



# Public Interest Disclosure (PID) Guidelines and Procedures

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# Public Interest Disclosure procedures for Landgate

## Purpose – Overview of the *Public Interest Disclosure Act 2003*

The *Public Interest Disclosure Act 2003* (PID Act) commenced operation on 1 July 2003. The objective of the PID 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 civil or criminal liability, disciplinary action, dismissal and termination of employment for any breach of duty of secrecy or confidentiality that may apply as a result of the person making the disclosure. However, the person may still be liable for any wrongdoing and face disciplinary charges if the person has been involved in the wrongdoing;
- providing for the confidentiality of the identity of the person making the disclosure and a person who is the subject of a disclosure; and
- protecting the person from detrimental action or the threat of detrimental action and providing remedies for acts of reprisal and victimisation that occur substantially because the person has made a disclosure.

The PID Act only applies to disclosures of public interest information (defined in s. 3). Public interest information means information that tends to show that, in relation to performance of a public function (either before or after the commencement of the PID Act), a public authority, public officer or 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 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:
  - o injury to public health; or
  - o prejudice to public safety; or
  - o harm to the environment; or
- a matter of administration that can be investigated under section 14 of the *Parliamentary Commissioner Act 1971* by the Parliamentary Commissioner (Ombudsman Western Australia).

## What is a public interest disclosure?

A Public Interest Disclosure (PID) is a report of wrongdoing made under the PID Act. A disclosure must relate to a matter of public interest information and show or tend to show wrongdoing by a public authority, public officer or public sector contractor performing a public function.

A PID can be made by anyone who believes on reasonable grounds their information is or may be true. It is an offence under the PID Act to deliberately make a false or misleading disclosure.

A PID, once properly made, cannot be withdrawn. A proper authority (as defined under the PID Act) may continue to investigate the issues raised.

## Organisational commitment for reporting public interest information

Landgate does not tolerate corrupt or other improper conduct, including mismanagement of public resources, in the exercise of the public functions of Landgate and its officers, employees and contractors.

Landgate is committed to the aims and objectives of the PID Act. The PID Act recognises the value and importance of reporting as a means to identify and address wrongdoing.

Landgate strongly supports disclosures being made by employees about corrupt or other improper conduct. Landgate also strongly supports contractors and members of the community making disclosures about corrupt or improper conduct.

Landgate does not tolerate any of its employees, contractors or subcontractors taking reprisal action against anyone who makes or proposes to make a PID.

Landgate will take all reasonable steps to protect employees from any detrimental action for the making of a PID.

The commitment to effectively manage PIDs extends to a proper authority of Landgate. This is the person in Landgate responsible for receiving disclosures of public interest information designated by the Chief Executive Officer of Landgate under s. 23(1)(a) of the PID Act (PID Officer). The PID Officer will abide by the [PID Code of conduct and integrity](#) in performing their duties.

Landgate is also committed to responding to the disclosure thoroughly and impartially. We will treat all people in the disclosure process fairly, including those who may be the subject of a disclosure.

Landgate will provide as much information as possible to people considering making a PID. These procedures are available to employees and contractors and can be accessed through the Policy Register.

General information about PIDs and how Landgate will manage a disclosure is available for external clients and members of the community on our website: [www.landgate.wa.gov.au](http://www.landgate.wa.gov.au).

While these procedures focus on PIDs, Landgate is committed to dealing with all reports of suspected wrongdoing. Landgate encourages people to report if they witness any such behaviour. Landgate will consider each matter under the appropriate reporting pathway and make every attempt to protect employees making reports from any reprisals.

## Purpose of the internal procedures

Our Chief Executive must prepare and publish these internal procedures under s. 23(1)(e) of the PID Act.

These procedures outline how Landgate will meet its obligations under the PID Act. They cover the roles and responsibilities of the PID Officer, the discloser and the subject of the disclosure.

