



Government of **Western Australia**
South Regional **TAFE**

Public Interest Disclosure Manual

A procedure manual for all employees and public sector contractors when facilitating the disclosure of public interest information.

Contents

About this procedure manual.....	1
Definitions	1
Code of Conduct and Integrity – Public Sector Commission	3
Designation of Public Interest Disclosure (PID) Officers	3
Process for specifying PID positions and occupants	5
Training	5
Receiving and assessing public interest disclosures	5
Advice to disclosers	5
Proper authorities for receiving disclosures of public interest information	6
Assessing a public interest disclosure	7
Form of public interest disclosure	8
Investigating a public interest disclosure	8
Determining whether a matter must be investigated	8
Investigating information received as public interest disclosure	9
Maintaining confidentiality in an investigation	9
Recording the outcome of an investigation	10
Taking action following an investigation	11
Maintaining confidentiality when taking action	11
Recording action taken	11
Reporting to a discloser on the progress and outcome of an investigation	11
Protecting disclosers	12
Victimisation and reprisals	12
Confidentiality	12
Public Interest Disclosure Register	12
Reporting requirements	13
Principal Executive Officer Report	13
Commissioner’s Compliance Report	13
Report Format and Submission	13
Making information available	14
Appendix 1: Public Interest Disclosure Officer’s Declaration	15
Appendix 2: Flowchart for receiving and assessing disclosures	16
Appendix 3: Assessment Form for Public Interest Disclosure	17
Appendix 4: Public Interest Disclosure lodgement form	18
Appendix 5: Assessment checklist for public interest disclosure	20
Appendix 6: Flowchart for investigating information disclosed	21

Appendix 7: Consent to the disclosure of identifying information	22
Appendix 8: Notification to disclose identifying information	23
Appendix 9: Investigation checklist	24
Appendix 10: Taking action flowchart.....	26
Appendix 11: Assessment for Public Interest Disclosure	27
Appendix 12: Staff information.....	28
Appendix 13: Rights and responsibilities under the Public Interest Disclosure Act 2003	32
Making, receiving and assessing a public interest disclosure	33
Proper authorities for receiving disclosures of public interest information	36

About this procedure manual

This procedure manual is part of the Public Interest Disclosure Policy. It is intended to provide procedures for college staff (public officers), public sector contractors, and members of the public on the process of dealing with public interest information received by the college.

The procedures are written in accordance with the *Guidelines for Internal Procedures in Public Authorities* as prepared by the Public Sector Commissioner; which have assisted the college in ensuring that it facilitates disclosures of public interest information in accordance with the *Public Interest Disclosure Act 2003* (the PID Act).

The procedures are to be strictly complied with.

Definitions

Discloser

A person who makes a disclosure to a public authority.

Public authority

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

Proper authority

A person to whom an appropriate disclosure of public interest information has been made in accordance with section 5(3) of the Public Interest Disclosure Act 1993, except that it does not include the Chief Justice or the Presiding Officer of a House of Parliament.

"Section 5(3) –

A disclosure of public interest information is made to a proper authority if:

- a) *where the information relates to an act or omission that constitutes an offence under a written law – it is made to a police officer or to the Corruption and Crime Commission;*
- b) *where the information relates to a substantial unauthorised or irregular use of, or substantial mismanagement of public resources – it is made to the Auditor General;*
- c) *where the information relates to a matter of administration that can be investigated under section 13 of the Parliamentary Commissioner Act 1971 – it is made to the Parliamentary Commissioner or to a person who occupies a position specified under section 23(1)(a) [of the PID Act] in relation to the public authority concerned;*
- d) *where the information relates to a police officer – it is made to the Commissioner of Police or to the Corruption and Crime Commission;*
- e) *where the information relates to a judicial officer – it is made to the Chief Justice;*
- f) *where the information relates to a member of either House of Parliament – it is made to the Presiding Officer of the House of Parliament to which the member belongs;*
- g) *where the information relates to a public officer (other than a member of Parliament, a Minister of the Crown, a judicial officer or an officer referred to in schedule 1 [of the PID Act] to the Parliamentary Commissioner Act 1971) – it is made to the Commissioner or the*

Parliamentary Commissioner;

- h) where the information relates to a matter falling within the sphere of responsibility of a public authority – it is made to a person who occupies a position specified under section 23(1)(a) [of the PID Act] in relation to that authority; or*
- i) where the information relates to a person or a matter of a prescribed class – it is made to a person declared by the regulations to be a proper authority for the purposes of subsection (1) in relation to such information.”*

Public interest information

Information that tends to show that, in relation to its performance of a public function (either before or after the commencement of the PID Act), a public authority, a public officer, or a public sector contractor is, has been, or proposes to be, involved in:

- a) improper conduct;*
- b) an act or omission that constitutes an offence under a written law;*
- c) substantial unauthorised or irregular use of, or substantial mismanagement of, public resources;*
- d) an act done or omission that involves a substantial and specific risk of injury to public health; prejudice to public safety; or harm to the environment; or*
- e) a matter of administration that can be investigated under section 14 of the Parliamentary Commissioner Act 1971.*

Public officer

- a) a Minister of the Crown;*
- b) a Parliamentary Secretary appointed under section 44A of the Constitution Acts Amendment Act 1899;*
- c) a member of either House of Parliament;*
- d) a judicial officer;*
- e) a police officer;*
- f) a person authorised under a written law to execute or serve any process of a court or tribunal for remuneration;*
- g) a public service officer within the meaning of the Public Sector Management Act 1994;*
- h) a member, officer, or employee of a public authority;*
- i) the holder of –
 - i) an office that is established for a public purpose under a written law; or*
 - ii) an office that is established by the Governor or a Minister;**
- j) an officer of the Commonwealth who exercises or discharges on behalf of this State a function under a written law; or*
- k) any other person holding office under the State of Western Australia*

Public sector contractor

- a) a person who, other than as an employee, contracts with a public authority or the State of Western Australia to supply goods or services to or on behalf of the authority or the State or as directed in accordance with the contract;*
- b) A person who, other than as an employee, contracts with a public authority or the state of Western Australia to perform a public functions; or*
- c) a subcontractor or employee of a person referred to in paragraph a) or b) and each person who contracts with another person for the execution of the whole or part of the requirements of a contract referred to in those paragraphs*

Code of Conduct and Integrity – Public Sector Commission

The Code of Conduct and Integrity (the Code) is established by the Public Sector Commissioner under section 20 of the PID Act, and is to be complied with by any person to whom a disclosure is made under the Act.

The Code uses as its ethical base, the principles of personal integrity, relationships with others and accountability as referred to in the *Western Australian Public Sector Code of Ethics*. Consistent with those principles, to meet the minimum standards of conduct and integrity, persons receiving disclosures must:

- Be professional and courteous to those involved in a disclosure, and give prompt attention to all their lawful requirements;
- Not use any circumstance or information connected to a disclosure for personal profit or gain;
- Take all reasonable steps to seek to ensure informants who make a public interest disclosure are protected in accordance with the provisions specified in the PID Act;
- Take all reasonable steps to seek to ensure that persons who are the subject of a disclosure are also provided with appropriate safeguards and protections as specified in the PID Act;
- Maintain records that ensure all action taken about the receipt and processing of a disclosure is reviewable;
- Declare to an appropriate person, in writing, any interests that may conflict with their obligations to impartially receive and process disclosures;
- Immediately report corrupt behaviour that has been, or may be occurring, to an appropriate authority; and
- Provide information to the informant about their rights and responsibilities and the possible implications of lodging a public interest disclosure.

Designation of Public Interest Disclosure (PID) Officers

Appropriate disclosures of public interest information can only be made to a proper authority. The college is a proper authority for the purposes of the PID Act. The PID Officer is a proper authority for the purposes of the PID Act.

When the disclosure relates to	the proper authority is
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 PID Officer of the public authority
Offences under State law	A police officer for the Corruption and Crime 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 falling 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 the Corruption and Crime Commission
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	The 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 Public Sector Commissioner (the Commissioner)
A person or a matter of a prescribed class	A person declared by the regulations to be a proper authority

The Managing Director of the college is required to designate an occupant of a specified position within the college as a person responsible for receiving disclosures of public interest information.

PID Officers are responsible for receiving disclosures of public interest information relating to matters falling within the sphere of responsibility of the college. A contact list of PID Officers can be found on the college intranet and website.

Process for specifying PID positions and occupants

The Principal PID Officer and the Managing Director will review the PIDO structure as necessary. This will occur at least annually and as needed when officers move in and out of specified PID positions. This may also occur on a case by case basis to ensure that the college can cause an investigation to occur.

The Managing Director may at any time specify a position and authorise an occupant of that position as a PID Officer.

Once a position and officer are authorised by the Managing Director the PIDO will be required to complete a **Public Interest Disclosure Officers Declaration (Appendix 1)**. The signed declaration will be held by the PCG and a copy will be sent to the Public Sector Commission along with any relevant correspondence to:

Public Sector Commission

Dumas House

2 Havelock Street

Dumas House

West Perth WA 6005

Facsimile: (08) 6552 8500

Email: PIDRegister@psc.wa.gov.au Web: www.wa.gov.au

The PID Officers Contact List is updated and made available on the Public Sector Commission website.

