



Public Interest Disclosure

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1. Background

The School Curriculum and Standards Authority (the Authority) does not tolerate any deliberate intent for improper conduct or other form of maladministration, deliberate or reckless failure to perform business functions or exercising powers improperly by the Authority, its secretariat, other public officers or public sector contractor/s engaged by the Authority.

In that respect, the Authority recognises the value and importance of contributions of the Department of Education's School Curriculum and Standards Division staff to enhance administrative and management practices. It strongly encourages the disclosure of information that may reveal past, present and alleged future improper conduct of the Authority, its public service officers and contractors engaged by the Authority in exercising of their public functions pursuant to the *Public Interest Disclosure Act 2003 (WA)* (the *PID Act*).

The intention of the Authority's Public Interest Disclosure (PID) Procedures is to:

- provide assistance to the Board, School Curriculum and Standards Division employees and members of the public in **understanding the mechanism** for the Public interest disclosure (the PID)
- provide **advice about procedure and protection** for those who make disclosures (hereafter referred to as *informant*) and for those about whom disclosures are made
- provide a set of **steps for the matter to be disclosed**, under some circumstances investigated and when required the appropriate action(s) to be taken
- enable a person to make a PID whether **anonymous or otherwise** and **ensure confidentiality** of the informant and any person that may be subject to a PID
- enable the Authority to **identify risks for the incidence** of any kind of improper conduct
- provide a **management tool** that is used for **prevention and response** to those threats
- provide **practical assistance for employees** in:
 - deciding whether information they have is public information for the purposes of a Public Interest Disclosure
 - act of making a Public Interest Disclosure in accordance with the legislation
 - understanding their rights and obligations under the *PID Act*.

2. Scope

Every Authority Board member, the Authority's secretariat and every member of the public have the right to make an appropriate disclosure of public interest information and seek protection for doing that.

In compliance with the *PID Act* (refer S.23 of the *PID Act*), the Authority has statutory obligation to:

- designate a specified position within the Authority (PID Officer) with the power to receive and investigate, or refer to be investigated, disclosures of public interest information
- provide protection from any detrimental action, or threat of detrimental action, for any employee who makes such disclosures
- prepare and publish internal procedures relating to PID.

The Authority's internal *Public Interest Disclosure Procedures* are to 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 on the Authority's web page.

Where an individual makes an allegation about improper conduct, but the person has not been referred to the PID Officer, the person is to be advised that he/she has the option of making a public interest disclosure under the *PID Act*. If the person wishes to do so, they must be referred to the PID Officer for guidance on how to make a disclosure under the *PID Act* and on the implications of such a decision.

3. Key terms

Confidentiality	A protection of identity of the person making a disclosure and the person(s) about whom a disclosure is made.
Informant	A person who makes a PID. This can be anyone who believes on reasonable grounds that information they have is true or may be true and tends to show a wrongdoing of the public body. This person is sometimes known as a <i>discloser</i> or <i>whistleblower</i> .
Journalist	A person engaged in the profession or occupation of journalism in connection with the publication of information in a medium for the dissemination to the public.
Prescribed class	Class within a classification system related to a position or to an employee that provide a basis for the remuneration of employees by identifying the level which reflects the responsibilities of the position or of the employee.
Proper authority	A person to whom a disclosure of public interest information has been made (e.g. PID Officer, Police Officer, Corruption and Crime Commission, Ombudsman).
Protection for informant	For a person who makes/intends to make a PID, the protection includes: <ul style="list-style-type: none">• immunity from civil/criminal liability, disciplinary action, termination of employment• protection from any detrimental action or threat from detrimental action• protection from reprisal• protection of identity• providing civil remedies for acts of victimisation.
PID officer	A person appointed by the Authority, who receives disclosure of public interest information relating to the performance of business functions of the Authority, Authority's public service officers and Authority's engaged contractors.
Public body	Public bodies include: <ul style="list-style-type: none">• a government organisation (includes State Government organisations, local government, regional local government and public universities).
Public function	The alleged conduct relates to the performance of the functions of the Authority, the Authority's public service officers, or public service contactor (e.g. PID applies to the information where alleged criminal behaviour of an employee is connected with his/her employment at the Authority).