## Scope and application of internal procedures

These guidelines and procedures apply to all people involved in the PID process, including Landgate's PID Officer, employees of Landgate and/or any person making a PID and any subject(s) of a disclosure.

These guidelines and procedures should be read in conjunction with:

- *Public Interest Disclosure Act 2003*;
- *Public Interest Disclosure Regulations 2003*;
- Public Interest Disclosure (PID): Supporting information for Principal Executive Officers and PID Officers (proper authorities);

- Guide for disclosers: Don't be afraid to speak up;
- Guide for managers: When someone speaks up (Public Interest Disclosure);
- Public Sector Code of Ethics; and
- Landgate's Code of Conduct.

The behaviour of all employees involved in the PID process must always accord with Landgate's Code of Conduct. A breach of the Landgate Code of Conduct may result in disciplinary action.

## Overview of roles and responsibilities of parties involved in the disclosure process at Landgate

Person / role	Responsibilities
Principal executive officer (s. 23) (Landgate Chief Executive)	<ul style="list-style-type: none"> <li>• Designates a PID Officer to receive PIDs related to Landgate (s. 23(1)(a)).</li> <li>• Provides protection from detrimental action or the threat of detrimental action for any employee of Landgate who makes a PID (s. 23(1)(b)).</li> <li>• Ensures Landgate complies with the PID Act and the code of conduct and integrity established by the Public Sector Commissioner (s. 23(1)(c) and (d)).</li> <li>• Prepares and publishes internal procedures, consistent with those prepared by the Public Sector Commission, detailing how Landgate will meet its obligations under the PID Act (s. 23(1)(e)).</li> <li>• Provides information annually (s. 23(1)(f)) to the Public Sector Commissioner on the: <ul style="list-style-type: none"> <li>○ number of disclosures received by Landgate;</li> <li>○ results of any investigations conducted as a result of the disclosures;</li> <li>○ action, if any taken, as a result of each disclosure; and</li> <li>○ any matters as prescribed.</li> </ul> </li> <li>• May have a role in enabling an investigation to be undertaken or taking disciplinary action against individuals under functions and powers separately from the PID Act.</li> </ul>
The Proper Authority (s. 5(3), s. 7 and s. 18) (Landgate PID Officer (s. 23(1)(a)))	<ul style="list-style-type: none"> <li>• As is designated by s. 5(3)(a)-(g) or by the Chief Executive of Landgate, under s. 23(1)(a) the PID Officer is to receive disclosures related to Landgate.</li> <li>• Provides information to potential disclosers about their rights and responsibilities consistent with the Code of conduct and integrity established under s. 20(1).</li> <li>• Receives and manages PIDs in accordance with the PID Act (s. 5(3)).</li> <li>• Notifies the discloser within three months of the disclosure being made about what action is planned in dealing with the disclosure (s. 10(1)).</li> <li>• Where appropriate, investigates, or causes an investigation of, the matters in the disclosures (s. 8(1)).</li> <li>• Where appropriate, provides information to subjects of disclosures about their rights, responsibilities, duties and potential offences (s. 9(2), s. 14, s. 15, s. 16 and s. 24).</li> </ul>

