



Public Interest Disclosure Procedure

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Purpose: To ensure PAHSMA complies with our obligations under the *Public Interest Disclosures Act 2002* concerning disclosures of improper conduct or detrimental action.

Policy: All relevant practices at PAHSMA will align with the Model Procedures provided by the Ombudsman Tasmania.

Relevant Legislation: *Public Interest Disclosures Act 2002*

Principle Officer: Will Flamsteed, Chief Executive Officer

Public Interest Disclosure Officer: David Nelan, Chief Financial Officer

David Nelan

Chief Financial Officer

Date: 2 April 2025

Will Flamsteed

Chief Executive Officer

Date: 2 April 2025

The PAHSMA Executive at its meeting on the (to insert date) formally reviewed this Policy. Updates were made in accordance with advice from the Office of the Ombudsman.

Contents

1	Statement of Support	2
2	Purpose of these procedures	2
3	The purpose of the Act.....	3
4	How the Act works	3
5	Comparison with the Integrity Commission Act.....	5
6	Key terms.....	6
6.1	The right to make a disclosure.....	6
6.2	“Public officer” and “Public body”	7
6.3	“Contractor”	9
6.4	“Members of the Public”	10
6.5	“Anonymous Persons”	10
6.6	“Improper conduct” and “Corrupt conduct”	10
6.7	Detrimental action.....	12
7	The reporting system	13
7.1	To whom a disclosure may be made – general principles.....	13
7.2	Disclosure to persons within PAHSMA.....	15
7.3	Oral or written disclosure.....	15
7.4	Disclosure to the Ombudsman	16
7.5	Disclosure to the Integrity Commission	16
7.6	To which entity should a disclosure be made?.....	17
8	Roles and Responsibilities.....	18
8.1	Members, officers and employees	18
8.2	Principal Officer.....	18
8.3	Public Interest Disclosure Officer	19
8.4	Investigator.....	20
8.5	Welfare manager	20
9	Confidentiality	21
10	Preliminary Issues	22
10.1	What should the recipient of the disclosure do upon receipt of the disclosure?.....	22
10.2	Assessing the disclosure – is it a protected disclosure?.....	23
10.3	Risk assessment	25
10.4	Should the disclosure be referred to another body?	25
11	Protection.....	27
11.1	When does protection commence?.....	27
11.2	What protection does the Act provide?	28
12	Investigations	29
12.1	Introduction.....	29
12.2	Matters that do not have to be investigated.....	29
12.3	Employment Direction 5 Investigations	30
12.4	Appointment of investigator and framing of terms of reference	31
12.5	Investigation plan.....	32
12.6	Procedural fairness.....	32
12.7	Conduct of the investigation	34
12.8	Referral of an investigation to the Ombudsman	34
12.9	Provision of information about the investigation	34

13	Action taken after an investigation	35
13.1	Investigator's final report	35
13.2	Action to be taken	36
14	Managing the welfare of the discloser	37
14.1	Commitment to protecting disclosers	37
14.2	Keeping the discloser informed	38
14.3	Occurrence of detrimental action	38
14.4	Discloser implicated in improper conduct	38
15	Management of the person against whom a disclosure has been made	39
16	Offences	40
17	Approval and review of these procedures	41
Assessment of disclosure form (Attachment 1)		1
Part 1:	Is the disclosure a protected disclosure?	1
Part 2:	Should the protected disclosure be referred to the Integrity Commission?	3
Part 3:	Is the protected disclosure a public interest disclosure?	3
Part 4 -	Is there a ground under s64 not to investigate the public interest disclosure?	4
	Summary	6
Risk assessment template (Attachment 2)		7
Risk assessed to:	.....	7
Type of risk / possible harm .....	.....	7
Likelihood risk/s will occur .....	.....	7
Seriousness of consequences if risk/s occurs .....	.....	2
Evaluation of level of risk .....	.....	2
Steps needed to mitigate risk .....	.....	3
Action to be taken .....	.....	3
Approval .....	.....	3
Risk assessment review .....	.....	3
Ombudsman notification template (Attachment 3)		5
Notification type .....	.....	5
Evidence attached .....	.....	5

Attachment 1: Assessment of disclosure form template

Attachment 2: Risk assessment template

Attachment 3: Ombudsman notification template

Attachment 4: Flowcharts

1 Statement of Support

The Port Arthur Historic Sites Management Authority (PAHSMA) is committed to the aims and objectives of the *Public Interest Disclosures Act 2002* (the Act). It does not tolerate improper conduct by its employees, officers or members, or the taking of reprisals against those who come forward to disclose such conduct.

PAHSMA recognises the value of transparency and accountability in its administrative and management practices, and encourages and facilitates the making of disclosures that reveal the type of conduct to which the Act is directed.

PAHSMA will take all reasonable steps to protect people who make such a disclosure from any detrimental action in reprisal for making the disclosure, and to protect their welfare. It will also provide for matters disclosed to be properly investigated and dealt with, and afford natural justice to all parties involved in the investigation of a disclosure. Employees should feel safe to report improper conduct and confident that it will be appropriately dealt with.

2 Purpose of these procedures

These procedures establish a system for reporting disclosures of improper conduct or the taking of reprisals by PAHSMA or members, officers or employees of the public body. The procedures are also intended to assist its members, officers and employees to understand the way in which the Act operates and needs to be administered, including how:

- public officers and contractors can make disclosures about improper conduct or reprisal action;
- disclosures are assessed and investigated;
- public interest disclosures are investigated; and
- PAHSMA protects disclosers and affords procedural fairness.

The system created by these procedures provides for such disclosures to be made to the Chief Executive Officer (the Principal Officer) or to a delegated Public Interest Disclosure Officer. Disclosures may be made by people who are "public officers" with PAHSMA. People who are or have been "contractors" with PAHSMA for the supply of goods or services can make disclosures to the Ombudsman or Integrity Commission. The meaning of public officers and contractors is explained later in this document.

These procedures are designed to complement normal communication channels between supervisors and employees. Employees are encouraged to continue to

raise appropriate matters at any time with their supervisors, and to use existing grievance procedures within the organisation where appropriate.

The PAHSMA Internal Grievance and Conflict Resolution Procedures can be found in the Public Drive.

