Public Interest Disclosure Policy and Procedure

|  |  |
| --- | --- |
| Status: | Final approved |
| Approved by: | Dr Adam Tomison, Director General 12 November 2019 |
| Responsible Officer / Policy Custodian: | Shayne Maines  Executive Director, Professional Standards Division |
| Content Administrator/ Contact person | Principal Public Interest Disclosure Officer Professional Standards Division |
| Next review: | 3 years |
| HPRM reference: | A812184 |

Table of contents

[Public Interest Disclosure Policy 4](#_Toc26970525)

[1 Introduction 4](#_Toc26970526)

[2 Purpose 5](#_Toc26970527)

[3 Scope 5](#_Toc26970528)

[4 Definitions 5](#_Toc26970529)

[5 Objectives 6](#_Toc26970530)

[Public Interest Procedure 6](#_Toc26970531)

[1 Overview of roles and responsibilities of parties Involved in the Department’s disclosure process 6](#_Toc26970532)

[2 Managing public interest disclosure 9](#_Toc26970533)

[2.1 What is ‘public interest information’? 9](#_Toc26970534)

[2.2 Confidentiality 9](#_Toc26970535)

[2.2.1 Confidentiality regarding the Discloser 9](#_Toc26970536)

[2.2.2 Confidentiality regarding the Respondent 10](#_Toc26970537)

[2.2.3 Protections 10](#_Toc26970538)

[2.2.4 Notification requirements 11](#_Toc26970539)

[2.2.5 Record keeping 11](#_Toc26970540)

[3 How to make a public interest disclosure 12](#_Toc26970541)

[3.1 Before you make a disclosure 12](#_Toc26970542)

[3.2 Making the disclosure 13](#_Toc26970543)

[3.3 Determining whether your matter is an appropriate disclosure 14](#_Toc26970544)

[3.4 Determining whether your public interest disclosure will be investigated 14](#_Toc26970545)

[3.5 Referring public interest matters 14](#_Toc26970546)

[3.6 Investigating the disclosure 14](#_Toc26970547)

[3.7 What are your responsibilities if you are the subject of a disclosure? 15](#_Toc26970548)

[4 Taking action 16](#_Toc26970549)

[4.1 Confidentiality and record keeping 16](#_Toc26970550)

[5 After the public interest disclosure process has been finalised 17](#_Toc26970551)

[6 Making a disclosure to a journalist 17](#_Toc26970552)

[7 References 17](#_Toc26970553)

[7.1 Policies and directives 17](#_Toc26970554)

[7.2 Legislation 18](#_Toc26970555)

[7.3 Guidelines 18](#_Toc26970556)

[7.4 Procedures and forms 18](#_Toc26970557)

[8 Approval 18](#_Toc26970558)

[9 Document version history 19](#_Toc26970559)

[10 Distribution list 19](#_Toc26970560)

Public Interest Disclosure Policy

# Introduction

The Department of Justice (the Department) does not tolerate corrupt or other improper conduct and is committed to the aims and objectives of the *Public Interest Disclosure Act 2003* (PID Act). The PID Act recognises the value and importance of reporting as a means to identify and address wrongdoing across the Public Sector.

The Department strongly supports disclosures being made by employees about corrupt or other improper conduct. We also strongly support public sector contractors and members of the community making disclosures about corrupt or improper conduct by departmental employees or other Public Officers.

The Department does not tolerate any of its employees, public sector contractors or subcontractors taking reprisal action against anyone who makes or proposes to make a public interest disclosure.

The Department will take all reasonable steps to protect employees from any detrimental action in reprisal for the making of a public interest disclosure.

The commitment to effectively manage public interest disclosures extends to a ‘*proper authority’* [[1]](#footnote-1)of the Department. The persons responsible for receiving disclosures of public interest information designated under the PID Act Section 23(1)(a)*,* will abide by the Public Sector Commission’s (PSC) [*PID Officers Code of Conduct and Integrity*](https://publicsector.wa.gov.au/sites/default/files/documents/public_interest_disclosure_code_of_conduct_and_integrity_1.pdf) in performing their duties.

The Department is also committed to responding to any disclosure thoroughly and impartially. We will treat all people in the disclosure process fairly, including those who may be the subject of a disclosure (the Respondent).

The Department will provide as much information as possible to people considering making a public interest disclosure. These internal procedures are accessible to all employees and public sector contractors. Copies are available from the designated persons appointed as the proper authority (Public Interest Disclosure (PID) Officer) and will be kept on the [Reporting Misconduct Intranet Page](http://justus/intranet/department/standards/Pages/reporting-misconduct.aspx).

General information about public interest disclosures and how the Department will manage a disclosure will be made available for external clients and members of the community on the

[Department’s website](https://www.justice.wa.gov.au/).