Public Officer	Includes: <ul style="list-style-type: none"> • a State public service officer, • an employee of a public authority, • a minister, • a member of parliament, • a judicial officer, • a police officer, • a holder of office under the State, an officer of the Commonwealth exercising a function on behalf of the State • a government contractor (a person/organisation engaged by a government organisation), or a subcontractor of this person for the supply of goods or services, or the performance of a public function.
Public interest disclosure (PID)	PID is the act of revealing information to a proper authority that allegedly shows wrongdoing by a public body in the exercise of its public function.
Public interest information	Information that shows alleged involvement of a public body in an improper conduct or other wrongdoing related to the exercise of its public function.
Victimisation	Action taken or threatened by a person against another person resulting from making or intending to make a PID, causing, comprising, or involving: <ul style="list-style-type: none"> • injury, damage, or loss, or • intimidation or harassment, or • adverse discrimination, disadvantage, or adverse treatment in relation to a person's career, profession, employment, trade, or business, or • reprisal.
Wrongdoing of a public body	PID must show the public body's involvement in: <ul style="list-style-type: none"> • improper conduct, or • an act or omission that constitutes an offence under a written law, or • a substantial unauthorised or irregular use of, or • substantial mismanagement of public resources, or • an act done or omission that involves a substantial and specific risk of <ul style="list-style-type: none"> ▪ injury to public health, or ▪ prejudice to public safety, or ▪ harm to the environment, or ▪ a matter of administration that can be investigated under Section 14 of the <i>Parliamentary Commissioner Act 1971</i> (e.g. failure or refusal to perform any act in the exercise of any power or function by a public body).

4. Public Interest Disclosure (PID) Officer and other proper authorities for receiving and the investigation of a PID

The Board has appointed Ms Janine Nairn as the **Public Interest Disclosure Officer** (PID Officer), for the Authority. The PID Officer is responsible for receiving disclosures of public interest information relating to matters falling within the sphere of responsibility of the Authority (refer s.23 of the *PID Act*).

The contact details of the Authority's PID Officer are as follows:

Ms Janine Nairn
Public Interest Disclosure Officer
School Curriculum and Standards Authority
PO Box 816 Cannington WA 6987
Phone: (08) 9273 6300 F: (08) 9273 6301

Proper authorities for receiving PID are provided below.

When the disclosure relates to...	The proper authority is...
The sphere of responsibility of the Authority (e.g. matters about the Authority functions or Board members) for which the Authority has the responsibility of investigating.	The Public Interest Disclosure Officer (PID Officer) of the Authority
A School Curriculum and Standards Division employee	The Public Interest Disclosure Officer (PID Officer) of the Department of Education
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 Authority, 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 Authority, or the Ombudsman
A police officer	The Commissioner of Police, or the Corruption and Crime Commission
A Member of the Legislative Council	The President of the Legislative Council
A Member of the Legislative Assembly	The Speaker of the Legislative Assembly
A judicial officer	The Chief Justice
A public officer who is not a member of Parliament, a Minister, a Judicial Officer or a Commissioned or other officer specified in schedule 1 of the <i>Parliamentary Commissioner Act 1971</i>	The PID Officer of the Authority, the Ombudsman, or the Commissioner for Public Sector Standards
A person or a matter of a prescribed class	A person declared by the <i>Public Sector Management (General) Regulations 1994</i> to be a proper authority

Note: Not all proper authorities will be required or have a power to investigate the disclosed information, in which case the information is to be referred to another proper authority with a power to investigate the matter.

Also, if disclosure is made to more than one proper authority, the protections and obligations created by the PID Act apply to each of the disclosures.

5. Procedures for lodgement, assessment and the investigation of a public interest disclosure

5.1 Advising the informant before making a PID

Any person can make a disclosure of public interest information.

The informant cannot withdraw a PID. Once PID is made, a proper authority is required to investigate the matter. After making a disclosure an informant will not normally be required to do anything else other than cooperate with an investigation.

A person wishing to make a disclosure can do so anonymously. Anonymous disclosures can be difficult to investigate as the PID Officer cannot contact the person for more information.

Any person wishing to make a disclosure must contact the PID officer directly by phone or in writing.

Before making a decision to register a public interest disclosure to the PID Officer, the PID Officer must **advise** the informant about his/her **rights** and **responsibilities** under the *PID Act*.

