



OPSSC

Office of the
**Public Sector
Standards**
Commissioner

PUBLIC INTEREST DISCLOSURE ACT 2003



GUIDELINES



Public Interest Disclosure Act 2003

Code of Conduct and Integrity

CODE

OF

CONDUCT

AND

INTEGRITY

Established by the Commissioner for Public Sector Standards under Section 20 of the Public Interest Disclosure Act 2003.

The Code operates from 1 July 2003.

The Code is to be complied with by any person to whom a disclosure is made under the Public Interest Disclosure Act 2003.

THE CODE

The Code uses as its ethical base the principles of justice, respect for persons and responsible care 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 Public Interest Disclosure Act 2003.
- ◆ 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 Public Interest Disclosure Act 2003.
- ◆ 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.
- ◆ Provide information to the informant about their rights and responsibilities and the possible implications of lodging a public interest disclosure.

Public Interest Disclosure Act 2003



Guidelines On Internal Procedures

First Edition Reprint 2006

Office of the Public Sector Standards Commissioner

Office of the Public Sector Standards Commissioner

Reprint February 2006

Initially published June 2003 by
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ISBN 0-9751020-0-1

Important Disclaimer:

These Guidelines have been prepared pursuant to the Act for the assistance of public authorities in developing their internal procedures. However, no warranty is given as to the accuracy or completeness of this document. The Commissioner for Public Sector Standards, the State of Western Australia and their agents and employees, disclaim liability, whether in negligence or otherwise, for any loss or damage resulting from reliance on the accuracy or completeness of this document.

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Public Interest Disclosure Act 2003

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MESSAGE FROM THE COMMISSIONER

The *Public Interest Disclosure Act 2003* (the Act) aims to facilitate and encourage the disclosure of public interest information and to provide protection for those who make disclosures and for those about whom disclosures are made.

The Act is a significant step towards reducing and eliminating corrupt conduct, and maladministration. It will work most effectively when its principles and intent are fully adopted by all public bodies and officers.

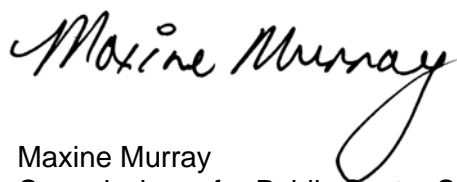
These Guidelines are designed for the use of all proper authorities under the Act. A proper authority has the responsibility for receiving disclosures, investigating them, taking appropriate action and reporting. To do this, it is necessary to have effective internal procedures in place. The Act very clearly places the responsibility to develop these procedures on the shoulders of each proper authority.

This document is not to be regarded as the procedures themselves; it is merely a set of guidelines providing a framework for developing and implementing internal procedures. Importantly, internal procedures must be consistent with these Guidelines.

Procedures for handling disclosures must facilitate the making of disclosures, the investigation of disclosures and the protection of those who make disclosures. It is strongly recommended that when developing internal procedures, public authorities consult the Act and the Public Interest Disclosure website located at www.opssc.wa.gov.au/pid.

The legislation is a welcome addition to our accountability requirements. It gives a solid foundation for increasing accountability and public confidence. The provision of complaints and grievance avenues, as they apply to both employees and members of the public, is indicative of good management. Protected disclosures are a vital management tool to enable organisations to identify areas of management, criminal and ethical risk of public interest, and to then address them.

In developing this first edition of the Guidelines we have adopted a relatively legalistic approach. Over time, we will review the Guidelines to include more interpretative and practical information. To enable this to occur, a process of consultation will be undertaken. When changes are made to the Guidelines, all proper authorities will be informed and further information will be available on the Public Interest Disclosure website.



Maxine Murray
Commissioner for Public Sector Standards

READING THESE GUIDELINES

These Guidelines are intended to provide information that will assist proper authorities under the Act to develop internal procedures relating to their functions.

Part I of these Guidelines provides information on the rights and obligations of persons under the Act. This information should be made available to persons within a public authority who are proper authorities to whom disclosures may be made under the Act. The information should also be made available to officers and employees of public authorities and members of the public who may wish to disclose public interest information under the Act.

Part II of these Guidelines provides a template for Internal Procedures relating to the obligations of public authorities under the Act. In general, this template is provided as a guide and may be modified by public authorities to suit their individual circumstances. However, internal procedures to be prepared by public authorities must contain the provisions in relation to:

- the designation of a Public Interest Disclosure Officer, or PID Officer.
- the receipt of public interest disclosures.
- the recording and reporting of public interest disclosures.

Appendix 5 to the Draft Internal procedures contains templates of forms that should be used by all public authorities, with any appropriate modifications to suit the particular circumstances of the public authority. These forms can be included as appendices to the internal procedures.

Part III of these Guidelines contains the text of the Act and the Code of Conduct and Integrity made under the Act.

While the Guidelines give a framework for dealing with the requirements of the Act, there will be, from time to time, investigations that raise complex questions of law, where there is a real possibility of litigation or where the matter is otherwise highly contentious. In these cases further legal or other professional advice should be sought before taking action.

ACKNOWLEDGMENT

We gratefully acknowledge the assistance of the NSW Ombudsman in the compilation of these Guidelines. The Ombudsman has generously allowed us to borrow heavily from the *Protected Disclosures Guidelines*, 4th edition, January 2002.

Many of the ideas and words expressed in these Guidelines are directly attributable to the work of the NSW Ombudsman's office as it appears in the NSW guidelines, however, for reasons of layout and readability quotation marks or direct referencing has not been indicated.

Public Interest Disclosure
Act 2003

Guidelines On Internal Procedures

PART I: RIGHTS AND OBLIGATIONS UNDER
THE PUBLIC INTEREST DISCLOSURE
ACT

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A. Overview of the Public Interest Disclosure Act

1. INTRODUCTION

The *Public Interest Disclosure Act 2003* facilitates the disclosure of public interest information, and provides protection for those making such disclosures and those who are the 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 Act requires a public authority to investigate a matter and to notify the person making the disclosure of the 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. These internal procedures must be consistent with these Guidelines.

2. 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 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.
- made to the appropriate proper authority.

While the 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.

More specific information about how a public interest disclosure is to be made and assessed can be found in section B of Part I of these Guidelines.

3. WHAT IS PROTECTION?

When a person makes an appropriate disclosure of public interest information to a proper authority, the 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. More specific information about protection can be found in section D of Part I of these Guidelines.

The 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.

4. KEY ASPECTS OF THE LEGISLATION

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

- Part 2 of the Act is concerned with the 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 3 of the 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.
- Part 5 of the 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.

B. Making, Receiving and Assessing a Public Interest Disclosure

1. 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 Act.

In order to be a disclosure to which the 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.
- made to the appropriate proper authority.

2. 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 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; or
- are reckless about whether the information is false or misleading in a material particular.

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

3. WHAT IS PUBLIC INTEREST INFORMATION?

The Act only applies to disclosures of public interest information.

Public interest information must meet a number of criteria. It 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.
- tend to show that the public body is, has been, or proposes to be, involved in improper conduct.

4. 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.)
- 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.
- Officers of the Commonwealth exercising a function on behalf of the State.

The 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.

5. WHAT IS A PUBLIC FUNCTION TO WHICH PUBLIC INTEREST INFORMATION MUST RELATE?

The 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 Act would not apply to information that an employee of a Department had engaged in criminal behaviour unconnected with their employment.

6. 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.
- 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 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 Act will apply. Public authorities should establish a chart or matrix or similar for identifying the nature of a complaint to determine if it is a public interest disclosure.

For example, the chart below identifies some of the differences between a grievance to which the Act would not apply and a public interest disclosure.

Grievance	Public Interest Disclosure
Aims to resolve a complaint or dispute	Does not aim to resolve a grievance or dispute
Aims to deal with the complaint as close to the source as possible, i.e. to resolve differences directly between the parties concerned	This principle is not relevant to the handling of a public interest disclosure
Usually a dispute between an employee and management, or between two parties	More than a dispute between two parties – relates to a matter of public interest
A complainant generally 'owns' the complaint and can withdraw it at any stage	The discloser doesn't 'own' the disclosure once it has been made and cannot withdraw it
Generally can be resolved by agreement between the parties	The aim is not to resolve the issue between two or more parties

7. 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 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 Act.

A public interest disclosure may be made internally to the public authority concerned or, in appropriate cases, externally to the proper authorities named in the Act. The named proper authorities are listed in the following chart.

Generally, disclosures about a public authority or its officers or contractors should be made to the Public Interest Disclosure Officer, or PID Officer, of the public authority concerned. The Act requires that each public authority specify a position the holder of which is the PID Officer 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 Commissioner for Public Sector Standards. The PID Officer must also comply with the *Code of Conduct and Integrity* made under the 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 chart 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 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 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 Parliamentary Commissioner Act 1971	The PID Officer of the public authority concerned, the Ombudsman or the Commissioner for Public Sector Standards
A person or a matter of a prescribed class	A person declared by the regulations to be a proper authority

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

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

8. CAN A DISCLOSURE OF PUBLIC INTEREST INFORMATION BE MADE TO MORE THAN ONE PROPER AUTHORITY?

Yes – the Act refers to a disclosure being made to more than one proper authority. In such a case the protection and obligations created by the 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 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.

9. NO TIME LIMIT ON A DISCLOSURE

A disclosure may relate to matters that occurred before the commencement of the 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 Act coming into effect on 1 July 2003.

10. CAN INFORMATION PROTECTED BY LEGAL PROFESSIONAL PRIVILEGE BE DISCLOSED?

The 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 document was created for the dominant purpose of:

- Obtaining or giving legal advice; or
- With reference to current or contemplated litigation.

C. Dealing with Public Interest Disclosures

1. HOW SHOULD A PUBLIC INTEREST DISCLOSURE BE MADE?

The 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 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 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 Act apply.