Whilst this Public Interest Disclosure Policy and Procedure (policy and procedure) is focused on public interest disclosures, the Department is committed to dealing with all reports of suspected wrongdoing. We encourage employees, public sector contractors, those in our care and the broader community to report any such behaviour or suspected misconduct. The Department will consider each matter under the appropriate reporting pathway and make every attempt to protect employees making reports from any reprisals. Further information for reporting suspected misconduct can be found on the Department’s Professional Standards [Reporting Misconduct Intranet Page](http://justus/intranet/department/standards/Pages/reporting-misconduct.aspx).

# Purpose

The PID Act requires the Director General to develop and publish the internal PID procedure.

This policy and procedure outlines how the Department will meet its obligations under the PID Act and covers the roles and responsibilities of the Director General as the Principal Executive Officer of the Department and the person designated as the “Proper Authority” referred to in this document as the Principal PID Officer; together with the Discloser and the subject of the disclosure (Respondent).

# Scope

This policy and procedure applies to all people involved in the public interest disclosure process, including the Director General, PID officer(s), employees, public sector contractors and/or any person making a public interest disclosure and any person/s whom may be subject of a disclosure.

These procedures should be read in conjunction with:

* [*Public Interest Disclosure Act 2003*](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a6372.html)
* [*Public Interest Disclosure Regulations 2003*](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s33774.html)
* Department of Justice’s [Code of Conduct](http://justus/intranet/department/Pages/code-conduct.aspx)
* PSC [PID Officers Code of Conduct and Integrity](https://publicsector.wa.gov.au/sites/default/files/documents/public_interest_disclosure_code_of_conduct_and_integrity_1.pdf)
* PSC [Don’t be Afraid to Speak Up](https://publicsector.wa.gov.au/sites/default/files/documents/your_guide_to_public_interest_disclosures_1.pdf)

The behaviour of all employees involved in the public interest disclosure process must accord with the Department’s [Code of Conduct](http://justus/intranet/department/Pages/code-conduct.aspx) and the [PSC PID Officers Code of Conduct and](https://publicsector.wa.gov.au/sites/default/files/documents/public_interest_disclosure_code_of_conduct_and_integrity_1.pdf) [Integrity](https://publicsector.wa.gov.au/sites/default/files/documents/public_interest_disclosure_code_of_conduct_and_integrity_1.pdf) at all times. A breach of these codes may result in disciplinary action.

# Definitions

|  |  |
| --- | --- |
| Term | Definition |
| Employee | A person defined as a ‘public officer’ pursuant to the PID Act s 3. |
| Journalist | A person engaged in the profession or occupation of journalism in connection with the publication of information in a medium for dissemination to the public of news and the observation of news (PID Act s 7A (1)). |
| Principal PID Officer/PID Officer | Includes PID Officers designated by the Director General to be the ‘proper authority(s)’ pursuant to the PID Act, s 23(1)(a) and s 5(3)(h*).* |
| Public Sector Contractor | Any person defined as a ‘public sector contractor’ pursuant to the PID Act s 3. |
| Discloser | The person who makes the public interest disclosure. |
| Respondent | The person/s about whom the public interest disclosure concerns. |

# Objectives

The PID Act has the following objectives to:

* Facilitate the disclosure of public interest information
* Provide protection for those who make disclosures
* Provide protection for those who are the subject of a disclosure.

This is achieved by: providing protection to Disclosers and Respondents.

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 the Department with any additional powers to investigate or take action in relation to public interest disclosures.

Additional information about making a public interest disclosure is available from the (PSC) and in the [PSC Don’t be Afraid to Speak Up](https://publicsector.wa.gov.au/sites/default/files/documents/your_guide_to_public_interest_disclosures_1.pdf) publication.

