

PUBLIC INTEREST DISCLOSURE POLICY AND PROCEDURES

Public Interest Disclosure Policy

Policy Statement

MyLeave does not tolerate corrupt or other improper conduct.

Recognising the value and importance of contributions of employees in enhancing administrative and management practices, MyLeave is committed to the aims and objectives of the *Public Interest Disclosure Act 2003* (PID Act) and to effectively managing and responding to public interest disclosure (PID) relating to public interest information and to corrupt or improper conduct generally.

Scope

This policy applies to all employees, Board Members and contractors making a PID to MyLeave relating to a matter of public interest information.

Key Principles

MyLeave:

- Strongly supports PIDs being made by employees, Board members, contractors and members of the community regarding public interest information or other improper conduct.
- Requires PIDs to be lodged with a duly authorised Public Interest Disclosure Officer (PID Officer).
- Does not tolerate any of its employees, Board members or contractors taking reprisal action against anyone who makes or proposes to make a PID and will respond accordingly.
- Is committed to responding to a PID thoroughly and impartially and will treat all people in the disclosure process fairly.
- Expects all persons directly involved in a PID process to maintain confidentiality, particularly regarding the identity of the discloser and the subject of the disclosure.
- Maintains procedures relating to PIDs in accordance with the PID Act and the Public Sector Commission Guidelines.

Definitions

Contractor

Is a person who contracts with MyLeave or the State to supply goods or services to MyLeave or the State; or to perform a public function.

Discloser

A person who makes a public interest disclosure. A discloser may be anonymous.

Public Interest Disclosure (PID)

A PID is made when a person discloses public interest information to MyLeave that tends to show past, present or proposed future improper conduct of a MyLeave employee, Board member or contractor in the exercise of a public function.



Public Interest Information

Public interest information is information that tends to show that, in relation to its performance of a public function, a public authority, a public officer, or a public service contractor is, has been or proposes to be, involved in:

- improper conduct; or
- an act or omission that constitutes an offence under a written law; or
- 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 injury to public health, prejudice to public safety, or harm to the environment; or
- a matter of administration that can be investigated by the WA Ombudsman under Section 14 of the *Parliamentary Commission Act 1971*.

Public Interest Disclosure Officer (PID Officer)

A person authorised under Section 23(1)(a) of the PID Act as a proper authority for disclosure of public interest information relating to a matter falling within the sphere of responsibility of MyLeave.

Investigating Officer

A PID Officer, or their nominee, conducting an investigation of public interest information within the terms of reference given.

Environment

Has the same meaning as in the Environmental Protection Act 1986.

Roles and Responsibilities

Discloser

A person who makes an appropriate PID; and maintains confidentiality of the information, and, in particular the identity of the person(s) to whom the information relates.

PID Officer

A MyLeave officer authorised to receive a PID who:

- 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 person(s) subject to the disclosure, in accordance with the requirements of the PID Act.
- Takes action following an investigation, where appropriate.
- Provides appropriate reports of investigations and action taken to the discloser.
- Creates and maintains proper records in relation to the disclosure.
- Acts in accordance with the rules of natural justice and procedural fairness.



Investigating Officer

A PID Officer, or their nominee, who:

- May conduct investigations of public interest information on behalf of MyLeave, within the terms of reference given.
- Maintains confidentiality of the identity of the discloser and person(s) subject to the disclosure, in accordance with the requirements of the PID Act.
- Takes action following an investigation, where appropriate, and provides appropriate reports of investigation and action to the discloser.
- Creates and maintains proper records in relation to the disclosure.
- Acts in accordance with the rules of natural justice or procedural fairness.

Other Relevant Legislation and Regulations

Corruption, Crime and Misconduct Act 2003 Environmental Protection Act 1986 Parliamentary Commissioner Act 1974 Public Interest Disclosure Regulations 2003 Public Sector Management Act 1994

Approving Authority	Board
Policy Custodian	General Manager Compliance Legal and Risk
Effective Date	18 June 2021
Review Date	June 2022



Public Interest Disclosure Procedures

Purpose

This Procedure operates in conjunction with the MyLeave Public Interest Disclosure Policy.

