) of the *Public Sector Management Act 1994*.

A public service employee may apply in writing to their employer to be relocated on the grounds that detrimental action has been, or may be taken against them, in reprisal for them making a public interest disclosure and relocation is the only practical means of removing or substantially reducing the danger of a reprisal (s. 15B(2)).

If the employer is satisfied these grounds are established, they must, as far as is practicable, make arrangements to relocate the employee away from the employee's existing work location. This may be within the employee's current department or organisation, or to another department or organisation (s. 15B(3)). The employer is not authorised to relocate an employee unless that employee consents to the specific arrangements proposed (s. 15B(4)).

Civil proceedings may be taken against either the perpetrator of victimisation or any employer of the perpetrator (s. 15(2)). For example, the employer of the perpetrator may be:

- the State, in the case of public service officers
- the public authority that employs the perpetrator
- a public sector contractor whose employees engage in victimisation.

However, an employer may have a defence to civil proceedings (s. 15(3)) for damages where it proves that it:

- was not knowingly involved in the act of victimisation and
- did not know and could not reasonably be expected to have known about the act of victimisation and
- could not, by the exercise of reasonable care, have prevented the act of victimisation.

### **When might a discloser's identity be lawfully revealed?**

Generally, a person (including the proper authority, PID Officer, discloser and the subject of the discloser) must not disclose information that might identify or tend to identify anyone as a person who has made an appropriate disclosure (s. 16).

For example, to disclose that a young woman in a small accounts section has made a public interest disclosure about irregularities she has detected in the accounts of a public authority might tend to identify the discloser, even though she is not named.

Exceptions arise under s. 16 (1) where the disclosure of a discloser's identity:

- is made with the discloser's consent
- is necessary for natural justice to occur
- is necessary to enable the matter to be investigated effectively
- is ordered by a Court or other body with authority to do so
- is made in accordance with s. 152 or s. 153 of the CCM Act.

Where a discloser's identity is to be revealed for natural justice to occur or to enable the matter to be investigated effectively, the person making the identifying disclosure must take all reasonable steps to inform the person whose identity is to be disclosed:

- that the disclosure is being made
- the reasons for the disclosure being made.

These steps to inform the person must be taken a reasonable time before the identifying disclosure is made (s. 16(2)). Revealing the identity of the discloser outside of the above circumstances may result in a fine of \$24 000 or imprisonment for two years.

### **Is the person that is the subject of the disclosure, also kept confidential?**

Section 16 (3) also provides for the subject (person of interest) of the disclosure's identity to generally remain confidential.

Exceptions arise where the disclosure of a subject's identity is:

- made with the subject's consent
- necessary to enable the matter to be investigated effectively
- necessary in the course of taking action under s. 9(1)(a) or s. 9(1)(c)
- made on the reasonable belief that the disclosure of identifying information is necessary to prevent or minimise the risk of injury to any person or damage to any property
- ordered by a Court or other body with authority to do so
- made in accordance with s. 152 or s. 153 of the CCM Act.

Revealing the identity of the person that is the subject of a disclosure outside of the above circumstances may result in a fine of \$24 000 or imprisonment for two years.

### **How do the confidentiality provisions of the PID Act impact on the release of information under the *Freedom of Information Act 1992 (FOI Act)*?**

The FOI Act complements the confidentiality provisions of the PID Act. Certain information is considered 'exempt matters' under Schedule 1 of the FOI Act and thus cannot be released. Under cl14(5)(a)&(b) of the FOI Act a matter is an exempt matter if its disclosure would reveal or tend to reveal the identity of a discloser or the person that is the subject of a disclosure.

### **When might a discloser forfeit their protections under the PID Act?**

A discloser may forfeit their protections provided by s. 13 if they fail, without reasonable excuse, to assist a person investigating a matter or if they on-disclose information within their disclosure (s. 17(1)) otherwise than under the PID Act.

Whether a person has forfeited this protection is a question of fact and depends on all the circumstances of the case. It is strongly recommended you seek legal advice about whether a discloser has lost their protections (s. 13 and s. 17) before taking any action.

A court may make an order relieving a person from the forfeiture, if the court, considering the question, forms the view that the failure to assist in an investigation or the subsequent disclosure of the public interest information other than in accordance with the PID Act (whichever is relevant):

1. has not materially prejudiced the public interest served by the original disclosure
2. is minor in nature.