2. 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 Act where:

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

3. 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 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 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 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 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 police.

Before taking preventative or disciplinary action the proper authority is to afford any person against whom, or in respect of whom, the 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.

4. IS THE DISCLOSER GIVEN DETAILS OF THE INVESTIGATION AND ACTION TAKEN?

Where a proper authority refuses to investigate information disclosed under the 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 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 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.

5. 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 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.

6. WHAT IF A DISCLOSER DOES NOT AGREE WITH THE ACTION TAKEN BY THE PROPER AUTHORITY?

The 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.

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

8. CODE OF CONDUCT AND INTEGRITY

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

D. Confidentiality and Protection for Disclosers

1. WHAT PROTECTION DOES THE ACT PROVIDE TO DISCLOSERS?

The 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.
- requiring public authorities to provide protection from detrimental action for disclosers who are their employees.

2. 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.
- being liable for any breach of a duty of secrecy or confidentiality or any other applicable restriction on disclosure.

3. 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 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.
- 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.

4. 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 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 act of victimisation;
- did not know and could not reasonably be expected to have known about the act of victimisation; and
- could not, by the exercise of reasonable care, have prevented the act of victimisation.

5. 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 Act.

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)
- 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 \$24,000 or imprisonment for two years.

E. Managing Person(s) Subject to Disclosure

1. IS THE IDENTITY OF A PERSON ABOUT WHOM A DISCLOSURE IS MADE TO BE KEPT CONFIDENTIAL?

The protection that the Act 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 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.
- 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 \$24,000 or imprisonment for two years.

2. PROVIDING NATURAL JUSTICE

The 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.

F. Roles and Responsibilities of Public Authorities

1. WHAT IS THE ROLE OF THE COMMISSIONER FOR PUBLIC SECTOR STANDARDS?

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

- develop a Code setting out the minimum standards of conduct and integrity to be complied with by proper authorities,
- monitor compliance with the Act and Code,
- assist public authorities and public officers to comply with the Act and Code,
- prepare and publish guidelines on internal procedures relating to the functions of a proper authority under the Act,
- report annually to Parliament on the performance of his/her obligations and the compliance or non-compliance with the 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 Act.

2. 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 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 Commissioner for Public Sector Standards.

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 Commissioner for Public Sector Standards annually on:

- the number of disclosures made to the public authority under the Act,

- the outcome of investigations conducted as a result of disclosures,
- the action taken as a result of the investigation, and
- other matters prescribed (at present it is not contemplated that other matters will be 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 the internal procedures that each public authority is required to establish will need to implement these requirements.

3. 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 chart, 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 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 Act • Makes and keeps secure, comprehensive records of any investigation undertaken

G. Further Information

For information about agency roles generally, contact:

Office of the Commissioner for Public Sector Standards

GPO Box 2581
PERTH WA 6001

Level 12, St Martin's Tower
44 St Georges Terrace
Perth WA 6000

PID Advice and Referral Line: 1800 355 835
Facsimile: (08) 9260 6611
National Relay Service: 13 25 44 (city callers)
(Quote 9260 6600) 1800 067 167 (country callers)
Website: www.opssc.wa.gov.au/pid
Email: pid@opssc.wa.gov.au

**For advice on information related to an act or omission
that constitutes an offence under a written law contact:**

Corruption and Crime Commission

PO Box 7667
Cloisters Square
PERTH WA 6850

186 St Georges Terrace
PERTH WA
Telephone: 9215 4888
Outside Metro: 1800 809 000
Facsimile: 9215 4884
Website: www.ccc.wa.gov.au

Commissioner of Police

Police Headquarters
2 Adelaide Terrace
EAST PERTH WA 6004

Telephone: 9223 1000
Facsimile: 9223 1010
Website: www.police.wa.gov.au

**For information about proper use and management of
public resources, and more generally on public authorities'
accountability and performance requirements contact:**

Office of the Auditor General

4th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Telephone: 9222 7500
Facsimile: 9322 5664
Website: www.audit.wa.gov.au

On what constitutes matters of administration and what can be investigated under section 14 of the Parliamentary Commissioner Act 1971 contact:

State Ombudsman

PO Box Z5386
St Georges Terrace
PERTH WA 6831

Level 12, St Martin's Tower
44 St Georges Terrace
PERTH WA 6000

Telephone: 9220 7555
Outside Metro: 1800 117 000
Facsimile: 9325 1107
Website: www.ombudsman.wa.gov.au

Public Interest Disclosure Act
2003

Guidelines
On Internal
Procedures

PART II: DRAFT INTERNAL PROCEDURES
RELATING TO THE OBLIGATIONS
OF PUBLIC AUTHORITIES UNDER
THE PUBLIC INTEREST
DISCLOSURE ACT 2003

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It is suggested that public authorities consider using Part II of the Guidelines as a basis for writing their own Internal Procedures relating to their obligations under the Act. While these draft internal procedures are not necessarily comprehensive, they are designed to cover the main requirements for a public authority under the Act.

Some sections have been presented with blank spaces to allow public authorities to insert their unique information eg name of public authority and designation of PID officer.

Where appropriate, public authorities should amend or enhance these draft procedures to better reflect their own situation and context.

These procedures should be used in conjunction with the forms provided with these guidelines.

A. Support for Staff who make Public Interest Disclosures

The [insert name of public authority] does not tolerate corrupt or other improper conduct, including mismanagement of public resources, in the exercise of the public functions of the [insert name of public authority] and its officers, employees and contractors.

The [insert name of public authority] is committed to the aims and objectives of the *Public Interest Disclosure Act 2003*. It recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by staff as to corrupt or other improper conduct.

The [insert name of public authority] will take all reasonable steps to provide protection to staff who make *such* disclosures from any detrimental action in reprisal for the making of a public interest disclosure.

The [insert name of public authority] does not tolerate any of its officers, employees or contractors *engaging* in acts of victimisation or reprisal against those who make public interest disclosures.

B. Purpose of this Policy

These internal procedures provide for the manner in which the [insert name of public authority] will comply with its obligations under the *Public Interest Disclosure Act 2003*. They provide for the manner in which:

- disclosures of public interest information shall be made to the Public Interest Disclosure Officer (PID Officer).
- the PID Officer shall investigate the information disclosed, or cause that information to be investigated.
- the PID Officer may take action following the completion of the investigation.
- the PID Officer shall report to the discloser as to the progress and outcome of that investigation and the action taken as a consequence.
- the confidentiality of the discloser, and any person who may be the subject of a public interest disclosure, shall be maintained.
- records as to public interest disclosures shall be maintained and reporting obligations complied with.

C. Object of the Act

The Public Interest Disclosure Act 2003 commenced operation on 1 July 2003. The object of the Act is to:

- facilitate the disclosure of public interest information;
- provide protection for those who make disclosures; and
- provide protection for those who are the subject of a disclosure.

This is achieved by:

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

The rights and obligations created by the Act are described in Appendix 1 to these Procedures.

[Note for Public Authorities:

The text at Part I of these Guidelines should be reproduced as an Appendix to the Internal Procedures, for the information of PID Officers and staff and customers of the public authority]

D. Designation of Public Interest Disclosure (PID) Officer

The person from time to time holding or acting in the position of [insert name of position] is designated as the Public Interest Disclosure Officer, or PID Officer, of the [insert name of public authority]. The PID Officer is responsible for receiving disclosures of public interest information relating to matters falling within the sphere of responsibility of the [insert name of public authority].

The contact details of the PID Officer are as follows:

[insert address, e-mail, phone and fax numbers]

After assuming or beginning to act in the position of [insert name of position] the person holding or acting in that position must forward a completed PID Officer's Declaration (see FORMS) to the Office of the Public Sector Standards Commissioner. A copy of the completed PID Officer's Declaration shall be retained on a file to be kept for that purpose.

The person holding or acting in the position of [insert name of position] at the commencement of these procedures shall forward a completed PID Officer's Declaration to the Office of the Public Sector Standards Commissioner as soon as is practicable. A copy of the completed PID Officer's Declaration shall be retained on a file to be kept for that purpose.

[Notes for public authorities:

- ***The PID Officer should be a senior officer within the organisation who is provided with support in relation to their obligations.***
- ***Where practicable, the PID Officer ought not to be the principal executive officer of the public authority.***
- ***In large or dispersed organisations it may be necessary to appoint more than one PID Officer. In these cases as few as possible positions should be designated as PID Officer.***
- ***The named authorities – the Corruption and Crime Commission, the Ombudsman, the Auditor General and police officers – may themselves be proper authorities. In these named authorities a broader range of officers may require training in the receipt of public interest disclosures. For example, any police officer may be a proper authority for disclosures relating to offences. These named authorities should also appoint a PID Officer to deal with information relating to those authorities. The following special paragraphs should be included in the procedures of named authorities:***

***Corruption and
Crime
Commission***

The Act also provides for the Corruption and Crime Commission to receive public interest disclosures of information relating to an offence under State law. Subsequent references in these procedures to the PID Officer shall be taken to include an employee or officer of the Commission who receives, on behalf of the Commission, information relating to an offence under State law.

Police

The Act also provides for any police officer to receive public interest disclosures of information relating to an offence under State law. Subsequent references in these procedures to the PID Officer shall be taken to include an officer who receives a public interest disclosure relating to an offence under State law.

Ombudsman

The Act also provides for the Ombudsman to receive public interest disclosures of information relating to matters of administration within the jurisdiction of the Ombudsman, and matters relating to most public officers. Subsequent references in these procedures to the PID Officer shall be taken to include an officer of the Ombudsman who receives, on behalf of the Ombudsman, information relating to these matters.

Auditor General

The Act also provides for the Auditor General to receive public interest disclosures of information relating to substantial unauthorised or irregular use of, or substantial mismanagement of, public resources. Subsequent references in these procedures to the PID Officer shall be taken to include a person appointed by the Auditor General who receives, on behalf of the Auditor General information relating to these matters.