These procedures have been prepared in accordance with the Ombudsman's *Guideline Two: Procedures for Public Bodies*. This Guideline can be accessed on the Ombudsman's website at www.ombudsman.tas.gov.au.

3 The purpose of the Act

The Act commenced operation on 1 January 2004. It was substantially amended by the *Public Interest Disclosures Amendment Act 2009*, following a major review of the Act, and these procedures reflect those amendments. The amendments took effect on 1 October 2010.

The purposes of the Act are contained in its long title. These are:

- to encourage and facilitate disclosures of improper conduct by public officers and public bodies
- to protect persons making those disclosures, and others, from reprisals
- to provide for the matters disclosed to be properly investigated and dealt with, and
- to provide all parties involved in the disclosures with natural justice.

The public interest is served by providing an avenue for persons to report improper conduct and be protected for doing so.

4 How the Act works

Briefly, the Act works in this way:

- It gives certain people – *public officers and contractors* – the right to make a disclosure about *improper conduct* or *detrimental action* to certain integrity agencies, other persons and bodies (Part 2 of the Act, particularly (s 6).¹
- It provides certain statutory protections for protected disclosures, even if the discloser does not reference the Act (Part 3).
- It dictates how the recipient of the disclosure is to deal with it (Parts 4 to 8).
- It treats the Ombudsman as the oversight agency in relation to the operation of the Act, including the default investigator, monitor of investigations by public bodies, and setter of standards under the Act.
- Where the disclosure is handled by the Ombudsman or a public body, it requires a preliminary determination as to whether the protected disclosure is a *public interest disclosure* (ss 30 and 33). In other words a disclosure which, in the case of decision-making by the Ombudsman, meets the requirements of s 30(2), or, in the case of decision-making by the public body, meets the requirements of s 33(2).
- Subject to exceptions, it requires investigation by the Ombudsman or public body of any protected disclosure which is found to be a public interest disclosure (ss 39 and 63).
- It requires such investigation to be conducted as soon as practicable, but if it is being conducted by a public body, not more than six months from the date of the determination that the disclosure is a public interest disclosure (ss 39A and 77A).
- It controls the manner in which a disclosure is investigated, and provides powers in this respect.
- In the case of investigation by the Ombudsman, it gives the Ombudsman the power to recommend that action be taken in light of the investigation (s 56.)

¹ Note that s 7A of the Act permits a person to whom a disclosure may be made under Part 2 of the Act to treat a person who is not a public officer or contractor as a contractor for the purposes of the Act, if they consider that it would be in the public interest to do so. A disclosure by a contractor is not necessarily protected if made to a public body, so referral should be made to the Ombudsman or the Integrity Commission.

- In the case of an investigation by a public body which results in a finding that the alleged conduct occurred, it requires the public body to take action to prevent that conduct from continuing or recurring, and to take action to remedy any harm or loss which may have arisen (s 75).

A flow chart which depicts the way in which a public body should deal with a disclosure made to it under the act is at Attachment 4 to this document.

It is important to note that a person does not have to expressly reference the Act when making a disclosure in order to be eligible for protection, if all the requirements in the Act are otherwise met.

5 Comparison with the Integrity Commission Act

The PID Act and the *Integrity Commission Act 2009* (IC Act) work very differently.

Perhaps the most important difference is that the IC Act does not contain any provisions which protect a person who makes a complaint under that Act from detrimental action by way of reprisal. The provision of such protection is a key feature of the PID Act.

Other important differences are:

- the fact that anyone can make a complaint under the IC Act, whereas the right to make a disclosure under the PID Act is given only to a current public officer and a contractor;
- in the types of conduct to which the Act applies;² - the fact that a disclosure may be made under the PID Act about proposed conduct, whereas the IC Act only concerns past conduct;
- the fact that a disclosure under the PID Act may be oral, whereas a complaint under the IC Act must be in writing; and

² The PID Act concerns “improper conduct”, which embraces “corrupt conduct”. The IC Act concerns “misconduct” only and it is unclear as to the extent to which corrupt conduct would be able to be investigated. The definitions of these expressions used in the two Acts do not align.

- the different processes which each Act applies to a matter brought forward under it.

A person who is trying to decide which Act to proceed under should consider seeking legal advice on what is the best course for them to take.

It is possible for a disclosure which is made under the PID Act to be dealt with under the IC Act – see Part 4A of the PID Act.

6 Key terms

6.1 The right to make a disclosure

The right to make a disclosure under the Act is given by s 6 of the Act. That states:

6. *Disclosures about improper conduct or detrimental action*
 - (1) *A public officer who believes that another public officer or a public body –*
 - (a) *has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body; or*
 - (b) *has taken, is taking or proposes to take detrimental action in contravention of section 19 –*
may disclose that improper conduct or detrimental action in accordance with this Part.
 - (2) *A contractor who believes that the public body with which the contractor has entered into a contract –*
 - (a) *has engaged, is engaging or proposes to engage in improper conduct in its capacity as a public body; or*
 - (b) *has taken, is taking or proposes to take detrimental action in contravention of section 19 –*
may disclose that improper conduct or detrimental action in accordance with this Part.

As can be seen from the emphasis given to certain expressions in this version of s 6, the specific meaning given to a number of expressions are key to its operation. These are:

- “public officer”
- “public body”
- “contractor”
- “improper conduct”
- “detrimental action”

Because of the way that the expression “improper conduct” is defined in s 3 of the Act, a further expression is also very important. This is the expression “corrupt conduct”.

Who can make a disclosure?

