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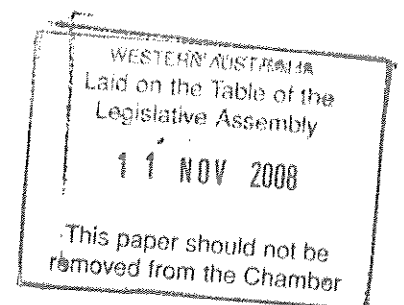
Statutory Review

of the

Public Interest Disclosure Act 2003

Government Response

July 2008



**Statutory Review of the *Public Interest Disclosure Act 2003*
Government Response to the Lyon Review Recommendations**

Recommendation A:

A new definition of "misconduct" should be inserted into section 3(1), consistent with the definition of misconduct in the Corruption and Crime Commission Act 2003.

Supported.

Implementation: Legislative

Recommendation B:

The definition of "police officer" should be deleted, and the definition of that term in the Interpretation Act 1984 should be relied upon.

Supported

Implementation: Legislative

Recommendation C:

Section 5(3)(a) should be amended to reflect the jurisdiction of the Corruption and Crime Commission, so that disclosures to the Commission under the Public Interest Disclosure Act are those relating to "misconduct" under the Corruption and Crime Commission Act 2003.

Supported

Implementation: Legislative

Recommendation D:

It would seem to be premature to form a view on the question of whether the Act should be amended to restrict disclosure-making capacity to public officers and volunteers performing public functions. This is ultimately a question of policy, does not affect the attainment of the purposes of the Act, and is still subject to review in the Whistling While They Work Project.

Supported.

Implementation: N/A

Comment: The Government does not propose to amend the Act to restrict the disclosure making capacity to public officers and volunteers performing public functions at this point in time. However, any recommendations made in this regard in the final report of the *Whistling While They Work Project* will be considered by Government. It is understood that this report is not expected to be completed until mid-2008.

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Recommendation E:

The review is concerned only with the purposes of the Act as it stands, and to allow for disclosures to the media and members of Parliament would be a departure from these purposes, and a marked change from the current policy.

Supported.

Implementation: N/A

Recommendation F:

The implications of recent legal advice that the Commissioner for Public Sector Standards is not a proper authority for the disclosure of public interest information in relation to an officer of the Corruption and Crime Commission, should be accommodated in any amendments to the Act.

Supported.

Implementation: Legislative

Recommendation G:

Section 5(3)(h) should be amended to make it clear that the Act allows disclosures to be made to investigative authorities with responsibility for the type of behaviour which is the subject of the disclosures.

Supported.

Implementation: Legislative

Recommendation H:

Section 8(1) should be amended to address the difficulty of interpretation where the proper authority is a Public Interest Disclosure (PID) officer.

Supported

Implementation: Legislative

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Recommendation I:

Section 8(2) should be amended to encompass investigations other than those pursuant to the Act.

Supported.

Implementation: Legislative

Recommendation J:

Section 9(2) should be amended to clarify that a proper authority is required to give a person an opportunity to make a submission, which submission may be either oral or written.

Supported.

Implementation: Legislative

Recommendation K:

Section 10 should be amended to require investigative bodies to provide progress reports to the PID officer on the outcome of the investigation, or to transfer responsibility for such reports to these bodies.

Supported.

Implementation: Legislative

Comment: To ensure clarity of roles and responsibilities, the Government supports amending the Act to allow the transfer of all responsibilities under section 10 from the original PID officer to the relevant investigative body.

Recommendation L:

The word “informant” should be replaced by “discloser” in the headings to section 10 and 11.

Supported.

Implementation: Legislative

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Recommendation M:

Responsibility for the investigation and prosecution of the offences under the Act should lie with the Public Sector Investigations Unit of the WA Police Service.

Supported.

Implementation: Administrative

Comment: The WA Police Service has advised that in relation to allegations of breaches under the Act concerning Police Officers, investigation and prosecution would rest with the WA Police Major Fraud Unit. The functions of the Public Sector Investigations Unit were transferred to the Major Fraud Unit in November 2007.

Recommendation N:

Sections 16(1) and (3) should be amended to enable offences and complaints to be made, investigated and heard without potentially breaching the confidentiality provisions of section 16.

Supported.

Implementation: Legislative

Recommendation O:

Any amendments to section 16 should also ease the confidentiality requirements so that "identifying disclosures" may be made to a limited class of third parties, such as workplace grievance officers.

Supported.

Implementation: Legislative

Comment: The Government notes the comment in the Lyon Review that in progressing this recommendation, "serious consideration will also need to be given to how to prevent such parties from making further disclosure". Accordingly, the Government supports this recommendation, subject to the drafting process addressing the concerns expressed in the Lyon Review.

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Recommendation P:

The word "or" at the end of section 16(1) should be removed.

Supported.

Implementation: Legislative

Recommendation Q:

Section 23(1)(a) should be amended so that small public authorities, such as boards and committees, are able to arrange for officers in supporting or associated departments or authorities to perform the role of PID officer for them.

Supported.

Implementation: Legislative

Recommendation R:

A new paragraph should be inserted into section 23(1) to require a principal executive officer to promote awareness of the Act within his or her organisations.

Supported

Implementation: Legislative

Recommendation S:

Section 23(1)(f) should be amended to allow the Commissioner for Public Sector Standards to request information from principal executive officers at any time about any disclosures and the conduct of subsequent investigations.

Supported.

Implementation: Legislative

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Recommendation T:

- (a) *The Guidelines should be amended to ensure that public authorities have management procedures in place to assist employees who make a disclosure under the Act.*

Supported.

Implementation: Administrative

- (b) *Consideration could also, perhaps, be given to amending the Act to specifically require the provision of welfare services to the discloser, and any subject of the disclosure.*

Supported.

Implementation: Legislative