



ECU PUBLIC INTEREST DISCLOSURE and WHISTLEBLOWER PROTECTION DISCLOSURE GUIDELINES

Strategic and Governance Services Centre

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A. SUPPORT FOR DISCLOSERS

The Edith Cowan University Vision and associated Values are indicative of the importance that the University places on ethical behaviour. The University does not tolerate corrupt or other improper conduct, including the mismanagement of University resources by staff, in the exercise of the public functions of the University.

The University is committed to the aims and objectives of the *Public Interest Disclosure Act 2003* (**PID Act**) and the relevant whistleblower provisions under the *Corporations Act 2001* (Cth) (**Corporations Act**).

The University strongly supports disclosures being made by employees, contractors and members of the community about corrupt or other improper conduct.

The University does not tolerate any of its employees, contractors or subcontractors taking reprisal action against anyone who makes or proposes to make a disclosure. The University will take all reasonable steps to protect employees from any detrimental action in reprisal for the making of a disclosure.

The University will appoint delegated staff members to act as the University's authorised officers to receive disclosures under the provisions of the PID Act and the Corporations Act, who will be referred to as Protected Disclosure Officers (**PDOs**).

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

While these Guidelines focus on specific types of disclosures, the University is committed to dealing with all reports of suspected wrongdoing. We encourage people to report any such behaviour. The University will consider each matter under the appropriate reporting pathway and will make every attempt to protect staff members making reports from any reprisals.

B. PURPOSE OF THESE GUIDELINES

These Guidelines outline how the University meets its obligations under the PID Act and the Corporations Act and provide guidance to potential disclosers when they are considering making a disclosure under the provisions of the legislation.

C. SCOPE AND APPLICATION OF INTERNAL GUIDELINES

These Guidelines apply to all people involved in disclosures made under the PID Act (PID Disclosure) and disclosures made under the Corporations Act (Corporations Act Disclosure) (together, referred to in these Guidelines as **Protected Disclosures**), including the Vice-Chancellor, PDOs, University employees, and any person(s) making or the subject of a Protected Disclosure.

These Guidelines are to be read in conjunction with the:

- *Public Interest Disclosure Act 2003 and Public Interest Disclosure Regulations 2003*;
- whistleblowing provisions under Part 9.4AAA of the *Corporations Act 2001* (Cth);
- [ECU Code of Conduct](#);
- [Fraud and Misconduct Management and Prevention Policy](#)
- Public Sector Commission publication "[Don't be afraid to speak up](#)".

Employee behaviour related to the disclosure process must accord with ECU's Code of Conduct at all times. A breach of the ECU Code of Conduct may result in disciplinary action.

D. ROLES AND RESPONSIBILITIES

Person / Role	Responsibilities
Vice-Chancellor (Principal executive officer - s. 23 of PID Act)	• Determines the University's PDOs. • Provides protection from detrimental action or the threat of detrimental action for any ECU employee who makes a disclosure. • Ensures ECU complies with the PID Act, the Corporations Act, and the Code of Conduct and Integrity established by the Public Sector Commissioner. • Prepares and publishes internal procedures, consistent with those prepared by the Public Sector Commission, detailing how ECU will meet its obligations under the PID Act. • Provides information on disclosures received under the PID Act to the Public Sector Commissioner on the: ○ number of disclosures received by ECU, ○ results of any investigations conducted as a result of the disclosures, ○ action, if any, taken as a result of each disclosure, and ○ any matters as prescribed. • 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 and Corporations Act.
ECU Protected Disclosure Officer (PDO)	• Provides information to potential disclosers about their rights and responsibilities consistent with the PID Act and Corporations Act. • Receives and manages disclosures in accordance with the PID Act and Corporations 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 the persons that are the subject 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. • Maintains confidentiality of the identity of the discloser and the persons that are the subject of disclosures, in accordance with the requirements of the PID Act and the Corporations Act. • Provides progress reports where requested and a final report to the discloser in accordance with the PID Act and the Corporations Act. • Creates and maintains proper and secure records in relation to the disclosures in accordance with the PID Act, Corporations Act and the State Records Act 2000. • Completes a Register (Protected Disclosure Register) for each disclosure lodged. • Acts in accordance with the rules of natural justice. • For PID Disclosures, acts in accordance with the Code of Conduct and Integrity established by the Public Sector Commissioner and for all disclosures in accordance with the University's Code of Conduct.

Person / Role	Responsibilities
The discloser	• Makes a disclosure to a proper authority or the University's PDO if the matter relates to ECU. • 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, in accordance with the requirements of the PID Act and the Corporations Act. • Assists any person investigating the matter to which the disclosure relates by supplying the person with any information requested.
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 and Corporations 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 disclosures on behalf of a proper authority [ECU or other proper authorities as described in section G(1)(b)] in accordance with the terms of reference given to them. • Maintains confidentiality of the identity of the discloser and any persons subject to the disclosure. • Makes, and keeps secure, comprehensive records of any investigation undertaken.