E. Receiving Public Interest Disclosures

1. 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 the Act (disclosure of their identity may be required in the course of the investigation or in taking action in some circumstances).
- (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 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 Act if they disclose the information otherwise than under the Act (ie 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 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 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 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 Parliamentary Commissioner Act 1971	The PID Officer of the public authority concerned, the Ombudsman or the Commissioner for Public Sector Standards
A person or a matter of a prescribed class	A person declared by the regulations to be a proper authority

Important Note: In addition, the information disclosed must be public interest information as defined in the Act. Not all proper authorities to which a disclosure may be made will be required or have the power to investigate the information disclosed. In some cases it may be necessary for the discloser or information to be referred to another proper authority with power to investigate the information.

2. Assessing a Public Interest Disclosure

The PID Officer must, on receiving the information confirm that the discloser, after receiving the advice referred to in section 1, wishes to make a public interest disclosure under the Act. If they do the PID Officer must 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 in section 1).
- the discloser believes on reasonable grounds that the information is or may be true.
- the information is not protected by legal professional privilege.

If the above questions are all answered "yes", then the disclosure of information is a public interest disclosure to which the Act will apply.

In assessing whether a disclosure is a public interest disclosure, the PID Officer should consider the *Flowchart for Receiving Disclosures* at Appendix 2, as well as complete Part 1 of the *Assessment Form Public Interest Disclosure* at Appendix 5.

[Note for Public Authorities:

- **Where the proper authority does not have the power to investigate a matter the person should be referred to the appropriate proper authority. However, if they still wish to make the disclosure to you, it should be assessed and if it is a public interest disclosure, it should be referred to the appropriate authority for investigation as provided for under the Act.]**

3. Form of Public Interest Disclosure

If a disclosure is a public interest disclosure, the discloser and the PID Officer should complete the *Public Interest Disclosure Lodgement Form* (see FORMS). The PID Officer should also complete Part 2 of the *Assessment Form For Public Interest Disclosures* (see FORMS).

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 Act.

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

The making of the public interest disclosure should also be recorded in the Public Interest Disclosure Register, described in section J of these Procedures, for reporting to the Commissioner for Public Sector Standards.

F. Investigating a Public Interest Disclosure

1. Determining whether the matter must be investigated

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

- the disclosure relates to the [insert name of public authority], its officers or contractors.
- the disclosure relates to a matter or person that [insert name of public authority] 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 Act to investigate the matter.

Where the PID Officer considers that he or she lacks sufficient power to effectively investigate the matter, but the information received causes him or her to form the opinion that a public authority, public officer or public sector contractor may have engaged in improper conduct, the PID Officer should refer the matter to another appropriate investigative body. For example, an allegation of an offence supported by cogent evidence may need to be referred by a PID Officer to the Police for investigation.

[Note for Public Authorities:

At this point the Procedures may identify the matters which the proper authority has the functions and power to investigate, in accordance with the legislation under which the authority operates. This includes taking into account the independence that any particular proper authority has under a written law.]

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.
- 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 Act.

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

The questions to be considered in the initial assessment by the PID Officer are indicated in the *Flowchart for Investigating Information Disclosed* at Appendix 3, and Part 1 of the *Assessment Form for Public Interest Disclosures* (see FORMS) should be completed.

In assessing whether a public interest disclosure should be investigated, a PID Officer should consider the *Flowchart for Investigating Information Disclosed* (Appendix 3) and complete Part 3 of the *Assessment Form for Public Interest Disclosures* (see FORMS).

2. Investigating information received in a Public Interest Disclosure

Where the PID Officer determines that the disclosure is a public interest disclosure that should be investigated, the officer must investigate the disclosed matter himself or herself or engage another person to carry out the investigation.

[Note for Public Authorities

Investigative procedures that an authority already has may be incorporated into these Procedures, by reference where appropriate. The following text is provided to assist those authorities that do not have a general investigative function or established procedures, and need not be included in all cases.

An investigation should be carried out in accordance with established procedures. These procedures should be readily available to a proper authority. Where a proper authority is required to conduct investigations in a certain manner these requirements would take precedence over relevant information in the guidelines or internal proceedings.]

In conducting an investigation, typical procedures could include:

- Drawing up terms of reference, which should clarify the key issues identified by the disclosure.
- Specifying a date by which the investigation should be completed.
- Ensuring the objectives of the investigation include collecting and collating information relating to the disclosure, considering the information collected and drawing conclusions objectively and impartially.
- Maintaining procedural fairness for the person who is the subject of the disclosure.
- Giving information to the person who is the subject of a disclosure about their rights and obligations under the Act, the Code of Conduct and Integrity, any agency code of conduct, and the law.
- The investigator making contemporaneous notes of discussions and interviews and, where practicable and appropriate, recording discussions and interviews on audio or videotape.
- Ensuring strict security with all investigations, so as to maintain the confidentiality requirements of the Act.

If a disclosure is withdrawn, a proper authority may still continue to investigate the issues raised.

3. Maintaining Confidentiality in an Investigation

The 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 Act, is a serious offence, punishable with a maximum penalty of \$24,000 or two years.

The confidentiality provisions of the 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. It is important that this consent be recorded. The *Consent to Disclosure of Identifying Information* form should be used for this purpose (see FORMS).

Identifying information relating to a discloser may 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 for these reasons 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.

This information should be given, where practicable, in the form for *Notification of Disclosure of Identifying Information* (see FORMS).

Where identifying information in relation to a discloser is conveyed to another person for these reasons, the other person should be warned 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;
- 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 section 152 or 153 of the *Corruption and Crime Commission Act* are exempt from these confidentiality requirements.

Particularly where a discloser works for the [insert name of public authority], 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.

4. Recording the Outcome of an Investigation

The outcome of an investigation should be clearly and comprehensively recorded. In addition to any investigation report, the person conducting the investigation should complete part 4 of the *Assessment Form for Public Interest Disclosure* (see FORMS).

The result of the investigation should also be recorded in the Public Interest Disclosure Register, described in section J of these Procedures (sample Register is provided as Appendix 5). All reporting requirements to the Commissioner for Public Sector Standards required under the Act will be based on extracts from this Register.

G. Taking Action Following an Investigation

1. General

The PID Officer must take action where he or she forms the opinion that a person may be, or 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 the Police or other appropriate body, or
- taking disciplinary action against a person responsible for the matter.

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 Officer operates. The 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.

2. Maintaining Confidentiality when Taking Action

When taking action, the confidentiality of identifying information must be maintained, unless its disclosure is authorised by the 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.

3. Recording Action Taken

In addition to keeping other records, the PID Officer shall complete Part 5 of the *Assessment Form for Public Interest Disclosures* (see FORMS) and record a summary of the action taken in the Public Interest Disclosure Register. All reporting requirements to the Commissioner for Public Sector Standards required under the Act will be based on extracts from this Register.

H. Reporting to a Discloser on the Progress and Outcome of an Investigation

Where the PID Officer decides not to investigate information disclosed under the Act, or discontinues an investigation, the 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.

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 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, the PID Officer must not give information that, in the officer's 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 Act.

I. Protecting Disclosers

1. Victimization and Reprisals

The [insert name of public authority] 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 [insert title of principal executive officer] 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 [insert name of public authority].

2. 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 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.

J. Public Interest Disclosure Register

The [insert name of public authority] shall maintain a Public Interest Disclosure Register recording a unique register number and key information for each disclosure.

The register should include a summary of 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 action, if any, taken
- Communication with the discloser
- Disclosure of the discloser's identity, if applicable
- Disclosure of identity of persons named in the disclosure
- Claims of unlawful disclosure of discloser's identity or identity of persons named in the disclosure
- Claims of victimisation
- Key dates

A sample *Public Interest Disclosure Register* is provided at Appendix 5. An electronic version can be found on the website at www.opssc.wa.gov.au/pid. Additional information may also be recorded in the Register at the discretion of the public authority.

All reporting requirements to the Commissioner for Public Sector Standards required under the Act will be based on extracts from the fields shown in the sample Register.

K. Reporting Requirements

Under the Act public authorities will need to report to the Commissioner each year as outlined below.

Principal Executive Officer Report

Under section 23 (f) of the Act, the [insert name of public authority] is required to report annually to the Commissioner for Public Sector Standards 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 action, if any, taken as a result of each investigation.
- Commissioner's Compliance Report

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

Under section 27 of the Act the Minister will carry out a review of the Act in 2006.

To enable the Commissioner and the Minister to meet these obligations [insert name of public authority] will provide a report each year on compliance with and administration of the Act as requested by the Commissioner.

Report Format and Submission

An electronic format for the Principal Executive Officer Report and the information for the Commissioner's Compliance Report will be provided each year by the Commissioner and both will be able to be submitted in a single electronic submission. The reports will cover the period 1 July in any year to 30 June in the subsequent year.

Where there has been no action on a disclosure in the reporting period the format of the report will provide for a simple nil return. Where action relating to one or more disclosures has occurred, all data required will be obtainable as a simple extract from the Public Interest Disclosure Register.

L. Making Information Available

These internal procedures shall be made available for access by all staff and members of the public. Copies of these internal procedures are available from the Public Interest Disclosure Officer and are to be kept at [specify locations from which internal procedures are to be available].

After the commencement of the Act all staff should be provided with the *Information for Staff* at Appendix 6. This information should also be provided to new staff on induction.

Where a person makes an allegation about improper conduct, but the person has not referred to the Act, the person should be advised that they might want to make a public interest disclosure under the Act. If they may wish to do so, they should be referred to the PID Officer for guidance on how to make a disclosure under the Act and on the implications of having done so.