6.2 “Public officer” and “Public body”

These expressions are defined in ss 3 and 4 of the Act, in this way:

3. *Interpretation*

“public body” means a public body referred to in section 4;

“public officer” means a public officer referred to in section 4;

4. *Public bodies and officers*

(1) *Subject to subsection (3), the following bodies and authorities are public bodies for the purposes of this Act:*

(a) *the Parliament of Tasmania;*

(b) *a State Service Agency;*

(c) *the Police Service;*

(d) *a council;*

(e) *a Government Business Enterprise;*

(f) *a State-owned Company;*

(g) *a council-owned company;*

(h) *a body or authority, whether incorporated or not, whose members or a majority of whose members are appointed by the Governor or a Minister;*

- (i) any other prescribed body or authority, whether incorporated or not –
 - (i) to which any money is paid by way of appropriation from the Public Account; or
 - (ii) over which the Government or a Minister exercises control.
- (2) Subject to subsection (3), the following persons are public officers for the purposes of this Act:
 - (a) a Member of Parliament;
 - (b) a councillor;
 - (c) a member, officer or employee of a public body;
 - (d) a member of the governing body of a public body;
 - (e) an employee of a council;
 - (f) any person performing functions under the Parliamentary Privilege Act 1898;
 - (g) a person employed in an office of a Minister, Parliamentary Secretary or other Member of Parliament whether in accordance with the State Service Act 2000, Parliamentary Privilege Act 1898 or otherwise;
 - (h) any person performing functions under the Governor of Tasmania Act 1982;
 - (i) a person appointed to an office by the Governor or a Minister under an Act
- (3) The following bodies are not public bodies for the purposes of this Act:
 - (a) a court;
 - (b) a tribunal;
 - (c) the Tasmanian Industrial Commission;
 - (d) the Integrity Commission;
 - (e) any other prescribed body.

(4) *The following persons are not public officers for the purposes of this Act:*

- (a) *the Governor of Tasmania;*
- (b) *a judge of the Supreme Court;*
- (c) *the Associate Judge of the Supreme Court;*
- (d) *a magistrate of the Magistrates Court;*
- (e) *the Director of Public Prosecutions;*
- (f) *any other prescribed person.*

PAHSMA is a “public body”, as so defined.

Further, any member, officer or employee of PAHSMA is a “public officer”, as so defined.

Note that the right which s 6 of the Act gives to a public officer to make a disclosure must be exercised whilst the person is still a public officer. It is not a requirement that a public officer refer to the Act, or even have knowledge that the Act exists, to make a disclosure which may be protected under the Act.

6.3 “Contractor”

This expression is defined in s 3 of the Act, in this way:

3. Interpretation

“contractor” means –

- (a) *a person who at any time has entered into a contract with a public body for the supply of goods or services to, or on behalf of, the public body; or*
- (b) *an employee of the contractor; or*
- (c) *a subcontractor engaged by the contractor to fulfil all or part of a contract with a public body for the supply of goods or services to, or on behalf of, the public body;*

This definition has the effect that current or past contractors and sub-contractors can make disclosures about public bodies, not public officers, but they can only make a disclosure to the Ombudsman or the Integrity Commission not to PAHSMA. Public Interest Disclosure officers should refer any contractors wanting to make a disclosure to either of these bodies.

6.4 “Members of the Public”

Members of the public can make a disclosure about a public body, and may be treated in the same way as a contractor if it is in the public interest to do so, but they can only make the disclosure to the Ombudsman or Integrity Commission. The Ombudsman or Integrity Commission determine whether it is in the public interest to treat the discloser as a contractor, not the discloser. Public interest disclosure officers should refer any members of the public wanting to make a disclosure to either of these bodies.

6.5 “Anonymous Persons”

An anonymous disclosure may be accepted if the person receiving it is satisfied that the disclosure is being made by a public officer or contractor (see s 8 of the Act). If the person is satisfied that an anonymous disclosure is from a contractor it should be referred to the Ombudsman.

6.6 “Improper conduct” and “Corrupt conduct”

These expressions are also defined in s 3 of the Act, in this way:

3. Interpretation

“improper conduct” means –

- (a) conduct that constitutes an illegal or unlawful activity; or*
- (b) corrupt conduct; or*
- (c) conduct that constitutes maladministration; or*
- (d) conduct that constitutes professional misconduct; or*
- (e) conduct that constitutes a waste of public resources; or*
- (f) conduct that constitutes a danger to public health or safety or to both public health and safety; or*
- (g) conduct that constitutes a danger to the environment; or*
- (h) misconduct, including breaches of applicable codes of conduct; or*

- (i) *conduct that constitutes detrimental action against a person who makes a public interest disclosure under this Act –*

that is serious or significant as determined in accordance with guidelines issued by the Ombudsman.³

Note that paragraph (b) leads to another definition in s 3, being that of “corrupt conduct” –

“corrupt conduct” means –

- (a) *conduct of a person (whether or not a public officer) that adversely affects, or could adversely affect, either directly or indirectly, the honest performance of a public officer's or public body's functions; or*
- (b) *conduct of a public officer that amounts to the performance of any of his or her functions as a public officer dishonestly or with inappropriate partiality; or*
- (c) *conduct of a public officer, a former public officer or a public body that amounts to a breach of public trust; or*
- (d) *conduct of a public officer, a former public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their functions as such (whether for the benefit of that person or body or otherwise); or*
- (e) *a conspiracy or attempt to engage in conduct referred to in paragraph (a), (b), (c) or (d);*

Note that, for the right of disclosure under s 6 to apply, the improper conduct (including corrupt conduct) must be serious or significant as determined in accordance with guidelines issued by the Ombudsman. These guidelines can be accessed at www.ombudsman.tas.gov.au.

Examples of other types of “improper conduct”

- To avoid closure of a town's only industry, an Environmental Health Officer ignores or conceals evidence of illegal dumping of waste.

³ See Public Interest Disclosure Guideline Two: Serious or Significant Improper Conduct, available at www.ombudsman.tas.gov.au

- An Agricultural Officer delays or declines imposing quarantine to allow a financially distressed farmer to sell diseased stock.
- A Principal Officer spends \$15,000 of public money on a staff Christmas party.

Examples of “corrupt conduct”

- A Public Officer takes a bribe in exchange for the discharge of a public duty.
- A Public Officer favours unmeritorious applications for jobs or permits by friends and relatives.
- A Public Officer sells confidential information.