Public Interest Procedure

# Overview of roles and responsibilities of parties Involved in the Department’s disclosure process

| Person/role | Responsibilities |
| --- | --- |
| Principal Executive Officer (PID Act s 23) (in the Department of Justice, the Director General): | * Designates the occupant of a specified position (a PID Officer) to receive public interest disclosures related to the Department (PID Act s 23(1)(a)). * Provides protection from detrimental action or the threat of detrimental action for any employee who makes an appropriate disclosure of public interest information (PID Act s 23(1)(b)). * Ensures the Department complies with the PID Act and the Code of Conduct and Integrity established by the Public Sector Commissioner (PID Act s 23(1)(c) and (d)). * Prepares and publishes internal procedures relating to the Department’s obligations under the PID Act consistent with guidelines prepared by the PSC. * Provides information annually pursuant to the PID Act s 23(1)(f), to the Public Sector Commissioner on the: * Number of disclosures received by the Department. * Results of any investigations conducted as a result of the disclosures. * Action, if any taken, as a result of each investigation. * Such other matters as are prescribed. * May have a role in enabling an investigation to be undertaken or taking disciplinary action against individuals under functions and powers separately from the PID Act. |
| Proper Authority PID Act s 7 and  s. 23(1)(a): | * As designated by the Director General as the holder of a specified position, being the person responsible for receiving disclosures of public interest information. * The Principal PID Officer occupies the position of Assistant Director, Integrity and Accountability Directorate in the Professional Standards Division. * The Director General will designate other PID Officers who the Principal PID Officer will support to fulfil the Department’s compliance and obligations under the PID Act. * Provides information to potential Disclosers about their rights and responsibilities consistent with the Code of Conduct and Integrity established under the PID Act s 20(1). * Receives and manages public interest disclosures in accordance with the PID Act s 5(3)(h). * Notifies the Discloser within three months of the disclosure being made about what action is planned in dealing with the disclosure *(*PID Act*, s* 10(1)). * Where appropriate, investigates, or causes an investigation of, the matters in the disclosure (PID Act*, s* 8(1)). * Where appropriate, provides information to subjects of a disclosure (the Respondent) about their rights, responsibilities, duties and potential offences *(*PID Act, ss9(2), 14, 15, 16 and 24). * Where appropriate, takes such action as is necessary and reasonable, within their functions and powers (PID Act s 9). * Maintains confidentiality of the identity of the Discloser and subject(s) of disclosures (Respondent) PID Act ss11 and 16. * Provides progress reports where requested and a final report to the Discloser (PID Act s 10*).* * Creates and maintains proper and secure records in relation to the disclosures in accordance with the Code of Conduct and Integrity established under the PID Act s 20(1) and the [*State Records Act 2000*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_29661.pdf/%24FILE/State%20Records%20Act%202000%20-%20%5B01-f0-01%5D.pdf?OpenElement). * Completes a PID register for each disclosure lodged  (PID Act s 23(1)(f)). * Acts in accordance with the rules of natural justice  (PID Act ss9(2) and 16(1)(b)). * Acts in accordance with the PSC’s [Code of Ethics](https://publicsector.wa.gov.au/sites/default/files/documents/commissioners_instruction_07_code_of_ethics_08_17.pdf) and the [Department’s Code of Conduct](http://justus/intranet/department/Pages/code-conduct.aspx). |
| Discloser: | * Makes an appropriate disclosure of public interest information to a proper authority (PID Act s 5(1)). * Believes on reasonable grounds the information in their disclosure is true or has no reasonable grounds on which to form a belief about the truth of the information, but believes on reasonable grounds that the information may be true  (PID Act s 5(2)) * Does not disclose information subject to legal professional privilege (PID Act s 5(6)). * Does not knowingly and recklessly make a false or misleading disclosure (PID Act s 24(1)). * Maintains confidentiality of the information disclosed and the identity of the person(s) to whom the information relates, in accordance with the requirements of the PID Act ss16 and 17(1)(b). * Assists any person investigating the matter to which the disclosure relates by supplying the person with any information requested (PID Act s 17(1)(a)). |
| Respondent: | * Is afforded the opportunity to make a submission, either orally or in writing, in relation to the matter before preventative or disciplinary action is taken (PID Act s 9(2). * Maintains confidentiality of the identity of the Discloser, in accordance with the requirements of the PID Act s 16(1). * Does not take or threaten to take detrimental action (defined in the PID Act s 3) against a person because they have made or intend to make a disclosure (PID Act s 14(1)). * Does not incite another person to take detrimental action against another because they have made or intend to make a disclosure *(*PID Act s 14(2)). * Does not commit an act of victimisation by taking or threatening to take detrimental action against the person making or intending to make a disclosure (PID Act s 15(1). |
| Investigating officer: | * May investigate matters of public interest information on behalf of a proper authority of the Department, in accordance with the terms of reference given to them. * Maintains confidentiality of the identity of the disclosure and any persons subject to the disclosure, in accordance with the PID Act s.16. * Makes, and keeps secure, comprehensive records of any investigation undertaken. |

# Managing public interest disclosure

## What is ‘public interest information’?

Public interest information means information that:

* Relates to the performance of a public function by a public authority, an Employee or Public Sector Contractor (either before or after the commencement of the PID Act).
* Shows or tends to show that a public authority, an Employee or a Public Sector Contractor is, has been or proposes to be involved in:
  + - * Improper conduct
      * An act or omission that constitutes an offence under a written law
      * A substantial unauthorised or irregular use of, or substantial mismanagement of, public resources
      * An act done or omission that involves a substantial and specific risk of - injury to public health
      * Prejudice to public safety
      * Harm to the environment; or
      * A matter of administration that can be investigated by the [Parliamentary Commissioner (Ombudsman Western Australia) under the *Parliamentary Commissioner Act 1971*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_29654.pdf/%24FILE/Parliamentary%20Commissioner%20Act%201971%20-%20%5B10-c0-01%5D.pdf?OpenElement) s.14.

## Confidentiality

Maintaining confidentiality is an important part of managing a disclosure. The confidentiality requirements of the PID Act not only protects the Discloser, but also any other people affected by the disclosure.

The confidentiality requirements do not apply to all information in a disclosure, although, we are committed to maintaining confidentiality around:

* Any information that may identify the Discloser and the Respondent, including the fact a disclosure has been made; and
* Information relating to a disclosure that, if known, may cause detriment.