APPENDIX 1

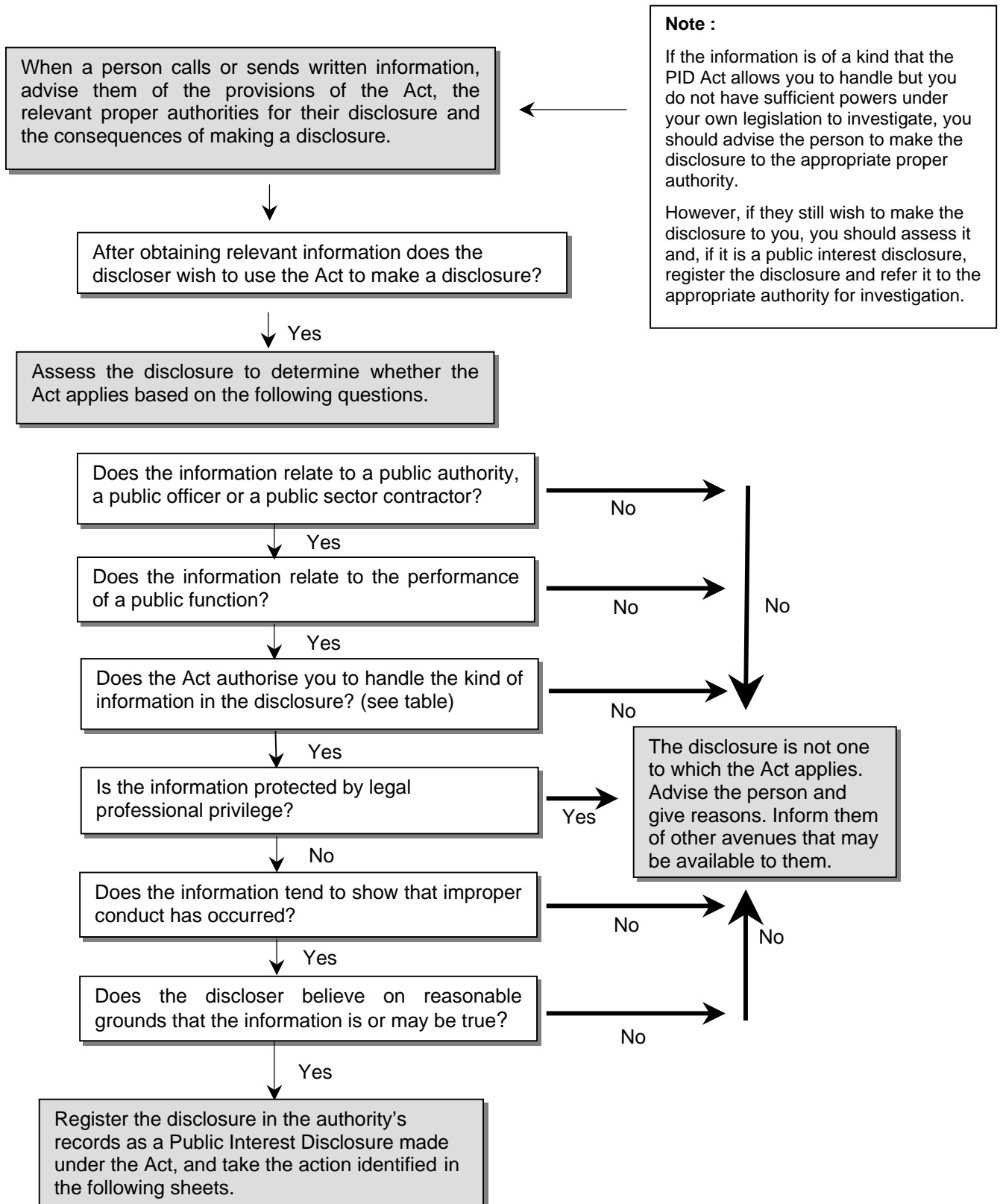
RIGHTS AND OBLIGATIONS UNDER THE PUBLIC INTEREST DISCLOSURE ACT

Note for Public Authority: The text of Part I of these Guidelines should be inserted here, for the information of PID officers, staff and customers of the public authority.