	<ul style="list-style-type: none"> <li>• Where appropriate, takes such action as is necessary and reasonable, within their functions and powers in accordance with s. 9.</li> <li>• Maintains confidentiality of the identity of the discloser and subject(s) of disclosures, in accordance with the requirements of the PID Act (s. 11 and s. 16).</li> <li>• Provides progress reports where requested and a final report to the discloser in accordance with s. 10.</li> <li>• Creates and maintains proper and secure records in relation to the disclosures in accordance with the Code of conduct and integrity established under s. 20(1) and the <i>State Records Act 2000</i>.</li> <li>• Completes a PID Register for each disclosure lodged (s. 23(1)(f)).</li> <li>• Acts in accordance with the rules of natural justice (s. 9(2) and s. 16(1)(b)).</li> <li>• Acts in accordance with the Code of conduct and integrity established by the Public Sector Commissioner (s. 20(1)) and any authority-specific code of conduct established separately from the PID Act.</li> </ul>
The discloser	<ul style="list-style-type: none"> <li>• Makes a PID to a proper authority or our PID Officer if the matter relates to Landgate (s. 5(1)).</li> <li>• Believes on reasonable grounds the information in their disclosure is, or may be, true (s. 5(2)).</li> <li>• Does not disclose information subject to legal professional privilege (s. 5(6)).</li> <li>• Does not knowingly and recklessly make a false or misleading disclosure (s. 24(1)).</li> <li>• Maintains confidentiality of the information disclosed and the identity of the person(s) to whom the information relates, in accordance with the requirements of the PID Act (s. 16 and s. 17(1)(b)).</li> <li>• Assists any person investigating the matter to which the disclosure relates by supplying the person with any information requested (s. 17(1)(a)).</li> </ul>
The subject of the disclosure (person about whom disclosure is made)	<ul style="list-style-type: none"> <li>• 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 (s. 9(2)).</li> <li>• Maintains confidentiality of the identity of the discloser, in accordance with the requirements of the PID Act (s. 16(1)).</li> <li>• Is to be treated in accordance with the rules of natural justice (s. 16(1)(b)).</li> <li>• Does not take or threaten to take detrimental action (defined in s. 3) against a person because they have made or intend to make a disclosure (s. 14(1)).</li> <li>• Does not incite another person to take detrimental action against another because they have made or intend to make a disclosure (s. 14(2)).</li> <li>• 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 (s. 15(1)).</li> </ul>
An investigating officer	<ul style="list-style-type: none"> <li>• May investigate matters or public interest information on behalf of a proper authority of Landgate, in accordance with the terms of reference given to them.</li> </ul>

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|--|--|
|  | <ul style="list-style-type: none"> <li>• Maintains confidentiality of the identity of the discloser and any persons subject to the disclosure, in accordance with s. 16.</li> <li>• Makes, and keeps secure, comprehensive records of any investigation undertaken.</li> </ul> |
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## Managing public interest disclosures

The following procedures describe how Landgate will manage the PID process.

### Overarching requirements of the *Public Interest Disclosure Act 2003*

The PID Act has some overarching requirements for handling disclosures. These requirements separate the PID 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 we will meet these requirements, as well as expectations of you, as a discloser, and any subject(s) of your disclosure.

#### What is ‘public interest information’?

The PID Act only applies to disclosures of public interest information (defined in s. 3). Public interest information means information that:

- relates to the performance of a public function by a public authority, public officer or public sector contractor (either before or after the commencement of the PID Act); 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 written (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 section 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 (s. 16) not only protect the discloser, but also any other people affected by the disclosure.

The confidentiality requirements do not apply to all information in a disclosure, although, we are 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 discloser’s identity and the identity of any persons, 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. 16(1)) or any person, that is, the subject(s) (s. 16(3)) of the disclosure, except in accordance with the PID Act, is an offence punishable with a penalty of a \$24,000 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 disclosure of information that might identify or tend to identify their identity (s. 16(1)(a)), the discloser will be requested by our PID Officer to record this using the [Consent to disclosure of identifying information form](#).

Sometimes we may need to identify the discloser, without the discloser's consent s. 16(1)(b)-(f) 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
- we are ordered by a court or any other person or body having authority to hear, receive or examine evidence; or
- we are required by s. 152 or s. 153 of the *Corruption, Crime and Misconduct Act 2003*.

Before we identify the discloser for any of the reasons above, our PID Officer will take all reasonable steps to inform the discloser that this will happen and the reasons why. Our PID Officer will use the [Notification of disclosure of identifying information form](#) to do this.

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

Our PID Officer will also consider whether it is necessary to inform any external investigator about the identity of the discloser. Where it is necessary to provide this identifying information, our PID Officer will notify as described above.

## Confidentiality plan

If your confidentiality cannot be maintained, we will develop a plan to support and protect you from any potential risks of detrimental action. You will be involved in developing this plan.