The PID Officer will inform the informant that:

- **PID procedure will not result in informant's liability** for:
 - any civil or criminal offence
 - any disciplinary action under State law
 - any dismissal or termination of employment
 - any breach of a duty of secrecy or confidentiality
 - any detrimental action or threat to detrimental action
 - or any other applicable restriction on disclosure(Refer s.13 of the *PID Act*)
- the disclosure will only be protected if the PID Officer is the **proper authority** for receiving that kind of information (refer above table with information about PID officers and other proper authorities with powers to administer and enforce PID)
- an informant will have the right to take legal action and apply to the Supreme Court for the remedy or injunction (court order) if he/she believes they have or is **subject to detrimental action** as a result of making the disclosure (refer s.15 A of the *PID Act*)
- **identity** of an informant or person(s) who are subject of PID **must not be disclosed**.
A person may commit an offence if he/she discloses information that might identify or tend to identify the informant (identifying disclosure). Also, a person may commit an offence if they disclose information that identifies anyone about whom a disclosure of public interest information has been made (identifying information) (refer s.16 of the *PID Act*).
Note: Exemptions that allow disclosure of identity apply in both identifying disclosure and identifying information (refer s.16 of the *PID Act*)
- in accordance with s.10 of the *PID Act*, the informant has the **right to be informed** of the progress of current investigation (progress report) and the outcome of the investigation and action(s) taken as a result (final report)
Exemption: obligation to notify an informant is not applicable in the case of an anonymous disclosure (refer s.10 (5) of the *PID Act*)
- the informant is protected if he/she believes on reasonable grounds that the **information** to be disclosed is or may be **true**
- the informant may commit an offence, and **lose the protection** of the *PID Act*, if he/she knows that the information is deliberately false or misleading in a material particular or the informant is reckless whether the **information is false or misleading**. Penalty for the offence of false or misleading disclosure is a fine of \$12 000 or imprisonment for one year (refer s.24 of the *PID Act* about false or misleading disclosure offence)
- the informant may **lose the protection** given by the *PID Act*, i.e. if he/she discloses the information other than under the *PIC Act*, i.e. if they provide information to a person who is **not a proper authority**.
Exemption: Disclosure to a journalist under Section 7A(2) of the PID Act is protected disclosure and the informant receives associated protection under the PID Act when:
 - a proper authority refused to investigate or discontinued the investigation of the matter
 - a proper authority has not completed the investigation after six months from lodgment of

- the PID
 - the investigation is completed, but further action(s) were not recommended
 - a proper authority did not notify the informant (progress report) within three months from the lodgment of the PID
 - a proper authority did not provide final report(outcomes and recommendations after an investigation) to the informant or proposed any further action(s)
- the informant may **lose the protection** given by the *PID Act* if he/she **fails or refuses**, without reasonable excuse, **to assist a person investigating the matter** to which the information relates, by providing any information requested whether orally or in writing.

5.2 Lodgement of a PID

Whether anonymous or otherwise (refer s.6A of the *PID Act* for anonymous disclosure), a disclosure is a public interest disclosure, the informant must complete the **Public Interest Disclosure Lodgment Form** (refer Appendix 1 for PID Lodgment Form) and forward it to:

Ms Janine Nairn
Public Interest Disclosure Officer
School Curriculum and Standards Authority
PO Box 816 Cannington WA 6987

The lodgment form must be marked PRIVATE AND CONFIDENTIAL.

Where a disclosure is being made anonymously, the form must clearly indicate that a disclosure under the PID Act is being made. For example, this can be indicated by stating at the top of the letter 'this is a public interest disclosure'.

5.3 Receipt and assessment of a PID

The PID Officer upon receiving the information must **confirm** that:

- the informant, after receiving advice from the PID Officer, **wishes to make a PID**
- the PID Officer will make an initial assessment of whether the **information is public interest information** (refer Appendix 2 Flowchart for receiving and assessing disclosures).

The PID Officer may **discontinue or refuse** to proceed further with assessment if:

- 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 *PID Act*.

If one or more of the statements below is true, then the disclosure of information is a **valid PID** pursuant to *the PID Act*.