E. UNIVERSITY PROTECTED DISCLOSURE OFFICERS

At the University the occupants of the following designated positions are authorised to receive Protected Disclosures in accordance with the PID Act and the Corporations Act. These officers will be referred to as "Protected Disclosure Officers" (PDOs).

Position	Name	Contact
Director, Strategic and Governance Services Centre & General Counsel	Jo Quinn	Email: j.quinn@ecu.edu.au Phone: (08) 6304 2016
Director, People and Culture People and Culture	Jane Nicolson	Email: j.nicolson@ecu.edu.au Phone: +61 8 6304 5511
Senior Employee Relations Officer, People and Culture	Donna Cuthbert	Email: d.cuthbert@ecu.edu.au Phone: +61 8 6304 2327

F. DIFFERENCE BETWEEN A PID DISCLOSURE AND A CORPORATIONS ACT DISCLOSURE

PID Disclosures	Corporations Act Disclosures
Disclosures must: • Be made to a proper authority (refer Section G1(b)) • Relate to public interest information (refer Section G(1c))	Disclosure must: • Relate to Reportable Conduct (refer Section G2(b(i)) • Be made by a Stakeholder (refer Section G2(b(ii))
In instances where the disclosure would qualify as a disclosure under both the PID Act and the Corporations Act, the discloser in consultation with the PDO should decide which option would be in the best interest of the discloser to pursue.	

G. HOW TO MAKE A DISCLOSURE

1. Making a PID Disclosure under the provisions of the Public Interest Disclosure Act

A PID Disclosure cannot be made to just anyone, it needs to be made to the University's authorised officer to receive disclosures under the provisions of the PID Act (PDO) or one of the authorities named in the PID Act. These are known as 'proper authorities'. Proper authorities are defined further in section G1(b) of these Guidelines.

a. Before making a PID Disclosure

The University strongly encourages anyone thinking about making a PID Disclosure to seek advice from a PDO or another "property authority" before doing so. A list of proper authorities and the information they can receive is covered in section G(1)(b). A disclosure must be made to a proper authority for it to be covered by the PID Act and must meet a number of other requirements. Please refer to the [Don't be afraid to speak up](#) publication for more information.

Initial discussions between potential disclosers and the PDO should be general in nature. Specific details of the disclosure should not be discussed until the discloser understands their rights and responsibilities. The PDO will inform the discloser that they need to make the disclosure voluntarily and consciously – the University will never force a person to make a disclosure. It is important to remember that once a disclosure has been made, it cannot be withdrawn.

When the University receives a disclosure, the PDO is obliged to take action and the University may continue to investigate a matter irrespective of the discloser's continued approval.

These initial discussions with the PDO may assist potential disclosers in deciding whether they want to make a PID Disclosure and will also enable the PDO 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 PDO will discuss other mechanisms through which issues may be reported, for example, the University's general complaints or grievance resolution process.

The PDO will be able to provide more detailed information about the University's disclosure process and what potential disclosers can expect from it. Disclosers may also contact the Public Sector Commission Advisory Line on (08) 6552 8888 (or 1800 676 607 for country callers) for general information about the PID Disclosure process.

b. What is "sphere of responsibility"?

Under the PID Act an authorised officer (PDO) for an authority (ECU) can receive information relating to a matter which falls within the 'sphere of responsibility' for their public authority (ECU). 'Sphere of responsibility' is not defined in the PID Act but may include matters that relate to:

- the University; or
- a public officer or public sector contractor of the University; or
- conduct or person that the University has a function or power to investigate.

The proper authority to which disclosers need to make the disclosure depends on the type of disclosure information. Where the information is outside of ECU's PDO's sphere of responsibility, it may need to be disclosed to another proper authority for it to be considered a PID 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 [Don't be afraid to speak up](#) publication.

For the purposes of the PID Act, the following are named authorities who also may investigate PID Disclosures in connection with the University:

Corruption and Crime Commission	Under the PID Act the Corruption and Crime Commission (CCC) may receive PID Disclosures of information relating to an offence under State law.
WA Police	Under the PID Act any police officer may receive PID Disclosures of information relating to an offence under State law.
Parliamentary Commissioner (Ombudsman Western Australia)	Under the PID Act the Ombudsman may receive PID Disclosures of information relating to matters of administration within the jurisdiction of the Ombudsman, and matters relating to most public officers.
Auditor General	Under the PID Act provides the Auditor General may receive PID Disclosures of information relating to substantial unauthorised or irregular use or substantial mismanagement of public resources.
Public Sector Commission	Under the PID Act the Public Sector Commissioner may receive PID Disclosures of information that relates to a Public Officer (other than a Member of Parliament, a Minister of the Crown, a judicial officer or an officer referred to in Schedule 1 to the Parliamentary Commissioner Act 1971).

c. What is 'public interest information'?

The PID Act only applies to disclosures of public interest information. Public interest information is information that indicates wrongdoing by a public authority, public officer or public sector contractor performing a public function.

Public interest information relates to:

- improper conduct*
- an offence under State law
- substantial unauthorised or irregular use of public resources
- substantial mismanagement of public resources
- substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment
- conduct relating to matters of State or local government administration affecting you that is in the [Ombudsman Western Australia's](#) remit.

