



Workplace Gender Equality Agency

Public Interest Disclosure Policy

6 August 2021

Publication details

Document reference	WGEA-2021-HR18	Version number	1.3
Released for publication by (sign)	<i>Mary Wooldridge</i>	Appointment	WGEA Director Mary Wooldridge
Date	06/08/2021		

Amendment details

Version	Amendment detail	Edited by
1.0		Human Resources
1.1	Change to Authorised officers. Add reprisal procedures	Operations
1.2	Change to WGEA Director.	Operations
1.3	Change to WGEA Director. Update references	Operations

Table of Contents

Part One – Introduction	4
1.1 Purpose	4
1.2 Scope	4
1.3 What can be reported?	4
1.4 References and resources	4
Part Two – Roles & Responsibilities	5
2.1 Discloser	5
2.2 The Agency	5
2.3 Authorised Officer	5
Part Three – Administration	6
3.1 Making a public interest disclosure	6
3.2 Making a public interest disclosure to other government agencies or other people	6
3.3 Privacy, confidentiality and protections afforded by the Act	7
3.4 Receiving and allocating a public interest disclosure	8
3.5 Investigating a public interest disclosure	8
3.6 Procedural fairness	8
3.7 Support person	9
3.8 Outcomes of a public interest disclosure inquiry	9
3.9 Frivolous, vexatious, false, fabricated or malicious report	9

Part One – Introduction

1.1 Purpose

- WGEA is committed to ensuring the highest standards of ethical and accountable conduct. WGEA promotes an environment where appropriate action is taken to investigate and resolve public disclosures (“disclosure”) of suspected wrongdoing and maladministration, and where staff who make these disclosures are supported.
- The purpose of this policy is to advise on the procedures to be followed by WGEA employees when making, receiving or dealing with public interest disclosures under the *Public Interest Disclosure Act 2013*. This policy is to be read in conjunction with the *WGEA Fraud Control Plan*.

1.2 Scope

- Public interest disclosures are disclosures of information in relation to suspected wrongdoing and/or maladministration that in the public interest should be disclosed.
- A disclosure may be made by a public official, including a former or current Agency staff member, or by a service provider under a Commonwealth contract.

1.3 What can be reported?

- Information that a discloser believes on reasonable grounds tends to show ‘disclosable conduct’ may be disclosed. This means conduct by an agency, a public official or a contracted Commonwealth service provider (in connection with the contract) that:
 - contravenes a law
 - is corrupt
 - perverts the course of justice
 - results in wastage of public funds
 - is an abuse of public trust
 - unreasonably endangers health and safety or endangers the environment
 - is misconduct relating to scientific research, analysis or advice
 - is maladministration, including conduct that is unjust, oppressive or negligent.
- Disagreeing with government policy, action or expenditure is not disclosable conduct.

1.4 References and resources

- Public Interest Disclosure Act 2013 (the Act)
- Delegations of Agency Head Powers and Functions under the Public Interest Disclosure Act 2013
- “Speaking up about wrongdoing – A guide to making a disclosure under the Public Interest Disclosure Act 2013” – www.pid.ombudsman.gov.au
- APS Code of Conduct
- Public Service Act 1999
- Public Service Regulations
- 2021 – OP04 - WGEA Fraud Control Plan
- 2020 – OP06 – Protective Security Policy
- WGEA-2021-HR15-Director’s procedures – breaches of the APS Code of Conduct

Part Two – Roles and responsibilities

2.1 Discloser

- A person who makes a public interest disclosure (discloser) has a responsibility to ensure that any disclosures that they make are made in good faith and are not frivolous, vexatious, false, fabricated or malicious.
- Disclosers may not discuss the details of their disclosure with anyone who does not need to know for the purposes of investigating the disclosure.

2.2 The Agency

- WGEA has a statutory obligation under the Act to ensure that disclosures are considered fairly and independently.
- WGEA is committed to taking all reasonable measures to protect a discloser who submits a disclosure from victimisation and/or discrimination as a result of making the report.

2.3 Authorised officer

- An authorised officer is a person who is delegated by the Director, or through legislative mandate, to receive and investigate public interest disclosures. At WGEA, authorised officers are the:
 - Director
 - Operations Executive Manager
- An authorised officer is responsible for:
 - receiving a public interest disclosure
 - enquiring into the disclosure
 - where necessary, appointing another person to inquire into the disclosure
 - determining whether there are grounds on which to decline to conduct an inquiry
 - advising the discloser of decisions in relation to inquiring into the report and the outcome of the inquiry.

Part Three - Administration

3.1 Making a public interest disclosure

A public interest disclosure is a report made about information that a discloser believes on reasonable grounds tends to show 'disclosable conduct' (refer section 1.3 of this policy). The disclosure must be made in accordance with the provisions of this policy.

- The disclosure:
 - may be made to an authorised officer identified within this policy or to the discloser's supervisor. The discloser should be aware that a disclosure made to a supervisor must be reported to an authorised officer by the supervisor. This is a requirement under s.60(a) of the Act.