## Confidentiality regarding the person, that is, the subject of the disclosure

The subject of disclosure may consent to having their identity revealed to assist with the disclosure process s. 16(3)(a). Our PID Officer will use the [Consent to disclosure of identifying information form](#) to record this.

Additionally, we may need to reveal identifying information about the subject(s) of a disclosure without their consent, s. 16(3)(b)-(g) 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 under s. 9;
- 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;
- we are ordered by a court or any other person or body having authority to hear, receive or examine evidence; or
- we are required by s. 152 or s. 153 of the *Corruption, Crime and Misconduct Act 2003*.

Revealing the identity of the person that is the subject of a disclosure outside of the above circumstances may result in a fine of \$24,000 or imprisonment for two years.



## Protections

The PID Act provides a range of protections for disclosers (Part 3). It also requires that our Chief Executive provides protection to any employees who make disclosures (s. 23(1(b))).

[The Guide for disclosers: Don't be afraid to speak up](#) contains general information about the protections provided by the PID Act. Our PID Officer will be able to expand on this information specific to Landgate.

We are committed to ensuring that no detrimental action, including workplace reprisals by managers or other employees, occurs as a result of a person making a disclosure. If any of the above does occur, the discloser can request that we take action to protect them. Tell the PID Officer who is handling the disclosure immediately.

The PID Act also provides that the discloser may lose the protections provided in s. 13 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

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

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

- within three months of making a disclosure, the action taken, or proposed to be taken, in relation to the disclosure (s. 10(1))
- when the disclosure process has concluded, the outcome of the investigation and the reasons for taking any action following the investigation (s. 10(4)).

Our PID Officer may also provide a progress report during any investigation, either on their initiative or upon your request (s. 10(2) and (3)).

Our PID Officer has some limits on what they can include in their reports. Section 11 prevents provision of information that would be likely to adversely affect:

- any person's safety s. 11(1)(a); or
- the investigation of an offence or possible offences s. 11(1)(b); or
- confidentiality as to the existence or identity of any other person who made a PID s. 11(1)(c).

Our PID Officer is also prevented from giving any information they must not disclose under s. 151, s. 152 or s. 153 of the *Corruption, Crime and Misconduct Act 2003*.

## Record keeping

During the investigation our PID Officer may make comprehensive and contemporaneous records of any discussions and interviews. These records along with any other documentation or files relating to the disclosure, whether paper or electronic, will be stored securely and only accessed by authorised persons.

## PID Register

To assist with annual reporting to the Public Sector Commissioner Landgate will maintain a PID register. We will assign a unique register number to each disclosure and record key information about the disclosure, any investigation and the outcome in the PID register. This register (paper and/or electronic) is kept strictly confidential and maintained in a secure location.

## How to make a public interest disclosure

### Before you make a disclosure

We strongly encourage anyone thinking about making a public interest disclosure to seek advice from our PID Officer ('proper authority') before they do. A disclosure must be made to a proper authority for it to be covered by the PID Act.

A number of other requirements apply to the discloser, so it is important to understand the rights and responsibilities in the process. This information is outlined generally in the [Guide for disclosers: Don't be afraid to speak up](#), available from the Public Sector Commission website at [Public interest disclosure resources \(www.wa.gov.au\)](#) and Landgate's website: [www.landgate.wa.gov.au](http://www.landgate.wa.gov.au).

At Landgate the occupant(s) of the following designated positions(s) are specified with the authority as the person(s) responsible for receiving disclosures of public interest information in accordance with s. 23(1)(a). For the purposes of this procedure a PID Officer is the proper authority designated under s. 5(3)(h) for dealing with information that falls within the sphere of responsibility of Landgate.