- 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 pertains to:

- 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.
- The PID Officer is the proper authority to administer and enforce the PID (refer Section 4)
 - The informant believes on reasonable grounds that the information is or may be true
 - The information is not protected by legal professional privilege
 - The informant, after receiving the above advice, wishes to make a public interest disclosure under the *PID Act*.

5.4 Investigation of a PID

After receiving a disclosure, which is not discontinued or refused (refer above Section 5.3), the PID Officer must consider whether:

- the disclosure relates to the School Curriculum and Standards Authority, its officers* or contractors
- the disclosure relates to a matter or person that School Curriculum and Standards Authority has a function or power to investigate.

If the answer to both of these questions is ‘no’, the PID Officer is not required to investigate the matter in accordance with the *PID Act*.

Where the PID Officer determines that the disclosure should be investigated, the PID officer **must investigate** the disclosed matter himself/herself or arrange for the engagement of another person to carry out the investigation.

*The Department of Education’s PID Officer is the responsible officer for receiving and investigating PID relating to a public officer or a public sector contractor of the School Curriculum and Standards Division.

Where the PID Officer considers that he/she lacks sufficient power to effectively investigate the matter, but the information received causes him/her to form the opinion that a public authority, public officer or public sector contractor may have been engaged in improper conduct, the PID Officer will refer the matter to another appropriate investigative body.

5.5 Confidentiality

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

- the identity of the person making the disclosure; and
- the identity of any person named in the disclosure.

The disclosure of information, which might identify or tend to identify these persons, except in accordance with the *PID Act* or other written law, is an offence punishable with a penalty of \$24 000

or imprisonment of two years.

There are **exceptions** from restriction to disclose identity of informant – ‘identifying disclosure’ (refer s.16 (1) of the *PID Act*) or a person who is subjected in PID – ‘identifying information’ (refer s.16 (3) of the *PID Act*).

For additional details regarding confidentiality, advice should be sought from the PID officer or by calling the Public Sector Commissioner (PSC) Advisory Line on 6552 8888 before making a disclosure.

5.6 Victimization and reprisals

The Authority will not tolerate any detrimental action or threat to take a detrimental action against a person making, or proposing to make, a PID.

A person who attempts or commits a detrimental action against the informant commits an act of victimisation (refer s.23 (1) (b) of the *PID Act*).

A person who attempts or cause another to commit a reprisal against the informant may commit an offence with a penalty of \$24 000 or imprisonment of two years (refer s.14 of the *PID Act*).

Detrimental action includes action causing:

- injury, damage or loss
- intimidation or harassment
- adverse discrimination, disadvantage, or any other adverse treatment in relation to informant’s career, employment, trade or business
- reprisal.

Any act of victimisation or reprisal must be reported immediately to the Executive Director School Curriculum and Standards or, for the Division’s public officers and contractors, to the Department’s Director, Standards and Integrity, who must take immediate action to prevent the continuance of this unlawful conduct.

In order to reduce danger from reprisal, a public officer who believes they have been or they will be subject to detrimental action in reprisal for making a PID, may apply for **relocation** from their current work location (refer s.15B of the *PID Act*).

A person alleging victimisation as a result of a disclosure may take civil legal action against the perpetrator or employer of the perpetrator, or lodge a **formal complaint** under the *Equal Opportunity Act 1984 (WA)* before the **Equal Opportunity Commission**. (Refer s.8– Contact details of external organisations).

6. Determining outcomes of an investigation

6.1 Action(s) after an investigation

Where the PID Officer forms the opinion that a person may be, or has been or may in the future be, involved in improper conduct the Executive Director, School Curriculum and Standards must inform the Board Chair and take action(s).

Action(s) 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 with a power to investigate the matter
- **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 relation to the matter.

After making a disclosure an informant will not normally be required to do anything else other than cooperate with an investigation. A dissatisfied informant has **no right of appeal** under the *PID Act* in order to challenge the public authority's actions. He/she may however, be able to make another disclosure to a different proper authority.

The *PID Act* does not give the PID Officer additional powers to take action.

6.2 Reporting to an informant on the progress and outcome of an investigation

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

Within three months of a disclosure being made the PID Officer must notify the informant on the:

- current status of an pending investigation (*progress report*)
- outcome of an investigation and reasons for the action(s) to be taken or proposed to be taken after the investigation is completed (*final report*).