*Generally, improper conduct is a breach of the standards of conduct that a reasonable person would expect of a person or body, knowing their duties, powers and authority in the circumstances of the case.

d. Lodging a PID Disclosure

A discloser needs to clearly identify that they are making a disclosure under the PID Act. For the purposes of accountability and certainty, persons wishing to make a PID Disclosure are encouraged to do so in writing. The University has developed a disclosure lodgment form which may be used for the purpose of making a disclosure (refer to **Appendix C**). There is no requirement to use the Form, however the use of the Form will help to define the details of the disclosure. A discloser may complete the Form themselves or the PDO may complete the Form when they are speaking with the discloser. Disclosers should sign the Form to acknowledge that they are making a disclosure voluntarily and consciously.

The University has to accept anonymous disclosures. Disclosers should be aware that if they decide to make an anonymous disclosure, it may be more difficult for the PDO to investigate or take action about the disclosure. Reasons include that the PDO would not be able to contact the discloser to seek any further information. The University is also not required to provide any reports about the progress or final outcome of the disclosure, to anonymous disclosers.

An anonymous disclosure may not prevent the discloser from being identified during an investigation. Additionally, if the PDO 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.

2. Making a disclosure of Reportable Conduct under the Corporations Act

a. What is “reportable conduct” and who are “stakeholders”?

In order to qualify for the whistleblower protection provisions under the Corporations Act, a Corporations Act Disclosure must relate to “Reportable Conduct” and must be made by a “Stakeholder”.

i. Reportable Conduct

For the purposes of these Guidelines, **Reportable Conduct** includes:

- 1) any concern that an employee or officer of the University has committed an actual or apparent violation of the ECU Code of Conduct or any other policy or procedure of the University;
- 2) any complaint regarding accounting, internal controls, disclosure controls or auditing matters including dishonest, fraudulent or corrupt practices at the University;
- 3) a danger or significant risk to public safety or the financial system;
- 4) any good faith concerns regarding questionable accounting or auditing matters at the University;
- 5) a breach of any legal obligation, including regulatory or contractual obligations or requirements, at the University;
- 6) a breach of any statute administered by the Australian Securities and Investments Commission (**ASIC**) and the Australian Prudential Regulation Authority (**APRA**) by the University; or
- 7) any other kind of misconduct or improper state of affairs or circumstances by the University or employee or officer of the University.

The protections afforded to Stakeholders under these Guidelines and the Corporations Act do not apply to Corporations Act Disclosures that do not relate to Reportable Conduct or, that only relate to “personal work-related grievances” and do not otherwise relate to Reportable Conduct.

Examples of personal work-related grievances include complaints an employee or former employee of the University may hold concerning:

- the terms and conditions of their employment;
- an interpersonal conflict with another employee;
- any disciplinary or performance management process; or
- the termination of their employment.

A personal work-related grievance may be reported to the Human Resources Services Centre (HRSC) by contacting the relevant HR Advisor. Further information can be obtained from the [HRSC](#).

A personal work-related grievance may still qualify for protection under the Corporations Act and these Guidelines if:

- it includes information about misconduct, or information about misconduct which includes or is accompanied by a personal work-related grievance;
- the University has breached employment or other laws, engaged in conduct that represents a danger to the public, or the disclosure relates to information that suggests misconduct beyond the disclosing Stakeholder’s personal circumstances;
- the disclosing Stakeholder suffers from or is threatened with detriment for disclosing Reportable Conduct; or
- the disclosing Stakeholder seeks legal advice or legal representation about the operation of whistleblower protections under the Corporations Act.

ii. Stakeholders

The University may only receive Corporations Act Disclosures from Stakeholders. Stakeholders in relation to the University include:

- 1) current and former employees, volunteers, directors, officers, associates, agents, consultants, suppliers (including employees of suppliers), contractors (including employees of contractors); and
- 2) relatives, dependents, spouses, or depended or a spouse of any of the aforementioned persons.

b. Lodging a Corporations Act Disclosure

A disclosing Stakeholder may submit a disclosure of Reportable Conduct about any good faith concerns they have regarding any item within the scope of a Corporations Act disclosure. A disclosing Stakeholder may choose to remain anonymous. An anonymous disclosure of Reportable Conduct will still qualify for protection under these Guidelines and the Corporations Act.

Disclosures of Reportable Conduct from Stakeholders will only be accepted in writing, by email or post. Correspondence should be clearly labelled as follows:

“Private and Confidential, to the PDO. Submitted in accordance with the Edith Cowan University’s Public Interest Disclosure and Whistleblower Protection Guidelines”

If the disclosing Stakeholder would like to discuss any matter with the PDO, the disclosing Stakeholder should indicate this in the submission and include a contact telephone number.

c. Corporations Act Disclosures to other officers

If a disclosing Stakeholder does not want to raise a concern in respect of Reportable Conduct with a PDO, concerns may be raised with:

- i. a lawyer, where the information is disclosed for the purpose of obtaining advice about the whistleblower protection regime established under the Corporations Act;
- ii. the University’s internal or external auditor; and
- iii. the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA), and any other Commonwealth authority prescribed to be an authorised recipient of whistleblower concerns for the purpose of section 1317AA(1)(b) of the Corporations Act.