Their names and contact details are:

Position	Name of PID Officer	Contact details
General Counsel	Bee Ang	Email: <a href="mailto:Bee.Ang@landgate.wa.gov.au">Bee.Ang@landgate.wa.gov.au</a> Tel: (08) 9273 9472
Senior Legal Counsel	Alison Fleming	Email: <a href="mailto:Alison.Fleming@landgate.wa.gov.au">Alison.Fleming@landgate.wa.gov.au</a> Tel: (08) 9273 7022

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. Our PID Officer will also let the discloser know that they need to make the disclosure voluntarily and consciously – we will never force a person to make a disclosure. This is because they cannot withdraw the disclosure once it is made. Once we receive a disclosure, our PID Officer is obliged to take action and may continue to look into the matters within the disclosure irrespective of a discloser's continued approval.

The initial discussions with our PID Officer may help 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, our PID Officer will discuss other mechanisms through which issues may be dealt with, for example, our general complaints or grievance resolution process.

Our PID Officer will be able to provide more detailed information about Landgate's disclosure process and what people can expect from it.

You can also contact the Public Sector Commission Advisory Line on (08) 6552 8888 or 1800 676 607 (for country callers) for general information about the disclosure process.

### What is 'sphere of responsibility'?

Under s. 5(3)(h) the PID Officer for an authority can receive information relating to a matter which falls within the 'sphere of responsibility' for their public authority. 'Sphere of responsibility' is not defined in the PID Act but may include:

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

Some examples of matters that would fall into Landgate's sphere of responsibility include:

- identifying that a Landgate employee has been accepting gifts from customers as bribery to prioritise their applications;
- suspecting that a Landgate employee has been using their corporate credit card for personal purchases; or
- identifying that a printing company contracted by Landgate has billed a substantial amount to Landgate for services not provided/delivered.

The proper authority to which you need to make the disclosure depends on the type of disclosure information. Where the information is outside of our 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.

A list of proper authorities and the information they can receive is covered in [The Guide for disclosers: Don't be afraid to speak up](#). They are as follows:

### 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 (e.g. matters about the public authority or its officers, or which the public authority has the function of investigating)	The 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 <i>Parliamentary Commissioner Act 1971</i>	The PID Officer of the public authority concerned, the Ombudsman or the Public Sector Commissioner
A person or a matter of a prescribed class	A person declared by the regulations to be a proper authority

Important Notes: The information disclosed must be public interest information as defined in the PID 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 powers to investigate the information. The discloser will be kept informed if the matter is referred to another authority.

## Making the disclosure

A discloser needs to clearly identify that they are making a PID. 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. As we expect that most disclosures will be made in writing, Landgate has developed a [PID lodgement form](#) which can be used for the purpose of making such a disclosure. There is no requirement to use the form. The form will help to define the details of the disclosure. A discloser may fill out the form or our PID Officer may complete the form if they are speaking with the discloser and then have the discloser sign the form to acknowledge they are making a disclosure voluntarily and consciously.

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

If our 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. An anonymous disclosure may not prevent the discloser from being identified during an investigation.

## Determining whether your matter is an appropriate disclosure

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

If the disclosure is not one to which the PID Act applies, our PID Officer will let the discloser know the reasons for their decision (unless you made an anonymous disclosure) 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, our PID Officer will ensure proper and adequate records are made and will communicate with the discloser further, unless it is an anonymous disclosure.

Landgate's PID Officer will notify the discloser within three months about what action has been taken or is proposed to be taken to deal with the disclosure, unless it is an anonymous disclosure.

### **Assessing a PID**

Our PID Officer must, on receiving the information confirm that the discloser, after being informed of the consequences, wishes to make a PID under the Act.