Throughout the disclosure process and after its completion, the PID Act provides for the Discloser’s and Respondent’s identities to be kept confidential (except in certain circumstances as detailed at Section 2.2.1 and 2.2.2 of the PID Policy Procedure).

Disclosing information which might identify, or tend to identify the Discloser except in accordance with the PID Act is an offence punishable with a penalty of a $24,000 fine or imprisonment for two years.

### Confidentiality regarding the Discloser

Maintaining confidentiality is an important part of protecting the Discloser, from any detrimental action in reprisal for making, or intending to make, a disclosure.

If the Discloser consents to having their identity revealed to assist in dealing with the disclosure, the PID Officer will record this using the PSC’s [PID Consent to disclosure of identifying information form](https://publicsector.wa.gov.au/document/consent-disclosure-identifying-information-form).

On occasion, a PID Officer may need to identify the Discloser, without the Discloser’s consent but only where:

1. It is necessary to do so, having regard to the rules of natural justice; or
2. It is necessary to do so, to enable the matter to be investigated effectively; or
3. We are ordered by a court or any other person or body having authority to hear, receive or examine evidence; or
4. The identifying disclosure is made in accordance with the [*Corruption, Crime and Misconduct Act 2003*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_41982.pdf/%24FILE/Corruption%20Crime%20and%20Misconduct%20Act%202003%20-%20%5B07-a0-00%5D.pdf?OpenElement) ss 152 or 153.

Before the PID Officer identifies the Discloser for the reasons specified in (b) or (c) above, the officer will take all reasonable steps to inform the Discloser that this will happen and the reasons why. The PID Officer may use the PSC’s [PID Notification of disclosure of identifying information form](https://publicsector.wa.gov.au/document/notification-disclosure-identifying-information-form) to do this.

If there is a need to provide information about the identity of the Discloser to another person for the reasons referred to above, the PID Officer will inform the other person that further disclosure to a third person may put them at risk of committing an offence.

The PID Officer will also consider whether it is necessary to inform any external investigator about the identity of the Discloser. Where it is necessary to provide this identifying information, the PID Officer will notify as described above.

### Confidentiality regarding the Respondent

The Respondent may consent to having their identity revealed to assist with the disclosure process. The PID Officer may use the PSC’s [PID Notification of disclosure of identifying information form](https://publicsector.wa.gov.au/document/notification-disclosure-identifying-information-form) to record this.

Additionally, it may be necessary to reveal identifying information about the Respondent without their consent, PID Act ss 16(3)(b)(g) where:

* It is necessary to do so to enable the matter to be investigated effectively
* It is necessary to do so in the course of taking action under s 9 of the PID Act
* There are reasonable grounds to believe that it is necessary to prevent or minimise the risk of injury to any person or damage to any property
* The disclosure is ordered by a court or any other person or body having authority to hear, receive or examine evidence; or
* The disclosure is made in accordance with the [*Corruption, Crime and Misconduct Act 2003*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_41982.pdf/%24FILE/Corruption%20Crime%20and%20Misconduct%20Act%202003%20-%20%5B07-a0-00%5D.pdf?OpenElement) ss 152 or 153.

There is no obligation to advise the Respondent that identifying information will be released.

### Protections

The PID Act provides a range of protections for Disclosers.

The PSC’s [‘*Don’t be Afraid to Speak Up*’](https://publicsector.wa.gov.au/sites/default/files/documents/your_guide_to_public_interest_disclosures_1.pdf) contains general information about the protections provided by the PID Act. A PID Officer will be able to expand on this information specific to the Department.

The Department is committed to ensuring that no detrimental action, including workplace reprisals by managers or other Employees, occurs as a result of a person making a disclosure. If any of the above does occur, the Discloser can request that the Department take action to protect them. It is important that the Discloser informs the PID Officer who is handling the disclosure immediately.

The PID Act also provides that the Discloser may lose the protections provided in s 13 of the PID Act, in some circumstances, including where they on-disclose information or fail, without reasonable excuse, to assist any person investigating the matters of the disclosure.

A person who makes an appropriate disclosure of public interest information to a proper authority under s 5 of the PID Act incurs no civil or criminal liability for doing so; and is not for doing so, liable to any disciplinary action under a written law; or to be dismissed; or to have his or her services dispensed with or otherwise terminated; or for any breach of a duty of secrecy or confidentiality or any other restriction. A disclosure of public interest information under the PID Act by a person does not affect that person’s liability for anything to which the information relates (PID Act s 6). This means that 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.

### Notification requirements

The Principal PID Officer will ensure that all reporting is completed in accordance with the legislative and administrative requirements of the PID Act.

Provided it is not an anonymous disclosure, a PID Officer will provide the following reports to the Discloser and the Principal PID Officer:

* Within three months of making a disclosure, the action taken, or proposed to be taken, in relation to the disclosure (PID Act s 10(1)); and
* When the disclosure process has concluded, the outcome of the investigation and the reasons for taking any action following the investigation (PID Act, s 10(4)).

A PID Officer may also provide the Discloser with a progress report during any investigation, either on their initiative or upon the Discloser’s request, (PID Act, ss10(2) and (3)).