- may either expressly, or by implication, make an allegation about another APS employee or Commonwealth service provider about actual conduct which the discloser believes to be disclosable conduct
 - must be in writing and must clearly convey to the authorised person that the discloser is seeking a formal investigation of the alleged conduct under the procedures established by the Director within this policy
 - must include any documentary or other evidentiary material in support of the allegation, such as emails, minutes, reports, file and/or diary notes
 - must include the identities of any persons whom the discloser believes may have relevant information about, or who may have witnessed, any of the incidents or behaviours which the discloser alleges amounts to disclosable conduct.
 - should include the name of the person making the report.
- A discloser may remain anonymous, but under these circumstances must be aware that the Agency has the discretion not to investigate if it cannot contact the discloser to seek further information. Where an anonymous disclosure is received the Agency will also not be able to provide advice about how the disclosure was handled.

3.2 Making a public interest disclosure to other government agencies or other people

- If the discloser has information about suspected wrongdoing in another public sector agency, a report can be made to an authorised officer in that agency. If the agency has ceased to exist since the suspected wrongdoing took place, the appropriate agency to contact would be the agency that has taken over its functions.
- In circumstances where the matter involves an intelligence agency or intelligence related information, a disclosure may be made to that agency or to an authorised officer of the Inspector-General Intelligence and Security (IGIS)
- A disclosure may also be made to the Commonwealth Ombudsman if the discloser believes on reasonable grounds that this would be the most appropriate avenue to utilise.
- A discloser may make a public interest disclosure to other people, including outside government, in limited circumstances. The following restrictions apply to such disclosures:
 - The matter must not include intelligence information or sensitive law enforcement information or concern an intelligence agency.
 - A disclosure may not be made to a foreign public official.
- In limited circumstances where it is not contrary to public interest, a discloser has a right to make a public interest disclosure to anyone outside government in circumstances where the discloser has first made an internal disclosure and either the investigation has exceeded its time limit (90 days) or the discloser reasonably believes that the investigation or its outcome was inadequate.
- When considering whether to make a disclosure outside government, the discloser must consider whether on balance such a disclosure is contrary to the public interest.
- If an external disclosure is made, the discloser must not disclose any more information than is reasonably necessary to identify the wrongdoing.
- In exceptional circumstances, a discloser may also make an emergency disclosure outside government if she or he reasonably believes that there is a substantial and imminent danger to health or safety or to the environment.
- Information may be provided to a lawyer for the purposes of seeking legal advice or professional assistance about making a disclosure, provided that the information provided is not about intelligence related matters or sensitive law enforcement issues. A lawyer must have a security clearance to discuss national security or other protected information.

3.3 Privacy, confidentiality and protections afforded by the Act

- WGEA will make every reasonable effort to protect the identity of a discloser and will not reveal your identifying information to anyone else without your consent or use it for another purpose unless:
 - it is necessary for the purposes of the Act
 - information is provided to support an investigation by the Ombudsman or the IGIS
 - it is required by another Commonwealth law or other law which overrides the protections offered by the Act
 - the information has already lawfully been published.
- A discloser needs to be fully cognizant that complete and ongoing anonymity cannot be guaranteed even when every reasonable effort is made to do so. The discloser's identity may need to be disclosed to certain other people if it is necessary to:
 - investigate the disclosure effectively
 - protect the discloser against reprisals

In such circumstances WGEA will seek the consent of the discloser to provide identifying information to relevant people, and will take steps to protect the discloser against any reprisal.

- A discloser cannot be subject to any civil, criminal or administrative liability, including disciplinary action, for making a disclosure in accordance with the Act, and no contractual or other remedy can be enforced against the discloser on the basis of their disclosure.
- A person who makes a disclosure about matters that include their own wrongdoing will not be protected from liability for their own wrongdoing.
- Any WGEA employee involved in the submission of, or inquiry into, a public disclosure or its outcomes, or who has any knowledge of the same, is required to comply with WGEA's media and social media policies in relation to communicating with anyone who does not possess express authorisation from the Director to be in possession of that knowledge.
- Employees should be aware that *section 70(1) of the Crimes Act 1914* makes it a criminal offence for an APS employee to publish or communicate any fact or document which came into their possession by virtue of their APS employment and in respect of which there is a duty not to disclose without authorisation.
- *Regulation 2.1 of the Public Service Regulations* also provides that an APS employee must not, except in the course of his or her duties as an APS employee or with the Agency Head's express authority, give or disclose, directly or indirectly to any person, any information about public business or anything of which the employee has official knowledge.