Public Interest Disclosure Act 2003

APPENDIX 2

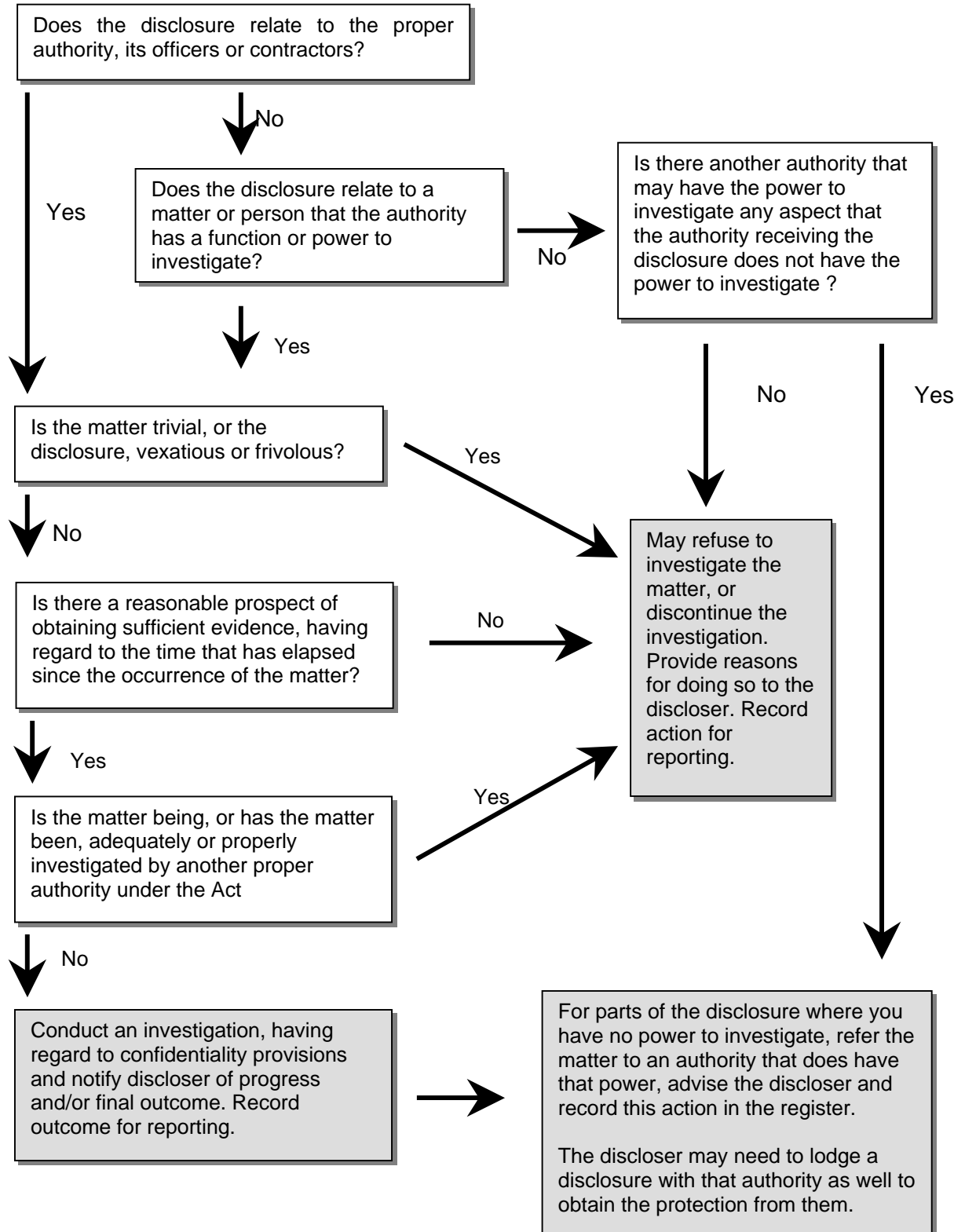
FLOWCHART FOR RECEIVING AND ASSESSING DISCLOSURES



Public Interest Disclosure Act 2003

APPENDIX 3

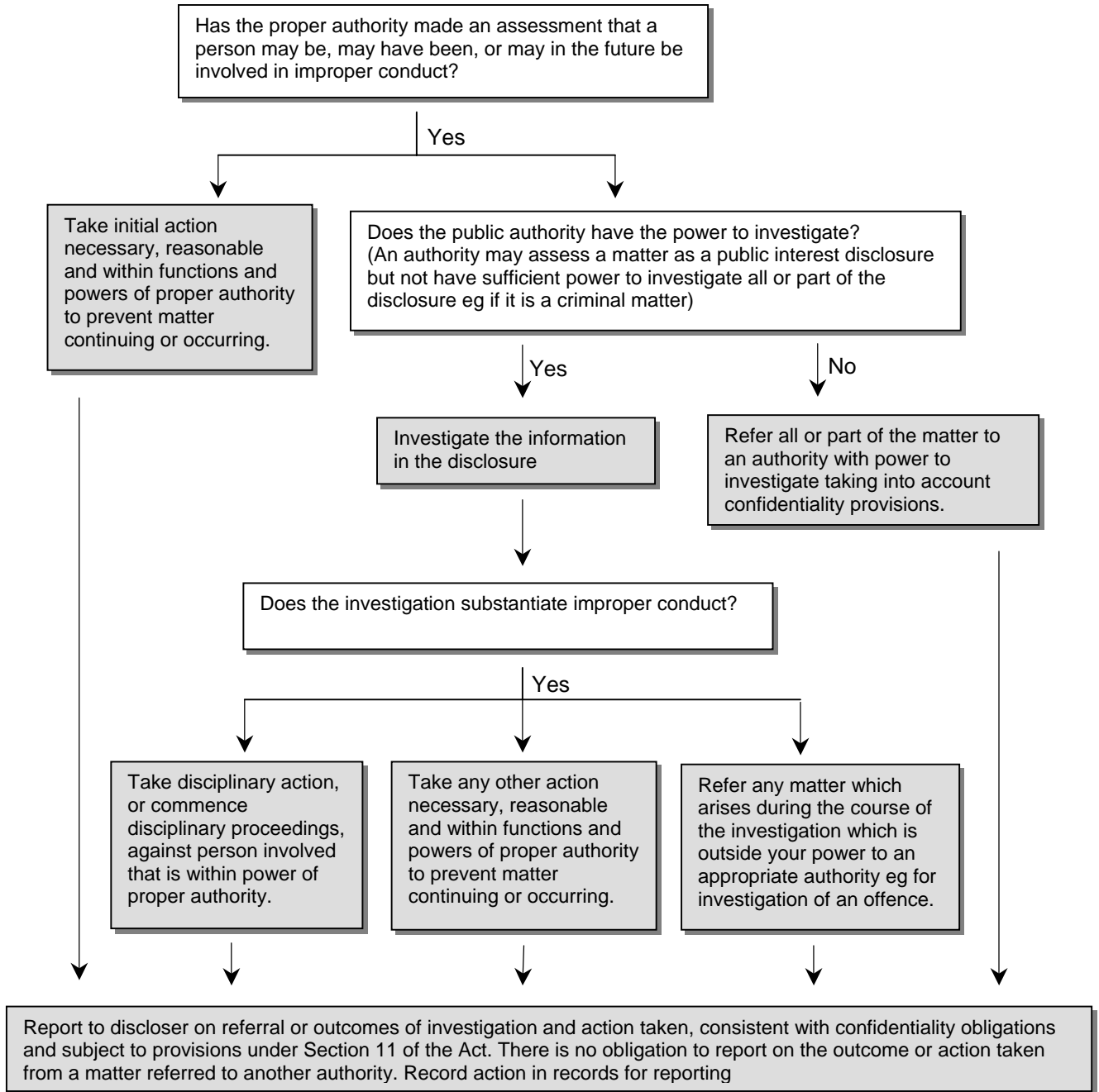
FLOWCHART FOR INVESTIGATING INFORMATION DISCLOSED



Public Interest Disclosure Act 2003

APPENDIX 4

FLOWCHART FOR TAKING ACTION



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 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 Act and receive reports from the new authority on the outcome and action taken.

APPENDIX 5

PUBLIC INTEREST DISCLOSURE REGISTER

It is suggested that proper authorities use this Register to record public interest disclosures. All information required for reporting to the Commissioner for Sector Standards will be able to be extracted from this draft register. Yes

Proper authorities should ensure that the *Public Interest Disclosure Register*, both in electronic and hardcopy forms, is kept strictly confidential and in a secure place.

This Register is also provided in electronic format on the website. In the electronic version most of these fields will have drop down menus with choices from which to select. If you wish to use a hard copy, as below, it is advised that you obtain a list of choices from the Office of the Public Sector Standards Commissioner.

• **Disclosure Number:** _____

• **Disclosure Code (Unique Register No)** _____

• **Person Making the Disclosure (Discloser)**

Name of discloser: _____

Gender of discloser: _____

Name of public authority employing the discloser (if applicable) _____

Relationship of discloser to public authority about which disclosure is made _____

• **First Public Authority about which the Disclosure is made**

Name of public authority _____

Individuals named in the disclosure _____

• **Second Public Authority about which the Disclosure is made**

Name of public authority _____

Individuals named in the disclosure _____

Public Interest Disclosure Act 2003

APPENDIX 5

PUBLIC INTEREST DISCLOSURE REGISTER

It is suggested that proper authorities use this Register to record public interest disclosures. All information required for reporting to the Commissioner for Public Sector Standards will be able to be extracted from this draft register.

Proper authorities should ensure that the *Public Interest Disclosure Register*, both in electronic and hardcopy forms, is kept strictly confidential and in a secure place.

This Register is also provided in electronic format on the website. In the electronic version most of these fields will have drop down menus with choices from which to select. If you wish to use a hard copy of the electronic format it is advised that you obtain a list of choices from the website.

• **Disclosure Number:** _____

• **Disclosure Code (Unique Register No)** _____

Person Making the Disclosure (Discloser)

Name of discloser: _____

Gender of discloser: _____

Name of public authority employing the discloser (if applicable) _____

Relationship of discloser to public authority about which disclosure is made _____

• **First Public Authority about which the Disclosure is made**

Name of public authority _____

Individuals named in the disclosure _____

• **Second Public Authority about which the Disclosure is made**

Name of public authority _____

Individuals named in the disclosure _____

• **Nature of Disclosure**

Type of disclosure _____

Brief description of nature of disclosure _____

- **Investigation Process and Action Taken**

Investigation undertaken Yes No

Reason if no investigation or investigation discontinued _____

Outcome of investigation _____

Brief description of results of Investigation _____

Brief description of action taken if investigation has substance _____

- **Key Dates**

Date lodged _____

Date of decision on whether to investigate _____

Date investigation completed or discontinued _____

Date of decision on action to be taken _____

- **Communication with Discloser**

Total number of written progress reports to discloser _____

	Yes/No	Date
First advice to discloser of action taken or proposed within 3 months		
Reasons given if no investigation or investigation discontinued		
Final report requested by discloser		
Final report provided to discloser		

- **Disclosure of Identity of Discloser**

	Yes/No	Date
Discloser's identity disclosed		
Discloser advised of reasons for disclosure		
Claim of unlawful disclosure made		
Reason for disclosure of identity		

- **Disclosure of Identity of Persons Named in the Disclosure**

	Yes/No	Date
Person's identity disclosed		
Person advised of reasons for disclosure		
Claim of unlawful disclosure made		
Reason for disclosure of identity		

- **Unlawful Disclosure of Discloser's Identity**

Outcome of investigation _____

Brief description of results of investigation _____

Brief description of action taken if claim has substance _____

- **Unlawful Disclosure of Identity of Person Named in Disclosure**

Outcome of investigation _____

Brief description of results of investigation _____

Brief description of action taken if claim has substance _____

- **Claim of Victimization**

Claim of victimisation made Yes No Date _____

Brief description of nature of claim of victimisation _____

Internal or Equal Opportunity Commission Investigation _____

- **Internal Handling of Victimisation Claim (if applicable)**

Outcome of investigation _____

Brief description of results of investigation _____

Brief description of action taken if claim has substance _____

- **Victimisation Claims Lodged with Equal Opportunity Commission (if applicable)**

Outcome of investigation _____

Brief description of results of investigation _____

Brief description of action taken if claim has substance _____

APPENDIX 6

STAFF INFORMATION

WHAT IS A PUBLIC INTEREST DISCLOSURE?

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

The [insert name of public authority] is committed to the aims and objectives of the *Public Interest Disclosure Act 2003*. 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 Act deals with disclosures by anyone (not just government employees) but the information must be specific to the following areas:

- | | |
|---|--|
| <input type="checkbox"/> 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 |

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 Act.

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

- it is an offence to make a disclosure if you know, or are reckless about, it being false and misleading.
- with some exceptions, the 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 Act and may commit an offence under the Act

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

The Public Interest Disclosure Officer of the [insert name of public authority] is [insert position address, email, phone and fax numbers of PID Officer.]

This Officer is responsible for receiving disclosures of public interest information relating to matters falling within the sphere of responsibility of the [insert name of public authority].

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 Assembly
A Judicial officer	Chief Justice
A public officer who is not a member of Parliament, a Minister, a judicial officer or a Commissioned or other officer specified in schedule 1 of the <i>Parliamentary Commissioner Act 1971</i>	The PID Officer of the public authority concerned, the Ombudsman or the Commissioner for Public Sector Standards
A person or a matter of a prescribed class	A person declared by the regulations to be a proper authority

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

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

WHAT YOU SHOULD ASK YOURSELF

Making a disclosure is a serious matter and needs to be fully 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
- If you fully understand your responsibilities under the 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 Act
- 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 public authority must inform you within three months of making the disclosure of what they intend to do about your disclosure.

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

You are entitled to a report on the outcome and any action taken when the investigation is complete.

WHAT ABOUT CONFIDENTIALITY AND MY PROTECTION?

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

- The identity of the person making the disclosure
- The identity of any person named in the disclosure

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

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

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

A person alleging victimisation as a result of a disclosure can complain to the Equal Opportunity Commission or may be able to take civil action. (The Equal Opportunity Commission is at Level 2 Westralia Square 141 St Georges Terrace. Telephone (08) 9216-3900 or via its Website eoc@equalopportunity.wa.gov.au).

AFTER THE INVESTIGATION

After making a disclosure you will not normally be required to do anything else other than 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 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 [insert name of public authority] will take all reasonable steps to provide protection to staff who make such disclosures from any detrimental action in reprisal for the making of a disclosure.

The [insert name of public authority] does not tolerate any of its officers, employees or contractors engaging in acts of victimisation or reprisal against those who make public interest disclosures. These acts should be reported immediately to the Public Interest Disclosure Officer or the [insert position title of principal executive officer].

NAMED PROPER AUTHORITIES

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

- The 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) 9222-7500 Website www.audit.wa.gov.au
- The Police Service will be able to provide advice on offences under a State law
Telephone (08) 9223 1000 Website www.police.wa.gov.au
- The Office of the Public Sector Standards Commissioner will be able to provide assistance to public authorities and public officers to comply with the Code of Conduct and Integrity, and with the Act
PID Advice and Referral Line 1800 355 835 Website www.opssc.wa.gov.au/pid

Public Interest Disclosure Act
2003

Guidelines On Internal Procedures

FORMS

FORMS

**NOTE FOR PUBLIC AUTHORITY:
THESE MAY BE MODIFIED TO SUIT THE PARTICULAR
CIRCUMSTANCES OF THE PUBLIC AUTHORITY.**

CONTENTS

- Public Interest Disclosure Officer's Declaration
- Assessment Form for Public Interest Disclosure
- Public Interest Disclosure Lodgement Form
- Consent to Disclosure of Identifying Information
- Notification of Disclosure of Identifying Information

Public Interest Disclosure Act 2003

PUBLIC INTEREST DISCLOSURE OFFICER'S DECLARATION

To: The Office of the Public Sector Standards Commissioner
12th Floor St Martins Tower
44 St Georges Terrace
Perth WA 6000

Facsimile: (08) 9260 6611

Email pid@opssc.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 Act, or
- as a person in respect of whom such a disclosure has been made,

except in accordance with the Act.