Restrictions apply to what information can be provided in reports to a Discloser. The PID Act s 11 prevents provision of information that would be likely to adversely affect:

* Any person’s safety
* The investigation of an offence or possible offence; or
* Necessary confidentiality about the existence or identity of a person who has made a disclosure of public interest information, other than the person being given the information.

A PID Officer is also prevented from giving any information they must not disclose under the [*Corruption, Crime and Misconduct Act 2003*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_41982.pdf/%24FILE/Corruption%20Crime%20and%20Misconduct%20Act%202003%20-%20%5B07-a0-00%5D.pdf?OpenElement) ss 151, 152 or 153.

### Record keeping

A PID Officer will make records of actions and investigative inquiries undertaken following receipt of an appropriate disclosure of public interest information. These records along with any other documentation or files relating to the disclosure, whether paper or electronic, will be stored securely and only accessed by authorised persons.

# How to make a public interest disclosure

## Before you make a disclosure

The Department strongly encourages anyone thinking about making a public interest disclosure to seek advice from a Departmental PID Officer (‘*proper authority*’) before they do. A disclosure must be made to a proper authority for it to be covered by the PID Act.

A number of other requirements apply to the Discloser, so it is important to understand the rights and responsibilities in the process. This information is outlined in the PSC’s [*‘Don’t be*](https://publicsector.wa.gov.au/sites/default/files/documents/your_guide_to_public_interest_disclosures_1.pdf)[*Afraid to Speak Up’*](https://publicsector.wa.gov.au/sites/default/files/documents/your_guide_to_public_interest_disclosures_1.pdf) and [*When someone speaks up: guide for managers*](https://publicsector.wa.gov.au/sites/default/files/documents/when_someone_speaks_up_managers_guide.pdf). The PID Officer will be able to expand on this information specific to our Department.

Within the Department, a number of officers attached to the Professional Standards Division and some other Divisions are specified with the authority as the persons responsible for receiving disclosures of public interest information in accordance with the PID Act s 23(1)(a). For the purposes of this procedure a PID Officer(s) is the proper authority designated under the PID Act s 5(3)(h), to deal with information that falls within the Department’s sphere of responsibility.

A PID Officer can be contacted by using the Safe Line number, 1300 880532. PID Officers for the Department who you can make contact with are also recorded on the PID Officer Contact Directory, maintained by the PSC [PID Officer Contact Directory](https://publicsector.wa.gov.au/document/pid-officer-contact-directory).

Initial discussions between the Discloser and the PID Officer should be general in nature and should not discuss the specific details of the disclosure until the Discloser understands their rights and responsibilities under the PID Act. The PID Officer will also let the Discloser know that they need to make the disclosure voluntarily and consciously – a person will never be forced to make a disclosure. A disclosure cannot be withdrawn once it has been made.

Once a disclosure is received, it will be assessed to determine if the matter relates to ‘public interest information’ (discussed further at section 2.1 of the PID Act). The mere lodgement of a disclosure does not necessarily mean that it has been accepted by the Proper Authority and that the provisions of the PID Act will apply. Whilst the matter is being assessed, the Discloser must maintain confidentiality to ensure a potential public interest disclosure is not compromised. If accepted as a public interest disclosure, the PID Officer is obliged to take action and may continue to look into the matters within the disclosure, irrespective of the Discloser’s continued approval.

These initial discussions with a PID Officer may help persons in deciding whether to make a public interest disclosure and also enable the PID Officer to ascertain if the information would be covered by the PID Act. If the information appears not to be the type covered by the PID Act, the PID Officer will discuss other mechanisms through which issues may be made, for example, the Department’s general complaints or grievance resolution process.

Departmental PID Officers will be able to provide more detailed information about the Department’s disclosure process and what people can expect from it.

You can also contact the Public Sector Commission Advisory Line on (08) 6552 8888 (or 1800 676 607 for country callers) for general information about the disclosure process.

**What is ‘sphere of responsibility’?**

Under the PID Act s 5(3)(h), the PID Officer for an 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:

* Matters that relate to the Department; or
* A public officer (Employee) or Public Sector Contractor of the Department; or
* A matter or person that the Department has a function or power to investigate.

The Department’s Intranet contains further details including *‘sphere of responsibility’*

examples.

The proper authority to which you need to make the disclosure depends on the type of disclosure information. Where the information is outside of a PID Officer’s ‘sphere of responsibility’, it may need to be made to another proper authority for it to be considered as a public interest disclosure and for the Discloser to receive the protections of the PID Act. A list of proper authorities and the information they can receive is covered in the PSC publication, [*Don’t be afraid to speak up*](https://publicsector.wa.gov.au/sites/default/files/documents/your_guide_to_public_interest_disclosures_1.pdf).