H. ASSESSING PROTECTED DISCLOSURES

1. Determining whether a matter is an appropriate disclosure

When a PDO receives a disclosure, they will make an assessment to determine whether it meets the requirements of the PID Act or the Corporations Act. This may require of them to make some initial inquiries.

If the disclosure is not one to which the PID Act or Corporations Act applies, the relevant PDO will inform the discloser of the reasons for their decision (unless an anonymous disclosure was made) and make proper and adequate records thereof. Some matters raised within the disclosure may not be matters to which the PID Act or Corporations Act applies and the PDO may discuss with the discloser other pathways that may be available to report these matters.

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

The PDO will notify the discloser within three months of the disclosure being made about what the University intends to do in taking action relating to the disclosure, unless it is an anonymous disclosure.

2. Determining whether a disclosure will be investigated

After assessing the disclosure as one to which the PID Act or Corporations Act applies, the PDO will consider whether it will be investigated, guided by the relevant legislative requirements. The reasons why a disclosure may not be investigated 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 authorised authority.

The PDO will make proper and adequate records of their decision and reasons about whether to investigate.

Disclosers should consider that a disclosure once properly made cannot be withdrawn. The University may continue to investigate the issues raised within a disclosure even if a discloser decides to withdraw a disclosure.

3. Referring disclosures to other agencies

Where a PDO assesses the disclosure as one to which the PID Act or Corporations 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 an appropriate authority for investigation. For example, the PDO may need to refer an allegation of an offence supported by evidence to the Western Australia Police for investigation. Alternatively, a discloser may also be able to make a disclosure directly to the appropriate authority, if they wish to receive reports from them about the disclosure.

I. INVESTIGATING PROTECTED DISCLOSURES

1. Investigation

The University's PDO will investigate, or cause to be investigated, any matters in a disclosure that fall within their sphere of responsibility. The relevant PDO may cause the disclosure to be investigated by engaging a suitably skilled staff member within the University or an externally contracted investigator.

If causing the disclosure to be investigated, the PDO will ensure that the person undertaking the investigation understands the requirements of the PID Act or Corporations Act, in particular the confidentiality requirements and protections for disclosers. The PDO 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 or Corporations Act.

When investigating the disclosure, the PDO or relevant appointed investigator, is limited by the functions and powers derived from the University's operating legislation. The PID Act or Corporations Act do not provide them with any additional investigative powers.

Disclosers who are employees are expected to cooperate with investigations into a disclosure in order for them to maintain the protections under the PID Act. Employee disclosers are also expected to act in accordance with the University's Code of Conduct at all times.

Employees who are the subject of the disclosure can clarify the process and what to expect with the relevant PDO.

The PDO may at any time decide to discontinue an investigation. If this happens, they will provide the discloser with reasons for their decision (unless the discloser made an anonymous disclosure). The PDO may also notify any person(s) whom were the subject of the disclosure about the discontinuation of the investigation.

To ensure the disclosure is adequately and properly investigated, the PDO or appointed investigator will abide by the procedures set out in the [Universities industrial instrument](#), the [ECU Code of Conduct](#) and the [Fraud and Misconduct Management and Prevention Policy](#). In general, the PDO will:

- draw up terms of reference, which should clarify the key issues identified by the disclosure;
- specify a date by which the investigation should be completed;
- ensure the objectives of the investigation include collecting and collating information relating to the disclosure, considering the information collected and drawing conclusions objectively and impartially;
- maintain procedural fairness for the person who is the subject of the disclosure;
- provide information to the person who is the subject of a disclosure about their rights and obligations under the PID Act, Corporations Act, the Code of Conduct and Integrity, the Universities industrial instrument, the Code of Conduct, the Fraud and Misconduct Prevention and Management Policy and the law;
- ensure investigators make contemporaneous notes of discussions and interviews and, where practicable and appropriate, record discussions and interviews on audio or videotape; and
- ensure strict security with all investigations, to maintain the confidentiality requirements of the PID Act and the Corporations Act.

2. Reporting

The PDO will ensure that they complete all reporting in accordance with the legislative and administrative requirements. Provided it is not an anonymous disclosure, the PDO will provide the Vice-Chancellor with the following reports:

- within three months of a disclosure being made, the action taken, or proposed to be taken, 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.

PDOs may also provide a progress report during an investigation, either on their initiative or upon request.

PDOs have some limits on what they can include in their reports including information that would be likely to adversely affect:

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

PDOs are also prevented from giving any information they must not disclose under ss. 151, 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*.

3. Record Keeping

During the investigation, the PDO will 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.

J. CONFIDENTIALITY

The PID Act and Corporations Act place a legal obligation on the University to protect the confidentiality of disclosers. The confidentiality requirements do not apply to all information in a disclosure, but only to information that might identify or tend to identify the discloser and persons in respect of whom a disclosure has been made. However, the University 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; and
- information relating to a disclosure that, if known, may cause detriment.

