

# DON'T BE AFRAID TO SPEAK UP

The *Public Interest Disclosure Act 2003*  
encourages people to come forward with  
information about wrong-doing without fear of  
reprisal

“Your silence  
gives consent”

Plato





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## About public interest disclosures

The *Public Interest Disclosure Act 2003* (the Act) enables people to make disclosures about wrongdoing within the State public sector, local government and public universities without fear of reprisal.

The Act aims to ensure openness and accountability in government by encouraging people to make disclosures and protecting them when they do.

## Don't be afraid to speak up

The Act allows you to disclose public interest information and provides you with protection for doing so. Making a public interest disclosure (a disclosure) enables public authorities to investigate and deal straight away with matters that may otherwise have gone unnoticed or unreported.

Making a disclosure or 'whistleblowing' is a serious matter and in many cases it will take courage and trust for people holding information to come forward.

This brochure may help you to decide whether making a disclosure under the Act is the best avenue for you to use.

### What is a public interest disclosure?

A disclosure must relate to a matter of public interest and tend to show wrongdoing by a public body when performing a public function.

### Who can make a disclosure?

Anyone who believes on reasonable grounds that the information they have is or may be true can make a disclosure, including an employee of a public authority and a member of the public.

### What is a public body?

Public bodies include:

- A public authority (includes a State Government organisation, local government, regional local government, or a public university).
- A public officer (includes a State public service officer, an employee of a public authority, a minister, a member of Parliament, a judicial officer, a police officer, a holder of office under the State, or an officer of the Commonwealth exercising a function on behalf of the State).
- A public sector contractor (a person or organisation engaged by a public authority, or a subcontractor of this person, for the supply of goods and services, or the performance of a public function).

## What is a public function?

The information must relate to the performance of a public function of the public body. For example, the Act would not apply to information that an employee of a public authority had engaged in criminal behaviour unconnected with their employment.

## What is wrong-doing according to the Act?

Your disclosure must tend to show the public body's involvement in one or more of the following:

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

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

A disclosure is more than a general complaint about dissatisfaction with a product or service or a decision by government, and is more than a personal grievance that can be resolved by agreement between parties. In order to be covered by the Act, the information needs to relate to a matter of public interest.

### Who do I make a disclosure to?

Your disclosure must be made to a proper authority. The proper authority for receiving your information depends on the type of information you have.

<b>When the disclosure relates to:    The proper authority is:</b>	
A public authority or an officer of the public authority	PID officer of the public authority
Offences under State law	A police officer or the Corruption and Crime Commission
Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources	PID officer of the public authority concerned or the Office of the Auditor General
Matters of administration affecting someone in their personal capacity falling within the jurisdiction of the Ombudsman	PID officer of the agency concerned or the WA Ombudsman
A police officer	Commissioner of Police or the Corruption and Crime Commission
A member of the Legislative Assembly	Speaker of the Legislative Assembly
A member of the Legislative Council	President of the Legislative Council
A judicial officer	Chief Justice
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>	PID officer of the public authority concerned, the Ombudsman or the Public Sector Commissioner

Generally, disclosures about a public authority or its officers or contractors should be made to the PID officer of the public authority concerned. Depending on the type of information you have, a disclosure may be made to more than one authority.

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

Not if you want the protections available under the Act. If you make a disclosure to someone who is not a PID officer, then the Act will not apply and you and your disclosure will not be protected.

# How do I make a public interest disclosure?

## What do I do first?

Before making a disclosure, you should contact the PID officer in the relevant authority to find out more about:

- how to make the disclosure and who you should disclose to
- your rights and responsibilities
- the protections that will apply
- whether the information you have is covered by the Act.

If your information is not covered by the Act you can still make your complaint to the public authority concerned using its grievance process (if you are or were an employee at the time the incident occurred) or its complaints management process (if you are a member of the public).

Once you have been informed about the Act and your rights and responsibilities, you must make it clear that you have chosen to make your disclosure under the Act. Generally, the PID officer will have a PID lodgement form for you to sign.

If you don't know who to speak to about making a disclosure or need additional information, then call the PID Advice and Referral Line on 1800 676 607.

If you choose to make a disclosure under the Act you must ensure you do not discuss the matter with anyone other than the PID officer or the person conducting the investigation. You may lose your immunity under the Act and breach the confidentiality provisions which may incur a penalty.



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

No. You can make a disclosure at any time including about matters that occurred before the commencement of the Act (1 July 2003).

## Can I make my disclosure anonymously?

Yes. You are able to make your disclosure anonymously, provided you make it to a proper authority and you clearly indicate that you are intending to make a disclosure under the Act.

## Do I need to provide evidence to support my disclosure?

At the time you make your disclosure, you must believe on reasonable grounds that the information you have is, or may be, true. False or misleading disclosures attract a penalty. The information you have must be more than a mere suspicion and show, or tend to show, that wrongdoing is, has, or is about to occur. Therefore, supporting documentation, names of witnesses and relevant dates when the alleged conduct occurred would be extremely useful.

# What happens after I make a disclosure?

## What will the PID officer do first?

The PID officer will examine the information and decide whether it is an appropriate disclosure of public interest information. If it is not, they will let you know.

## Will my disclosure be investigated?

If the PID officer considers that the disclosure is an appropriate disclosure of public interest information, they must investigate or cause to investigate the matter if they have the power to do so, unless:

- the matter is trivial, frivolous or vexatious
- there is no reasonable prospect of obtaining sufficient evidence due to the time that has elapsed since the conduct occurred
- the matter is or has been properly investigated under the Act by another proper authority.

Where a proper authority does not have sufficient power under its own legislation, it may refer your information to another proper authority with relevant powers for investigation.