## Making the disclosure

A Discloser needs to clearly identify that they are making a public interest disclosure. 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. Disclosure reports are to be made in writing and the Department encourages staff to use the [PID disclosure lodgement form](https://department.justice.wa.gov.au/_files/PID-lodgement-form.docx). There is no requirement to use the form but it will help to define the details of the disclosure. A Discloser may complete the form or a PID Officer may assist. The Discloser is required to sign the disclosure form to acknowledge they are making it voluntarily and consciously.

Anonymous reports may be dealt with, however it is best if the Discloser identifies themselves to the person to whom the report is made. This will help to provide the Discloser with any necessary protection and support, including from the risk of reprisal. It also helps to give feedback to the Discloser about the progress and outcome of any investigation.

If the Discloser decides to make an anonymous disclosure it should be understood that it may be more difficult to investigate, if further information is required. The Department is also not able to provide any reports about the progress or final outcome of a matter, if the Discloser chooses to remain anonymous.

An anonymous disclosure may not prevent the Discloser from being identified during an investigation. Additionally, if our PID Officer does not know who made the disclosure, it will be difficult for them to ensure the Discloser is protected and to prevent any reprisal or detrimental action.

A member of the public may also make a disclosure, however the Department cannot provide the Discloser the same protections afforded to an employee under the PID Act. A member of the public may obtain contact details of a PID Officer for the Department by accessing the Public Sector Commission PID Contact Directory [PSC PID Officer Contact Directory](https://publicsector.wa.gov.au/document/pid-officer-contact-directory).

**Submitting a disclosure:**

Declarations must be addressed as below and sent marked:

**Strictly confidential**

Principal PID Officer - Public Interest Disclosure  
Department of Justice  
Professional Standards Division  
Locked Bag 22  
CLOISTERS SQUARE WA 6850

## Determining whether your matter is an appropriate disclosure

Once the PID Officer has received the disclosure they will assess whether it meets the requirements under the PID Act. It may be that the PID Officer undertakes initial inquiries and decides not to take the matter any further, as it does not constitute an appropriate public interest disclosure. If the disclosure is not one to which the PID Act applies, the PID Officer will let the Discloser know the reasons for their decision (unless you made an anonymous disclosure) and make proper and adequate records about it. Some matters raised within the disclosure may not be matters to which the PID Act applies and the PID Officer may discuss with the Discloser other pathways to report these matters.

If the disclosure is one to which the PID Act applies, the PID Officer will ensure proper and adequate records are made and will communicate with the Discloser further, unless it is an anonymous disclosure.

The PID Officer will notify the Discloser within three months about what we plan to do in dealing with the disclosure, unless it is an anonymous disclosure.

## Determining whether your public interest disclosure will be investigated

After assessing the disclosure as one to which the PID Act applies, the PID Officer will consider whether it will be investigated, guided by the PID Act s 8. The reasons a PID Officer may not investigate the disclosure include:

* The matter is trivial
* The disclosure is vexatious or frivolous
* There is no reasonable prospect of obtaining sufficient evidence due to the time that has elapsed since the matter(s) occurred; or
* The matter is being or has been adequately or properly investigated by another proper authority (PID Act, s 5(3)).

The PID Officer will make proper and adequate records of their decision and reasons about whether to investigate or not.

Although your issue may not be a PID matter, it may still warrant an investigation. Please see the [JustUs - Reporting Misconduct](http://justus/intranet/department/standards/Pages/reporting-misconduct.aspx) page for more information.

## Referring public interest matters

Where the PID Officer assesses the disclosure as one to which the PID Act applies, but they do not have the functions or power to investigate one or more matters within the disclosure, they will refer the information to the appropriate authority for investigation as provided for under the PID Act. Alternatively, a Discloser may also be able to make a disclosure directly to this new authority, if they wish to receive reports from them about the disclosure.

For example, a PID officer may need to refer an allegation of an offence supported by evidence to the Western Australia Police Force for investigation.

## Investigating the disclosure

The PID officer will investigate or cause an investigation to be undertaken in respect to any matters in the disclosure within the ‘sphere of responsibility’.

In causing the disclosure to be investigated, the PID officer will ensure that the person undertaking the investigation understands the requirements of the PID Act, in particular the confidentiality requirements and protections for Disclosers.

The PID officer will only provide the name of the Discloser and that of the subject of the disclosure to the Investigator in accordance with of the PID Act s 16.

When investigating the disclosure, the PID Officer or Investigator is limited by the functions and powers derived from our operating legislation. The PID Act does not provide for any additional investigative powers.

If you are an employee Discloser, you are expected to co-operate with any investigation into the disclosure to maintain the protections under the PID Act. A Discloser is also expected to act in accordance with the Department’s [Code of Conduct](http://justus/intranet/department/Pages/code-conduct.aspx) at all times.

Employees who are the subject of the disclosure can clarify the process and what to expect with a PID Officer.

The PID Officer may also decide to discontinue an investigation in accordance with the PID Act s 8(2). If this occurs, the Discloser will be provided with reasons for their decision in accordance with PID Act s 8(3), unless made anonymously. The PID Officer may also notify any subject(s) of the disclosure if they discontinue the investigation.

