

PART 12: THE PUBLIC INTEREST

“the public interest”

The Western Australia Surveillance Devices Act 1998 defines “the public interest” in the following terms at Section 24:

“public interest includes the interests of national security, public safety, the economic well-being of Australia, the protection of public health and morals and the protection of the rights and freedoms of citizens.”

Further to Section 3 of the WA Defamation Act 2005, the Western Australia Public Interest Disclosure Act 2003 describes itself thus:

“An Act to facilitate the disclosure of public interest information, to provide protection for those who make disclosures and for those the subject of disclosures, and, in consequence, to amend various Acts, and for related purposes.”

Note the statement: *“to facilitate the disclosure of public interest information”*

This Act defines “public interest information” thus:

“public interest information” means information that tends to show that, in relation to its performance of a public function (either before or after the commencement of this Act), a public authority, a public officer, or a public sector contractor is, has been, or proposes to be, involved in —

- (a) improper conduct; or*
- (b) an act or omission that constitutes an offence under a written law; or*
- (c) a substantial unauthorised or irregular use of, or substantial mismanagement of, public resources; or*
- (d) an act done or omission that involves a substantial and specific risk of —*
 - (i) injury to public health; or*
 - (ii) prejudice to public safety; or*
 - (iii) harm to the environment; or*
 - (e) a matter of administration that can be investigated under section 14 of the Parliamentary Commissioner Act 1971;”*

Section 3 provides:

3. Terms used

- (1) In this Act, unless the contrary intention appears —*

“detrimental action” includes action causing, comprising, or involving —

- (a) injury, damage, or loss; or*
- (b) intimidation or harassment; or*
- (c) adverse discrimination, disadvantage, or adverse treatment in relation to a person’s career, profession, employment, trade, or business; or*
- (d) a reprisal;*

Section 5 provides:

5. Appropriate disclosure of public interest information, making

- (1) **ANY PERSON** person may make an appropriate disclosure of public interest information to a proper authority.*
- (2) A person makes an appropriate disclosure of public interest information if, and only if, the person who makes the disclosure —*

- (a) *believes on reasonable grounds that the information is true; or*
- (b) *has no reasonable grounds on which to form a belief about the truth of the information but believes on reasonable grounds that the information may be true.”*

13. Immunity for person making appropriate disclosure of public interest information

A person who makes an appropriate disclosure of public interest information to a proper authority under section 5 —

- (a) *incurs no civil or criminal liability for doing so; and*
- (b) *is not, for doing so, liable —*
 - (i) *to any disciplinary action under a written law; or*
 - (ii) *to be dismissed; or*
 - (iii) *to have his or her services dispensed with or otherwise terminated; or*
 - (iv) *for any breach of a duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by a written law) applicable to the person.*

14. Detrimental action against informant etc., offence

(1) A person must not take or threaten to take detrimental action against another because anyone has made, or intends to make, a disclosure of public interest information under this Act.

Penalty: \$24 000 or imprisonment for 2 years.

(2) A person who —

- (a) *attempts to commit an offence created by subsection (1); or*
- (b) *intending that an offence created by subsection (1) be committed, incites another person to commit that offence, commits an offence.*

Penalty: \$24 000 or imprisonment for 2 years.

23. Principal executive officer of public authority, duties of

- (1) The principal executive officer of a public authority MUST —*
 - (c) ensure that his or her public authority complies with this Act; and*
 - (d) ensure that his or her public authority complies with the code established by the Commissioner under section 20; and*
 - (e) prepare and publish internal procedures relating to the authority’s obligations under this Act; and*

25. Other laws not excluded

The protection given by this Act is in addition to, and does not derogate from, any privilege, protection, or immunity existing apart from this Act.

Since the CEO of a local government is an authorised person but individual Councillors are not, complaining to the CEO about his or her actions, errors or omissions is hardly likely to be productive.

It is also a breach of “Natural Justice”, which proscribes an accused person shall not stand in their own cause.

Notwithstanding the *intent* of the Public Interest Disclosure Act, the above statutory framework results in a situation where it is preferable – and safer - for an Elector to complain directly to a “proper authority” instead of to their elected representatives.

23. Principal executive officer of public authority, duties of

- (1) The principal executive officer of a public authority must —*

- (c) ensure that his or her public authority complies with this Act;*

Therefore it can be concluded any reasonable interpretation of the bans imposed upon myself and the reasons for their creation would support a case for several breaches of the above Act by the CEO, Acting CEO, every Councillor and the whole Council.