6.7 Detrimental action

This expression is defined in s 3 of the Act, in this way:

“detrimental action” includes –

- (a) *action causing injury, loss or damage; and*
- (b) *intimidation or harassment; and*
- (c) *discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action; and*
- (d) *threats of detrimental action;*

Note that the right to make a disclosure in relation to detrimental action under s 6 relates to detrimental action taken in contravention of s 19 of the Act. Section 19 is in these terms:

19. *Protection from reprisal*
 - (1) *A person must not take detrimental action against a person in reprisal for a protected disclosure.*

Penalty:

Fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (2) *A person takes detrimental action in reprisal for a protected disclosure if –*
- (a) *the person takes or threatens to take the action because –*
- (i) *a person has made, or intends to make, a protected disclosure; or*
- (ii) *the person believes that a person has made or intends to make the protected disclosure; or*
- (b) *the person incites or permits another person to take or threaten to take the action for either of those reasons.*
- (3) *In determining whether a person takes detrimental action in reprisal, it is irrelevant whether or not a reason referred to in subsection (2) is the only or dominant reason as long as it is a substantial reason.*

The effect of s 19 is that reprisal must have been a substantial reason behind the detrimental action taken, though other reasons may exist.

Examples of detrimental action are:

- refusal of a deserved promotion;
- demotion, transfer, isolation in the workplace or changing a person's duties to their disadvantage;
- threats, abuse or other forms of harassment directly or indirectly against the discloser, his or her family or friends; and
- discrimination against the discloser or his or her family and associates in applications for jobs, permits or tenders.

7 The reporting system

7.1 To whom a disclosure may be made – general principles

For the protections in the Act to apply, a disclosure must be made to the right person or body. Section 7 of the Act deals with this subject, and the following table summarises its effect:

Officer or public body to which the disclosure relates	Person to whom the disclosure may be made
A member, officer or employee of a public body other than the Police Service or a State Service Agency	that public body; or the Integrity Commission; or the Ombudsman
A member, officer or employee of a public body that is a State Service Agency	that State Service Agency; or the Integrity Commission; or the Ombudsman
The Principal Officer of a public body or State Service Agency	the Ombudsman; or the Integrity Commission
A member of the Police Service, other than the Commissioner of Police	the Commissioner of Police
The Commissioner of Police	the Ombudsman
A member of the Legislative Council	the President of the Legislative Council
A member of the House of Assembly	the Speaker of the House
A councilor, within the meaning of the <i>Local Government Act 1993</i>	the Ombudsman
A person employed under the provisions of the <i>Parliamentary Privilege Act 1898</i>	the Ombudsman; or the Integrity Commission
The Auditor-General	the chairman of the Public Accounts Committee
The Ombudsman	the Joint Standing Committee on Integrity
A person employed in an office of a Minister, Parliamentary Secretary or other Member of Parliament	the Ombudsman
in any other case, including if the disclosure is about a public body as opposed to an individual public officer	the Ombudsman; or the Integrity Commission

Hence, disclosures which relate to improper conduct or detrimental action by a member, officer or employee of PAHSMA must be made as explained in parts 7.2 to 7.6. A contractor, or a member of the public under s7A of the Act, can only make a disclosure about a public body, so they must make it to the Ombudsman or the Integrity Commission.

7.2 Disclosure to persons within PAHSMA

Disclosures of improper conduct or detrimental action by a member, officer or employee of PAHSMA may be made to the following officers:

- The CEO – who is the “Principal Officer” of the public body, within the terms of the Act.
- A Public Interest Disclosure Officer.

Each person who holds or acts in any of the following positions within PAHSMA has been appointed by the Principal Officer to act as a Public Interest Disclosure Officer and holds a delegation which enables them to receive public interest disclosures under the Act.

- Chief Financial Officer

Where a person is contemplating making a disclosure and is concerned about approaching the Principal Officer or a Public Interest Disclosure Officer in the workplace, he or she can call the relevant officer and request a meeting in a discreet location away from the workplace.

It is not a requirement that the person contemplating making a disclosure refers to the Act, or is aware of the Act, to make a valid disclosure.

A disclosure about the Principal Officer or PAHSMA should be immediately referred to the Ombudsman or the Integrity Commission.

7.3 Oral or written disclosure

An oral disclosure can be made by telephone, or in person, in private to a Public Interest Disclosure Officer. If a Public Officer is concerned about making a disclosure in person in the workplace, they can call or email the Public Interest Disclosure Officer at PID@portarthur.org.au, to request a meeting in a location away from the workplace.

Alternatively, and preferably, a disclosure can be made in writing. It should be addressed to the Principal Officer or Public Interest Disclosure Officer PAHSMA. It should be sent, delivered or left at

Port Arthur Historic Site Management Authority
6973 Arthur Highway,
PORT ARTHUR TAS 7182

It is not a requirement that the person contemplating making a disclosure refers to the Act, or is aware of the Act.

7.4 Disclosure to the Ombudsman

A disclosure may also be made directly to the Ombudsman. The contact details for the Ombudsman are:

The Ombudsman
GPO Box 960
HOBART TAS 7001

or at

Level 6, 86 Collins Street
HOBART TAS 7000

website: www.ombudsman.tas.gov.au
Email: ombudsman@ombudsman.tas.gov.au

Phone: 1800 001 170 (Freecall, though charges from mobile phones may apply)

7.5 Disclosure to the Integrity Commission

A disclosure may also be made directly to the Integrity Commission. The Commission can deal with a protected disclosure about individuals under the *Integrity Commission Act 2009* or refer it to a public body or the Ombudsman. A protected disclosure about a public body would be referred to the Ombudsman. The contact details for the Integrity Commission are:

Tasmanian Integrity Commission
GPO Box 822
HOBART TAS 7001

or at

Level 2
Surrey House
199 Macquarie Street
HOBART TAS 7000

website: www.integrity.tas.gov.au
Email: integritycommission@integrity.tas.gov.au
Phone: 1300 720 289

7.6 To which entity should a disclosure be made?

As can be seen from part 7.1, there are some situations in which a disclosure may only be made to a single entity. For instance, if the disclosure is about the Commissioner of Police, it must be made to the Ombudsman.

Where there is a choice of entities, those choices will include the Ombudsman and the Integrity Commission. Either of those entities will be able to give advice on the most suitable entity to receive the disclosure, but the Ombudsman has overall responsibility for the administration of the Act.

The considerations which might sensibly bear on the choice of entity to which the disclosure is made include:

- the nature of the normal functions (and therefore the skills and experience) of the different entities which might be chosen;
- the desirability of independent investigation of the disclosure – which might, for instance, lead away from making the disclosure to the public body to which it relates; and
- the seriousness or otherwise of the disclosure.