Scope

This Procedure applies to all employees, Board members and contractors (hereinafter collectively referred to "Officers").

Roles and Responsibilities

Officers acknowledge and must comply with the key principles of this Procedure.

Other Relevant Legislation and Regulations

Public Interest Disclosure Act 2003 Public Interest Disclosure Regulations 2003 Corruption, Crime and Misconduct Act 2003 Public Sector Management Act 1994

Approving Authority	Board
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Organisational commitment for reporting public interest information

MyLeave is committed to the aims and objectives of the *Public Interest Disclosure Act 2003* (PID Act). The PID Act recognises the value and importance of reporting as a means to identify and address wrongdoing.

MyLeave strongly supports disclosures being made by Officers about corrupt or other improper conduct. We also strongly support members of the community making disclosures about corrupt or improper conduct.

MyLeave does not tolerate any of its Officers taking reprisal action against anyone who makes or proposes to make a public interest disclosure. MyLeave will take all reasonable steps to protect employees from any detrimental action in reprisal for the making of a public interest disclosure.

MyLeave is a committed to responding to the disclosure thoroughly and impartially.

While this procedure focuses on public interest disclosures, MyLeave is committed to dealing with all reports of suspected wrongdoing. We encourage people to report, if they witness any such behaviour. MyLeave will consider each matter under the appropriate reporting pathway and make every attempt to protect staff members making reports from any reprisals.

Purpose of the internal procedures

This document outlines how MyLeave will meet its obligations under the PID Act. It covers the roles and responsibilities of the person designated as the as the PID Officer in accordance with s.23(1)(a) and s.5(3)(h) of the PID Act, the discloser and the subject of the disclosure.

Scope and application of internal procedures

These procedures apply to all people involved in the public interest disclosure process, including the Chief Executive Officer (CEO), PID Officer(s), Officers and/or any person making a public interest disclosure and any subject(s) of a disclosure.

These procedures should be read in conjunction with:

- Public Interest Disclosure Act 2003
- Public Interest Disclosure Regulations 2003
- MyLeave Public Interest Disclosure Policy
- State Records Act 2000

Overview of roles and responsibilities of parties involved in the disclosure process

Chief Executive Officer

- Designates the occupant of a specified position (a PID Officer) to receive public interest disclosures related to MyLeave.
- Provides protection from detrimental action or the threat of detrimental action for any employee of MyLeave who makes a public interest disclosure.
- Ensures MyLeave complies with the PID Act and the Code of Ethics and integrity established by the Public Sector Commissioner.
- Prepares and publishes internal procedures, consistent with those prepared by the Public Sector Commission, detailing how MyLeave will meet its obligations under the PID Act.



- Provides information to the Public Sector Commissioner on the:
 - number of disclosures received by MyLeave.
 - outcome of any investigations conducted as a result of the disclosures.
 - Action (if any taken) as a result of each disclosure.
 - any matters as prescribed.

PID Officer

- As is designated by the Chief Executive Officer, the PID Officer is to receive disclosures related to MyLeave.
- Provides information to potential disclosers about their rights and responsibilities.
- Receives and manages public interest disclosures in accordance with the PID Act.
- Notifies the discloser within three months of the disclosure being made about what action is planned in dealing with the disclosure.
- Where appropriate, investigates, or causes an investigation of, the matters in the disclosures.
- Where appropriate, provides information to subjects of a disclosure about their rights, responsibilities, duties and potential offences.
- Where appropriate, takes such action as is necessary and reasonable, within their functions and powers in accordance with the PID Act.
- Maintains confidentiality of the identity of the discloser and subject(s) of disclosures
- Provides progress reports where requested and a final report to the discloser.
- Creates and maintains proper and secure records in relation to the disclosures in accordance with the Code of Conduct and integrity and the State Records Act 2000.
- Completes a PID Register for each disclosure lodged.
- Acts in accordance with the rules of natural justice.