## If I make a disclosure, are there any obligations on me?

Yes. After making a disclosure, you must:

- not disclose any information contained in your disclosure to anyone
- not reveal any information that would identify or tend to identify the person about whom the disclosure has been made
- assist anyone investigating the disclosure by supplying any information on request.

## If the disclosure is substantiated will action be taken?

Yes. The proper authority must take such action as is necessary, reasonable and within its functions and powers to:

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

## Can I withdraw a disclosure once I have made it?

No. You do not 'own' a disclosure of public interest information once it has been made and it cannot be withdrawn. There are obligations on a proper authority to investigate disclosures of public interest information.

## Will I be kept informed of the progress and outcome?

Yes. The authority must inform you within three months of making your disclosure of what it has done or intends to do about your disclosure. If the investigation is ongoing, then you can request a progress report. You are entitled to a report on the outcome of the investigation and any action taken when the investigation is complete.

## Can I appeal against the findings?

No. If you are dissatisfied with the outcome of the investigation, you may be able to make a disclosure to another proper authority. This other authority may, however, decide not to investigate your disclosure if it is satisfied that the matter has been investigated properly.

# How does the PID Act protect me?

## How am I protected if I make a public interest disclosure?

The Act has been introduced to reassure and encourage those who want to speak out by providing protection through a process of making disclosures. This process will safeguard you as long as the correct procedure is used for making your disclosure.

There are three types of protection provided under the Act.

- Immunity from civil or criminal liability, disciplinary action, dismissal and termination of employment or for any breach of duty of secrecy or confidentiality that may apply to you, as a result of making the disclosure.
- The public authority will take all reasonable steps to protect you from detrimental action or the threat of detrimental action if you are an employee of the public authority.
- Your identity will be protected, except in certain circumstances (including where it is necessary to do so to enable the matter to be investigated).

The Act requires that you be informed before your identity is disclosed.

### **What is detrimental action?**

Detrimental action is action such as dismissing you or taking disciplinary action against you and also includes any action that:

- causes you injury, damage or loss
- intimidates or harasses you
- discriminates against or disadvantages you in your employment.

## What if someone else takes detrimental action against you?

Advise the PID officer to whom you made the disclosure so that further action can be taken by the agency. Alternatively, the Act provides you with the choice of either making a complaint of victimisation to the Equal Opportunity Commission (see back page for contact details) or taking civil action.

## What protection is there for the person about whom the disclosure is made?

In addition to protecting the identity of the person making a disclosure, the Act protects the identity of the person about whom a disclosure is made. The Act also requires that natural justice, or procedural fairness, be accorded to those who may be the subject of a disclosure.

### Important things to remember

- Seek advice from the PID officer in the public authority concerned, or call the PID Advice and Referral Line on 1800 676 607 before making a disclosure.
- Be careful about whom you make your disclosure to and how you make it. To be protected under the Act you must make your disclosure to a proper authority.
- Be discreet by keeping your intentions to yourself. Do not broadcast the fact that you are going to make or have made a disclosure. Ensure your information is provided discreetly.
- Don't breach confidentiality by going to the media or any other person with the information after you have made a disclosure. You may lose your immunity under the Act and you may incur a penalty.
- Check your information is or may be true. Making false or misleading disclosures is an offence under the Act and carries a penalty.

## Useful contacts

### **For advice about the Code of Ethics and Public Sector Standards:**

Public Sector Commission  
Phone: (08) 6552 8888  
Fax: (08) 6552 8501  
Email: [admin@psc.wa.gov.au](mailto:admin@psc.wa.gov.au)  
Website: [www.publicsector.wa.gov.au](http://www.publicsector.wa.gov.au)

### **For advice about misconduct and corruption:**

Corruption and Crime Commission  
Phone: (08) 9215 4888  
Outside metro: 1800 809 000  
Fax: (08) 9215 4884  
Email: [info@ccc.wa.gov.au](mailto:info@ccc.wa.gov.au)  
Website: [www.ccc.wa.gov.au](http://www.ccc.wa.gov.au)

### **For advice on public authorities' accountability and performance requirements:**

Office of the Auditor General  
Phone: (08) 6557 7500  
Fax: (08) 6557 7600  
Email: [info@audit.wa.gov.au](mailto:info@audit.wa.gov.au)  
Website: [www.audit.wa.gov.au](http://www.audit.wa.gov.au)

### **For advice on offences under a State law:**

WA Police  
Phone: (08) 9223 1000  
Fax: (08) 9223 1010  
Website: [www.police.wa.gov.au](http://www.police.wa.gov.au)

### **For advice on matters of State and local government administration:**

Ombudsman of Western Australia  
Phone: (08) 9220 7555  
Outside metro: 1800 117 000  
Fax: (08) 9220 7500  
Email: [mail@ombudsman.wa.gov.au](mailto:mail@ombudsman.wa.gov.au)  
Website: [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au)

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

Equal Opportunity Commission  
Phone: (08) 9216 3900  
Fax: (08) 9216 3690  
Email: [eoc@eoc.wa.gov.au](mailto:eoc@eoc.wa.gov.au)  
Website: [www.eoc.wa.gov.au](http://www.eoc.wa.gov.au)



For further information about public interest disclosures visit  
[www.publicsector.wa.gov.au](http://www.publicsector.wa.gov.au)

For further information on making a disclosure contact the agency  
where the conduct occurred and ask for the PID officer.

A list of PID officers is available at  
[www.publicsector.wa.gov.au](http://www.publicsector.wa.gov.au)

Alternatively, contact the PID Advice and Referral Line:  
1800 676 607

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