Signed: _____

Date: _____

Public Interest Disclosure Act 2003

ASSESSMENT FORM FOR PUBLIC INTEREST DISCLOSURE

Register #

PART ONE

RECEIVING THE DISCLOSURE - ASSESSMENT OF WHETHER INFORMATION IS A VALID DISCLOSURE

	Tick Box	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 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 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

ASSESSMENT FORM FOR PUBLIC INTEREST DISCLOSURE

PART TWO

Register #

INTERNAL QUALITY CONTROL

Does the disclosure meet the manner and form required by the Internal Procedures of the [insert name of public authority]?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If no, explain why
--	---	--------------------

SIGNATURE:

I, the Public Interest Disclosure Officer for the [insert name of public authority] confirm that the disclosure made to me on the _____ day of _____ 200 by _____ (discloser's name) is registered as a disclosure under the *Public Interest Disclosure Act 2003* in the Public Interest Disclosure Register of the [insert name of public authority].

Signed:
PID Officer

Date:

Public Interest Disclosure Act 2003

ASSESSMENT FORM FOR PUBLIC INTEREST DISCLOSURE

PART THREE

Register #

ASSESSMENT OF WHETHER THE
DISCLOSURE SHOULD BE INVESTIGATED

	Tick Box	Notes
Does the disclosure relate to the proper authority, its officers or contractors?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does the disclosure relate to a matter or person that the authority has a function or power to investigate?	<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 requires be investigated. 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.

	Tick Box	Notes
Is the matter trivial?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is the disclosure vexatious?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is the disclosure frivolous?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

If any of the "Yes" boxes have been ticked then the disclosure is unlikely to be one that the Public Interest Disclosure Act requires be investigated. The PID officer should ensure a proper record is made of the reasons for the "Yes" response and should provide his or her response to the discloser.

Public Interest Disclosure Act 2003

ASSESSMENT FORM FOR PUBLIC INTEREST DISCLOSURE

PART THREE CONTINUED

Register #

ASSESSMENT OF WHETHER THE
DISCLOSURE SHOULD BE INVESTIGATED

	Tick Box	Notes
Is there a reasonable prospect of obtaining sufficient evidence, having regard to the time that has elapsed since the occurrence of the matter?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

If the "No" box has been ticked then the disclosure is unlikely to be one that the Public Interest Disclosure Act requires be investigated. 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.

	Tick Box	Notes
Is the matter being, or has the matter been, adequately or properly investigated by another proper authority under the Act?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

If the "Yes" box has been ticked then the disclosure is unlikely to be one that the Public Interest Disclosure Act requires be investigated. The PID officer should ensure a proper record is made of the reasons for the "Yes" response and should provide his or her response to the discloser.

SIGNATURE:

I, the Public Interest Disclosure Officer for the [insert name of public authority] confirm that the public interest disclosure made to me on the _____ day of _____ 200 by (discloser's name) in my opinion meets/does not meet (delete one) the requirements for a public interest disclosure to be investigated.

I also confirm that I have recorded this opinion in the Public Interest Disclosure Register of the [insert name of public authority].

Signed:
PID Officer

Date:

Public Interest Disclosure Act 2003

ASSESSMENT FORM FOR PUBLIC INTEREST DISCLOSURE

PART FOUR

Register #

INVESTIGATION

Investigating Officer's Name: _____

Normal Designation of Investigating Officer: _____

Address: _____

Contact Telephone No. _____

Email Address: _____

Date Investigation Authorised by the Proper Authority: _____

Details of Authorisation: _____

REVIEW OF THE INVESTIGATION PROCESS

	Tick Box	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 - 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, but the above serves as a useful checklist for a proper investigation.

Public Interest Disclosure Act 2003

ASSESSMENT FORM FOR PUBLIC INTEREST DISCLOSURE

PART FOUR CONTINUED

Register # _____

INVESTIGATION

RECOMMENDATION

It is recommended that the proper authority form the opinion that:

SIGNATURE:

I, the investigating officer appointed by [insert name of public authority] to investigate the public interest disclosure No _____ (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 *Public Interest Disclosure Act 2003*.

Signed:
(investigating officer
for public authority)

Date:

Public Interest Disclosure Act 2003

ASSESSMENT FORM FOR PUBLIC INTEREST DISCLOSURE

PART FIVE

Register # _____

FURTHER ACTION

	Tick Box	Notes
Does the proper authority accept the recommendation contained in Part Four?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

If the 'yes' box has been ticked, please indicate action to be taken by proper authority.

Action taken by the proper authority

	Tick Box	Notes
Take action necessary, reasonable and within functions and powers of proper authority 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	
Take disciplinary action, or commence disciplinary proceedings, against person involved, within power of proper authority	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Report to discloser on outcome of investigation and action taken, or to be taken consistent with confidentiality obligations. Record action(s) in records for reporting.

SIGNATURE:

I, the Public Interest Disclosure Officer for the [insert name of public authority] 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 action taken or to be taken in the Public Interest Disclosure Register of the [insert name of public authority].

Signed:
PID Officer

Date:

Public Interest Disclosure Act 2003

PUBLIC INTEREST DISCLOSURE LODGEMENT FORM

This is an official lodgement form for a disclosure made under the Public Interest Disclosure Act 2003. A discloser should ensure that they fully understand the rights and responsibilities required under this legislation before the form is completed and signed. Appropriate advice should be gained before any disclosure is made.

1. PERSONAL DETAILS

Family Name: _____

Given Name: _____ Gender (please circle): M / F

Title (please circle): Mr, Ms, Mrs, Miss Date of Birth: _____

Address: _____

Home Telephone No: _____ Work Telephone No: _____

Mobile: _____ Email address: _____

2. DISCLOSURE DETAILS

Name of the Public Authority(ies)
the Disclosure Relates To: _____

Do you work for a public authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes, which public authority and what is your position title?	

Does the disclosure relate to one or more individuals?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide names and positions held by person(s) in the public authority	

Public Interest Disclosure Act 2003

PUBLIC INTEREST DISCLOSURE LODGEMENT FORM CONTINUED

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

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

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	

Public Interest Disclosure Act 2003

PUBLIC INTEREST DISCLOSURE LODGEMENT FORM CONTINUED

**YOU SHOULD READ THE FOLLOWING
INFORMATION AND SIGN AT THE END OF THIS FORM**

3. 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:

1. 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

2. I will forfeit protection provided by the *Public Interest Disclosure Act 2003* if I fail, without reasonable excuse, to assist a person investigating the matter by supplying requested information.
3. I will forfeit the protection provided by the *Public Interest Disclosure Act 2003* if I subsequently disclose this information to any person other than a proper authority under the Act.
4. 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 *Public Interest Disclosure Act 2003*, except in accordance with section 16(3) of that Act.

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

Signed:

Date:

For Office Use Only:

Register Number: _____

Public Interest Disclosure Act 2003

CONSENT TO DISCLOSURE OF IDENTIFYING INFORMATION

PERSONAL DETAILS

Family Name: _____

Given Name: _____ Gender (please circle): M / F

Title (please circle): Mr, Ms, Mrs, Miss Date of Birth: _____

Address: _____

Home Telephone No: _____ Work Telephone No: _____

Mobile: _____ Email address: _____

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 *Public Interest Disclosure Act 2003*.

Consent to disclosure of identifying information by person in respect of whom a public interest disclosure has been made

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 *Public Interest Disclosure Act 2003*.

Limitations on consent (optional)

This consent only applies to disclosures made to the following persons:

This consent only applies to the following information:

Signed: _____

Date: _____

Public Interest Disclosure Act 2003

NOTIFICATION OF DISCLOSURE OF IDENTIFYING INFORMATION

TO:

Title (please circle): Mr, Ms, Mrs, Miss Gender (please circle): M / F

Name (in full): _____

Address: _____

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.

Is necessary to enable the matter to be investigated effectively.