The Discloser:

- Makes a public interest disclosure to a proper authority or the PID Officer if the matter relates to MyLeave.
- Believes on reasonable grounds the information in their disclosure is, or may be, true.
- Does not disclose information subject to legal professional privilege.
- Does not knowingly and recklessly make a false or misleading disclosure.
- Maintains confidentiality of the information disclosed and the identity of the person(s) to whom the information relates.
- Assists any person investigating the matter to which the disclosure relates by supplying the person with any information requested.

The subject of the disclosure (i.e. the person about whom the disclosure is made):

- Is afforded the opportunity to make a submission, either orally or in writing, in relation to the matter before preventative or disciplinary action is taken.
- Maintains confidentiality of the identity of the discloser, in accordance with the requirements of the PID Act.
- Is to be treated in accordance with the rules of natural justice.
- Does not take or threaten to take detrimental action against a person because they have made or intend to make a disclosure.
- Does not incite another person to take detrimental action against another because they have made or intend to make a disclosure.
- Does not commit an act of victimisation by taking or threatening to take detrimental action against the person making or intending to make a disclosure.



An investigating officer:

- May investigate matters of public interest information on behalf of MyLeave, in accordance with the terms of reference given to them.
- Maintains confidentiality of the identity of the disclosure and any persons subject to the disclosure.
- Makes, and keeps secure, comprehensive records of any investigation undertaken.

Managing public interest disclosures

The following section describes how MyLeave will manage the public interest disclosure process.

Overarching requirements of the Public Interest Disclosure Act 2003

The PID Act has some overarching requirements for handling disclosures. These requirements separate the public interest disclosure process from other reporting or complaint handling processes. The PID Act does not, however, displace the notification or reporting requirements of the *Corruption, Crime and Misconduct Act 2003*, which are paramount. The following section outlines how MyLeave will meet these requirements, as well as expectations of the discloser and any subject(s) of the disclosure.

What is public interest information

The PID Act only applies to disclosures of public interest information. Public interest information means information that:

- relates to the performance of a public function by a public authority, public officer or public sector contractor and;
- shows or tends to show that a public authority, a public officer, or a public sector contractor is, has been or proposes to be involved in;
- improper conduct or;
- an act or omission that constitutes an offence under a State law or;
- 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;
- injury to public health or;
- prejudice to public safety or;
- harm to the environment or;
- a matter of administration that can be investigated under s.14 of the Parliamentary Commissioner Act 1971 by the Parliamentary Commissioner (Ombudsman Western Australia).

Confidentiality

Maintaining confidentiality is an important part of managing a disclosure. The confidentiality requirements of the PID Act not only protects the discloser, but also any other people affected by the disclosure.

MyLeave is committed to maintaining confidentiality around:

- Any information that may identify the discloser or any person who may be the subject of a disclosure, including the fact a disclosure has been made.
- Information relating to a disclosure that, if known, may cause detriment.



Throughout the disclosure process and after its completion, the PID Act provides for the identity of the discloser(s) and the identity of any person(s), that is, any subject of the disclosure to be kept confidential, except in certain circumstances. Disclosing information which might identify or tend to identify the discloser(s) or any person, that is, the subject of the disclosure, except in accordance with the PID Act, is an offence punishable with a penalty of a fine or imprisonment for two years.

Confidentiality regarding the discloser

Maintaining confidentiality is an important part of protecting the discloser, from any detrimental action in reprisal for making or intending to make a disclosure.

If the discloser consents to having their identity revealed to assist MyLeave in dealing with the disclosure, the PID Officer will record this consent.

MyLeave may need to identify the discloser, without the discloser's consent but only 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 or;
- MyLeave is required by s.152 or s.153 of the Corruption, Crime and Misconduct Act 2003.

Before the discloser is identified for any of the reasons above, the PID Officer will take all reasonable steps to inform the discloser that this will happen and the reasons why. The PID Officer will document their intention to disclose.

If MyLeave needs to provide information about the identity of the discloser to another person for the reasons above, the PID Officer will inform the other person that further disclosure to a third person may put them at risk of committing an offence.

Confidentiality regarding the person that is the subject of the disclosure

The subject of a disclosure may consent to having their identity revealed to assist with the disclosure process. The PID Officer will document any such consent.