Training

All authorised PID Officers must undertake PID training within two months of commencing in the position if the duration is three months or longer. The PIDO will undertake training provided by the Public Sector Commission.

Receiving and assessing public interest disclosures

Advice to disclosers

Before a discloser makes a public interest disclosure to a PID Officer, the PID Officer shall advise the discloser of the following matters:

- a) If they choose to make a public interest disclosure they will not as a result
 - Incur any civil or criminal liability
 - Be liable to any disciplinary action under state law
 - Be liable to be dismissed or have his or her services dispensed with or otherwise terminated
 - Be liable for any breach of a duty of secrecy or confidentiality or any other applicable restriction on disclosure.
- b) If they choose to make a public interest disclosure they may have the right to take civil proceedings if they are subject to detrimental action as a result of making the disclosure.

- c) If they choose to make a public interest disclosure then their identity will not be disclosed except in accordance with section 16 of the PID Act (i.e. disclosure of their identity may be required in the course of the investigations).
- d) If they choose to make a public interest disclosure then they will have the right to be informed of the progress and outcome of the investigation and action taken as a result.
- e) If they choose to make a public interest disclosure:
 - they are only protected if they believe on reasonable grounds that the information to be disclosed is or may be true
 - they will commit an offence, and lose the protection of the PID Act, if they know the information to be false or misleading in a material particular or are reckless about whether the information is false or misleading in a material particular
 - they will forfeit the protection given by the PID Act if they disclose the information otherwise than under the PID Act (i.e. if they provide the information to the media or a person who is not a proper authority)
 - they will forfeit the protection given by the PID Act if they fail, without reasonable excuse, to assist a person investigating the matter to which the information relates, by supplying any information requested
 - they may commit an offence if they disclose information that might identify or tend to identify anyone as a person in respect of whom a disclosure of public interest information has been made.
- f) The disclosure will only be protected if the PID Officer is the proper authority for receiving that kind of information, as indicated in the following table:

Proper authorities for receiving disclosures of public interest information

When the disclosure relates to	the proper authority is
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 PID Officer of the public authority
Offences under State law	A police officer for the Corruption and Crime 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 (WA)
Matters of administration affecting someone in their personal capacity	The PID Officer of the public authority concerned or the Ombudsman (WA)

falling within the jurisdiction of the Ombudsman	
A police officer	The Commissioner of Police or the Corruption and Crime Commission
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	The 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

Only a designated PID Officer of the college is to receive disclosures of public interest information. Further the PID Officer must ensure that the information disclosed is public interest information as defined in the PID Act.

Assessing a public interest disclosure

The PID Officer must, on receiving the information, make an initial assessment of whether:

- The information disclosed relates to a public authority, a public officer, or a public sector contractor;
- The information disclosed relates to the performance of a public function;
- The information disclosed tends to show improper conduct;
- The improper conduct is of the kind for which the PID Officer is the proper authority (see the table “Proper Authorities for Receiving Disclosures of Public Interest Information” at section 1 above for details);
- The discloser believes on reasonable grounds that the information is, or may be true;
- The information is not protected by legal professional privilege; and
- The discloser, after receiving the advice referred to at section 1 above, wishes to make a public interest disclosure under the PID Act.

If any of the questions are answered “Yes”, then the disclosure of information is a public interest disclosure to which the PID Act will apply.

In assessing whether a disclosure is a public interest disclosure, the PID Officer should consider the **Flowchart for receiving disclosures (Appendix 2)**, as well as completing the **Assessment checklist for Public Interest Disclosure (Appendix 3)**.

Important note

Should the college not be required, or not have the power to investigate information disclosed, then the PID Officer must refer the discloser or information disclosed, to another proper authority as appropriate.

Form of public interest disclosure

If a disclosure is a public interest disclosure, the discloser and the PID Officer can use the Public Interest Disclosure Lodgement Form (Appendix 4). The PID Officer should also complete the Assessment Checklist for Public Interest Disclosure (Appendix 5).

On completion of this form, the PID Officer should create a separate file for the public interest disclosure, with the following text clearly marked on the front of the file.

“CONFIDENTIAL

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

Disclosure of information that might identify or tend to identify either the discloser or a person in respect of whom the disclosure has been made is an offence, unless the disclosure occurs in accordance with the PID Act.

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

The PID Officer must then record the public interest disclosure on the PID Register.

Investigating a public interest disclosure

Determining whether a matter must be investigated

After receiving a disclosure, the PID Officer must consider whether:

- The disclosure relates to the college, its employees, or public sector contractors; or
- The disclosure relates to a matter or person that the college has a function or power to investigate.

If the answer to both of these questions is “No”, the PID Officer is not required by the PID Act to investigate the disclosure.

The PID Officer must also consider whether:

- 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 occurrence of the matter; or
- The matter is being or has been adequately or properly investigated by another proper authority to which an appropriate disclosure of public interest information has been made under the PID Act.

If the answer to any of these questions is “yes”, the PID Officer is not required by the PID Act to investigate the disclosure.

If the PID Officer considers they have sufficient power to effectively investigate the disclosure, but the information received causes them to form the opinion that a public authority, public officer, or public sector contractor may have engaged in improper conduct, the PID Officer is to refer the matter to another investigative body as appropriate. This should be done in consultation with the Principal PID Officer and where appropriate the Managing Director.

The questions to be considered in the initial assessment by the PID Officer are indicated in the **Flowchart for investigating information disclosed (Appendix 6)**, and the **Assessment form for public interest disclosure (Appendix 3)** should be completed. In assessing whether a public interest disclosure should be investigated, a PID Officer should consider the Flowchart for investigating information at Appendix 2.

In assessing whether a disclosure should be investigated, the PID Officer should consider the **Flowchart for investigating information disclosed (Appendix 6)** and the assessment form for public interest disclosure of whether information is a valid disclosure checklist completed during the initial stage of receiving and assessing the disclosure.

Investigating information received as public interest disclosure

If a PID Officer determines that the disclosure is a public interest disclosure that should be investigated, the PID Officer is to investigate the disclosure themselves, or engage another person to carry out the investigation who is authorised to do so.

If a discloser seeks to withdraw their disclosure, the PID Officer and the college must continue to conduct an investigation. The discloser has no right to withdraw a disclosure.

Maintaining confidentiality in an investigation

The PID Act imposes strict confidentiality requirements in relation to the identity of the discloser and persons in respect of whom a public interest disclosure has been made. The disclosure of information which might identify, or tend to identify, these persons, except in accordance with the PID Act, is a serious offence, punishable with a maximum penalty of a \$24,000 fine or imprisonment for two years.

The confidentiality provisions of the PID Act do not apply to all information disclosed in a public interest disclosure, but only to information that might identify or tend to identify the discloser and persons in respect of whom a public interest disclosure has been made.

One of the circumstances in which identifying information may be disclosed is with the consent of the person concerned. Should a person agree to their identifying information being disclosed, the PID Officer must have the discloser complete and sign the **Consent to the disclosure of identifying information form (Appendix 7)**. Once completed, the PID Officer must attach the form to the hard copy file and record the action on the PID Register.

Identifying information relating to a discloser may also be disclosed without the discloser's consent where:

- It is necessary to do so having regard to the rules of natural justice; or
- It is necessary to do so to enable the matter to be investigated effectively.

However, before information is disclosed under these circumstances, the PID Officer making the disclosure must take all reasonable steps to inform the person whose identity is to be disclosed:

- That the disclosure is being made; and
- The reasons for the disclosure being made.

This information should be given, where practicable, in the form for **Notification of disclosure of identifying information (Appendix 8)**.

Where identifying information in relation to a discloser is conveyed to another person for these reasons, the PID Officer must warn the other person that disclosure of the information to a third person may involve a serious offence.

Identifying information relating to a person in respect of whom a public interest disclosure has been made can be disclosed at the investigation stage where the disclosure:

- Is necessary to enable the matter to be investigated effectively; and
- There are reasonable grounds to believe that the disclosure of identifying information is necessary to prevent or minimise the risk of injury to any person or damage to any property.

In addition, disclosures made in accordance with Sections 152 or 153 of the *Corruption and Crime Commission Act 2003* are exempt from these confidentiality requirements.

Where a discloser works for the college, protecting the identity of the discloser is an important part of protecting the discloser from reprisals and victimisation. Careful consideration must be given as to whether the disclosure of information that might identify, or tend to identify, a discloser is necessary for the effective investigation of the matter, or having regard to the rules of natural justice.

Where a PID Officer appoints a third person to conduct an investigation in relation to the public interest disclosure, he or she must consider whether it is necessary to inform the investigator of the identity of the discloser. In some cases it may not be necessary to provide the investigator with the identity of the discloser. Where it is necessary, to enable an effective investigation, or having regard to the rules of natural justice, to provide identifying information to the investigating officer, then the discloser should be notified in the manner described above.