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: _____

Public Interest Disclosure Act
2003

Guidelines
On Internal
Procedures

PART III: LEGISLATION

*Public Interest Disclosure Act
2003*

*Public Interest Disclosure
Regulations 2003*

Public Interest Disclosure Act 2003

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THE TEXT OF THE LEGISLATION FOLLOWS

Public Interest Disclosure Act 2003

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Western Australia

Public Interest Disclosure Act 2003

An Act to facilitate the disclosure of public interest information, to provide protection for those who make disclosures and for those the subject of disclosures, and, in consequence, to amend various Acts, and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Public Interest Disclosure Act 2003*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. Interpretation

- (1) In this Act, unless the contrary intention appears —
 - “**Auditor General**” means the officer of that title appointed or deemed to have been appointed under section 71 of the *Financial Administration and Audit Act 1985*;
 - “**Commissioner**” means the person for the time being holding the office of Commissioner for Public Sector Standards created by section 16(1) of the *Public Sector Management Act 1994*;
 - “**Commissioner of Police**” means the person holding the office of Commissioner of Police under the *Police Act 1892*;
 - “**Corruption and Crime Commission**” has the meaning given to “Commission” in section 3 of the *Corruption and Crime Commission Act 2003*;
 - “**detrimental action**” includes action causing, comprising, or involving —
 - (a) injury, damage, or loss;
 - (b) intimidation or harassment;

- (c) adverse discrimination, disadvantage, or adverse treatment in relation to a person's career, profession, employment, trade, or business; or
- (d) a reprisal;

“environment” has the same meaning as in the *Environmental Protection Act 1986*;

“Parliamentary Commissioner” means a person for the time being holding the office of the Parliamentary Commissioner for Administrative Investigations under the *Parliamentary Commissioner Act 1971*;

“police officer” means a person —

- (a) appointed under Part I of the *Police Act 1892* to be a member of the Police Force of Western Australia;
- (b) appointed under Part III of the *Police Act 1892* to be a special constable; or
- (c) appointed under Part IIIA of the *Police Act 1892* to be an aboriginal aide;

“public authority” means —

- (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 to 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;

s. 3

- (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;

“public interest information” means information that tends to show that, in relation to its performance of a public function (either before or after the commencement of this 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) a 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 —
 - (i) injury to public health;
 - (ii) prejudice to public safety; or
 - (iii) 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” means —

- (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” means —

- (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 function; 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.

s. 4

- (2) The regulations made for the purpose of paragraph (g) of the definition of “public authority” in subsection (1) can only declare a body or holder of an office to be a public authority if —
- (a) the body or office is established or continued under a written law; or
 - (b) it is a corporation or association over which control can be exercised by —
 - (i) the State;
 - (ii) a body referred to in paragraph (b), (c), (e) or (f) of that definition; or
 - (iii) a body or the holder of an office declared by the regulations to be a public authority.

[Section 3 amended by No. 48 of 2003 s. 62; No. 78 of 2003 s. 74(2).]

4. Application to the Crown

This Act binds the Crown in right of the State.

Part 2 — Public interest disclosures

Division 1 — Disclosures

5. Public interest disclosure

- (1) Any person may make an appropriate disclosure of public interest information to a proper authority.
- (2) A person makes an appropriate disclosure of public interest information if, and only if, the person who makes the disclosure —
 - (a) believes on reasonable grounds that the information is true; or
 - (b) has no reasonable grounds on which to form a belief about the truth of the information but believes on reasonable grounds that the information may be true.
- (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 14 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) 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;

Public Interest Disclosure Act 2003

Part 2 Public interest disclosures

Division 1 Disclosures

s. 5

- (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 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) 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.
- (4) Where a public interest disclosure falls within 2 or more paragraphs of subsection (3), then it is made to a proper authority if made to any or all of the authorities contemplated by the applicable paragraphs.
- (5) A disclosure of public interest information may be made under this Act —
- (a) even though anything to which the disclosure relates occurred before the commencement of this Act; and
 - (b) whether or not the person making the disclosure is able to identify any person whom the information concerns.
- (6) Nothing in this Act entitles a person to disclose information that would otherwise be the subject of legal professional privilege.

[Section 5 amended by No. 48 of 2003 s. 62; No. 78 of 2003 s. 74(2).]

6. Liability of person disclosing unaffected

A disclosure of public interest information under this Act by a person does not affect that person's liability for anything to which the information relates.

Division 2 — Obligations of a person to whom a disclosure is made

7. Interpretation

In sections 8, 9 and 10 —

“proper authority” means a person to whom an appropriate disclosure of public interest information has been made in accordance with section 5(3), except that it does not include the Chief Justice or the Presiding Officer of a House of Parliament.

8. Obligation to carry out investigation

- (1) A proper authority must investigate or cause to be investigated the information disclosed to it under this Act if the disclosure relates to —
 - (a) the authority;
 - (b) a public officer or public sector contractor of the authority; or
 - (c) a matter or person that the authority has a function or power to investigate.
- (2) A proper authority may refuse to investigate, or may discontinue the investigation of, a matter raised by the disclosure if it considers that —
 - (a) the matter is trivial;
 - (b) the disclosure is vexatious or frivolous;

Public Interest Disclosure Act 2003

Part 2 Public interest disclosures

Division 2 Obligations of a person to whom a disclosure is made

s. 9

- (c) there is no reasonable prospect of obtaining sufficient evidence due to the time that has elapsed since the occurrence of the matter; or
 - (d) the matter is being or has been adequately or properly investigated by another person to whom an appropriate disclosure of public interest information has been made in accordance with section 5(3).
- (3) A proper authority that refuses to investigate, or discontinues the investigation of, a matter raised by a disclosure must give the person who made the disclosure the reason for its refusal.

9. Action by proper authority

- (1) If a proper authority forms the opinion that a person may be, may have been, or may in the future be, involved in a matter that may be the subject of a disclosure of public interest information, the proper authority must take such action as is necessary, reasonable, and within its functions and powers, to —
- (a) prevent the matter to which the disclosure relates from continuing or occurring in future;
 - (b) refer the matter to the Commissioner of Police or another person, body, or organisation having power to investigate the matter; or
 - (c) take disciplinary action or commence or enable disciplinary proceedings to be commenced against a person responsible for the matter.
- (2) Before taking action under subsection (1)(a) or (c) the proper authority is to afford any person against whom, or in respect of whom, the action is to be taken the opportunity to make a submission, either orally or in writing, in relation to the matter.

10. Informant to be notified of action taken

- (1) If an appropriate disclosure of public interest information is made to a proper authority, that proper authority must, subject to

section 11, not more than 3 months after the disclosure is made, notify the person who made the disclosure of the action taken or proposed to be taken in relation to the disclosure.

- (2) A person who has made an appropriate disclosure of public interest information under this Act may request the proper authority to whom the disclosure was made to provide a report on progress on dealing with the matter in relation to which the disclosure was made.
- (3) If an investigation into a matter in relation to which the disclosure was made is not complete, the proper authority to whom the disclosure was made may provide a progress report to the person who requested a report on the current status of the investigation.
- (4) If an investigation into a matter in relation to which the disclosure was made is complete, the proper authority who carried out the investigation must provide a final report to the person who requested a report stating —
 - (a) the outcome of the investigation and any action the proper authority has taken or proposes to take as a result of the investigation; and
 - (b) the reason for taking the action that has been taken or that is proposed to be taken.

11. Limitation on notification of informant

- (1) A proper authority must not, in a notification or report under section 10, give information that, in that proper authority's opinion, would be likely to affect adversely —
 - (a) any person's safety;
 - (b) the investigation of an offence or possible offence; or
 - (c) necessary confidentiality about the existence or identity of a person who has made a disclosure of public interest information other than the person being given the information.

[(2) *repealed*]

Public Interest Disclosure Act 2003

Part 2 Public interest disclosures

Division 2 Obligations of a person to whom a disclosure is made

s. 12

- (3) To avoid doubt, it is declared that information that section 151, 152 or 153 of the *Corruption and Crime Commission Act 2003* prevents a person from disclosing is not to be given or disclosed under section 10.

[Section 11 amended by No. 48 of 2003 s. 62 (as amended by No. 78 of 2003 s. 35(13)); No. 78 of 2003 s. 74(2).]

12. Obligations under this Act of certain persons limited

- (1) The Corruption and Crime Commission and the Parliamentary Commissioner are not required to comply with sections 8(1), 9 and 10 if the disclosure relates to a matter that it is a function of the Corruption and Crime Commission or the Parliamentary Commissioner to investigate, inquire into, deal with, or take any other step with respect to, under another written law, whether on the complaint of a person or on its or his or her own motion.
- (2) If a person makes a disclosure of public interest information under this Act —
- [(a) deleted]*
- (b) to the Parliamentary Commissioner, section 26 of the *Parliamentary Commissioner Act 1971* applies as if the disclosure were the making of a complaint under that Act.
- (3) If a disclosure of public interest information is made —
- (a) to a declared person; and
- (b) the information relates to a matter which it is a function of the person to investigate, inquire into, deal with, or take any other step with respect to, under another written law, whether on the complaint of a person or on that person's own motion,

sections 8(1) and 9 do not apply to that declared person in relation to that disclosure.

- (4) If a declared person has a duty under a written law other than this Act to make a progress report to a person who has made a complaint to it —
- (a) section 10 does not apply to the declared person; and
 - (b) a progress report is to be made to any person who disclosed public interest information to that declared person under this Act as if the disclosure were the making of a complaint under that written law.

- (5) In this section —

“complaint” includes an allegation, application, charge, motion, objection, petition, report, request or summons;

“declared person” means a person declared in regulations made for the purposes of paragraph (g) of the definition of “public authority” to be a public authority.

[Section 12 amended by No. 48 of 2003 s. 62; No. 78 of 2003 s. 74(2).]

Part 3 — Protection

13. Immunity for appropriate disclosure of public interest information

A person who makes an appropriate disclosure of public interest information to a proper authority under section 5 —

- (a) incurs no civil or criminal liability for doing so; and
- (b) is not, for doing so, liable —
 - (i) to any disciplinary action under a written law;
 - (ii) to be dismissed;
 - (iii) to have his or her services dispensed with or otherwise terminated; or
 - (iv) for any breach of a duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by a written law) applicable to the person.

14. Reprisal an offence

- (1) A person must not take or threaten to take detrimental action against another because anyone has made, or intends to make, a disclosure of public interest information under this Act.

Penalty: \$24 000 or imprisonment for 2 years.

- (2) A person who —
 - (a) attempts to commit an offence created by subsection (1); or
 - (b) intending that an offence created by subsection (1) be committed, incites another person to commit that offence,

commits an offence.

Penalty: \$24 000 or imprisonment for 2 years.