Additionally, MyLeave may need to reveal identifying information about the subject(s) of a disclosure without their consent, where:

- it is necessary to do so to enable the matter to be investigated effectively;
- it is necessary to do so in the course of taking action;
- there are reasonable grounds to believe that it is necessary to prevent or minimise the risk of injury to any person or damage to any property;
- MyLeave is required in accordance with the Corruption, Crime and Misconduct Act 2003.

There is no obligation to advise the subject of a disclosure that identifying information will be released.

Protections

The PID Act provides a range of protections for disclosers. It also requires that the CEO provides protection for any employees who make disclosures.

MyLeave is committed to ensuring that no detrimental action, including workplace reprisals occurs as a result of a person making a disclosure. If any of the above does occur, the discloser can request that MyLeave takes action to protect them.



The PID Act also provides that the discloser may lose the protections provided in some circumstances, including where they on-disclose information or fail, without reasonable excuse, to assist any person investigating the matters of the disclosure.

Notification requirements

The PID Officer will ensure that they complete all reporting in accordance with the legislative and administrative requirements of the PID Act.

Provided it is not an anonymous disclosure, the PID Officer will provide the following reports:

- Within three months of making a disclosure, the action taken, or propose to take, in relation to the disclosure.
- When the disclosure process has concluded, the outcome of the investigation and the reasons for taking any action following the investigation.

The PID Officer may also provide a progress report during any investigation, either on their initiative or upon request from the discloser.

The PID Officer has some limitations on what can include in the reports. The PID Act prevents provision of information that would be likely to adversely affect:

- any person's safety or;
- the investigation of an offence or possible offences or;
- confidentiality as to the existence or identity of any other person who made a public interest disclosure.

The Corruption, Crime and Misconduct Act 2003 may impose limitation on the PID Officer as to what information they may disclose.

Record keeping

Comprehensive and secure records are kept for each disclosure made. Such records enable MyLeave to give account of 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*.

During the investigation the PID Officer may make comprehensive and contemporaneous records of any discussions and interviews. These records will be stored securely and only accessed by authorised persons.

The PID Act also requires MyLeave to provide information annually to the Public Sector Commission about the number of disclosures received, investigations conducted and actions taken.



How to make a public interest disclosure

Before you make a disclosure

MyLeave strongly encourages anyone considering making a public interest disclosure to seek advice from the PID Officer before doing so. A disclosure must be made to a proper authority for it to be covered by the PID Act.

At MyLeave the occupant(s) of the following designated position(s) are specified with the authority as the person(s) responsible for receiving disclosures of public interest information. For the purposes of this procedure a PID Officer(s) is the proper authority designated for dealing with information that falls within the sphere of responsibility for MyLeave.

Their names and contact details are:

Position	Name of PID Officer	Contact details
Primary Contact: General Manager Compliance Legal and Risk	Eileen McCaffrey	9476 5408
Secondary Contact: Board Chair Chief Executive Officer	Susan Barrera Jason Buckley	0417 921 968 9476 5404

Initial discussions between the discloser and the PID Officer should be general in nature and should not discuss the specific details of the disclosure until the discloser understands their rights and responsibilities under the PID Act. The PID Officer will also let the discloser know that they need to make the disclosure voluntarily and consciously. A disclosure once made cannot be withdrawn. Once the disclosure is received, the PID Officer is obliged to take action and may continue to look into the matters within the disclosure irrespective of discloser's continued approval.

These initial discussions with the PID Officer may assist in deciding whether to make a public interest disclosure and also enable the PID Officer to ascertain if the information would be covered by the PID Act. If the information appears not to be the type covered by the PID Act, the PID Officer will discuss other mechanisms through which issues may be made, for example, the general complaints or grievance resolution process.

What is 'sphere of responsibility'?

The PID Officer may only receive information relating to a matter which falls within the 'sphere of responsibility' for MyLeave. 'Sphere of responsibility' is not defined in the PID Act but may include:

- matters that relate to MyLeave or;
- a public officer or public sector contractor of MyLeave or:
- a matter or person that MyLeave has a function or power to investigate.

Where the information which is sought to be disclosed is outside the PID Officer's sphere of responsibility, it may need to be made to another proper authority for it to be considered as a public interest disclosure and for the discloser to receive the protections of the PID Act.