To ensure the disclosure is adequately and properly investigated a PID Officer, or other investigator, will be guided by the same procedures used in all Departmental investigations.

## What are your responsibilities if you are the subject of a disclosure?

A subject of a disclosure is the person (the Respondent) about whom an allegation of a public interest disclosure has been made.

The Department ensures that all persons will be treated fairly and impartially throughout the process, and inform them of their rights and obligations. The PID Officer will generally keep the parties involved informed during any investigation, although they cannot release any information to a person that may prejudice the investigation or does not comply with the provisions of the PID Act. Employees are expected to act in accordance with the Department’s [Code of Conduct](http://justus/intranet/department/Pages/code-conduct.aspx) at all times.

The PID Act provides the Respondent with rights and obligations as a person subject to a disclosure. Firstly, the Respondent has a right to have their identity kept confidential under the PID Act s 16(3), unless one of the following conditions apply:

* The Respondent consents to their identity being disclosed
* It is necessary to enable the matter to be investigated effectively
* It is necessary to do so in taking action within s 9 of the PID Act
* There are reasonable grounds to believe that it is necessary to prevent or minimise the risk of injury to any person or damage to any property
* Is made in accordance with a court order or other body having authority to hear evidence
* It is made in accordance with the [Corruption, Crime and Misconduct Act 2003](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_41982.pdf/%24FILE/Corruption%20Crime%20and%20Misconduct%20Act%202003%20-%20%5B07-a0-00%5D.pdf?OpenElement) ss. 152 and 153.

The Department will also provide appropriate natural justice. This means that, before any disciplinary or other action is taken against the person under the PID Act s 9, the Respondent will be given the opportunity to:

* Be informed of the substance of the allegations
* Make a submission either verbally or in writing in relation to the matter.

If you are the subject of a disclosure, you must not disclose information that might identify or tend to identify the identity of the Discloser or a person who you think might be the Discloser, as they also have rights to confidentiality under the PID Act.

It is an offence under the PID Act s 16, to disclose information that might identify or tend to identify any person who has made a disclosure under the PID Act.

A Respondent must not engage in reprisal action, threaten anyone with reprisal action, or have someone else conduct this action on their behalf because someone has made, or intends to make, a disclosure. It is still an offence to conduct this action against any person it is believed has made the disclosure even if they were not the individual who actually made the disclosure (PID Act s 14(1)).

# Taking action

A PID Officer will take action where they form the opinion that a person may be, may have been or may in the future be involved in conduct which may be the subject of a public interest disclosure. Usually, the PID Officer will form this opinion at the conclusion of an investigation, although there may be instances where they need to take immediate action and the PID Act enables them to do this.

Action the PID Officer may take under the PID Act s 9 includes, but is not limited to:

* Preventing the matter disclosed from continuing or occurring
* Referring the matter to the Western Australian Police or other appropriate body; or
* Taking disciplinary action against a person responsible for the matter.

The options above are not mutually exclusive. The PID Officer may take more than one action depending on the circumstances. For example, the PID Officer may seek to terminate the employment of an Employee caught stealing, and refer the matter to the Western Australia Police Force.

In taking action, a PID Officer and/or the Department is limited by the powers and functions derived from the Department’s operating legislation. The PID Act does not provide for any additional powers to take action. The Department is also guided by what is necessary and reasonable in the circumstances.

Before taking any action the Respondent will be given an opportunity to respond, either verbally or in writing, to ensure procedural fairness.

## Confidentiality and record keeping

When taking action, confidentiality will be maintained in accordance with the PID Act. A PID Officer will keep appropriate records about any action taken, as well as recording a summary of this action in the register maintained for that purpose.

# After the public interest disclosure process has been finalised

The PID Act places no further obligations on the Department or its PID Officers after the disclosure process is complete. However, the confidentiality requirements of the PID Act continue to apply to the Discloser and all other people involved with the disclosure.

The PID Act does not provide for the Discloser to appeal the outcome of the disclosure process. The Discloser may be able to make another disclosure to another proper authority, if the information relates to their functions or sphere of responsibility (PID Act s 5). See [*Don’t be afraid to speak up*](https://publicsector.wa.gov.au/sites/default/files/documents/your_guide_to_public_interest_disclosures_1.pdf) for the correct proper authority for your disclosure.

However, this ‘new’ proper authority may be able to decline to investigate the disclosure under the PID Act s 8, if they consider the matter(s) has already been properly or adequately investigated (as a public interest disclosure).

# Making a disclosure to a journalist

The PID Act s 7A, provides for certain circumstances where a Discloser may be able to make a protected disclosure to a journalist, These circumstances apply where the Discloser has first made a disclosure to the PID Officer or another proper authority named in the PID Act (outlined in s 5 or [*Don’t be afraid to speak up*](https://publicsector.wa.gov.au/sites/default/files/documents/your_guide_to_public_interest_disclosures_1.pdf)).

