

Changes to public interest disclosures in Western Australia

Information for Principal Executive Officers

The *Public Interest Disclosure Act 2003* (the Act) changed on 21 November 2012 when amendments contained in the *Evidence and Public Interest Disclosure Legislation Amendment Act 2012* came into operation. Changes to the Act:

- expand capacity to make public interest disclosures
- enhance protections available for disclosers of public interest information
- expressly enable a person to make an anonymous public interest disclosure
- allow a public interest disclosure to be made to a journalist under certain conditions
- provide another circumstance where the identity of the discloser and the subject of a disclosure can be revealed.

Do the changes affect my public authority?

Yes. The Act and its amendments affect all public authorities including ministers, members of parliament, judicial officers, State public sector agencies, government trading enterprises, local governments and public universities as well as public sector contractors.

What are the changes and what do I need to do?

Summary of changes	You need to...
<p>Strengthened protections for disclosers</p> <p>If someone believes they have or will be subject to detrimental action in reprisal for making a protected disclosure, they may apply to the Supreme Court for either an order remedying the detrimental action or injunctive relief.</p>	<p>Ensure you provide protection from detrimental action, or the threat of detrimental action for any employee making a disclosure (s23(1)(b) of the Act). Ensure you and your public interest disclosure officer(s) (PID officer(s)) are aware of this extra avenue of redress for disclosers.</p>
<p>A public service officer or public sector employee who believes they have been, or will be, subject to detrimental action in reprisal for making a protected disclosure may apply to their employer to be relocated.</p> <p>The employer will be required to relocate the employee away from the employee's existing work location when relocation is the only practical means of substantially reducing the danger of reprisal (provided the employee consents to the proposed relocation).</p>	<p>Ensure you provide protection from detrimental action, or the threat of detrimental action for any employee making a disclosure (s23(1)(b) of the Act). Reprisal action is also an offence under s14 of the Act.</p> <p>Ensure you and your PID officer(s) understand the relocation obligations, including the need to make transparent decisions about relocating an employee.</p> <p>Note: This applies to 'public service employees', defined as employees of a department, SES organisation or non-SES organisation in the <i>Public Sector Management Act 1994</i>.</p>

<p>Anonymous public interest disclosures</p>	<p>A person may make an anonymous public interest disclosure.</p> <p>If a person makes an anonymous disclosure, the relevant public authorities are relieved of their obligation to notify the discloser of the status or outcome of any investigation initiated as a result of the disclosure.</p>	<p>Update your internal procedures to reflect this change (if anonymous disclosures are not already covered).</p>
<p>Disclosures to journalists</p>	<p>A person may make a disclosure to a journalist, provided they disclose information which is substantially the same as they disclosed in the original disclosure AND the proper authority receiving the original disclosure or the person to whom a matter raised by the disclosure was referred under s9(1)(b) of the Act:</p> <ul style="list-style-type: none"> refused to investigate, or discontinued the investigation of a matter raised by the disclosure; or did not complete an investigation within six months of the matter being raised; or completed an investigation but did not recommend that action be taken; or did not notify the discloser within three months of the disclosure being made about the proposed actions or action taken; or did not provide a report stating the outcome of investigation and any action proposed or taken and the reasons for those actions. <p>A journalist is someone engaged in the profession or occupation of journalism in connection with the publication of information in a medium for dissemination to the public of news and observation of news.</p>	<p>Ensure you and your PID officer(s):</p> <ul style="list-style-type: none"> appropriately manage your obligations under the Act, these include investigating matters in a timely manner and notifying disclosers in accordance with s10 of the Act ensure disclosure matters are thoroughly examined and final reports give enough information for disclosers to understand why no action may have been taken, or what and why action is or is not recommended are aware that despite the Act providing that a proper authority (PID officer) may refuse to investigate a disclosure or discontinue an investigation, the matter may still be authorised by the Act to be disclosed to a journalist advise any referral body investigating a matter that a referred matter can be further disclosed to a journalist (in certain circumstances, outlined in the left column).
	<p>A person who makes a disclosure to a journalist, under the circumstances outlined above, is taken to be a person who makes a public interest disclosure (and they will receive all the associated protections under the Act).</p>	<p>Ensure you and your PID officer(s) understand that a person who makes an appropriate disclosure to a journalist is considered and treated as a person who makes a public interest disclosure.</p>
<p>Confidentiality</p>	<p>A person may need to identify the discloser or subject of a public interest disclosure if they have been ordered by a Court or another person/body with the authority to make such an order.</p>	<p>Ensure you and your PID officer(s) discuss this provision with potential disclosers and where relevant, subjects of the disclosure, to make them aware of this provision.</p>

Where can I get further assistance?

The amended Act is available to view on the State Law Publisher website: www.slp.wa.gov.au
 You, as a Principal Executive Officer, and your PID officer can also contact the Public Sector Commission’s Advisory Line on 6552 8888.

Please note: This information is provided as a general summary of the changes to the *Public Interest Disclosure Act 2003*, resulting from the proclamation of the *Evidence and Public Interest Disclosure Legislation Amendment Act 2012*. You may wish to seek further legal or other professional advice before taking any action.

The Commission gratefully acknowledges the NSW Ombudsman in the development of this factsheet.