

Medical Board of Western Australia

Public Interest Disclosure Procedures

It is suggested that public authorities consider using this document 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 Medical Board of Western Australia does not tolerate corrupt or other improper conduct, including mismanagement of public resources, in the exercise of the public functions of the Medical Board of Western Australia and its officers, employees and contractors.

The Medical Board of Western Australia 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 Medical Board of Western Australia 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 Medical Board of Western Australia 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 Medical Board of Western Australia 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 Office & Finance Administration Manager is designated as the Public Interest Disclosure Officer, or PID Officer, of the Medical Board of Western Australia. The PID Officer is responsible for receiving disclosures of public interest information relating to matters falling within the sphere of responsibility of the Medical Board of Western Australia.

The contact details of the PID Officer are as follows:

Medical Board of Western Australia
Unit 1, 8 Alvan Street
SUBIACO WA 6008
mjoyce@wa.medicalboard.com.au
Ph: (08) 6380 3500
Fax: (08) 9321 1744

After assuming or beginning to act in the position of Office & Finance Administration Manager 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 Office & Finance Administration Manager 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 Medical Board of Western Australia, its officers or contractors.
- the disclosure relates to a matter or person that Medical Board of Western Australia 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 Medical Board of Western Australia, 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 **Medical Board of Western Australia** 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 CEO 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 Medical Board of Western Australia.

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 Medical Board of Western Australia 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 Medical Board of Western Australia 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 Medical Board of Western Australia 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 the office of the Board.

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.