Note that if the disclosure is about PAHSMA it can only be made to the Ombudsman or the Integrity Commission. Given the normal functions of the Integrity Commission focus on individual misconduct it is recommended that the Ombudsman be contacted in the first instance.

8 Roles and Responsibilities

This part explains the roles and responsibilities of individuals within PAHSMA under the Act.

8.1 Members, officers and employees

Members, officers and employees of PAHSMA are encouraged to report known or suspected incidences of improper conduct or detrimental action under the Act, in accordance with these procedures.

All members, officers and employees of PAHSMA have an important role to play in supporting those who have made a disclosure. They must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

8.2 Principal Officer

The Principal Officer has primary responsibility for ensuring that the provisions of the Act are implemented by the public body. Section 62A of the Act provides that the Principal Officer has responsibility for:

- preparing procedures for approval by the Ombudsman;
- receiving public interest disclosures and ensuring they are dealt with in accordance with the Act;
- ensuring the protection of witnesses;
- ensuring the application of natural justice in the public body's procedures;
- ensuring the promotion of the importance of public interest disclosures and general education about the Act to all staff, and ensuring easy access to information about the Act and the public body's procedures, and
- providing access to confidential employee assistance programs and appropriately trained internal support staff for those involved in the process.

The Principal Officer may delegate many of his or her functions to a Public Interest Disclosure Officer.

8.3 Public Interest Disclosure Officer

A Public Interest Disclosure Officer is appointed by the Principal Officer under s 62A(2) of the Act, and holds a delegation from the Principal Officer which enables him or her to exercise the statutory powers and functions given to the Principal Officer by the Act which are listed in their instrument of delegation.

These procedures frequently give responsibilities or functions to a Public Interest Disclosure Officer. Not all of these are referable to specific statutory powers or functions bestowed on the Principal Officer by the Act, and so some of them represent things which the Public Interest Disclosure Officer is expected to do on a purely administrative basis.

Subject to the terms of their delegation, the responsibilities of a Public Interest Disclosure Officer generally include:

- acting as a contact point for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct or detrimental action;
- making arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace;
- receiving any disclosure made orally or in writing (from internal and external disclosers);
- recording in writing the details of any disclosure which is made orally;
- impartially assessing the allegation and determining whether it is a disclosure made in accordance with Part 2 of the Act (that is, “a protected disclosure”);
- impartially assessing under s 33 of the Act whether a disclosure is a “public interest disclosure”;
- taking all necessary steps to ensure that the identity of the discloser and the identity of the person who is the subject of the disclosure are kept confidential;
- Undertaking administrative functions to support the role under the Act, as required.

See the cover page for a list of PAHSMA’s Public Interest Disclosure officers.

8.4 Investigator

Where PAHSMA has determined that a disclosure is a public interest disclosure, or where the Ombudsman has referred a disclosed matter to PAHSMA for investigation, the Principal Officer will appoint an investigator to investigate the matter in accordance with the Act. An investigator may be a person from within PAHSMA or a consultant engaged for that purpose.

8.5 Welfare manager

The welfare manager will be appointed by the Principal Officer or by a Public Interest Disclosure Officer, and is responsible for looking after the general welfare of the discloser. The welfare manager will:

- examine the immediate welfare and protection needs of a person who has made a disclosure, and seek to foster a supportive work environment;
- advise the discloser of the legislative and administrative protections available to him or her;⁴
- listen and respond to any concerns of harassment, intimidation, victimisation or other detrimental action which may be occurring in reprisal for making the disclosure; and
- so far as is practicable, protect the identity of the discloser in the course of carrying out these responsibilities.

A welfare manager may be a person from within PAHSMA or a consultant engaged for that purpose. They must not be responsible for assessing or investigating the disclosure.

⁴ See Part 12 below for details of the legislative protections.

9 Confidentiality

PAHSMA will take all reasonable steps to protect the identity of a discloser. Maintaining confidentiality is crucial to ensure that detrimental action is not taken against the discloser.

All reasonable care will also be taken to protect the privacy of witnesses and of the person against whom the disclosure has been made.

Section 23 of the Act requires any person who receives information in the course of or as a result of a protected disclosure or its investigation, not to disclose that information except in certain limited circumstances. Disclosure of information in breach of this section constitutes an offence that is punishable by a maximum fine of 60 penalty units or six months imprisonment, or both.

The circumstances in which a person may disclose information obtained about a protected disclosure include:

- where exercising their functions or the functions of the public body under the Act
- when making a report or recommendation under the Act
- when publishing statistics in the annual report of a public body, and
- in proceedings for certain offences in the Act.

The Act, however, prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the discloser. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report made in accordance with Part 9 of the Act.

It may be necessary to consider disclosing information where:

- it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to the person who is the subject of the disclosure
- the investigating body believes that the disclosure of the identifying information is necessary for the matter to be effectively investigated, or
- the identity of the discloser is likely to be guessed from the circumstances of the disclosure and the risks for the discloser are better managed if their

identity is known and specific warnings or risk management actions can be taken.

In these circumstances, the person who made the disclosure should first be consulted before any action is taken.

PAHSMA will ensure that all relevant files, whether paper or electronic, are kept securely and can only be accessed by the Principal Officer, Public Interest Disclosure Officer/s, the investigator, and (in relation to welfare matters only) the Welfare Manager.

All printed and electronic material will be kept in files that are clearly marked as confidential, and all materials relevant to an investigation, such as interview recordings from interviews, will also be stored securely with the files. Electronic files should have access restricted to relevant officers.

Care should also be taken to ensure that all relevant phone calls and meetings are conducted in private.

Section 90 exempts documents from release under the *Right to Information Act 2009* to the extent that:

- they contain information regarding a disclosure, or
- information that is likely to lead to the identification of the person who:
 - made the disclosure or the person; or
 - the person who is the subject of the disclosure.

10 Preliminary Issues

10.1 What should the recipient of the disclosure do upon receipt of the disclosure?

If the disclosure is oral, the recipient should make a file note as soon as possible, which records the time when the disclosure was made, the circumstances under which it was made and, so far as is possible, the exact words used by the discloser. The recipient should also ask the discloser to put the disclosure in writing as soon as possible.