Recording the outcome of an investigation

The outcome of an investigation must be clearly and comprehensively recorded. In addition to any investigation report and other information, the PID Officer [or other authorised person] conducting the investigation must also complete an **Investigation Checklist (Appendix 9)**.

The PID Officer must then record the action and outcome on the PID register.

Taking action following an investigation

A PID Officer must take action when they form the opinion that a person may be, has been, or may in the future be, involved in improper conduct. Action that may be taken includes:

- Preventing the matter to which the disclosure relates from continuing or occurring;
- Referring the matter to an appropriate investigative body; or
- Referring the matter to the Human Resources section of the college for disciplinary action against a person responsible for the matter.

See **Appendix 10 for the action taken flowchart** to assist with the assessment process.

Before taking any action, the person against whom the action is to be taken is to be given the opportunity to make written or oral submissions.

In taking that action the PID Officer remains limited by the powers and functions that are conferred by the legislation under which the PID Officer operates. The PID Act does not give the PID Officer additional powers to take action.

As well as being limited to matters within the functions and powers of the PID Officer, the action to be taken is guided by what is necessary and reasonable.

Maintaining confidentiality when taking action

The PID Officer must maintain confidentiality of identifying information unless its disclosure is authorised by the PID Act.

The only additional exception beyond those identified in relation to investigations, is where disclosure of the identity of a person who is the subject of a public interest disclosure, is necessary in taking action following the investigation.

Recording action taken

In addition to keeping other records, the PID Officer must complete the **Assessment for Public Interest Disclosure – Action taken assessment form Appendix 11**). A summary of the PID action taken must also be recorded on the PID Register.

Reporting to a discloser on the progress and outcome of an investigation

If a PID Officer decides not to investigate information disclosed under the PID Act, or discontinues an investigation, the officer must give the discloser the reasons for doing so.

Where the PID Officer decides not to investigate information disclosed under the PID Act, or discontinues an investigation, the PID Officer must give the person who made the disclosure reasons for doing so.

Within three months of the disclosure being made the PID Officer must notify the discloser of the action taken or proposed to be taken in relation to the disclosure (section 10).

A discloser may also request a progress report.

If an investigation is not complete, the PID Officer may provide to the discloser a progress report on the current status of the investigation.

If an investigation is complete, the PID Officer must provide a final report (section 10) to the discloser, stating the outcome of the investigation and the reason for taking action following the investigation.

In providing information (section 11) and reports to disclosers, the PID Officer must not give information that, in their opinion, would be likely to adversely affect:

- Any person's safety
- The investigation of an offence or possible offence; or
- Necessary confidentiality as to the existence or identity of another person who has made a disclosure of public interest information under the PID Act.

Protecting disclosers

Victimisation and reprisals

The college will not tolerate any acts of victimisation or reprisal as a result of a person making, or proposing to make, a public interest disclosure.

Any victimisation or reprisals must be reported immediately to the Managing Director or the PID Officer, who must take immediate action to prevent the continuance of this unlawful conduct.

Where victimisation or reprisals are reported, a record of the report and the action taken must be placed on the file relating to the public interest disclosure. Steps taken to prevent acts of victimisation or reprisal should be recorded in a manner that they will be accessible for reference, should legal action be taken against the college.

Confidentiality

The confidentiality requirements in relation to information which might identify or tend to identify a discloser or a person in respect of whom a public interest disclosure has been made must be complied with at all times. As noted above, the disclosure of this identifying information, except in accordance with the PID Act, is an offence.

All files relating to a public interest disclosure, whether paper or electronic, must be secure and accessible only by authorised persons. Files should carry clear warnings that there are penalties for unauthorised divulgence of information concerning a disclosure.

It is strongly recommended that sensitive information is not emailed or faxed to machines with general or shared access.

Public Interest Disclosure Register

To assist with annual reporting to the Commissioner the college shall maintain a Public interest disclosure register recording a unique register number and key information for each disclosure. All annual reporting requirements to the Public Sector Commissioner required under section 22 of the PID Act will be based on extracts from this register.

The PID register must include information relating to:

- The discloser;
- Public authorities about which a disclosure is made;
- People named in the disclosure;
- The nature of the disclosure;
- The investigation process and the PID action taken, if any;
- Communication with the discloser;
- Disclosure of the discloser's identity, if applicable;
- Disclosure of identity of persons named in the disclosure, if applicable;
- Claims of unlawful disclosure of discloser's identity or identity of persons named in the disclosure;
- Claims of victimisation; and
- Key dates.

Additional information may also be recorded in the PID Register at the discretion of the college.

Reporting requirements

The Department must report to the Public Sector Commissioner (the Commissioner) each year as required by the PID Act:

Principal Executive Officer Report

Under Section 23 (f) of the PID Act, the college is required to report annually to the Commissioner on:

- The number of public interest disclosures received over the report period;
- The results of any investigations conducted as a result of the disclosures; and
- The PID action taken, if any, as a result of each investigation.

Commissioner's Compliance Report

Under section 19 and 22 of the PID Act, the Commissioner is required to monitor compliance with the PID Act, to assist public authorities to comply with the PID Act and the Code, and to provide an Annual Report to Parliament.

Report Format and Submission

The Commission runs an annual agency survey program (1 July to 30 June). Each public authority will be surveyed on questions relating to the authorities role and obligations under the PID Act. This survey also requires that the public authority's PID Officer completes and sends in a register in a confidential electronic format.

Where there have been no disclosures in the reporting period the format of the report will provide for a simple nil return.

Making information available

The college will make all information available and accessible by employees, public sector contractors, and members of the public. The college will publish on its website:

- The PID Policy;
- PID Procedure Manual; and
- Rights and Obligations under the *Public Interest Disclosure Act 2003* document

All employees, including public sector contractors, are to be provided with a copy of the Staff Information Brochure, and Rights and Obligations under the *Public Interest Disclosure Act 2003* document [provided at Appendix 12 and 13]. Further all new employees, including public sector contractors, must be provided with a copy of these documents at Induction.

Where a person makes an allegation about improper conduct, but the person has not referred to the PID Act, the person must be advised that they might want to make a disclosure under the PID Act. If they choose to do so, then the person must be referred to a PID Officer for guidance on how to make a disclosure under the PID Act, and the implications of doing so.

Appendix 1: Public Interest Disclosure Officer's Declaration

To: Public Sector Commission
Dumas House
2 Havelock Street
West Perth WA 6005
Facsimile: (08) 6552 8500
Email: PIDRegister@psc.wa.gov.au

Name of PID Officer	
Position of PID Officer in public authority	
Name of public authority	
Address	
Telephone	
Facsimile	
Email	
Date of commencement as PID Officer	

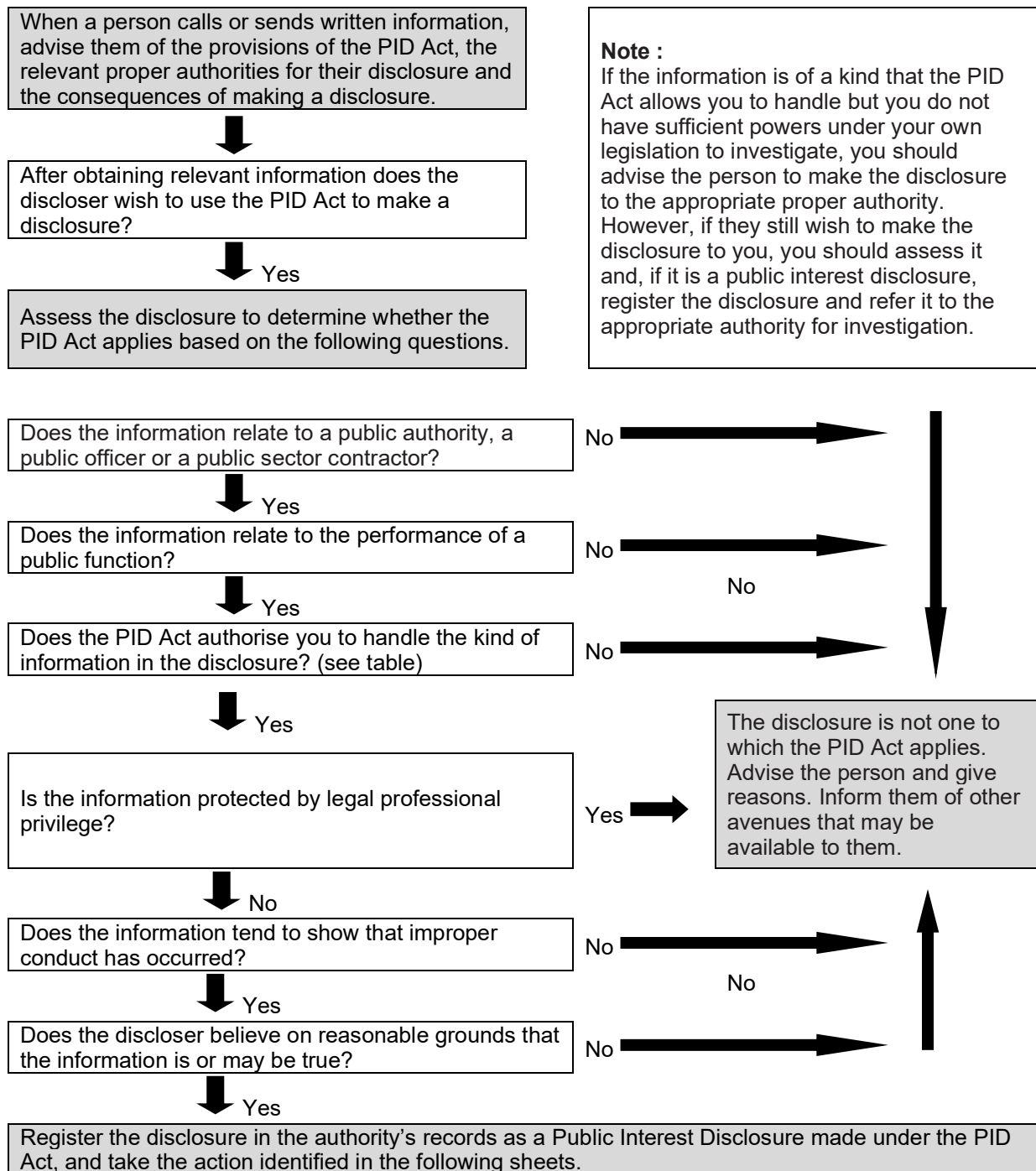
I declare that I understand my obligations as a PID Officer for the above authority. In particular, I am aware that it is an offence to make a disclosure of information that might identify or tend to identify anyone:

- as a person who has made a public interest disclosure under the *Public Interest Disclosure Act 2003* (PID Act); or
- as a person in respect of whom such a disclosure has been made.

except in accordance with the PID Act (section 16).

Signed by PID Officer	
Date	
Name of public authority	
Signed by Managing Director or designated officer	
Date	
<input type="checkbox"/>	I consent for my name and office phone number to be published on the Commission's website to identify me as a PID Officer for my agency.

Appendix 2: Flowchart for receiving and assessing disclosures



Appendix 3: Assessment Form for Public Interest Disclosure

Assessment of whether information is a valid disclosure

		Notes
Does the disclosure relate to a public authority, a public officer or a public sector contractor?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does the information relate to the performance of a public function?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does the information tend to show matters which public information can relate? ¹	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does the information tend to show public interest information for which the person receiving the information is the proper authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does the discloser believe on reasonable grounds that the information is or may be true?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
After being informed of the consequences, does the discloser wish to disclose the information under the PID Act?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

If any of the “No” boxes have been ticked then the disclosure is unlikely to be one that the *Public Interest Disclosure Act 2003* applies to. The PID officer should ensure a proper record is made of the reasons for the “No” response and should provide his or her response to the discloser.

¹ Matter to which public interest information can relate

- Improper conduct
- An offence against State law
- An unauthorised or irregular use of public resources
- A 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
- Conduct relating to a matter of administration affecting someone in their personal capacity that falls within the jurisdiction of the Ombudsman

Appendix 4: Public Interest Disclosure lodgement form

This is an official lodgement form for a disclosure made under the *Public Interest Disclosure Act 2003* (the PID Act). Appropriate advice should be gained before a public interest disclosure is made. A discloser should ensure that they understand their rights and responsibilities under the *Public Interest Disclosure Act 2003* prior to completing this lodgement form.

Personal details			
Family name			
Given name			
Date of birth		Gender	M/F
Title	<input type="checkbox"/> Mr <input type="checkbox"/> Ms <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Other:		
Address			
Work phone		(mobile)	
		(fax)	
Email			

Disclosure details	
Name of the public authority (ies) the disclosure relates to	
Do you work for a public authority? If yes, which public authority and what is your position title?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the disclosure relate to one or more individuals? If yes, please provide names and positions held by person(s) in the public authority	<input type="checkbox"/> Yes <input type="checkbox"/> No

Please tick box(es) on the area relevant to your disclosure

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

When did the alleged events occur?

Summary of disclosure

Description of any documentation provided or names of witnesses

Have you reported this information to any other person or agency?

<input type="checkbox"/> Yes	<input type="checkbox"/> No
------------------------------	-----------------------------

If yes, please provide details:

You should read the following information and sign at the end of this form

Acknowledgment

I acknowledge that I believe on reasonable grounds that the information contained in this disclosure is or may be true.

I have been informed and am aware that:

- I will commit an offence if I know that the information contained in this disclosure is false or misleading in a material particular, or am reckless as to whether it is false or misleading in a material particular.

Penalty: \$12,000 or imprisonment for one (1) year.

- I will forfeit protection provided by the PID Act if I fail, without reasonable excuse, to assist a person investigating the matter by supplying requested information.
- I will forfeit the protection provided by the PID Act if I subsequently disclose this information to any person other than a proper authority under the PID Act.
- I will commit an offence if I subsequently make a disclosure of information that might identify or tend to identify anyone as a person in respect of whom this disclosure has been made under the PID Act, except in accordance with section 16(3) of PID Act.

Penalty: \$24,000 or imprisonment for two (2) years.

Signed	
Date	

For office use only

Registered number	
Date	

Appendix 5: Assessment checklist for public interest disclosure

Internal quality control

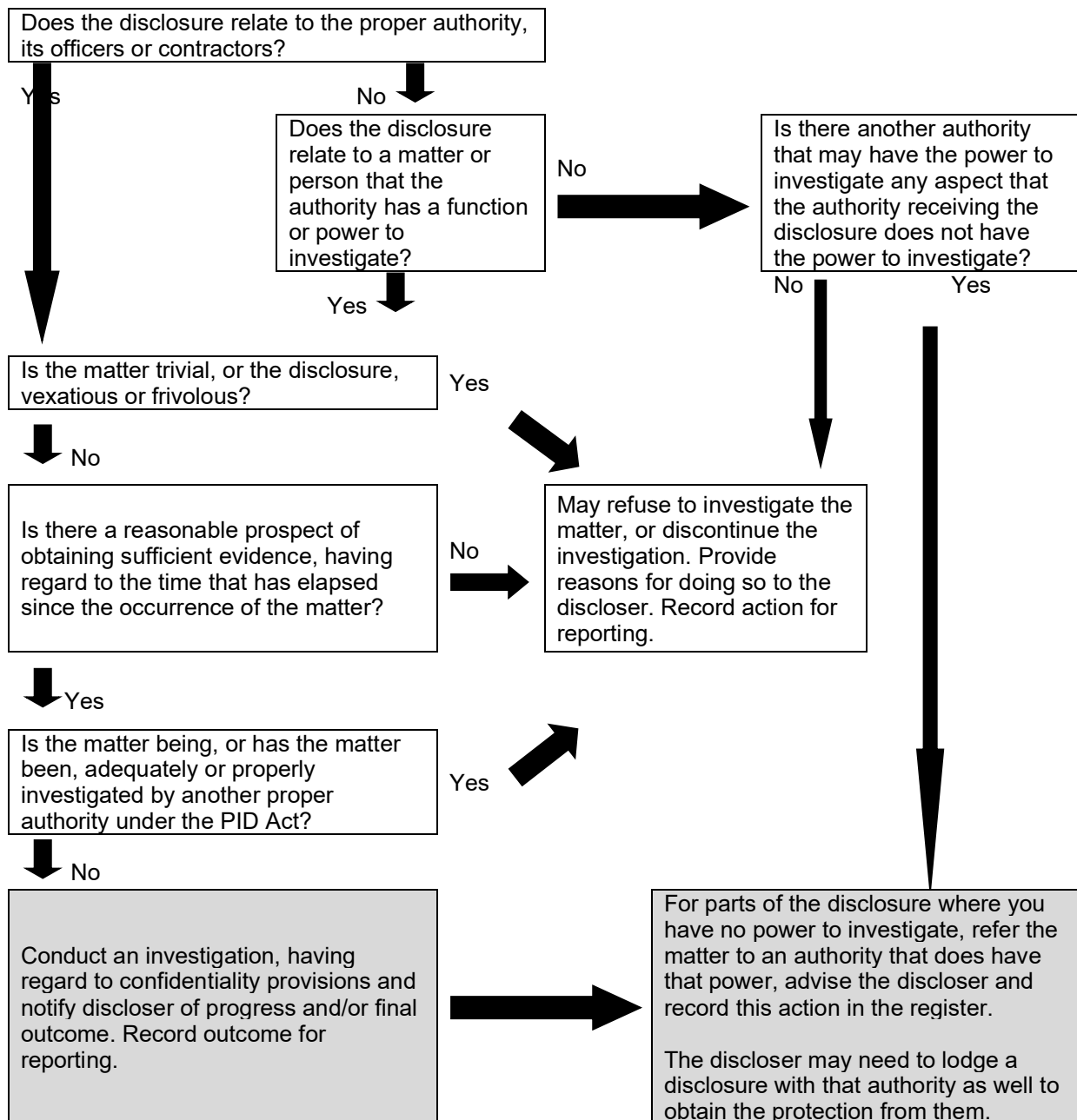
Does the disclosure meet the manner and form required by the internal procedures of the college?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If no, explain why
--------------------------------------------------------------------------------------------------	----------------------------------------------------------	--------------------

Signature	
-----------	--

I, <name of PID Officer>, a Public Interest Disclosure Officer for the South Regional TAFE, confirm that the disclosure made to me by <name of discloser> on <date>, is registered as a disclosure under the *Public Interest Disclosure Act 2003* on the Public Interest Disclosure Register of the college.