Exemption applies in the case of anonymous disclosure where the appropriate public authority does not have obligation to notify the informant on the status and outcome of an investigation (refer s.10 (5) of the *PID Act*).

*Note: In information and reports provided to the informant, the PID Officer **must not include 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*
- *necessary confidentiality as to the existence or identity of another person who has made a disclosure of public interest information under the Act.*
(Refer s.11 of the *PID Act*)

7. Regulatory framework

- *Public Interest Disclosure Act 2003*
- *School Curriculum and Standards Authority Act 1997*
- *Public Sector Management Act 1994*
- *Corruption, Crime and Misconduct Act 2003*
- *Equal Opportunity Act 1984*
- *Public Sector Management (General) Regulations 1994*
- *PSC Commissioner’s Instruction No.7 2012 – Code of Ethics*
- *School Curriculum and Standards Authority Code of Conduct*

Note: This summary of legislation is intended as a guide only. Please contact the Authority’s PID Officer or other appropriate external authority if you require specific advice relating to this matter.

The Public Sector Commission Website also contains useful information in relation to PID. Information is available to view and download at

<https://publicsector.wa.gov.au/public-administration/official-conduct-and-integrity/public-interest-disclosures>

8. External organisations

Contact details for other proper authorities for receiving disclosures:

For information and general advice about the Public Sector Code of Ethics and agency codes of conduct and investigation into allegations for minor misconduct, contact:

Public Sector Commission

Phone: (08) 6552 8500

Fax: (08) 6552 8501

Email: admin@psc.wa.gov.au

Street address

Dumas House	Hale House
2 Havelock St	1 Parliament Place
West Perth WA 6005	West Perth WA 6005

Mailing address

Locked Bag 3002
West Perth WA 6872

Public Sector Commissioner (PSC) Advisory Line on 6552 8888

PID Officer Contact Directory:

<https://publicsector.wa.gov.au/document/pid-officer-contact-directory>

The Public Sector Commission website also contains useful information in relation to PID. Information is available to view and download at

<https://publicsector.wa.gov.au/public-administration/official-conduct-and-integrity/public-interest-disclosures>

For advice about serious misconduct and corruption, contact:

Corruption and Crime Commission

Phone: (08) 9215 4888

Fax: (08) 9215 4884

Email: info@ccc.wa.gov.au

Website: www.ccc.wa.gov.au

Mailing address

PO Box 330

Northbridge Post Shop WA 6865

For advice on offences under state law, contact:

WA Police

Website: www.police.wa.gov.au

For complex/large value incidents involving theft or fraud relating to an employee or a business partner, refer to <https://www.police.wa.gov.au/Crime/Fraud>

For matters of state and local government administration, contact:

State Ombudsman

Telephone: 9220 7555

Outside metro: 1800 117 000

Email: PID@ombudsman.wa.gov.au

Website: www.ombudsman.wa.gov.au

Street address

Level 17, 44 St Georges Terrace

PERTH WA 6000

Mailing address

PO Box Z5386

St Georges Terrace

PERTH WA 6831

For investigation into complaints of victimisation from people who have made a disclosure under the Public Interest Disclosure Act 2003, contact:

Equal Opportunity Commission

Telephone: 09246 3900

Email: eoc@wa.gov.au

Website: www.eoc.wa.gov.au

Appendix 1 – Public Interest Disclosure lodgement form

This is an official lodgment form for a disclosure made under the *Public Interest Disclosure Act 2003*. An informant 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 / Mrs / Ms / Miss Date of birth: _____

Address: _____

Home telephone: _____ Work telephone: _____

Mobile: _____ Email address: _____

2. DISCLOSURE DETAILS

Name of the public authority the disclosure relates to: _____

(tick Yes or No)

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	

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

- | | |
|---|--|
| <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 |

When did the alleged events occur?

Summary of disclosure:

Description of any documentation provided or names of witnesses:

Have you reported this information to any other person or agency?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide details	

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

Acknowledgement

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

I have been informed and am aware that:

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

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

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

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

Signed	
Date	

For office use only

Registered number	
Date	

Appendix 2 – Flowchart for receiving and assessing disclosures