Making the disclosure

A discloser needs to clearly identify that they are making a public interest disclosure. For the purposes of accountability and certainty, persons wishing to make a disclosure of public interest information under the PID Act are encouraged to do so in writing.

MyLeave must accept anonymous disclosures, but if a discloser decides to make an anonymous disclosure they should understand that it may be more difficult for the PID Officer to investigate or take action about the disclosure. This is because they cannot come back to seek any further information. MyLeave is also not required to provide any reports about the progress or final outcome of the disclosure, if the discloser chooses to remain anonymous.

An anonymous disclosure may not prevent the discloser from being identified during an investigation. Additionally, if the PID Officer does not know who made the disclosure, it will be difficult for them to ensure the discloser is protected and to prevent any reprisal or detrimental action.

Determining whether your matter is an appropriate disclosure

Once the PID Officer has received the disclosure they will assess whether it meets the requirements under the PID Act. It may be that the PID Officer undertakes initial inquiries and decides not to take the matter any further, as it does not constitute an appropriate public interest disclosure.

If the disclosure is not one to which the PID Act applies, the PID Officer will let the discloser know the reasons for their decision (unless an anonymous disclosure is made) and make proper and adequate records about it. Some matters raised within the disclosure may not be matters to which the PID Act applies and the PID Officer may discuss with the discloser other pathways to report these matters.

If the disclosure is one to which the PID Act applies, the PID Officer will ensure proper and adequate records are made and will communicate with the discloser further, unless it is an anonymous disclosure.

The PID Officer will notify the discloser within three months about what the Officer plans to do in dealing with the disclosure, unless it is anonymous.

Determining whether your public interest disclosure will be investigated

After assessing the disclosure as one to which the PID Act applies, the PID Officer will consider whether it will be investigated, guided by the requirements in s.8 of the PID Act. The reasons a PID Officer may not investigate the disclosure include:

- 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 matter(s) occurred; or
- the matter is being or has been adequately or properly investigated by another proper authority.

The PID Officer will make proper and adequate records of their decision and reasons about whether to investigate or not.



Referring public interest matters

Where our PID Officer assesses the disclosure as one to which the PID Act applies, but they do not have the functions or power to investigate one or more matters within the disclosure, they will refer the information to the appropriate authority for investigation as provided for under the PID Act. Alternatively, a discloser may also be able to make a disclosure directly to this new authority, if they wish to receive reports from them about the disclosure. For example, the PID Officer may need to refer an allegation of an offence supported by evidence to the Western Australia Police for investigation.

Investigating the disclosure

The PID Officer will investigate, or cause to be investigated, any matters in the disclosure within MyLeave's sphere of responsibility. The PID Officer may cause the disclosure to be investigated by engaging a suitably skilled staff member within MyLeave or an externally contracted investigator.

If causing the disclosure to be investigated, the PID Officer will ensure that the person undertaking the investigation understands the requirements of the PID Act, in particular the confidentiality requirements and protections for disclosers. The PID Officer will only provide the name of the discloser and that of the subject of the disclosure to the investigator in accordance with the PID Act.

Officers are expected to co-operate with any investigation into the disclosure to maintain the protections under the PID Act.

Officers who are the subject of the disclosure can clarify the process and what to expect with the PID Officer.

The PID Officer may also decide to discontinue an investigation. If this occurs, they will give the discloser reasons for their decision (unless an anonymous disclosure is made). The PID Officer may also notify any subject(s) of the disclosure, if they discontinue the investigation.

Typical procedures for an investigation

The PID Act does not prescribe the way our authority must investigate a disclosure, nor does it provide MyLeave any additional investigative powers. MyLeave has its own investigative powers and procedures and these are a useful base for investigating public interest disclosures, acknowledging the additional requirements of the PID Act in relation to:

- protections and confidentiality:
- notifications to disclosers;
- the ability for a discloser to make a protected disclosure to a journalist as a last resort;
 and
- specific reasons why you can refuse to investigate or discontinue an investigation of a matter in a public interest disclosure.