Signed PID Officer		Date	
-----------------------	--	------	--

Appendix 6: Flowchart for investigating information disclosed



Appendix 7: Consent to the disclosure of identifying information

Personal details			
Family name			
Given name			
Date of birth		Gender	M/F
Title	<input type="checkbox"/> Mr <input type="checkbox"/> Ms <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Other:		
Address			
Home telephone		Work telephone	
Email			

Please tick relevant box(es):

Consent to disclosure of identifying information by discloser	
I consent to the disclosure of information that might identify or tend to identify me as a person who has made an appropriate disclosure of public interest information under the <i>Public Interest Disclosure Act 2003</i> (PID Act).	<input type="checkbox"/>

Consent to disclosure of identifying information by person in respect of whom a public interest disclosure has been made (subject)	
I consent to the disclosure of information that might identify or tend to identify me as a person in respect of whom a disclosure of public interest information has been made under the <i>Public Interest Disclosure Act 2003</i> (PID Act).	<input type="checkbox"/>

Limitations on consent (optional)

This consent only applies to disclosures made to the following persons	<input type="checkbox"/>

This consent only applies to the following information	<input type="checkbox"/>

Signed		Date	
--------	--	------	--

Appendix 8: Notification to disclose identifying information

To			
Title (please circle)			Gender M/F
Title	<input type="checkbox"/> Mr	<input type="checkbox"/> Ms	<input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Other:
Name (in full)			
Address			
Home telephone		Work telephone	
Email			

I intend to make a disclosure of information that might identify or tend to identify you as a person who has made an appropriate disclosure of public interest information under the *Public Interest Disclosure Act 2003*.

The disclosure of this information:

Please tick relevant box(es)

Is necessary, having regard to the rules of natural justice	<input type="checkbox"/>
Is necessary to enable the matter to be investigated effectively	<input type="checkbox"/>

The reason(s) why the disclosure of this information is necessary for these purposes/ this purpose is that (specify reason):

Important: A person making an identifying disclosure for these reasons must take all reasonable steps to provide this information to the discloser a reasonable time before making the disclosure.

Signed (person proposing to make disclosure)		Name	
Position		Date	
Contact details			

Appendix 9: Investigation checklist

Investigating officer's name	
Normal designation of investigating officer	
Address	
Contact telephone *number	
Email address	
Date investigation authorised by the proper authority	
Details of authorisation	

Review of the investigation process

		Notes
Has the documentation used in the assessment of the disclosure been reviewed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Was an investigation plan developed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Were terms of reference developed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Were people interviewed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Was confidentiality maintained <ul style="list-style-type: none"> • of the discloser's identity? • of the information disclosed? • of the identity of the subject(s) of the disclosure? 	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Were natural justice rules followed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Was a report prepared?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

The investigation process is not prescribed under the *Public Interest Disclosure Act 2003* (PID Act), but the above serves as a useful checklist for a proper investigation.

Recommendation

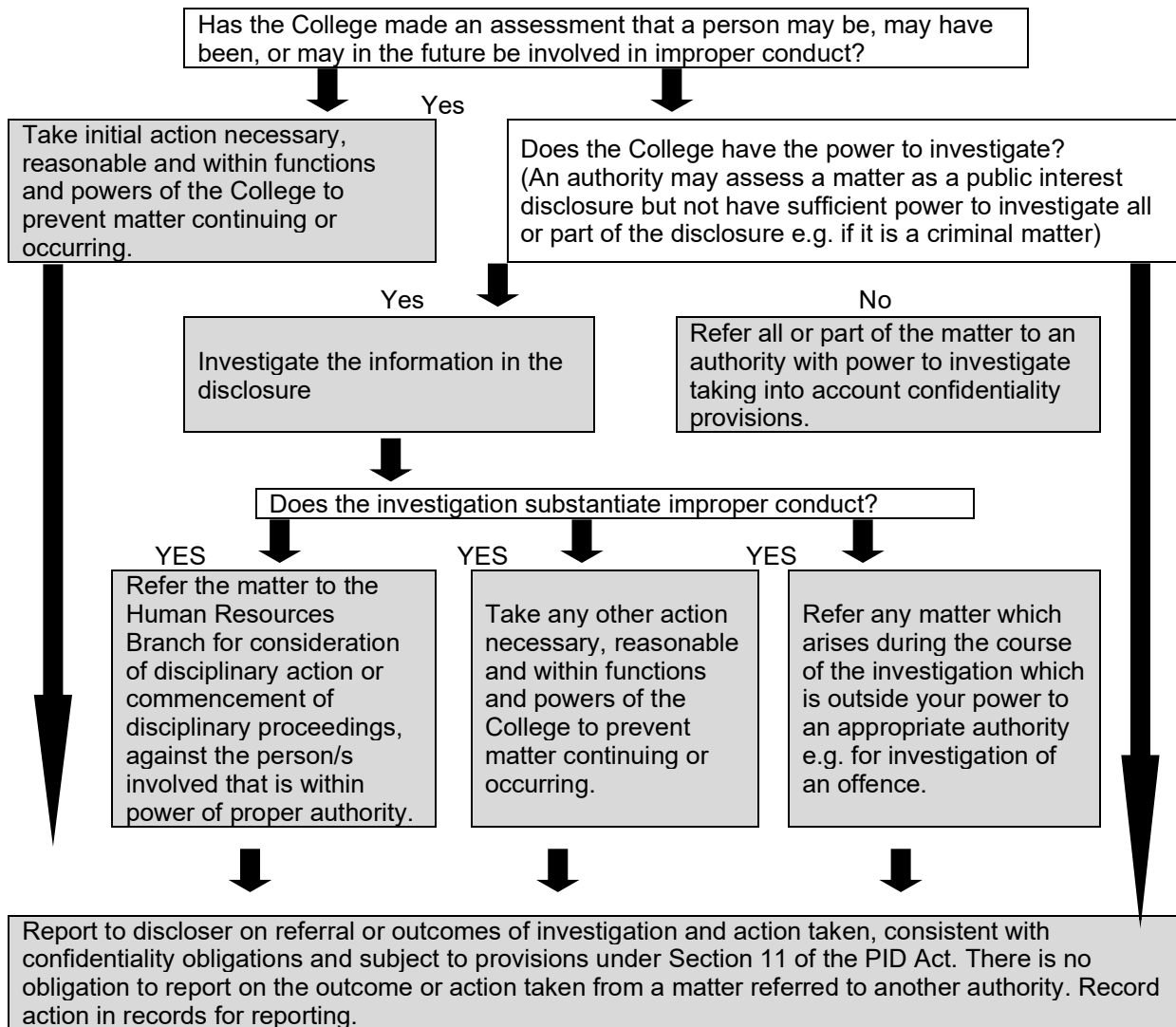
It is recommended that the college form the opinion that:

Signature	
-----------	--

I, the investigating officer appointed by the college to investigate the public interest disclosure registered number (file reference number) confirm that the above is a summary of my investigation undertaken as a result of a disclosure made in accordance with the PID Act.

Signed (investigating officer for public authority)		Date	
-----------------------------------------------------	--	------	--

Appendix 10: Taking action flowchart



Note on referrals

The confidentiality provisions apply when you refer a matter and the authority to whom the matter is referred is bound by the confidentiality provisions of the PID Act. However, they will treat it in accordance with their own powers and are not required to treat the matter as a PID for the purposes of reporting the outcome to the discloser.

Nothing precludes the discloser from lodging the matter as a PID in the new authority if they wish to extend the legal protections available to them under the PID Act and receive reports from the new authority on the outcome and action taken.

Appendix 11: Assessment for Public Interest Disclosure

Action taken

Notes		
Does the college authority accept the recommendation contained in the Investigation Checklist?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

If the "Yes" box has been ticked, indicate action to be taken by the proper authority.

Action taken by the proper authority

Notes		
Take action necessary, reasonable and within functions and powers of the college to prevent matter continuing or occurring	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Refer matter to another body with power to investigate the matter	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Refer to the Human Resources Branch for disciplinary action or the commencement of disciplinary proceedings against the person/s involved within the power of the college.	<input type="checkbox"/> Yes <input type="checkbox"/> No	

The PID Officer must report the outcome of the investigation and action taken, or action proposed to be taken, and remain consistent with all confidentiality obligations.