Unless the recipient is the Principal Officer (or the disclosure is about the Principal Officer), the recipient should immediately inform the Principal Officer of the

disclosure, and should provide the Principal Officer with a copy of the disclosure, or record of the disclosure, and any accompanying documents.⁵

If the disclosure is from a contractor, member of the public or about the Principal Officer or PAHSMA, it should be immediately referred to the Ombudsman or the Integrity Commission.

A file should be created for the disclosure, marked clearly as being a *Public Interest Disclosures Act 2002* matter – see part 9 of these procedures (Confidentiality).

10.2 Assessing the disclosure – is it a protected disclosure?

The protections provided by the Act to disclosers (contained in Part 3 of the Act) only apply where the disclosure made is a “protected disclosure”. This is defined in s 14 as a disclosure made in accordance with Part 2 of the Act.

The Principal Officer or a Public Interest Disclosure Officer should assess whether a disclosure has been made in accordance with Part 2 of the Act as soon as possible after it has been received. The template assessment decision document at Attachment 1 should be completed as part of this process. It contains a series of questions going to the essential elements of a protected disclosure, raised at [Assessing the disclosure](#), and what is needed to be established before a disclosure can be a protected disclosure. A separate assessment of disclosure form will usually need to be completed for each disclosure. This means, for example, that if a discloser is complaining about three different public officers, this constitutes three disclosures and three assessments should be completed.

The following questions need to be asked in carrying out this assessment:

- Has it been made to the correct person or body; and
- if it has been made to the correct person or body,
 - has it been made by a public officer (or, if the disclosure is anonymous, is the person receiving it satisfied that it is being made by a public officer);
 - is it about the conduct of a public officer;

⁵ Contractors or members of the public who wish to make a disclosure should be advised to contact the Ombudsman or Integrity Commission, as per [Who can make a disclosure?](#)

- does the discloser believe the public officer has, is or is proposing to engage in improper conduct;
- is it about conduct that could objectively fall within the definition of improper conduct; and
- does it concern conduct that occurred on or after 1 January 2001.

As required by s 6 of the Act (see part 6.1 above), one of the preconditions to a disclosure being a protected disclosure, and therefore attracting the protections in Part 3 of the Act, is that it is made by a public officer or a contractor. Note that disclosure by contractors must be made to the Ombudsman or the Integrity Commission.

Note that an anonymous disclosure may be accepted if the person receiving it is satisfied that the disclosure is being made by a public officer or contractor (see s 8 of the Act). If the person is satisfied that an anonymous disclosure is from a contractor it should be referred to the Ombudsman.

The person who carries out the assessment should inform the discloser as soon as practicable of their conclusion as to whether the disclosure is a protected disclosure, and of their reasons for coming to that conclusion. This should be done in writing. If the disclosure has been assessed as being a protected disclosure, the discloser should be given a copy of Part 3 of the Act, which details the protections which the Act provides. These protections should be explained to the discloser if necessary. The discloser should also be informed of the process which will now be followed with respect to the disclosure.

A copy of the assessment should also be given to the Principal Officer without delay, where the person who carried out the assessment is not the Principal Officer.

If the disclosure is considered to be a protected disclosure, the Principal Officer or a Public Interest Disclosure Officer should immediately appoint a Welfare Manager to protect the interests of the discloser, and ensure that the discloser is advised of the name and contact details of that person – see parts 8.5 and 15.1.

Section 7A of the Act provides that a person to whom a disclosure may be made under Part 2 of the Act may, if the person considers that it would be in the public interest to do so, treat any other person who is not a public officer or a contractor as a contractor for the purposes of the Act. Only the Ombudsman or the Integrity Commission can accept disclosures from contractors, so the person will need to be advised to contact either of these bodies. If the Public Interest Disclosure Officer considers this is applicable, they should seek advice from the Ombudsman.

10.3 Risk assessment

A risk assessment should occur as soon as possible after the disclosure has been assessed as being a protected disclosure under the Act. The risk assessment template at Attachment 2 should be completed by the Principal Officer or Public Interest Disclosure Officer and any appropriate risk mitigation action required be implemented. Input from the discloser and the Welfare Manager should be sought and all reasonable requests to reduce the risk of reprisal should be accommodated, when possible.

10.4 Should the disclosure be referred to another body?

10.4.1 Referral to the Ombudsman

See 12.8 for further information.

10.4.2 Referral to the Integrity Commission

PAHSMA may refer a protected disclosure, as distinct from a public interest disclosure, to the Integrity Commission where it considers that the disclosure relates to misconduct as defined in s 4(1) of the *Integrity Commission Act 2009*.

Matters which would bear on a decision as to whether a protected disclosure should be referred to the Integrity Commission are:

- whether independent investigation of the subject matter of the disclosure by the Integrity Commission is preferable; and
- the views of the discloser and the Integrity Commission about whether the matter should be referred.

PAHSMA must notify the discloser of the referral within a reasonable time (unless the disclosure was made anonymously) under s 29D.

The Integrity Commission may deal with the disclosure under the Integrity Commission Act, or it may refer the disclosure to the Ombudsman or a public body, as the case may require, for action by the Ombudsman or public body in accordance with the Public Interest Disclosures Act.

10.4.3 Referral of criminal conduct to the Police

It is possible that, before or during an investigation, facts are uncovered that reveal the possibility of a criminal offence. If this happens, PAHSMA will not commence, or will suspend the investigation and will consult with the Ombudsman as to the future of the matter. Under section 41 of the Act, the Ombudsman has the power to refer a disclosed matter to the Commissioner of Police for investigation.

If the Ombudsman is satisfied that the disclosed matter should be referred to Tasmania Police, PAHSMA should consider whether the disclosure should be referred to the Ombudsman under s 68 of the Act.

Early referral of the matter may avoid interference with the evidentiary trail. Referral to the police through the Ombudsman will also avoid any question of a breach of confidentiality under s 23 of the Act. Once a disclosure is referred to the Commissioner of Police through the Ombudsman, the investigation under the Act ceases. However, there may still be administrative or operational issues which have been identified during the disclosure process or investigation that should be dealt with under other internal processes of PAHSMA. The Principal Officer, or the Public Interest Disclosure Officer acting in consultation with the Principal Officer, will decide how the matter should be dealt with.