If they do, our PID Officer must make an initial assessment of whether:

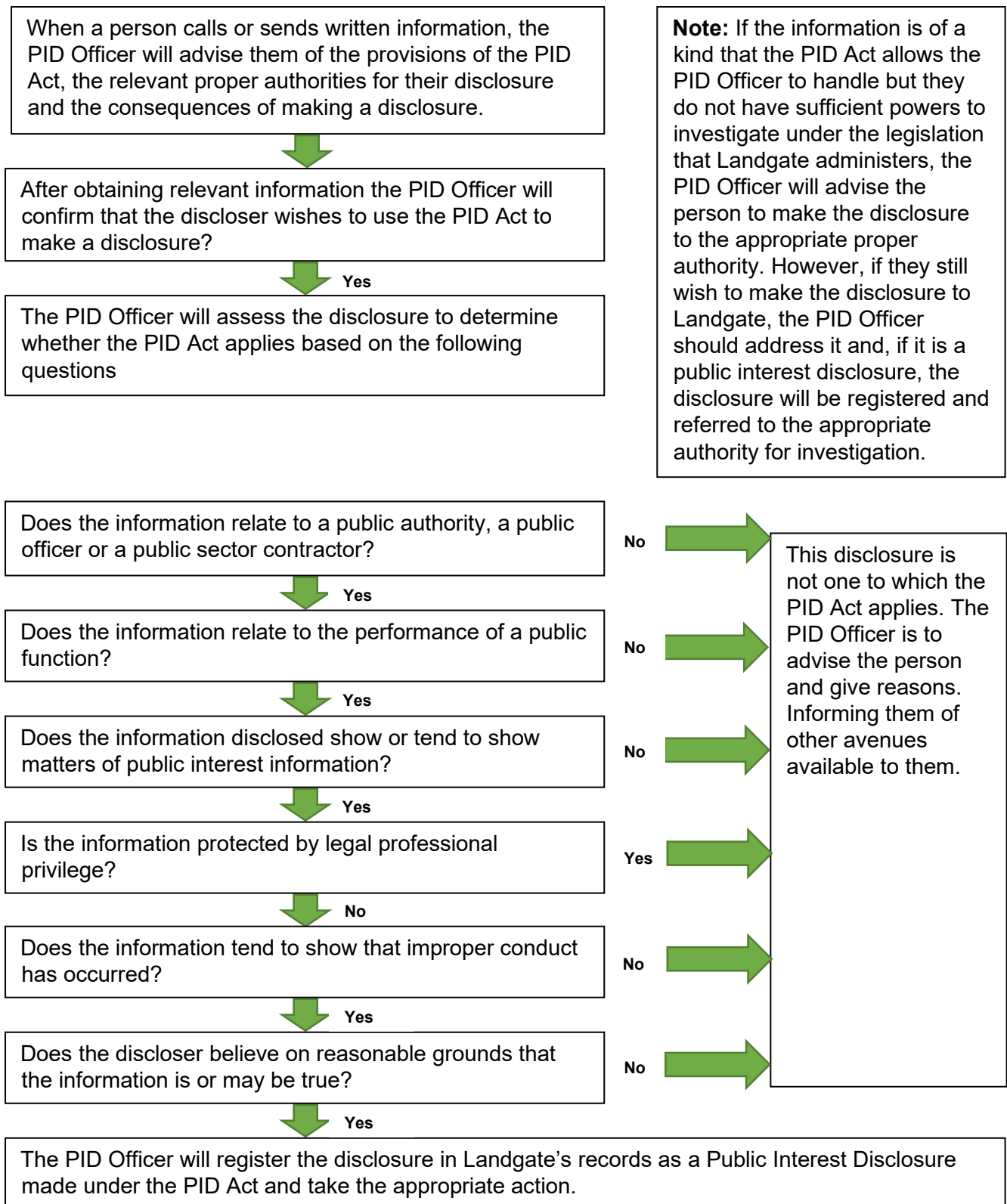
- the information disclosed relates to a public authority, a public officer or a public sector contractor;
- the information disclosed relates to the performance of a public function;
- the information disclosed shows or tends to show matters of public interest information;
- the information disclosed is of the kind for which our PID Officer is the proper authority;
- the discloser believes on reasonable grounds that the information is or may be true; and
- the information is not protected by legal professional privilege.