Record the action on the PID register.

I, the Public Interest Disclosure Officer for the college confirm that the above action was taken or will be taken following the public interest disclosure made by (discloser's name) and that I have recorded the outcome of the investigation and the PID Action taken or to be taken in the public interest disclosure register of the college.

Signed Investigating PID Officer		Date	
----------------------------------	--	------	--

Appendix 12: Staff information

What is a public interest disclosure?

The *Public Interest Disclosure Act 2003* (the PID Act) came into effect on 1 July 2003. The PID Act facilitates the disclosure of public interest information by providing protection for those who make disclosures and those who are the subject of disclosures.

The college is committed to the aims and objectives of the PID Act. It recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by staff regarding corrupt or other improper conduct.

What do I need to know before making a disclosure?

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

Improper conduct	Irregular or unauthorised use of public resources
An offence under State law	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 the above areas, then you may still be able to make a complaint, but this will not be a public interest disclosure under the PID Act.

Before making a disclosure, it is important that you are aware of the rights and responsibilities imposed on disclosers and others under the PID 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 public 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 PID Act and may commit an offence under the PID Act.

The PID 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

When the disclosure relates to	the proper authority is
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 Corruption and Crime 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 falling 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 the Corruption and Crime Commission
A Member of the Legislative Council	The President of the Legislative Council
A Member of the Legislative Assembly	The Speaker 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 specified in schedule 1 of the <i>Parliamentary Commissioner Act 1971</i>	The PID Officer of the public authority concerned, the Ombudsman, or the Public Sector Commissioner
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 PID 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 discloser or information to be referred to another proper authority with the power to investigate the information.

A proper authority is required to designate positions within the authority whom have designated responsibility [by law] to receive a disclosure of public interest information received by the authority.

The college is a public authority. Therefore, to comply with the PID Act, the Managing Director has designated Public Interest Disclosure Officer positions and their occupants across the college who are designated the responsibility of receiving disclosures of public interest information relating to matters falling within the sphere of responsibility of the college. These Officers are responsible for receiving disclosures of public interest information relating to matters falling within the sphere of responsibility of the college.

What you should ask yourself

Making a disclosure is a serious matter and needs to be fully considered. You should ask yourself:

- Whether you have reasonable grounds to believe the information you are thinking of disclosing is or may be true;
- If the information is 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;
- If you have sought proper advice; and
- If you fully understand your responsibilities under the PID Act if you make a disclosure.

I have made a disclosure – what next?

After assessing your information the public 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 PID Act; and
- The information does not relate to the proper authority, an officer or contractor of the authority or a matter that the proper authority has the function or power to investigate.

Will I be kept informed?

Yes – the college must inform you within three months of receiving your disclosure, of what they intend to do about your disclosure.

Where the information is under investigation, you are entitled to request a progress report.

You are also 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 PID Act requires confidentiality to be maintained on:

- The identity of the person making the disclosure; and
- 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 on these prior to making a disclosure.

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

- any reprisals;
- civil and criminal liability in the event of making a disclosure;
- dismissal or having services dispensed with; and
- 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. Telephone (08) 9216 3900, or contact via their [website](#) or email eoc@eoc.wa.gov.au

After investigation

After making a disclosure, you will not normally be required to do anything else other than cooperate with an investigation. If you are unhappy with the public authority's response to your disclosure, there is no right of appeal under the PID 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 college will take all reasonable steps to provide protection to staff who make disclosures from any detrimental action in reprisal for the making of a disclosure.

The college 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 Managing Director.

Named proper authorities

When a public authority deals with a relevant disclosure, the public authority is referred to in the PID Act as a proper authority. There are some public authorities that are named as proper authorities in the PID Act that may be able to offer you assistance. Their details are provided below:

- The Public Sector Commission will be able to provide assistance to public authorities and public officers to comply with the Code of Conduct and Integrity, and with the PID Act. Integrity Advisory Service, ph 6552 8888, website <https://www.wa.gov.au>.
- The Corruption and Crime Commission will be able to provide advice on corruption. Telephone (08) 9215 4888, website www.ccc.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 proper use and management of public resources and more generally public authorities' accountability and performance requirements. Telephone (08) 6557 7500, website www.audit.wa.gov.au
- The Western Australia Police will be able to provide advice on offences under a State law. Website www.police.wa.gov.au.

Appendix 13: Rights and responsibilities under the Public Interest Disclosure Act 2003

Overview of the Public Interest Disclosure Act 2003

The *Public Interest Disclosure Act 2003* (the Act) facilitates the disclosure of public interest information, and provides protection for those making disclosures, and those who are subject of disclosures. The Act provides a system for the matters disclosed to be investigated and for appropriate action to be taken.

The Act does not confer additional powers on public authorities to investigate or take action in relation to public interest disclosures. Rather, it provides for protection to persons who make disclosures that may result in a proper authority exercising its existing powers to investigate and take action in relation to the subject matter of the disclosure. In some circumstances, the PID Act requires a public authority to investigate a matter and to notify the person making the disclosure of the PID action taken.

The Act also requires the principal executive officer of each public authority to prepare and publish internal procedures relating to their authority's obligations under the Act which must be consistent with the Public Sector Commission Guidelines.

What is a public interest disclosure?

A public interest disclosure is made when a person discloses to a proper authority, information that tends to show past, present, or proposed future improper conduct by a public body in the exercise of public functions.

In order to be a disclosure to which the PID Act applies, a disclosure must be:

- Made by a discloser who believes, on reasonable grounds, that the information is or may be true;
- A disclosure of public interest information; and
- Made to the appropriate proper authority.

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

What is protection?

When a person makes an appropriate disclosure of public interest information to a proper authority, the PID Act:

- Protects the person making the disclosure from legal or other action;
- Provides for the confidentiality of the identity of the person making the disclosure and a person who is the subject of a disclosure; and
- Provides remedies for acts of reprisal and victimisation that occur substantially because the person has made a disclosure.

In general terms, for people who make disclosures, protection is provided against detrimental action, which includes injury, intimidation, harassment, adverse treatment or reprisal.

The PID Act also provides penalties for disclosing the identity of those persons about whom public interest disclosures are made, as well as emphasising the need for those persons to be accorded natural justice or procedural fairness.

Key aspects of the legislation

From the point of view of a public authority developing internal procedures, there are certain aspects of the PID Act that require careful consideration and a more in-depth understanding:

- Part two of the PID Act is concerned with the PID action of making a disclosure. It clarifies who may make a disclosure, to whom it can be made and their obligations, including investigation, action and notification;
- Part three of the PID Act deals with protection. It describes the forms of protection available and when protection is lost. It provides for offences relating to the disclosure of the identity of disclosers and those in respect of whom a public interest disclosure is made; and
- Part five of the PID Act enumerates the obligations of Principal Executive Officers of public authorities. Of particular importance is the requirement for a principal executive officer to designate a person within the authority who is responsible for receiving disclosures and to provide protection for their employees from detrimental action arising from their making of a disclosure.

Making, receiving and assessing a public interest disclosure

What is different about a public interest disclosure?

Not all disclosures about government can be classified as public interest disclosures that are protected by the PID Act.

In order to be a disclosure to which the PID Act applies, a disclosure must be:

- Made by a discloser who believes on reasonable grounds that the information is, or may be true;
- A disclosure of public interest information; and
- Made to the appropriate proper authority.

Who can make a disclosure?

Any person may make a disclosure of public interest information. While public officers may make disclosures of public interest information, the PID Act also allows for members of the public to make these disclosures.

A person making a public interest disclosure can be called a discloser.

A person making a public interest disclosure must believe, on reasonable grounds, that the information disclosed is true, or may be true. A person making a disclosure purporting to be a disclosure of public interest information commits an offence where they:

- Know the information to be false or misleading in a material particular;
- Are reckless about whether the information is false or misleading in a material particular;
- or

- The discloser does not necessarily need to be able to identify any person whom the disclosure concerns.

What is public interest information?

The PID Act only applies to disclosures of public interest information.

Public interest information must meet a number of criteria. The information must:

- Relate to a public authority, public officer, or public sector contractor (“a public body”);
- Relate to the performance of a public function of the public body; or
- Tend to show that the public body is, has been, or proposes to be, involved in improper conduct.

Who are the public bodies to which public interest information must relate?

The following are public authorities to which public interest information may relate:

- A department in the public service;
- An agency within the public sector;
- A local government or regional local government;
- A body established under state law for a public purpose. (eg public universities, port authorities, government boards etc.); or
- Bodies established by the governor or a minister.

The following are public officers to whom public interest information may relate:

- Ministers, Parliamentary Secretaries and Members of Parliament;
- Judicial officers;
- Police officers;
- Officers such as a bailiff serving or executing the process of a court or tribunal for remuneration;
- Public service officers;
- Members, officers and employees of public authorities;
- Holders of offices under the State and offices established by the Governor or a minister; or
- Officers of the Commonwealth exercising a function on behalf of the State

The PID Act does not apply to information relating to Commonwealth Government bodies, apart from officers of the Commonwealth exercising functions for the State under State law.