Importantly, the PID Act states that to attract the privileges and protections of the PID Act when disclosing to a journalist, the Discloser must disclose information that is substantially the same as what was disclosed in the original disclosure and the PID Officer that received the original disclosure:

* Did not notify the Discloser within three months of making the disclosure about actions they propose to take or have already taken
* Refused to investigate, or discontinued the investigation of, a matter raised in the disclosure
* Did not complete an investigation within six months of the Discloser making the disclosure
* Completed an investigation but did not recommend that action be taken; or
* Did not provide the Discloser with a report stating the outcome of any investigation or any action proposed or taken and the reasons for those actions.

The Department is committed to ensuring that it provides the notifications required under the PID Act and that the Discloser understands the reasons for decisions and actions. If a Discloser is considering making a disclosure to a journalist because they believe their circumstances meet one or more of the requirements outlined above, the Department would encourage the Discloser to discuss this with the PID Officer prior to disclosure to a journalist.

It is also recommended that the Discloser seek their own legal advice before taking any action in relation to matters that have been disclosed under the PID Act.

If a Discloser makes an anonymous disclosure they may not be able to demonstrate they meet the above requirements and the Department is not obliged to provide the Discloser with any notifications about what happens to the disclosure.

# References

## Policies and directives

* Department’s [Code of Conduct](http://justus/intranet/department/Pages/code-conduct.aspx)
* [PSC PID Officers Code of Conduct and Integrity](https://publicsector.wa.gov.au/sites/default/files/documents/public_interest_disclosure_code_of_conduct_and_integrity_1.pdf)
* [Public Interest Disclosure (PID): Guidelines for public authorities](https://publicsector.wa.gov.au/document/public-interest-disclosure-pid-guidelines-public-authorities)

## Legislation

* [*Public Interest Disclosure Act 2003*](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a6372.html)
* [Public Interest Disclosure Regulations 2003](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s33774.html)
* [*Corruption, Crime and Misconduct Act 2003*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_41982.pdf/%24FILE/Corruption%20Crime%20and%20Misconduct%20Act%202003%20-%20%5B07-a0-00%5D.pdf?OpenElement)
* [Criminal Code Compilation Act 1913](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a196.html)

## Guidelines

* [*Don’t be Afraid to Speak Up*](https://publicsector.wa.gov.au/sites/default/files/documents/your_guide_to_public_interest_disclosures_1.pdf)
* [*When someone speaks up: guide for managers*](https://publicsector.wa.gov.au/sites/default/files/documents/when_someone_speaks_up_managers_guide.pdf)

## Procedures and forms

* PSC’s [PID Consent to disclosure of identifying information form](https://publicsector.wa.gov.au/document/consent-disclosure-identifying-information-form)
* PSC’s [PID Notification of disclosure of identifying information form](https://publicsector.wa.gov.au/document/notification-disclosure-identifying-information-form)
* [PID disclosure lodgement form](https://department.justice.wa.gov.au/_files/PID-lodgement-form.docx)

# Approval

Approved by

|  |  |  |  |
| --- | --- | --- | --- |
| Name: | Dr Adam Tomison |  |  |
| Position title: | Director General |  |  |
| Signature: | (Signed) | Date:12 /11/2019 | |

# Document version history

|  |  |  |  |
| --- | --- | --- | --- |
| Version no | Primary author(s) | Description of version | Date completed |
| 0.1 | Peter S Murdoch | Initial draft | 12 April 2019 |
| 0.2 | Michelle Lindley SSO | Content review | 14 March 2019 |
| 0.3 | Paul Bouwman | Content review | 25 June 2019 |
| 0.4 | Tony Warwick | Content review | 27 June 2019 |
| 0.5 | Warwick/Bouwman | Content review | 4 July 2019 |
| 0.6 | Naomi Eagling | Content review | 5 July 2019 |
| 0.7 | Warwick/Bouwman | Content review | 15 July 2019 |
| 0.8 | Berragan/Bouwman | Content review | 22 August 2019 |
| 0.9 | Hardman/Berragan | Content review | 26 Sept 2019 |
| 0.10 | Trevor Wynn | Draft Final | 9 October 2019 |
| 0.11 | Margherita Lizzi | Proofing | 22 October 2019 |
| 0.12 | Trevor Wynn | Draft Final Proofed | 23 October 2019 |
| 1.0 | Trevor Wynn | Final approved (as per 0.12 signed by DG) | 11 November 2019 |

# Distribution list

|  |  |  |  |
| --- | --- | --- | --- |
| Date | Name | Position title | Business area |
| 27 June 2019 | Trevor Wynn | Assistant Director | Integrity and Accountability |
| 5 July 2019 | Naomi Eagling | Assistant State Counsel | SSO |
| 15 July 2019 | Shayne Maines | Executive Director | PSD |
| July 2019 | Dr Adam Tomison | Director General | Department of Justice |
| August 2019 | Dr Adam Tomison | Director General | Department of Justice |
| October 2019 | Dr Adam Tomison | Director General | Department of Justice |

1. As defined in the *Public Interest Disclosure Act 2003* Part 2 Division 2 Section 7. [↑](#footnote-ref-1)