Examples of measures the University may use to protect a discloser's identity include:

- redacting personal information;
- using gender neutral references;
- using secure record keeping processes;
- using qualified staff to investigate disclosures;
- limiting access to disclosure information; and
- reinforcing the confidentiality requirements of the PID Act and Corporations Act with all involved in the disclosure process.

1. 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. In conducting their investigation, the PDO will use their best efforts to protect the confidentiality and anonymity of the discloser, subject to their need to conduct a thorough investigation.

If the discloser consents to having their identity revealed to assist the University in dealing with the disclosure, the PDO will record the consent using the "Consent to Disclosure of Identifying Information" form (refer to **Appendix A**).

Sometimes the University may need to identify the discloser, without the discloser's consent but only where:

- it is necessary to do so to enable the matter to be investigated effectively;
- it is necessary to do so having regard to the rules of natural justice;
- for Corporations Act Disclosures, the disclosure is made to ASIC, APRA, or a member of the Australian Federal Police; or
- the disclosure is made to a legal practitioner for the purposes of obtaining legal advice or legal representation about the PID Act provisions or the whistleblower provisions in the *Corporations Act*);
- the University is ordered by a court or any other person or body having authority to hear, receive or examine evidence;
- is made to a Commonwealth authority, or a State or Territory authority, for the purpose of assisting the authority in the performance of its functions or duties; or

- the University is required by ss. 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*.

Information identifying the discloser, or likely to reveal the identity of a discloser, will be made on a strictly confidential basis and with the disclosers consent, subject to the exceptions in the PID Act or the Corporations Act, or with the purpose of obtaining legal advice or representation. The PDO will take all reasonable steps to inform the discloser that this will happen and the reasons why. The PDO will where practicable use the “Notification of Disclosure of Identifying Information” form (refer to **Appendix B**) to do this.

The release of information to a person not involved in an investigation (other than those authorised), without consent of the discloser will be a breach of the relevant law and these Guidelines. If the University needs to provide information about the identity of the discloser to another person for the reasons above, the PDO will inform the other person that further disclosure to a third person may put them at risk of committing an offence.

The PDO 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, the PDO will notify as described above.

2. Confidentiality regarding the person who is the subject of the disclosure

The person who is the subject of a disclosure may consent to having their identity revealed to assist with the disclosure process. The PDO will use the “Consent to Disclosure of Identifying Information” form (refer to **Appendix A**) to record this.

Additionally, the University 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 under s. 9 of the PID Act (PID Disclosures);
- 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;
- the University is ordered by a court or any other person or body having authority to hear, receive or examine evidence; or
- the University is required by ss. 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*.

The University is not obliged to advise the subject of a disclosure that identifying information will be released.

3. Corruption, Crime and Misconduct Act 2003 (CCM Act)

Sections 28 and 45 of CCM Act require the University to notify the Corruption and Crime Commission or the Public Sector Commission of any reasonably held suspicions of serious or minor misconduct. The duty to notify the Corruption and Crime Commission or the Public Sector Commission is paramount and means that a notification under section 28 or 45 must be complied with despite:

- the provisions of any other Act, whether enacted before or after the CCM Act; or
- any obligation the University has to maintain confidentiality about a matter to which the allegation relates.

Sections 152 and 153 of the CCM Act deal with the manner in which the Corruption and Crime Commission or Public Sector Commissioner may obtain and disclose official information including confidential identifying information.

K. PROTECTIONS AVAILABLE TO DISCLOSERS

The PID Act and Corporations Act provide a range of protections for disclosers. The University will not permit retaliation, harassment or any other kind of detrimental conduct as described within the PID Act and the Corporations Act against a discloser. If any reprisal action does occur, the discloser can request the University to take action to protect them. Disclosers should immediately advise the PDO who is handling the disclosure of any reprisal action being taken against them.

The PID Act also provides that the discloser may lose the protections provided in s. 13 of the PID Act in some circumstances, including where they on-disclose information or fail, without reasonable excuse, to assist any person investigating the matters of the disclosure.

A discloser may seek compensation and other remedies through the courts if:

- loss, damage or injury is suffered because of a disclosure; or

- the University has failed to take reasonable precautions and exercise due diligence to prevent detrimental conduct.

Examples of detrimental action include:

- dismissal of an employee;
- injury of an employee in their employment;
- alteration of an employee's position or duties to their disadvantage;
- discrimination between an employee and other employees of the same employer;
- harassment or intimidation of a person;
- harm or injury to a person, including psychological harm; or
- any damage to a person including damage to a person's property, business, financial position or reputation.

Detrimental action does not include:

- administrative action that is reasonable for the purpose of protecting a discloser from detriment (e.g. moving a discloser who has made a disclosure about their immediate work area to another office to prevent them from detriment); and
- managing a discloser's unsatisfactory work performance, if the action is in line with the University's performance management framework.

A discloser will be protected from:

- civil liability;
- criminal liability; and
- administrative liability.