In conducting an investigation, typical steps may include:

- Developing the terms of reference for the investigation, clarifying the key issues in the disclosure.
 - Ensuring the objectives of the investigation include:
 - o collecting and collating information related to the disclosure;
 - o considering the information collected;
 - o drawing conclusions objectively and impartially;



- o specifying a date by which the investigation should be completed and a report provided to the discloser about the final outcome.
- Bearing in mind that the discloser may be able to disclose to a journalist if:
 - the PID Officer does not notify the discloser within three months of them making their disclosure about how they plan to deal with the disclosure;
 - o the PID Officer discontinues an investigation;
 - o the PID Officer does not complete the investigation within six months; or
 - the PID Officer does not provide a final report to the discloser about the outcome and any action taken, including the reasons for that action.
- Maintaining procedural fairness for the person who is the subject of the disclosure.
- The investigator making contemporaneous notes of discussions and interviews and, where practicable and appropriate, recording discussions and interviews on audio or videotape (ensuring people are made aware they are being recorded).

Ensuring strict security to maintain the confidentiality requirements of the PID Act.

What are your responsibilities if you are the subject of a disclosure?

A subject of a disclosure is a person or persons of interest about whom an allegation of a public interest disclosure has been made.

MyLeave will treat the person or persons fairly and impartially throughout the process and inform them of their rights and obligations. MyLeave will generally keep the parties involved informed during any investigation, although the PID Officer cannot release any information to the person that may prejudice the investigation.

The PID Act provides the person with some rights and obligations as a person subject to a disclosure. Firstly, the subject has a right to have their identity kept confidential unless one of the following conditions apply:

- you consent to your identity being disclosed;
- it is necessary to enable the matter to be investigated effectively;
- it is necessary to do so;
- there are reasonable grounds to believe that it is necessary to prevent or minimise the risk of injury to any person or damage to any property; or
- it is made in accordance with the Corruption Crime and Misconduct Act 2003.

If you are the subject of a disclosure, you must not identify or tend to identify the identity of the discloser or a person who they think might be the discloser, as they also have rights to confidentiality under the PID Act. It is an offence under the PID Act to identify or tend to identify any person who has made a disclosure.

Also, you must not engage in reprisal action, threaten anyone with reprisal action or have someone else conduct this action on your behalf because someone has made, or intends to make, a disclosure. It is still an offence to conduct this action against any person you believe has made the disclosure even if they were not the individual who actually made the disclosure.



After the public interest disclosure process has been finalised

The PID Act places no further obligations on MyLeave or the PID Officer after the disclosure process is complete. The confidentiality requirements of the PID Act, however, continue to apply to you and all other people involved with the disclosure.

The PID Act does not provide for you to appeal the outcome of the disclosure process. You may be able to make another disclosure to another proper authority, if the information relates to their functions or sphere of responsibility. However, this 'new' proper authority may be able to decline to investigate the disclosure if they consider the matter(s) has already been properly or adequately investigated (as a public interest disclosure).

Making a disclosure to a journalist

The PID Act provides for certain circumstances where a discloser may be able to make a protected disclosure to a journalist. These circumstances apply where the discloser has first made a disclosure to the PID Officer or another proper authority named in the PID Act.

Importantly, the PID Act states that to attract the privileges and protections of the PID Act when disclosing to a journalist, the discloser must disclose information that is substantially the same as what was disclosed in the original disclosure and the PID Officer that received the original disclosure:

- did not notify the discloser within three months of making the disclosure about actions they propose to take or have already taken or;
- refused to investigate, or discontinued the investigation of, a matter raised in the disclosure or:
- did not complete an investigation within six months of the discloser making the disclosure or;
- completed an investigation but did not recommend that action be taken or;
- did not provide the discloser with a report stating the outcome of any investigation or any action proposed or taken and the reasons for those actions.

If a discloser is considering making a disclosure to a journalist because they believe their circumstances meet one or more of the requirements outlined above, the discloser is encouraged to discuss this with the PID Officer prior to disclosure to a journalist.

Contact details and further information

MyLeave Level 3, 50 Colin Street, West Perth Ph: 9476 5400

www.myleave.wa.gov.au