15. Remedies for acts of victimisation

- (1) A person who takes or threatens to take detrimental action against another because or substantially because anyone has made, or intends to make, a disclosure of public interest information under this Act commits an act of victimisation which may be dealt with as a tort.
- (2) Proceedings in tort under subsection (1) may be taken against the perpetrator of an act of victimisation or any employer of the perpetrator.
- (3) In proceedings against the employer of the perpetrator of an act of victimisation, it is a defence for the employer to prove that the employer —
 - (a) was not knowingly involved in the act of victimisation;
 - (b) did not know and could not reasonably be expected to have known about the act of victimisation; and
 - (c) could not, by the exercise of reasonable care, have prevented the act of victimisation.
- (4) An act of victimisation under this Act may be dealt with under the *Equal Opportunity Act 1984* as if it were an act that was unlawful under section 67 of that Act but, if the victim commences proceedings in a court under subsection (1), he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* because of the act and, conversely, if the victim lodges a complaint under that Act because of the act, he or she cannot subsequently commence proceedings under subsection (1) because of the act.
- (5) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

s. 16

- (6) Despite any other provision of this Act, this section has no retrospective operation and no proceeding may be taken under this section in relation to an act of victimisation that occurred before the commencement of this Act.

16. Confidentiality

- (1) A person must not make a disclosure (an “**identifying 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 this Act unless —
- (a) the person who made the disclosure of public interest information consents to the disclosure of information that might identify or tend to identify him or her;
 - (b) it is necessary to do so having regard to the rules of natural justice;
 - (c) it is necessary to do so to enable the matter to be investigated effectively;
 - [(d), (e) deleted]*
 - (f) the identifying disclosure is made in accordance with section 152 or 153 of the *Corruption and Crime Commission Act 2003*; or
- Penalty: \$24 000 or imprisonment for 2 years.
- (2) A reasonable time before making a disclosure in the circumstances described in subsection (1)(b) or (c), the person making the identifying disclosure must take all reasonable steps to advise the person whose identity is to be disclosed —
- (a) that the disclosure is to be made; and
 - (b) the reason for the disclosure being made.
- (3) 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 this Act (“**identifying information**”) unless —

- (a) the person in respect of whom the disclosure of public interest information has been made consents to the disclosure of information that might identify or tend to identify him or her;
- (b) it is necessary to do so to enable the matter to be investigated effectively;
- (c) it is necessary to do so in the course of taking action under section 9(1)(a) to (c);
- (d) 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; or

[(e), (f) deleted]

- (g) the disclosure is made in accordance with section 152 or 153 of the *Corruption and Crime Commission Act 2003*.

Penalty: \$24 000 or imprisonment for 2 years.

[Section 16 amended by No. 48 of 2003 s. 62 (as amended by No. 78 of 2003 s. 35(13)); No. 78 of 2003 s. 74(2).]

17. Loss of protection of the Act

- (1) A person who has made an appropriate disclosure of public interest information under this Act and who —
 - (a) fails, without reasonable excuse, to assist a person investigating a matter to which the disclosure relates by supplying the person with any information requested, whether orally or in writing, by the person in such manner, and within such period, as is specified by the person making the request; or
 - (b) discloses information contained in a disclosure of public interest information otherwise than under this Act,

forfeits the protection given by section 13.

s. 17

- (2) Where a Court is considering whether a person has pursuant to subsection (1) forfeited the protection of section 13 and forms the view that the failure or disclosure —
- (a) has not materially prejudiced the public interest served by the appropriate disclosure; and
 - (b) is of a minor nature,

it may make an order relieving the person in whole or part from the forfeiture and may also make such consequential orders necessary to give effect to the order for relief.

Part 4 — Role of Commissioner for Public Sector Standards

18. Interpretation

In this Part —

“proper authority” means a person to whom an appropriate disclosure of public interest information has been made in accordance with section 5(3), except that it does not include the Chief Justice or the Presiding Officer of a House of Parliament.

19. Promoting compliance with this Act

- (1) The Commissioner is to monitor compliance with —
 - (a) this Act; and
 - (b) the code established under section 20.
- (2) The Commissioner is to assist public authorities and public officers to comply with this Act and the code established under section 20.

20. Code

- (1) The Commissioner must establish a code setting out minimum standards of conduct and integrity to be complied with by a person to whom a disclosure of public interest information may be made under section 5(3).
- (2) In establishing, amending, or repealing and replacing the code, the Commissioner is to take into account the independence that any particular proper authority has under a written law.
- (3) The Commissioner may amend, or repeal and replace, the code.
- (4) The Commissioner must, before establishing, amending, or repealing and replacing the code, consult such persons as he or she considers it desirable and practicable to consult.

s. 21

- (5) The code must be published in the *Gazette*.
- (6) The code comes into operation at the beginning of the day on which it is published in the *Gazette* or of such later day as is specified in the code.
- (7) Section 42 of the *Interpretation Act 1984* applies to and in relation to the code as if the code were regulations within the meaning of that section.
- (8) Subsections (5) to (7) also apply to an amendment, or repeal and replacement, of the code.

21. Guidelines

The Commissioner must —

- (a) prepare guidelines on internal procedures relating to the functions of a proper authority under this Act; and
- (b) ensure that all proper authorities have copies of the guidelines.

22. Annual report and other reports to Parliament

- (1) The Commissioner must report annually to each House of Parliament on —
 - (a) the performance of the Commissioner's obligations under this Act;
 - (b) compliance or non-compliance with the Act; and
 - (c) compliance or non-compliance with the code established under section 20.
- (2) Despite subsection (1), the Commissioner may at any time, if he or she thinks fit, lay before each House of Parliament a report on any matter arising in connection with the exercise of his or her functions under this Act.

- (3) If either House of Parliament is not sitting at the time when the Commissioner wishes to lay a report under subsection (2) then the Commissioner may —
- (a) send copies of the report to the Clerk of that House; and
 - (b) make the report available to the public.

Part 5 — Miscellaneous

23. Obligations of principal executive officers of public authorities

- (1) The principal executive officer of a public authority must —
 - (a) designate the occupant of a specified position with the authority as the person responsible for receiving disclosures of public interest information;
 - (b) 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;
 - (c) ensure that his or her public authority complies with this Act;
 - (d) ensure that his or her public authority complies with the code established by the Commissioner under section 20;
 - (e) prepare and publish internal procedures relating to the authority's obligations under this Act; and
 - (f) provide information annually to the Commissioner on —
 - (i) the number of public interest disclosures received by a responsible officer of the authority over the report period;
 - (ii) the results of any investigations conducted as a result of the disclosures and the action, if any, taken as a result of each investigation; and
 - (iii) such other matters as are prescribed.
- (2) Internal procedures prepared under subsection (1)(e) must be consistent with guidelines prepared by the Commissioner under section 21.
- (3) Subsection (1) does not apply to the Chief Justice or to the Presiding Officer of a House of Parliament.

24. Offence to make false or misleading disclosure

- (1) A person who makes a statement to a proper authority purporting to be a disclosure of public interest information —
- (a) knowing it to be false in a material particular or being reckless about whether it is false in a material particular;
 - or
 - (b) knowing it to be misleading in a material particular or being reckless about whether it is misleading in a material particular,

commits an offence.

Penalty: \$12 000 or imprisonment for one year.

- (1a) For the purposes of subsection (1) a statement is made to a proper authority if, were the statement truly a disclosure of public interest information, it is disclosed to a proper authority for the purposes of section 5(3).
- (2) A person who makes a statement in contravention of this section is not protected by this Act in respect of that statement, whether or not it is truly a disclosure of public interest information.

[Section 24 amended by No. 48 of 2003 s. 62.]

25. Other laws not excluded

The protection given by this Act is in addition to, and does not derogate from, any privilege, protection, or immunity existing apart from this Act.

26. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

s. 27

27. Review of this Act

- (1) The Minister shall carry out a review of the operation of this Act three years after the Act and all of its provisions have been fully proclaimed, and in the course of such review the Minister shall consider and have regard to —
- (a) the attainment of the purposes of this Act;
 - (b) the administration of this Act; and
 - (c) such other matters as appear to him to be relevant.
- (2) The Minister shall prepare a report based on the review made under subsection (1) and shall as soon as practicable after its preparation, cause the report to be laid before each House of Parliament.

28. Consequential and miscellaneous amendments

The Acts specified in Schedule 1 are amended as specified in that Schedule.

Schedule 1 — Consequential and miscellaneous amendments

[s. 28]

1. *Freedom of Information Act 1992* amended

After Schedule 1 clause 14(4) to the *Freedom of Information Act 1992** the following subclause is inserted —

“

- (5) Matter is exempt matter if its disclosure would reveal or tend to reveal the identity of anyone as —
- (a) a person who has made an appropriate disclosure of public interest information under the *Public Interest Disclosure Act 2003*; or
 - (b) a person in respect of whom a disclosure of public interest information has been made under the *Public Interest Disclosure Act 2003*.

”.

2. *Prisons Act 1981* amended

Section 98(1) of the *Prisons Act 1981** is amended as follows:

- (a) after paragraph (c) by deleting “or”;
- (b) after paragraph (d) by deleting the comma and inserting instead —

“

- ; or
- (e) commits an act of victimisation within the meaning of section 15 of the *Public Interest Disclosure Act 2003*,

”.

3. *Public Sector Management Act 1994* amended

Section 80 of the *Public Sector Management Act 1994** is amended as follows:

- (a) after paragraph (c) by deleting “or”;

Schedule 1 Consequential and miscellaneous amendments

- (b) after paragraph (d) by deleting the comma and inserting instead —

“

; or

- (e) commits an act of victimisation within the meaning of section 15 of the *Public Interest Disclosure Act 2003*,

”.

Notes

¹ This is a compilation of the *Public Interest Disclosure Act 2003* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short title	Number and Year	Assent	Commencement
<i>Public Interest Disclosure Act 2003</i>	29 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Corruption and Crime Commission Act 2003</i> s. 62	48 of 2003 (as amended by No. 78 of 2003 s. 35(13))	3 Jul 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Corruption and Crime Commission Amendment and Repeal Act 2003</i> s. 74(2)	78 of 2003	22 Dec 2003	7 Jul 2004 (see s. 2 and <i>Gazette</i> 6 Jul 2004 p. 2697)