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

Relevant form: Assessment and case management form for public interest disclosure

Where the proper authority does not have the power to investigate a matter, our PID Officer should refer the person to the appropriate authority.

## Flowchart for receiving and assessing Public Interest Disclosures



## Form of PID

If a disclosure is a PID, the discloser and our PID Officer can use the [Public Interest Disclosure lodgement form](#). Our PID Officer must complete the Assessment and case management form for a public interest disclosure.

On completion of these forms, our PID Officer must create a separate file for the PID, 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 (PID Act)***

**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 PID Act.**

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

The PID must be recorded in the PID Register by the PID Officer and maintained in a secure location.

## Determining whether your PID will be investigated

After assessing the disclosure as one to which the PID Act applies, our PID Officer will consider whether it will be investigated, guided by the requirements in s. 8. 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
- the matter is being or has been adequately or properly investigated by another proper authority (s. 5(3)).

Our 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, our PID Officer may need to refer an allegation of an offence supported by evidence to the Western Australia Police for investigation.



## Investigating the disclosure

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

If causing the disclosure to be investigated, our 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. Our PID Officer will only provide the name of the discloser and that of the subject of the disclosure to the investigator in accordance with s. 16 of the PID Act.

When investigating the disclosure, the PID Officer or investigator is limited by the functions and powers derived from Landgate's operating legislation. The PID Act does not provide for any additional investigative powers.

If the discloser is an employee, the employee is expected to cooperate with any investigation into the disclosure to maintain the protections under the PID Act. A discloser is also expected to act in accordance with Landgate's Code of Conduct at all times.

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

Our PID Officer may also decide to discontinue an investigation, in accordance with s. 8(2). If this happens, they will give the discloser reasons for their decision in accordance with s. 8(3), unless the discloser made an anonymous disclosure. The PID Officer may also notify any subject(s) of the disclosure if they discontinue the investigation.

To ensure the disclosure is adequately and properly investigated our PID Officer, or other investigator, will be guided by the procedures below.

## Internal investigative procedures

In conducting an investigation, the PID Officer or other investigator may follow the following steps (or any other steps that the PID Officer or other investigator deems appropriate):

- 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 including determining whether it is necessary to interview the discloser and/or obtain additional clarification or material from the discloser and interview any Landgate employees and/or contractors;
  - o considering the information collected including existing Landgate records;
  - o drafting conclusions objectively and impartially
- notifying the discloser within three months of them making their disclosure about how the investigator plans to deal with the disclosure; informing the subject of the disclosure about their rights and obligations under the PID Act, the PID Officer's code of conduct and integrity and Landgate's Code of Conduct;
- maintaining procedural fairness for the person who is the subject of the disclosure including ensuring that the interviews take place on a confidential basis and on the basis that to the extent possible the confidentiality of both the discloser and any person the subject of the disclosure is preserved;
  - o In conducting the interviews, the investigator must:
    - Inform the interviewee of the identity and function of each person conducting the interview and the process for conducting a PID investigation.
    - The interviewee must be advised of the protections provided to them under the PID Act.
- the investigator making contemporaneous notes of all 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); and
- ensuring strict security to maintain the confidentiality requirements of the PID Act including recordkeeping; and
- completing a final report on the investigation including the outcome of the investigation and the reasons for taking any action following the investigation.

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

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

We will treat the person fairly and impartially throughout the process and inform them of their rights and obligations. We will generally keep the parties involved informed during any investigation, although we cannot release any information to the person that may prejudice our investigation. As an employee it is expected that they will act in accordance with Landgate's Code of Conduct at all times.

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 under s. 16(3), 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 in taking action within s. 9

- 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
- is made in accordance with a court order or other body having authority to hear evidence
- it is made in accordance with s. 152 or s. 153 of the *Corruption, Crime and Misconduct Act 2003*.

We will also provide appropriate natural justice. This means that, before we take any disciplinary or other action against the person under s. 9, we will give you the opportunity to:

- be informed of the substance of the allegations; and
- make a submission either verbally or in writing in relation to the matter.

