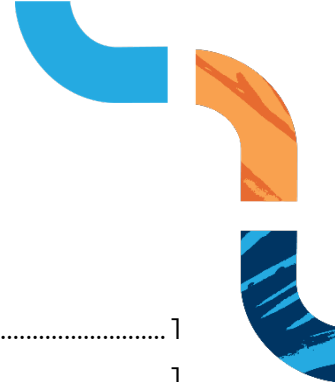





Public Interest Disclosure – Guide

November 2024



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

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

About public interest disclosures

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

We should all speak up

This guide contains broad information about making disclosures and making disclosures under the Act.

What is a Public Interest Disclosure?

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

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

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

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

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

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

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

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

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

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

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

A 'Public Interest Disclosure (PID) Officer' is the person who holds the specified position within a proper authority to receive public interest disclosures.

This person is determined by the Shire's Chief Executive Officer under section 23(1)(a) of the Act.

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

For more information on who a disclosure can be made, refer to the 'To who is a disclosure made?' section on page 3.

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

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

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

What is public interest information?

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

The information in your disclosure must tend to show the public authority, public officer or public sector contractor's involvement in one or more of the types of wrongdoing, as follows:

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

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

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

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

What is a public function?

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

To who is a disclosure made?

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

Category of public interest information	Appropriate proper authority (pursuant to the Act)
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)) or the PID Officer of the public authority concerned (s.5(3)(h))
Matters of administration affecting someone in their personal capacity falling within the jurisdiction of the 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 Assembly	Speaker of the Legislative Assembly (s.5(3)(f))
A Member of the Legislative Council	President of the Legislative Council (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)) or the PID Officer of the public authority concerned (s.5(3)(h))
A public authority or an officer of the public authority	PID Officer of the public authority (s.5(3)(h))

Are there other reporting avenues for my information?

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

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

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



Some of the other avenues for reporting your information include:

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

How does the Act protect me?

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

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

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

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

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

What is detrimental action?

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

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

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

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

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

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

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

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

What are my responsibilities?

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

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

It must be more than a mere suspicion, and show, or tend to show, that wrongdoing is occurring, has occurred or is about to occur.

It is an offence to knowingly or recklessly make a false or misleading disclosure. The penalty for doing so is \$12,000 or imprisonment for one year (section 24 of the Act).

You must assist the investigator where you can.

You need to supply information at the investigator's request where you can. If you do not, you may lose your protections (section 17(1)(a) of the Act).

Remember, it is not your role to investigate the matter, as you may affect the integrity of any ongoing investigation.

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

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

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

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

How do I make a public interest disclosure?

What should I do first?

Make sure you seek advice.

Before making a disclosure, contact the Shire's PID Officer to find out:

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

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

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

Is there a time limit for making a disclosure?

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

Should I make my disclosure to the PID Officer?

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

Generally, you should make disclosures about a public authority or its officers or contractors to the PID Officer of that public authority.

For some specific types of information, you may make a disclosure to another proper authority named in the Act. You may also be able to make a disclosure to more than one proper authority.

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

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

Can I make a disclosure to a journalist?

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

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

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

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

Can I make an anonymous disclosure?

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

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

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

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

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



Do I need to provide evidence to support my disclosure?

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

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

What do I need to know before making a disclosure?

The Act deals with disclosures by anyone but the information must be specific to the following areas:

- Improper conduct.
- An act or omission that constitutes an offence under State law, including corruption.
- Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources.
- Conduct involving a substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment.
- A matter of administration that can be investigated under Section 14 of the *Parliamentary Commissioner Act 1971*.

Before making a disclosure it is important that you are aware of the rights and responsibilities imposed on disclosers and others under the Act:

- It is an offence to make a disclosure if you know, or are reckless about, it being false and misleading.
- With some exceptions, the proper authority will investigate your information and you will be expected to cooperate.
- You will have to keep your information confidential – or else you may lose protection and commit an offence under the Act.

What you should ask yourself?

Making a disclosure is a serious matter and needs to be fully thought through. You should question:

- Whether you have reasonable grounds to believe the information you are thinking of disclosing is true, or otherwise you believe it to be true.
- If the information is something that you think is important to be disclosed because it is in the public interest.
- Have you sought proper advice.
- Have you fully understood your responsibilities under the Act if you make a disclosure.

How do I make a disclosure?

Before making a formal disclosure, you should make contact with the Shire's PID Officer to discuss the proposed disclosure, whether alternative means of dealing with the matter might be more appropriate, and to obtain information regarding your rights and responsibilities as a discloser.

I've made a disclosure

What next?

After assessing your information, the proper authority will have to investigate unless it considers:

- The matter to be trivial, vexatious or frivolous.
- There is no reasonable prospect of obtaining sufficient evidence, due to the lapse of time.
- The matter is being or has already been adequately or properly investigated by a proper authority.
- The information does not relate to a matter, which the proper authority has the function or power to investigate.

Will I be kept informed?

The PID Officer must inform you, within three months, of what has been done or they intend to do about your disclosure. You are entitled to a report on the outcome and any action taken when the investigation is complete.

What about confidentiality and my protection?

As the disclosure is about a public interest matter rather than a specific complaint, the Act requires confidentiality to be maintained on:

- The identity of the person making the disclosure.
- The information disclosed, including the identity of any person named in the disclosure.

There are exceptions to these rules and anyone thinking of making a disclosure should seek advice from the proper authority on these prior to making a disclosure.

A person making a disclosure is provided with protection under the Act for:

- Any reprisals.
- Civil and criminal liability in the event of making a disclosure.
- Dismissal or having services dispensed with.
- Breach of confidentiality or secrecy agreements.

A person alleging victimisation as a result of a disclosure can complain to the Equal Opportunity Commission or may be able to take civil action. The Equal Opportunity Commission is at Level 2 Westralia Square, 141 St Georges Terrace and can be contacted by calling (08) 9216 3900 or toll free on 1800 198 149 or via their [website](#).

Victimisation and reprisals

The Shire will take all reasonable steps to provide protection to staff who make such disclosures from any detrimental action in reprisal for the making of a disclosure.

The Shire does not tolerate any of its officers, employees or contractors engaging in acts of victimisation or reprisal against those who make public interest disclosures. These acts should be reported immediately to the PID Officer or the Chief Executive Officer.

PID Officer

Our PID Officer is responsible for receiving public interest disclosures relating to the Shire.

The Shire's appointed PID Officer is:

Mr Darren Kennedy
PO Box 567, Tom Price WA 6751
(08) 9188 4444
darren.kennedy@ashburton.wa.gov.au

Matters to be lodged are to be marked **Private and Confidential**.

Further Information

Other general information about the disclosure process is available by calling the Public Sector Commission Advisory Line on (08) 6552 8888 (or 1800 676 607 for country callers).

Acknowledgement

The source material for this guide, modified to suit the Shire's particular circumstances, was obtained from the Public Sector Commission's publication titled – Don't be afraid to speak up.