10.5 Further assessment - Is the disclosure a public interest disclosure?

Where the Principal Officer or Public Interest Disclosure Officer has received a disclosure that has been assessed to be a protected disclosure, the Principal Officer or Public Interest Disclosure Officer must make a determination under s 33 of the Act as to whether the disclosure is a public interest disclosure. This assessment must be made within 45 days of the receipt of the disclosure.

For a disclosure to be a public interest disclosure, PAHSMA must be satisfied that the disclosure shows or tends to show that the public officer or public body to whom the disclosure relates –

- has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a public officer, or
- has taken, is taking or proposes to take detrimental action in reprisal for the making of the protected disclosure.

A disclosure must be more than a mere allegation without substantiation. A disclosure must include an indication of the existence of evidence that, if substantiated, would show or tend to show that the alleged conduct occurred.

Where the Principal Officer or Public Interest Disclosure Officer concludes that the disclosure amounts to a public interest disclosure, he or she must -

- advise the Principal Officer (if not the person receiving the disclosure);
- notify the Ombudsman within 14 days of the decision using the notification template at Attachment 3;

- notify the person making the disclosure within 14 days of the decision (unless it is an anonymous disclosure), and
- proceed to investigate the disclosed matter - see part 12 (Investigations) below - see s 34.

If the Principal Officer or Public Interest Disclosure Officer concludes that the disclosure is not a public interest disclosure, he or she must -

- advise the Principal Officer (if not the person receiving the disclosure)
- notify the Ombudsman within 14 days of the decision, and
- notify the person making the disclosure within 14 days of the decision (unless it is an anonymous disclosure) – see s 35.

The Ombudsman must then review this decision: s 35(2).

If, on review of the matter, the Ombudsman decides that the disclosure is not a public interest disclosure, the matter does not need to be dealt with under the Act. The Principal Officer, or the Public Interest Disclosure Officer in consultation with the Principal Officer, will then decide how the disclosure should be dealt with.

If the Ombudsman determines on review that the disclosure is in fact a public interest disclosure, the matter may be referred back to the public body under s 42 for investigation under the Act or the Ombudsman will deal with the disclosed matter.

11 Protection

11.1 When does protection commence?

Where PAHSMA receives a disclosure which complies with the requirements of Part 2 of the Act, the disclosure immediately attracts the protections set out in Part 3 of the Act. This is so whether or not the disclosure is factually correct (although one of the requirements of Part 2, as found in s 6, is that the discloser honestly believes that the alleged improper conduct or detrimental action in fact occurred).

The protection also extends to a person who intends to make a disclosure.

Note that, as provided in s 9, a disclosure can still be made where the discloser cannot identify the person or body to whom or to which the disclosure relates.

11.2 What protection does the Act provide?

Part 3 of the Act gives various types of protection to a person who makes a protected disclosure. This part of these procedures only provides a summary of some elements of that Part of the Act.

A person who makes a protected disclosure:

- is not subject to any civil or criminal liability, or to any liability arising by way of administrative process, for making the protected disclosure (s 16);
- does not by doing so commit an offence under a provision of any other Act that imposes a duty to maintain confidentiality, or which imposes any other restriction on the disclosure of information (s 17(1)(a)); and
- does not by doing so breach an obligation by way of oath, or rule of law or practice, or under an agreement, which requires the discloser to maintain confidentiality or otherwise restricts the disclosure of information (s 17(1)(b)).

These last two protections do not apply, however, to a disclosure of information to a person other than the person to whom the protected disclosure was originally made, unless that further disclosure was made in accordance with the Act (see s 17(2) of the Act).

If a disclosure is not made to the correct entity, the protections also may not apply. For example, a discloser will not be protected if otherwise confidential information is disclosed to the media.

Part 3 also contains various provisions which are intended to protect a discloser from detrimental action by way of reprisal for a protected disclosure.

- section 19, the Act makes it an offence to take such detrimental action.
- section 20, it creates a liability to pay damages for such detrimental action. And by
- section 21, it gives a person who believes that detrimental action has been taken against him or her the right to apply to the Supreme Court for an order requiring the person who has taken the detrimental action to remedy that action, or for an injunction.

12 Investigations

12.1 Introduction

PAHSMA must investigate every disclosure referred to it for investigation by the Ombudsman: s 63(b).

Unless the matters set out in 13.2 below apply, or the matter is referred to the Ombudsman, PAHSMA will investigate every disclosure that it receives and determines is a public interest disclosure under s 33 of the Act (see s 63(a) of the Act).

The Principal Officer will appoint an investigator to carry out the investigation. The investigator may be a person from within an organisation or a consultant engaged for that purpose.

The objectives of an investigation are:

- to collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment
- to consider the information collected and to draw conclusions objectively and impartially
- to maintain procedural fairness in the treatment of witnesses and generally to all parties involved in the disclosure

12.2 Matters that do not have to be investigated

Before embarking on the investigation of a public interest disclosure, the Principal Officer or Public Interest Disclosure Officer must first consider whether the disclosed matter deserves to be investigated.

Section 64 specifies certain circumstances under which a public body may legitimately decide not to investigate. Those circumstances are if:

- in the opinion of the public body the disclosure is trivial, vexatious, misconceived or lacking in substance; or
- the subject matter of the disclosure has already been adequately dealt with by the Ombudsman or a public body, statutory authority, Commonwealth statutory authority, commission, court or tribunal; or
- the person making the disclosure has commenced proceedings in a commission, court or tribunal in relation to the same matter, and that

- commission, court or tribunal has power to order remedies similar to those available under this Act; or
- the person making the disclosure had knowledge for more than 12 months of the disclosed matter before making the disclosure and failed to give a satisfactory explanation for the delay in making the disclosure; or
 - the disclosure relates solely to the personal interests of the person making the disclosure; or
 - the disclosure is based on false or misleading information, or
 - the matter which is the subject of the disclosure has already been determined and the additional disclosure does not provide significant or substantial new information.

Any decision not to proceed with an investigation on a ground specified in s 64 must be made by the Principal Officer. If it is decided that the disclosed matter is not to be investigated, written notice must be given within 14 days of this decision to both the Ombudsman and (except in the case of an uncontactable anonymous discloser) the person who made the disclosure. Reasons for the decision must accompany the notice. Use the notification template at Attachment 3 to provide notice to the Ombudsman.