3.4 Receiving and allocating a public interest disclosure

- Upon receipt of a public disclosure, the authorised officer will examine the information presented and make a determination as to whether it is a disclosure covered by the Act.
- If there is no reasonable basis for considering the matter to be a public interest disclosure, the authorised officer will advise the discloser of this decision.
- If there is a reasonable basis for considering the matter to be a public interest disclosure, the authorised officer will, within 14 days, allocate the matter for investigation. The matter may be allocated within WGEA or to one or more other relevant agencies such as the Ombudsman or IGIS.
- The person who receives the disclosure should conduct an assessment of the risk of reprisal as soon as possible after the disclosure is received. Consultation should occur with the discloser and, keeping in mind confidentiality arrangements, their supervisor or the Human Resources Manager to help to ascertain where threats of reprisal may lie. The Commonwealth Ombudsman's publication *Agency Guide to the*

Public Interest Disclosure Act 2013 provides information on how to carry out a risk assessment. The Agency will attempt to control the risks proactively and continuously monitor and review the risks of reprisal.

3.5 Investigating a public interest disclosure

- Once allocated, the Director or her delegate must investigate the disclosure unless one of the exemptions noted in s.48 of the Act apply. A disclosure may not be investigated if:
 - the matter does not relate to serious disclosable conduct
 - is already under investigation
 - the disclosure is frivolous or vexatious
 - the age of the disclosure deems it impractical to investigate
 - the discloser has not disclosed their identifying or contact details
 - the discloser has failed to provide the investigator the information or assistance requested by them.
- A public interest disclosure investigation must be finished within 90 days of the date that the matter was allocated for investigation. The Ombudsman or IGIS may grant one or more extensions of time, and the discloser will be advised of the reason/s for this decision.
- WGEA will notify the discloser at various stages during the process as long as contact details have been provided. These stages include:
 - when the disclosure is allocated for investigation
 - if WGEA decides to investigate and if the investigation is under the Act, the estimated length of the investigation
 - if WGEA decides not to investigate, the reasons for that decision and any action that may be available for the discloser to take under other Commonwealth laws
 - if an investigation is conducted under the Act and an extension of time is granted by the Ombudsman or the IGIS, the progress of the investigation
 - after the investigation report is completed.

3.6 Procedural fairness

- The rules of procedural fairness require that:
 - an investigator or decision maker must be impartial and free of actual or apparent bias
 - a person whose interests are directly affected by the decision is entitled to know the case against them and must be given a reasonable opportunity to present their side of the story and respond to any adverse information relevant to their case
 - the decision maker must make their decision only after having considered the evidence.
- Employees who are the subject of a public interest disclosure are usually entitled to procedural fairness.
- During the course of an inquiry into a public interest disclosure, the person conducting the inquiry must consider, having regard to the circumstances, whether to give the person about whom the disclosure has been made an opportunity to be heard in relation to the report. This means that before a final determination is made, a WGEA employee who is the subject of a public interest disclosure:
 - may be provided with the substance of the material that the decision maker is considering
 - may be provided with a reasonable opportunity to be heard on whether the disclosure about their behaviour is true or false and whether further action should be taken.

- In most cases, the opportunity to be heard will be provided to an employee against whom the allegations have been made. However, there may also be cases where this opportunity is not provided to the employee, including, for example, where:
 - the report is found to be without substance and an inquiry is not pursued
 - advising the employee of the allegations may seriously disrupt workplace harmony, or adversely affect the health of the employee to a serious degree.
- In most circumstances, a discloser is not entitled to procedural fairness as their role in the matter is essentially that of an informant or witness. If it becomes apparent that adverse finding/s or recommendation/s may result about the discloser themselves as a result of the inquiry, the discloser will be entitled to procedural fairness.

3.7 Support person

- Any employee involved in an inquiry into a public interest disclosure is entitled to have a support person attend any meetings or discussions in relation to that report.
- The role of the support person is to provide the employee with emotional support and to act as a witness to the proceedings. A support person may not advocate on behalf of the employee but may take notes for the employee's later reference.
- The investigator may also utilise the services of another authorised employee to take notes and act as a witness to the proceedings.

3.8 Outcomes of a public disclosure inquiry

- The discloser will be provided with a copy of the investigation report once the investigation has been completed. The version of the report received by the discloser may contain some omissions. Any such omissions will result from the need to comply with privacy, confidentiality or security requirements.
- In the event that a disclosure is substantiated, the Director will take appropriate action in response to the recommendation/s made and other matters contained within the investigation report. Actions may include:
 - commencing APS Code of Conduct proceedings or other disciplinary processes
 - mediation or conciliation of a workplace conflict
 - an internal audit or other review of an issue
 - implementing or changing policies, procedures or practices
 - referral of the matter to the police or another body that can take further action.

3.9 Frivolous, vexatious, false, fabricated or malicious reports

- Employees should be aware that disciplinary action may be taken against anyone who deliberately makes a frivolous, vexatious, malicious, fabricated or false report of suspected misconduct by another employee.
- An employee who knowingly makes a statement that is false or misleading, or knowingly without a reasonable excuse, contravenes certain publication restrictions listed in the Act, will not receive any protection under the Act.