The University will take all reasonable steps to ensure that a discloser is protected from detriment, including:

- assisting the discloser to manage stress, time and performance impacts resulting from a disclosure;
- assignment to another role, location, of modification to workplace or reporting lines;
- ensuring those people involved in an investigation are reminded of the University's legal obligations of confidentiality; and
- to any extent reasonable in the circumstances, remedy the effects of any detriment already suffered.

The Public Sector Commission publication, [Don't be afraid to speak up](#) contains general information about the protections provided by the PID Act. The Australian Securities and Investment Commission [Whistleblower Rights and Protections](#) web page contains general information about the protections provided by the Corporations Act.

A discloser may be able to seek compensation and other remedies through the courts if:

- they suffer loss, damage or injury because of a disclosure; and
- the University failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

Disclosers should be aware that they may lose the protections provided by legislation in some circumstances, including where they on-disclose information or fail, without reasonable excuse, to assist any person investigating the matters of the disclosure.

The PID Act and Corporations Act do not grant immunity to disclosers for any misconduct they may have engaged in that is revealed in their disclosure. Disclosers are encouraged to seek independent legal advice about their rights and protections afforded by the PID Act and Corporations Act.

L. PROCEDURES RELATING TO THOSE WHO ARE THE SUBJECT OF A DISCLOSURE

The subject of a disclosure is a person of interest about whom an allegation has been made through a disclosure. The University will treat such a person fairly and impartially throughout the process and inform them of their rights and obligations. The University will generally keep the parties involved, informed during any investigation, although the University cannot release any information to any party, including the person(s) that is the subject of a disclosure, which may prejudice the University's investigation.

The University will keep the identity of the person who is the subject of a disclosure confidential unless one of the following conditions apply:

- they consent to their 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 of the PID Act;
- 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;
- it is disclosed in accordance with a court order or other body having authority to hear evidence; or
- it is disclosed in accordance with ss. 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*.

The University will also provide appropriate natural justice. This means that, before the University takes any disciplinary or other action against the person who is the subject of a disclosure, the University will provide the person with 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.

Individuals who are the subject of a disclosure, must not identify or tend to identify the identity of the discloser or a person who they think may be the discloser. Such disclosures may be unlawful.

Individuals who are the subject of a disclosure must not engage in reprisal action, threaten anyone with reprisal action or have someone else conduct this action on their behalf because someone has made, or intends to make, a disclosure. It is an offence to conduct such action against any person who is believed to have made a disclosure even if they were not the individual who actually made the disclosure.

M. TAKING ACTION

1. General

The PDO 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 disclosure. Usually, the PDO will form this opinion at the conclusion of an investigation, although there may be instances where they need to take immediate action including but 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. A PDO may take more than one action depending on the circumstances. For example, the PDO may seek to terminate the employment of an employee caught stealing and refer the matter to the Western Australia Police.

In taking action the University and the relevant PDO are limited by the powers and functions derived from the University's operating legislation. The PID Act and Corporations Act do not provide for any additional powers to take action. The University is also guided by what is necessary and reasonable in the circumstances.

Before taking any action, the University will provide procedural fairness to the person against whom the action is to be taken (the subject of the disclosure) by allowing them an opportunity to respond, either verbally or in writing.

2. Confidentiality and Record Keeping when Taking Action

The University will maintain confidentiality in accordance with the PID Act and Corporations Act when taking action. The PDO will keep appropriate records about any action taken, as well as recording a summary of this action in the "Protected Disclosure Register". The "Protected Disclosure Register" records a unique register number and key information for each disclosure. Additional information may also be recorded in the Register at the discretion of the University's PDO.

N. SUPPORT FOR DISCLOSERS AND THOSE WHO ARE THE SUBJECT OF A DISCLOSURE

University staff members making disclosures and those staff members who are the subject of a disclosure have access to the University [Employee Assistance Program](#) which provides employees and their immediate family members access to free and confidential short-term psychological assistance for either personal or work related issues.

O. WHAT HAPPENS AFTER THE DISCLOSURE PROCESS HAS BEEN FINALISED?

The PID Act and Corporations Act places no further obligations on the University or the PDO after the disclosure process is complete. The confidentiality requirements of the legislation however continue to apply to disclosers and all other people involved with the disclosure.

Disclosers do not have a right to appeal the outcome of the disclosure process, however a discloser not satisfied with the outcome of an investigation may request the University to review the findings.

Disclosers who made a disclosure under the PID Act may be able to make another disclosure to another proper authority, if the information relates to their functions or sphere of responsibility. Refer to [Don't be afraid to speak up](#) publication for the correct proper authority for disclosures under the PID Act. However, this 'new' proper authority may be able to decline to investigate the disclosure under section 8 of the PID Act, if they consider that the matter(s) has already been properly or adequately investigated.