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 s. 16 to identify or tend to identify any person who has made a disclosure under the PID Act.

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. This is an offence under s. 14(1) of the PID Act.

## Taking action

Our PID Officer will take action where they form the opinion that a person may be, may have been or may in the future be involved in conduct which may be the subject of a PID. Usually, the PID Officer will form this opinion at the conclusion of an investigation, although there may be instances where they need to take immediate action and the PID Act enables them to do this.

Action our PID Officer may take under s. 9 includes, but is not limited to:

- preventing the matter disclosed from continuing or occurring;
- referring the matter to the Western Australia Police or other appropriate body; or
- taking disciplinary action against a person responsible for the matter.

The options above are not mutually exclusive. Our PID Officer may take more than one action depending on the circumstances. For example, the PID Officer may seek to terminate the employment of an employee caught stealing and refer the matter to the Western Australia Police.

In taking action, the PID Officer and/or Landgate is limited by the powers and functions derived from our operating legislation. The PID Act does not provide for any additional powers to take action. We are also guided by what is necessary and reasonable in the circumstances.

Before taking any action we will give the person against whom the action is to be taken (the subject of the disclosure) an opportunity to respond, either verbally or in writing, to ensure procedural fairness.

### **Confidentiality and record keeping when action taken**

We will maintain confidentiality in accordance with the PID Act when taking action.

Our PID Officer will keep appropriate records about any action taken, as well as recording a summary of this action in the Public Interest Disclosure Register (PID Register).

## After the PID process has been finalised

The PID Act places no further obligations on Landgate or our PID Officers after the disclosure process is complete. The confidentiality requirements of the PID Act, however, continue to apply to the discloser 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 (s. 5). See [Guide for disclosers: Don't be afraid to speak up](#) for the correct proper authority for your disclosure.

However, this 'new' proper authority may be able to decline to investigate the disclosure under s. 8, if they consider the matter(s) has already been properly or adequately investigated (as a PID).

## 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 s. 7A(2). These circumstances apply where the discloser has first made a disclosure to the PID Officer or another proper authority named in the PID Act (outlined in s. 5 or [Guide for disclosers: Don't be afraid to speak up](#)).

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.

We are committed to ensuring that our PID Officer provides the notifications required under the PID Act and that the discloser understands the reasons for our decisions and 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, we would encourage the discloser to discuss this with the PID Officer prior to disclosure to a journalist.

It is also recommended that the discloser seek their own legal advice before taking any action in relation to matters that have been disclosed under the PID Act.

If a discloser makes an anonymous disclosure, they may not be able to demonstrate they meet the above requirements and the PID Officer is not obliged to provide the discloser with any notifications about what happens to the disclosure.

## Reporting requirements

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

### **Principal Executive Officer Report**

Under s. 23(f) of the PID Act, the Chief Executive Officer of Landgate is required to report annually to the Public Sector Commissioner on:

- the number of PIDs received over the reporting period; and
- 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 s. 19 and s. 22 of the PID Act, the Public Sector Commissioner is required to monitor compliance with the PID Act, to assist public authorities to comply with the PID Act and the Code of conduct and integrity and to provide an annual report to Parliament.

### **Report Format and Submission**

The Public Sector Commission runs an annual agency survey program (1 July to 30 June). Each public authority will be surveyed on questions relating to the authority's role and obligations under the PID Act. Currently, Landgate's Director of People Culture and Environment with the input from our PID Officers is responsible for submitting the survey results to the Commissioner.

The PID Officer may choose to use the Register available from the Public Sector Commission's public interest disclosure resource page. This register needs to be kept in a secure location within each authority to ensure confidentiality is maintained in accordance with the PID Act.

## Further information

Further information can be found on Landgate's website [Making a public interest disclosure - Landgate](#) and the Public Sector Commission's website [www.publicsector.wa.gov.au](http://www.publicsector.wa.gov.au)