

Western Parkland City Authority

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Guide to complying with the WPCA Act provisions relating to use of information and influence

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Review date

The Authority will review this Guide every two years or more frequently if required. It may be reviewed earlier in response to a change in the Western Parkland City Authority Act.

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Complying with the WPCA Act provisions relating to use of information and influence

1. Introduction

The Western Parkland City Authority (**Authority**) is constituted under, and governed by, the *Western Parkland City Authority Act 2018* (NSW) (**Act**).

The Act contains, amongst other things, provisions in relation to the use of information and influence by persons who have an 'association with the Authority'.

These provisions (together, the **Specific Offences**) are contained in:

- section 23(1) (**Information Offence**); and
- section 23(2) (**Influence Offence**).

A contravention of the Specific Offences may:

- attract a fine of up to \$2200 (being 20 penalty units under the Act);
- give rise to a personal liability for any loss incurred as a result of the breach.

2. What this Protocol does

This Protocol sets out:

- who the Specific Offences apply to;
- an overview of the Specific Offences; and
- a procedure to assist the Authority (including its officers and staff) to deal with information in a way that minimises the risk of contravening the Information Offence.

3. Who the Specific Offences apply to

A person is subject to the Specific Offences if that person has an 'association with the Authority'.

A person is considered to be 'associated with the Authority' if that person is:

- a member of the Authority's Board or a member of a committee of the Authority's Board;
- a member of staff of the Authority; or
- a person of whose services the Authority makes use, or who is otherwise appointed, employed or engaged, under the Act.

It also includes an officer or employee of a local council and persons acting for the Authority, the Minister or a local council in any capacity (including bankers, Australian legal practitioners, auditors or professional advisers).

To the extent any of these persons so acting are a corporation, it will include that corporation's director, manager or secretary.

4. The Specific Offences

The ‘Information Offence’ - section 23(1)

The Information Offence relates to information in respect of dealings in land.

‘Person A’ contravenes the Information Offence if through association with the Authority all of the elements set out in the table below are present.

Element	
Knowledge:	<ul style="list-style-type: none"> • Person A has specific information relating to a proposal of the Authority. • The proposal has been made or is to be made. • The proposal is in respect of the acquisition, development or disposal of land.
Information not generally known:	<ul style="list-style-type: none"> • The relevant information is not generally known. • If the information was generally known, it would reasonably be expected to affect materially the market price of the land.
A person gains an advantage:	<ul style="list-style-type: none"> • Person A: <ul style="list-style-type: none"> – deals, directly or indirectly, in that or in any other land for the purpose of gaining an advantage for Person A by the use of that information; OR – divulges information for the purpose of enabling another person (Person B) to gain an advantage by using that information to deal, directly or indirectly, in that or in any other land.

The ‘Influence Offence’ – section 23(2)

The Influence Offence relates to influencing dealings in land.

‘Person A’ contravenes the Influence Offence if (through association with the Authority) all of the elements set out in the table below are present. We have also set out some of the key considerations arising in respect of each element.

Element	
Position of influence	<ul style="list-style-type: none"> • Person A is in a position to influence proposals made, or to be made, by the Authority. • The proposal is in respect of the acquisition, development, or disposal of land.

<p>Actual influence</p>	<ul style="list-style-type: none"> • Person A influences the proposals by securing the inclusion or alteration of a matter in, or the exclusion or omission of a matter from, the proposals. • Person A person does so for the purpose of: <ul style="list-style-type: none"> – gaining an advantage for Person A; or – enabling another person (Person B) to gain an advantage.
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5. Considering whether use or divulgence of information contravenes the Information Offence

The process below is designed to assist officers to mitigate the risk that the use or divulgence is construed as contravening the Information Offence.

1. Consider whether the information relates to a ‘proposal’

A person should carefully consider whether the information relates to a ‘proposal’.
 If it doesn’t relate to a ‘proposal’ (for example, because it relates to a proof of concept or market sounding required to determine how to develop a proposal) then s 23(1) does not apply.

2. Consider whether the information is publicly available, and if it is not, consider ~~what~~ you can make it publicly available

If the information is publicly available, then it will be generally known and s 23(1) will not apply.
 If appropriate, consider publishing the information on the Authority’s website promptly after divulging it to a party. The longer the period between disclosing it to a party and making it publicly available the greater the risk.

3. Consider the purpose of the use or divulgence

A person should carefully consider whether the sole purpose or a material or substantive purpose of the relevant use or divulgence is:

- the gaining of an advantage; or
- enabling another person to gain an advantage.

4. Document all relevant aspects of any divulgence of the information

Ensure that you keep a record of information that has been disclosed and the purpose for which it has been disclosed.

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