Public sector contractors to whom public interest information may relate are contractors engaged by public authorities for the supply of goods and services or the performance of public functions.

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

The PID Act does not apply to the disclosure of information concerning improper conduct, unless the conduct relates to the performance of the functions of the public authority, public officer or public sector contractor. So for example, the PID Act would not apply to information that an employee of a Department had engaged in criminal behaviour unconnected with their employment.

What is improper conduct to which public interest information must relate?

Public interest information must tend to show the involvement of a public body in:

- improper conduct;
- an offence against State law;
- a substantial unauthorised or irregular use of public resources;
- a 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; or
- conduct relating to matters of administration affecting someone in their personal capacity falling within the jurisdiction of the Ombudsman.

A public authority can receive many different types of complaints. These can range from workplace disputes, through to harassment, bullying, or occupational health concerns, to allegations of improper conduct or corruption. Not all of these disclosures will be of public interest information to which the PID Act will apply.

To whom must a public interest disclosure be made?

A disclosure will only be a public interest disclosure if it is made to the appropriate proper authority. Depending on the nature of the disclosure, the identity of the appropriate proper authority will vary. It is important that the disclosure be made to the appropriate proper authority, as disclosures to other persons will not be protected.

The PID Act only applies to disclosures made to an appropriate proper authority. Disclosures to a journalist, the media, or other persons who are not specified as proper authorities are not protected by the PID Act.

Generally, disclosures about a public authority, or its officers or contractors, should be made to the Public Interest Disclosure Officer (PIDO) of the public authority concerned. The PID Act requires that each public authority specify a position the holder of which is the PIDO responsible for receiving disclosures of public interest information.

The PID Officer of a public authority is the proper authority for the disclosure of information relating to a matter falling within the sphere of responsibility of that public authority. The PID Officer should become familiar with procedures. Importantly, the PID Officer has a responsibility to keep up to date with all information made available by the Public Sector Commissioner ("the Commissioner"). The PID Officer must also comply with the Commissioner's *Code of Conduct and Integrity* as made under the PID Act.

In some cases, a public interest disclosure may be made to an external named proper authority. The authority to which a disclosure ought to be made will vary according to the nature of the information disclosed.

The table below identifies the appropriate proper authority for each type of disclosure.

Proper authorities for receiving disclosures of public interest information

When the disclosure relates to	The proper authority is
The sphere of responsibility of a public authority (matters about the public authority or its officers, or which the public authority has the function of investigating)	The PID Officer of 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	The PID Officer of the public authority concerned or the Auditor General
Matters of administration affecting someone in their personal capacity falling 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 the Corruption and Crime Commission
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	The Chief Justice
A public officer who is not a member of Parliament, a Minister, a Judicial Officer or a Commissioned or other specified in schedule 1 of the <i>Parliamentary Commissioner Act 1971</i>	The PID Officer of the public authority concerned, the Ombudsman, or the Public Sector Commissioner

Important Note

In addition, the information disclosed must be public interest information as defined in the PID 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 discloser or information to be referred to another proper authority with power to investigate the information.

Can a disclosure of public interest information be made to more than one proper authority?

Yes – the PID Act refers to a disclosure being made to more than one proper authority. In such a case, the protection and obligations created by the PID Act will apply to each of the disclosures.

A public authority may not have to investigate a matter raised by a public interest disclosure where it considers that the matter is being, or has been, adequately investigated by another person to whom a disclosure under the PID Act has been made.

In some cases, the proper authority to which the disclosure is made may refer the matter to some other person having power to investigate the matter.

In general, a disclosure about a public authority or its officers or contractors, or a disclosure falling within the sphere of responsibility of a public authority, should in the first instance, be made to the public authority concerned.

No time limit on a disclosure

A disclosure may relate to matters that occurred before the commencement of the PID Act. There is no time limit to the retrospectivity of a disclosure. However, a claim cannot be made in relation to victimisation that occurred prior to the PID Act coming into effect on 1 July 2003.

Can information protected by legal professional privilege be disclosed?

The PID Act does not protect disclosures of information protected by legal professional privilege. Legal professional privilege protects confidential communications between public authorities and their legal advisers, and associated documents. This protection exists where the communication was made, or a document was created, for the dominant purpose of:

- obtaining or giving legal advice; or
- with reference to current or contemplated litigation.

Dealing with public interest disclosures

How should a public interest disclosure be made?

The PID Act does not specify a form in which an appropriate disclosure of public interest must be made.

However, each public authority is required to prepare and publish internal procedures relating to the authority's obligations under the PID Act. These internal procedures will need to provide for the manner in which disclosures of public interest information may be made to the public authority concerned.

The internal procedures will need to provide for making a written record of the information disclosed, which clearly identifies the disclosure as a public interest disclosure made under the PID Act. This is necessary to enable public interest disclosures to be identified for reporting purposes, and to be distinguished from ordinary complaints made to the public authority. This provision is also necessary to ensure that the information is identified as information to which the protection and confidentiality provisions of the PID Act apply.

Must a public interest disclosure be investigated?

A proper authority is not obliged to investigate every public interest disclosure made to it. Generally, a proper authority must investigate information disclosed under the PID Act where:

- The disclosure relates to the proper authority, its officers or contractors; or

- The disclosure relates to a matter or person that the proper authority has a function or power to investigate (eg where a police officer may investigate an offence committed in a Department).

A proper authority may refuse to investigate, or discontinue an investigation, where it considers that:

- 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 occurrence of the matter; or
- The matter is being, or has been, adequately or properly investigated by another proper authority to which an appropriate disclosure of public interest information has been made.

The obligations in relation to investigations do not apply to the Corruption and Crime Commission or the Ombudsman where they have functions in relation to the disclosure under their own legislation. These provisions are made in the legislation.

The PID Act does not give proper authorities investigative powers that they do not otherwise have. The proper authority must look to the other legislation which they operate under for their investigative powers.

Where a proper authority lacks sufficient power to effectively investigate the matter, but the information received causes the proper authority to form the opinion that a public body has engaged in improper conduct, the proper authority may need to refer the matter to another investigative body.

What action must a proper authority take following an investigation?

A proper authority is only required to take action following an investigation if it forms the view that a person may be, may have been, or may in the future, be involved in improper conduct to which the PID Act applies. If the proper authority does not form that view after undertaking the investigation that is within its power, it is not required to take further action other than reporting to the discloser and recording the outcome.

If the proper authority forms the view that a person may be, may have been, or may in the future, be involved in improper conduct to which the PID Act applies, then it will be required to take action in relation to the matter.

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

As well as being limited to matters within the functions and powers of the proper authority, the PID Action to be taken is guided by what is necessary and reasonable.

Having regard to those matters, the proper authority must take action to:

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

These options are not mutually exclusive, and a proper authority may take more than one of the indicated steps: for example, to seek to terminate the employment of an officer caught stealing and refer the matter to the Western Australia Police.

Before taking preventative or disciplinary action, the proper authority is to afford any person against whom, or in respect of whom, the PID Action is to be taken, the opportunity to make a submission, either orally or in writing, in relation to the matter.

The above obligations to take action do not apply to the Corruption and Crime Commission or the Ombudsman where they have functions in relation to the disclosure under their own legislation. Provision relating to their actions after investigation is made in their legislation.

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

Where a proper authority refuses to investigate information disclosed under the PID Act, or discontinues an investigation, it must give the discloser reasons for doing so.

Within three months after a public interest disclosure is made, the proper authority must notify the discloser of the PID action taken, or proposed to be taken, in relation to the disclosure.

A discloser may also request a progress report.

If an investigation is not complete, the proper authority may provide a progress report on the current status of the investigation to the discloser.

If an investigation is complete, the proper authority must provide a final report to the discloser stating the outcome of the investigation and the reason for taking action following the investigation.

In providing information and reports to disclosers, a proper authority must not give information that, in its opinion, 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 another person who has made a disclosure of public interest information under the PID Act.

The obligations to report do not apply to the Corruption and Crime Commission or the Ombudsman where they have functions in relation to the public interest disclosure under their own legislation.

Can a discloser withdraw a public interest disclosure?

No. Once a disclosure of public interest information is made, a proper authority is required to investigate it and take action regardless of the subsequent attitude of the discloser.

In addition, a discloser may forfeit the protection given by the PID Act if they fail, without reasonable excuse, to assist a person investigating the matter to which the information relates by supplying any information requested, unless a court otherwise orders.

What if a discloser does not agree with the PID Action taken by the proper authority?

The PID Act does not provide for any right of appeal against decisions of an appropriate authority as to investigations and subsequent action.

If a discloser is dissatisfied with a decision made by a proper authority, they may make a further disclosure of the information to another proper authority. For example, where a discloser is dissatisfied with the response to a public interest disclosure about a matter of administration made to a PID Officer of a Department, the discloser may disclose the information to the Ombudsman.