P. MAKING A "PROTECTED" DISCLOSURE TO A JOURNALIST, MEMBER OF PARLIAMENT OR A LEGAL PRACTITIONER

1. PID Protected Disclosure (PID Act)

The PID Act provides for circumstances where a discloser may be able to make a "protected" disclosure to a journalist (s. 7A(d)). These circumstances apply where a discloser first made a disclosure to a PDO or another proper authority named in the PID Act (see item G1(b) above).

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 they originally disclosed to the PDO; and
- the PDO that received the original disclosure:
 - has not notified the discloser within three months of the original disclosure about the actions they propose to take or have already taken;
 - refused to investigate, or discontinued the investigation of, a matter raised in the disclosure;
 - did not complete an investigation within six months of the discloser making the disclosure;
 - 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 makes an anonymous disclosure, they may not be able to demonstrate that they meet the above requirements and the University would then not be obliged to provide the discloser with any notifications about what happens to the disclosure.

2. Emergency and Public Interest Protected Disclosures (Corporations Act)

The Corporations Act provides that a discloser may be protected under Part 9.4AAA of the Act when, in extreme cases, an eligible discloser makes a disclosure to the media or a member of Parliament in relation to a regulated entity (ECU). To be protected, the discloser must already have made a qualifying disclosure, certain written notifications in respect of that qualifying disclosure must have been made by the eligible discloser to the body that received it, and either:

- a. the disclosure was in respect of a substantial and imminent danger to someone's health and safety, or the natural environment (Emergency Protected Disclosure); or
- b. disclosing the information was in the public interest (Public Interest Protected Disclosure).

3. Disclosure to a Legal Practitioner

Disclosers may be protected by the PID Act or the Corporations Act if they make a disclosure of information to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the PID Act or the whistleblower regime found in Part 9.4AAA of the Corporations Act.

Individuals considering making a disclosure as outlined in (1) to (2) above should contact an independent legal advisor for legal advice in respect to the criteria for making such disclosures.

Q. Contact details and further information

These internal Guidelines are available for access by all staff and members of the public at <http://intranet.ecu.edu.au/staff/centres/strategic-and-governance-services/our-services/legal-and-integrity/integrity/public-interest-disclosures>. Copies of the Guidelines are also available from ECU's PDOs

whose contact details appear in Part E of these Guidelines.

Further information about disclosures under the PID Act is available from the Public Sector Commission's website: www.publicsector.wa.gov.au. Further information about disclosures under the Corporations Act is available from the Australian Securities and Investment Commission's website: www.asic.gov.au.

APPENDIX A

Consent to Disclosure of Identifying Information

Public Interest Disclosure Act 2003 and Corporations Act 2001



Personal details		
Family name		
Given name		
Disclosure No.		(to be completed by PDO)

Consent	
Consent to disclosure of identifying information by discloser (if applicable) I consent to the disclosure of information that might identify or tend to identify me as a person who has made an appropriate disclosure of public interest information under section 16(1)(a) of the <i>Public Interest Disclosure Act 2003</i> or under the whistleblower provisions of the <i>Corporations Act 2001</i> (delete incorrect Act).	☐
Consent to disclosure of identifying information by subject (if applicable) I consent to the disclosure of information that might identify or tend to identify me as a person in respect of whom a disclosure of public interest information has been made (subject) under section 16(3)(a) of the <i>Public Interest Disclosure Act 2003</i> or under the whistleblower provisions of the <i>Corporations Act 2001</i> (delete incorrect Act).	☐

Limitations on consent	
This consent only applies to disclosures made to the following persons	
This consent only applies to the following information	

Authorisation	
Signature of discloser/subject: (delete as appropriate)	
Date	
Signature of proper authority/PDO	
Date	

APPENDIX B

Notification of Disclosure of Identifying Information

Public Interest Disclosure Act 2003 and Corporations Act 2001



To					
Title	☐ Mr	☐ Ms	☐ Mrs	☐ Dr	☐ Other:
Given name					
Family name					
Provided by	☐ email ☐ mail ☐ in person				

I intend to make a disclosure of information that might identify or tend to identify you as a person who has made an appropriate disclosure:
☐ under section 16 of the *Public Interest Disclosure Act 2003*.
☐ under the whistleblower provisions of the *Corporations Act 2001*.

The disclosure of this information

Is necessary, having regard to the rules of natural justice	☐
Is necessary to enable the matter to be investigated effectively	☐
The reason(s) why the disclosure of this information is necessary is (specify reason(s))	
Important: A person making an identifying disclosure for these reasons must take all reasonable steps to provide this information to the discloser within a reasonable time before making the disclosure.	

Authorisation

Signature of person proposing to make disclosure	
Name	
Position	
Contact details	
Date	

APPENDIX C



Protected Disclosure Lodgment Form

Public Interest Disclosure Act 2003 and Corporations Act 2001

Edith Cowan University strongly encourages anyone thinking about making a disclosure under the *Public Interest Disclosure Act 2003* (PID Act) and *Corporations Act 2001* (Corporations Act) to seek out a nominated proper authority to discuss their issues first. Our proper authority(ies) (Protected Disclosure Officers) are:

Position	Name	Contact
Director, Strategic and Governance Services	Jo Quinn	Email: j.quinn@ecu.edu.au Phone: (08) 6304 2016
Director, People and Culture	Jane Nicolson	Email: j.nicolson@ecu.edu.au Phone: +61 8 6304 5511
Senior Employee Relations Officer, People and Culture	Donna Cuthbert	Email: d.cuthbert@ecu.edu.au Phone: +61 8 6304 2327

Ensure you understand your rights and responsibilities under the PID Act and Corporations Act before you sign this lodgement form. You may wish to seek external legal advice about those rights and responsibilities. Lodge your disclosure form with one of ECU's Protected Disclosure Officers.

