

Thinking About Making a Public Interest Disclosure?

How to make a public interest disclosure

What is a Public Interest Disclosure?

The Public Interest Disclosure Act came into effect on 1 July 2003. The Act facilitates the disclosure of public interest information by providing protection for those who make disclosures and those who are the subject of disclosures. It provides a system for the matters disclosed to be investigated and for appropriate action to be taken. If you believe that something is wrong with the way a government official or public authority or government contractor is acting or going to act, it is in the public interest that you talk to someone who can do something about it.

You can make disclosures about information that predates 1 July 2003 and about public authorities that include State government agencies and departments, local governments and bodies established under a written law for a public purpose, such as a public university.



What do I Need to Know Before Making a Disclosure?

The Act deals with disclosures by anyone (not just government workers) but the information must be specific to the following areas:

Improper conduct	Irregular or unauthorised use of public resources
An offence under State law, including corruption	Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources
Administration matter(s) affecting you	Conduct involving a substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment

If your information falls outside of the above areas then you may still be able to make a complaint to a public authority, but this will not be a disclosure under the Act.

Before making a disclosure it is important that you are aware of the rights and responsibilities imposed on informants and others under the Act. Three issues are worth highlighting:

- 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 in doing so you will be expected to cooperate.
- you will have to keep your information confidential – or else you may lose protection under the Act and commit an offence under the Act.

The Act only confers protection where a disclosure is made to an appropriate proper authority. The identity of the appropriate proper authority will vary according to the kind of information to be disclosed.

Proper Authorities for Receiving Disclosures of Public Interest Information

<i>When the disclosure relates to...</i>	<i>the proper authority is...</i>
The sphere of responsibility of a public authority (eg matters about the public authority or its officers, or which the public authority has the function of investigating)	The Public Interest Disclosure Officer (PID Officer) of the Public Authority
Offences under State law.	A Police officer or the Anti-Corruption Commission
Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources	The PID Officer of the public authority concerned, or the Auditor General
Matters of administration affecting someone in their personal capacity that fall within the jurisdiction of the Ombudsman	The PID Officer of the public authority concerned, or the Ombudsman
A police officer	The Commissioner of Police or Ombudsman
A Member of the Legislative Council	The President of the Legislative Council
A Member of the Legislative Assembly	The Speaker of the Legislative Assembly
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>	The PID Officer of the public authority concerned, the Ombudsman or the Commissioner for Public Sector Standards
A person or a matter of a prescribed class	A person declared by the regulations to be a proper authority

Important Note: In addition, the information disclosed must be public interest information as defined in the Act.

Not all proper authorities to which a disclosure may be made will be required or have the power to investigate the information disclosed. In some cases it may be necessary for the informant or information to be referred to another proper authority with power to investigate the information.

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 something that you think is important to be disclosed because it is in the public interest. The information should not be tied to any personal agenda.
- have you sought proper advice.
- have you fully understood your responsibilities under the Act if you make a disclosure.

I Have Made a Disclosure - What Next?

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

- the matter to be trivial.
- the disclosure to be 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 under the Act.
- the information does not relate to the proper authority, an officer or contractor of the authority or a matter which the proper authority has the function or power to investigate.

Will I Be Kept Informed?

Yes – the proper authority must inform you within three months of what has been done or they intend to do about your disclosure.

Where the disclosure is under investigation you will be able to request a progress report.

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 Tce and can be contacted by calling (08) 9216-3900 or via their website eoc@equalopportunity.wa.gov.au).

After the Investigation

After making a disclosure you will not normally be required to do anything else other than cooperating with an investigation.

If you are unhappy with the proper authority's response to your disclosure there is no right of appeal under the Act to challenge the public authority's actions. You may, however, be able to make another disclosure to a different proper authority.

Victimisation and Reprisals

The Public Authority 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 Public Authority 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 Public Interest Disclosure Officer or the Principal Executive Officer.

Named Proper Authorities

When a public authority deals with a relevant disclosure it is referred to in the Act as a proper authority. There are some public authorities that are named as proper authorities in the Act that may be able to offer you assistance. These are listed below.

The **Anti-Corruption Commission** will be able to provide advice on corruption

Telephone (08) 9213-4300 Website: www.acc.wa.gov.au

The **Ombudsman** will be able to provide advice on matters of administration

Telephone (08) 9220-7555 Website www.ombudsman.wa.gov.au

The **Office of the Auditor General** will be able to provide advice on the use and management of public authorities' accountability and performance requirements

Telephone (08) 9222-7500 Website www.audit.wa.gov.au

The **Police Service** will be able to provide advice on offences under a State law

Telephone (08) 9222-1111 Website www.police.wa.gov.au

The **Office of the Public Sector Standards Commissioner** will be able to provide assistance to public authorities and public officers to comply with the Code of Conduct and Integrity, and with the Act

Telephone (08) 9260-6600 Website www.wa.gov.au/opssc/