However, a proper authority to which a subsequent disclosure is made need not investigate the matter if it considers the matter has been adequately or properly investigated by another proper authority. In deciding whether this is the case, the second proper authority may need to contact the authority that has already dealt, or is already dealing, with the information in relation to its investigation.

Record keeping

It is extremely important that comprehensive and secure records are kept for each disclosure made.

As well as being normal administrative practice, keeping proper records enables a proper authority to give account of their decisions and actions. The period for which any record should be kept and the manner of disposal must be in accordance with the provisions of the *State Records Act 2000*.

Additionally, the PID Act requires all proper authorities to provide to the Public Sector Commissioner, annual information about the number of disclosures received, investigations conducted and actions taken.

Code of Conduct and Integrity

Any person to whom a public interest disclosure may be made must comply with the Public Sector Commission Public Interest Disclosure Code of Conduct and Integrity.

Confidentiality and protection for disclosers

What protection does the PID Act provide to disclosers?

The PID Act offers protection to disclosers by:

- Providing for immunity from legal or other action in relation to the disclosure;
- Providing for an offence of reprisal;
- Providing for civil remedies for acts of victimisation;
- Providing for confidentiality of the identity of the discloser, subject to exceptions; and; and
- Requiring public authorities to provide protection from detrimental action for disclosers who are their employees.

What immunity do disclosers have?

Making an appropriate disclosure of public interest information to a proper authority does not result in a discloser:

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

Is it an offence to take reprisals against a discloser?

Yes. A person must not take, or threaten to take, detrimental action against another because someone has made, or intends to make, a disclosure under the PID Act. This is the offence of reprisal.

Detrimental action for these purposes includes action causing:

- Injury, damage, or loss;
- Intimidation or harassment;
- Adverse discrimination, disadvantage, or adverse treatment in relation to a person's career, profession, employment, trade, or business; or
- A reprisal.

A person who attempts to commit the offence of reprisal, or incites another to commit that offence, is also guilty of this offence.

The maximum penalty for the offence of reprisal is a fine of \$24,000 or imprisonment for two years.

What remedies does a discloser have against victimisation?

A person who takes or threatens to take detrimental action against another because someone has made, or intends to make, a disclosure of public interest information, commits an act of victimisation.

A person who is subject to detrimental action may either take civil proceedings for damages, or make a complaint under the *Equal Opportunity Act 1984*. Instituting one of these alternative avenues of relief extinguishes the other.

Civil proceedings may be taken against either the perpetrator of the PID Act of victimisation, or any employer of the perpetrator. For example, the employer of the perpetrator may be:

- The State, in the case of public service officers;
- The public authority which employs the perpetrator; or
- A public sector contractor whose employees engage in victimisation.

However, an employer may have a defence to civil proceedings for damages where it proves that it:

- Was not knowingly involved in the PID Act of victimisation;
- Did not know and could not reasonably be expected to have known about the PID Act of victimisation; or
- Could not, by the exercise of reasonable care, have prevented the PID Act of victimisation.

Is a discloser's identity to be kept confidential?

Generally, a person must not make a disclosure of information that might identify or tend to identify anyone as a person who has made an appropriate disclosure of public interest information under the PID Act (section 16).

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

Exceptions arise where the disclosure of a discloser's identity:

- Is made with the discloser's consent;
- Is made in accordance with section 152 or 153 of the *Corruption and Crime Commission Act 2003*;
- Is necessary, having regard to the rules of natural justice (see Section E2 in relation to the rules of natural justice); or
- Is necessary to enable the matter to be investigated effectively.

In the case of the last two bullet points, the person making the disclosure must take all reasonable steps to inform the person whose identity is to be disclosed:

- That the disclosure is being made; and
- The reasons for the disclosure being made.

Those steps to inform the person must be taken a reasonable time before the identifying disclosure is made.

A breach of these confidentiality requirements is an offence punishable with a penalty of a \$24,000 fine or imprisonment for two years.

Managing person(s) subject to disclosure

Is the identity of a person about whom a disclosure is made to be kept confidential?

The protection that the PID Act (section 16) gives to the discloser is largely mirrored in the protection offered to a person to whom disclosed public interest information relates.

A person must not make a disclosure of information that might identify or tend to identify anyone as a person in respect of whom a disclosure of public interest information has been made under the PID Act. Exceptions arise where:

- The disclosure is made with the consent of that person;
- The disclosure is made in accordance with section 152 or 153 of the *Corruption and Crime Commission Act 2003*;
- The disclosure is necessary to enable the matter to be investigated effectively;
- The disclosure is necessary in the course of taking action following the investigation; or
- There are reasonable grounds to believe that the disclosure of identifying information is necessary to prevent or minimise the risk of injury to any person or damage to any property.

A breach of these confidentiality requirements is an offence punishable with a penalty of a \$24,000 fine or imprisonment for two years.

Providing natural justice

The PID Act requires that natural justice, or procedural fairness, be accorded to those who may be the subject of a public interest disclosure. An exception to the obligation to keep identifying information confidential arises where, having regard to the rules of natural justice, disclosing identifying information is necessary.

The rules of natural justice will generally include a requirement that, before disciplinary or other action is taken against them, those subject to a disclosure be given the opportunity to:

- Be informed of the substance of the allegations; and
- Make a submission, either orally or in writing, in relation to the matter.

The precise requirements of the rules of natural justice will vary according to the circumstances, and legal advice should be obtained in a case where there is any doubt as to these requirements.

Roles and responsibilities of public authorities

What is the role of the Public Sector Commissioner?

The role of the Public Sector Commissioner under the PID Act is to:

- Develop a Code that sets out the minimum standards of conduct and integrity to be complied with by proper authorities;
- Monitor compliance with the PID Act and Code;
- Assist public authorities and public officers to comply with the PID Act and Code;
- Prepare and publish guidelines on internal procedures relating to the functions of a proper authority under the PID Act;

- Report annually to Parliament on the performance of his/her obligations and the compliance or non-compliance with the PID Act and Code; and
- At any time, report to Parliament on any matter arising in connection with the exercise of his/her functions under the PID Act.

What are the responsibilities of public authorities?

The Principal Executive Officer of a public authority must ensure that his or her public authority complies with the PID Act and Code.

In particular, the Principal Executive Officer must:

- Designate the occupant of a specified position as the person responsible for receiving disclosures of public interest information; and
- Prepare and publish internal procedures relating to the authority's obligations under this Act, which are consistent with the Guidelines published by the Public Sector Commissioner.

The Principal Executive Officer must also provide protection from detrimental action or the threat of detrimental action for any employee of the public authority who makes an appropriate disclosure of public interest information.

There is also an obligation to report to the Public Sector Commissioner annually on:

- The number of disclosures made to the public authority under the PID Act;
- The outcome of investigations conducted as a result of disclosures;
- The PID Action taken as a result of the investigation; and
- Other matters prescribed.

In order to enable these reports to be consolidated into the Commissioner's report to Parliament, it will be necessary for the information to be provided in a common format. These guidelines will provide for a reporting format, and internal procedures that each public authority is required to establish, need to implement these requirements.

Roles and responsibilities of persons directly involved in a public interest disclosure

In the case of a typical public interest disclosure, there will be a number of people involved with different roles and responsibilities.

The main players and their principal roles and responsibilities are noted in the chart below. A more detailed description of the rights and obligations of these individuals is given elsewhere in these guidelines, and reference should be made to the preceding sections, as well as this table, in determining rights and responsibilities.

Who	Role and Responsibilities
The discloser	<ul style="list-style-type: none"> • Makes a public interest disclosure • Maintains confidentiality of the information disclosed and, in particular, the identity of the persons to whom the information relates
The proper authority	<ul style="list-style-type: none"> • Receives a public interest disclosure • Considers whether an investigation is required • Carries out, or causes to be carried out, any investigation • Maintains confidentiality of the identity of the discloser and persons subject to the disclosure, in accordance with the requirements of the PID Act • Takes action following an investigation, where appropriate • Provides appropriate reports of investigation and action taken to discloser • Creates and maintains proper records in relation to disclosure • Keeps statistics of disclosures made • Acts in accordance with the rules of natural justice or procedural fairness
The person about whom the disclosure is made	<ul style="list-style-type: none"> • May be subject to investigation and other action if improper conduct is established • Maintains confidentiality of the identity of the discloser
An investigating officer	<ul style="list-style-type: none"> • May conduct investigations of public interest information on behalf of a proper authority, within the terms of reference given • Maintains confidentiality of the identity of the public interest discloser and persons subject to the disclosure, in accordance with the requirements of the PID Act • Makes and keeps secure, comprehensive records of any investigation undertaken.

Related documents

Policy: Public Interest Disclosure

Form: Public Interest Disclosure Lodgement

Relevant references

Public Interest Disclosure Act 2003

Public Interest Disclosure Regulations 2003

Corruption and Crime Commission Act 2003

Public Sector Management Act 1994

Equal Opportunity Act 1984

[Public Interest Disclosures in Western Australia](#) (from WA Department of Premier and Cabinet)