Personal details

Family name						
Given name						
Title	Mr	Ms	Mrs	Dr	Other	
Address						
Work phone						
Mobile						
Email						

I wish to make an anonymous disclosure. I understand that:

- I will not receive any information about what happens to this disclosure
- it may be more difficult for the University and Protected Disclosure Officer to look into the matter(s) as they cannot come back to me for further information
- it may be more difficult for the University and Protected Disclosure Officer to protect me
- this anonymous disclosure may not prevent me from being identified during any investigation or when action is being taken.

Categories of disclosure information		Tick relevant box(es)
Disclosures under the PID Act		
Improper conduct		☐
An offence under written State law		☐
Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources		☐
Conduct involving a substantial and specific risk of injury to public health, or prejudice to public safety or harm to the environment		☐
Administration matter(s) affecting you personally		☐
Disclosures under the Corporations Act		
An actual or apparent violation of the ECU Code of Conduct or any other policy or procedure of the University		☐
An allegation regarding accounting, internal controls, disclosure controls or auditing matters including dishonest, fraudulent or corrupt practices		☐
Conduct involving a danger or significant risk to public safety or the financial system		☐
Conduct involving breaches of any legal obligation, including regulatory or contractual obligations or requirements		☐
Conduct involving breaches of any statute administered by the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA)		☐
Conduct involving any other kind of misconduct or improper state of affairs or circumstances.		☐
Disclosure details		
Name of the public authority(ies) the disclosure relates to		
Do you work for a public authority?	☐ Yes ☐ No If yes, which public authority and what is your position title?	
Does the disclosure relate to one or more individuals?	☐ Yes ☐ No If yes, provide name(s) and position(s) held by person(s) in the public authority	
When did the alleged events occur?		
Summary of the matters to disclose		

Additional information	
Description of any documents provided or names of witnesses	
Have you reported this information to any other person or agency?	☐ Yes ☐ No
If yes, did you report this information as disclosure under the PID or Corporations Act?	☐ Yes ☐ No If yes, please provide details

You should read the following information and sign this form prior to lodgement.

Acknowledgement

I believe on reasonable grounds that the information contained in this disclosure is or may be true.

I have been informed and I am aware that:

- I will commit an offence if I know that the information contained in this disclosure is false or misleading in a material particular, or I am reckless as to whether it is false or misleading in a material particular.
- If I made a PID Disclosure I will forfeit the protection provided by section 13 of the PID Act, if I fail, without reasonable excuse, to assist a person investigating the matter by supplying requested information (s17).
- If I made a PID Disclosure, I will forfeit the protection provided by section 13 of the PID Act, if I subsequently disclose this information to any person other than a proper authority under the PID Act (s17).
- If I made a PID Disclosure, I will commit an offence, if I subsequently make a disclosure of information that might identify or tend to identify anyone as a person in respect of whom this disclosure has been made under the PID Act, except in accordance with section 16(3) of the PID Act.
- I cannot withdraw my disclosure after I have made it.

Authorisation	
Discloser's signature	
Date	
Protected Disclosure Register	
Register Entry Number	
Date of Entry	

PUBLIC INTEREST DISCLOSURE ACT - CODE OF CONDUCT AND INTEGRITY

Code of conduct and integrity

Established by the Public Sector Commissioner under Section 20 of the *Public Interest Disclosure Act 2003* (PID Act).

The Code operates from 1 July 2003.

The Code is to be complied with by any person to whom a disclosure is made under the PID Act.

The Code

The Code uses as its ethical base the principles of personal integrity, relationships with others and accountability as referred to in the Western Australian Public Sector Code of Ethics.

Consistent with those principles, to meet the minimum standards of conduct and integrity, persons receiving disclosures, must:

- be professional and courteous to those involved in a disclosure, and give prompt attention to all their lawful requirements
- not use any circumstance or information connected to a disclosure for personal profit or gain
- take all reasonable steps to seek to ensure informants who make a public interest disclosure are protected in accordance with the provisions specified in the PID Act
- take all reasonable steps to seek to ensure that persons who are the subject of a disclosure are also provided with appropriate safeguards and protections as specified in the PID Act
- maintain records that ensure all action taken about the receipt and processing of a disclosure is reviewable
- declare to an appropriate person, in writing, any interests that may conflict with their obligations to impartially receive and process disclosures
- immediately report corrupt behaviour that has been, or may be occurring, to an appropriate authority
- provide information to the informant about their rights and responsibilities and the possible implications of lodging a public interest disclosure.