The Ombudsman will review the decision. If the Ombudsman agrees that the disclosure should not be investigated, the matter does not need to be dealt with under the Act. Importantly, the discloser still retains the protections. The Principal Officer, or the Public Interest Disclosure Officer in consultation with the Principal Officer, will decide how the matter should be dealt with.

If the Ombudsman determines that the disclosure should be investigated, they will advise the Principal Officer. Section 64 may be reconsidered at a later time during the investigation.

12.3 Employment Direction 5 Investigations

If a public body has already investigated the subject matter of a disclosure, it may not need to be investigated again under the Act, as provided by s64(b). It is not a relevant consideration, however, when determining whether or not to investigate a public interest disclosure that the matter may be, or is being, investigated under Employment Direction 5 (ED5) or another internal process.

ED5 investigations and the process under the Act for assessing and investigating disclosures are separate processes and the investigations should be conducted separately. The interaction between the two processes should be considered on a

case-by-case basis, for example, whether evidence gathered during a public interest disclosure investigation can be used in an ED5 investigation given the confidentiality requirements of s23. As a minimum, however, if a public officer has raised an allegation about another public officer that may need to be investigated under ED5, then it should also be considered under these public interest disclosure procedures.

The two processes have a different focus. An ED5 investigation is aimed at investigating potential breaches of the State Service Code of Conduct by an employee and ensuring they are afforded procedural fairness, including informing them of the substance of the alleged breach and the intention to investigate. In contrast, a protected disclosure, whilst it can also be about a breach of the code, provides protections to a discloser and imposes confidentiality requirements on the handling of the matter. The purpose of the investigation of a public interest disclosure is to establish if improper conduct has occurred and to make recommendations, which may include taking disciplinary action. Procedural fairness requirements still apply during a public interest disclosure investigation but the public officer may not be notified of the disclosure or the investigation at the outset, or at all, if the investigation finds it is unsubstantiated.

If an ED5 investigation concludes prior to the conclusion of a public interest disclosure investigation and the Principal Officer considers that the subject matter of the disclosure has been adequately dealt with through the ED5 process, they may decide not to further investigate the matter pursuant to s64(b). The notification process outlined above will need to be followed.

Consider seeking legal advice or contacting the Ombudsman for more information.

12.4 Appointment of investigator and framing of terms of reference

The Principal Officer – not a Public Interest Disclosure Officer - will determine who is to carry out the investigation. As earlier indicated, this may be an officer within PAHSMA or an external consultant.

The investigator will be given formal terms of reference, signed by the Principal Officer.

The terms of reference will specify –

- the matters to be investigated;
- the requirement for regular reports to be made to the Principal Officer, including details of compliance with any measures identified in the risk assessment;

- the date by which the investigation is to be concluded; and
- the resources available to the investigator for the purposes of the investigation.

The completion date should be as soon as practicable but, in any event, not more than 6 months from the date of the determination that the disclosure is a public interest disclosure under s 77A(1). If at any stage before or during the investigation it appears that the investigation cannot be completed within 6 months, PAHSMA may apply to the Ombudsman for an extension of up to 6 months in which to complete the investigation under s 77A(2).

12.5 Investigation plan

The investigator should prepare an investigation plan for approval by the Principal Officer. The plan should list the issues which are to be investigated and describe the steps which the investigator intends to take in investigating each of those issues.

The plan should be updated as necessary during the course of the investigation.

12.6 Procedural fairness

The principles of procedural fairness must be carefully observed in the course of the investigation, with respect to all parties involved. These principles are referred to as natural justice in the Act.

The principles are a set of procedural standards which need to be met in order to satisfy a person's right to a fair hearing. If natural justice is not provided, the investigation findings may be questionable and could be challenged.

PAHSMA will comply with the following requirements in ensuring that procedural fairness is accorded to all parties involved:

No one is to be involved in the investigation

- who is known to be biased against any person who is potentially subject to an adverse finding, or
- who is known to hold any biases which are relevant to the subject-matter of the investigation, or

- in respect of whom there is reasonable ground for apprehending or suspecting bias.⁶

If the investigator is aware of any reason why they may be susceptible to an allegation of bias on the basis of these principles, they should immediately inform the Principal Officer. It is best to err on the side of caution and to consider an external investigator if there might be a perception of bias over the investigation.

Any person who is potentially subject to an adverse finding or comment must be told of:

- the allegations made against them, or which have arisen against them as a result of the investigation;
- all of the information which is adverse to their interests and which is, on an objective basis, credible, relevant and significant to the investigation; and
- the potential findings in view, and their possible consequences.

This must be done before any final conclusions are formed by the investigator. Each such person must be given a reasonable time to respond to the material which is provided to them.

The investigator must maintain an open mind, and must fairly take into account all representations which such a person may make.

Note that there is no requirement to inform the person who is subject to the disclosure as soon as it is received, or as soon as the investigation has commenced. Note also that the name of the person making the disclosure or any particulars which might identify that person must not be revealed unless necessary, and with the discloser's knowledge.

The final investigation report should be drafted in a way that demonstrates that procedural fairness has been accorded. For instance, it should record and deal with all submissions and evidence which a person has put in their defence.

⁶ For apprehended bias, the test is whether a fair minded lay observer, taking into account all relevant circumstances, might reasonably apprehend that the decision-maker might not bring an impartial mind to the resolution of the questions that he or she is required to decide.

12.7 Conduct of the investigation

The Integrity Commission's Guide to Managing Misconduct in the Tasmanian Public Sector⁷ is a useful guide on the conduct of a public interest disclosure investigation.

The investigator should make contemporaneous notes of all discussions and phone calls, and consideration should be given to the desirability of voice recording significant interviews with witnesses.

All information gathered in the course of the investigation must be securely stored.

Interviews should be conducted in private, and the investigator should take all reasonable steps to protect the identity of the discloser. Where disclosure of the identity of the person cannot be avoided, due to the nature of the allegations, the investigator should warn the discloser and his or her welfare manager of this.

12.8 Referral of an investigation to the Ombudsman

Under s 68 of the Act, a public body may refer the investigation of a public interest disclosure to the Ombudsman where the public body considers that its own investigation is being obstructed or that it is otherwise not within the capacity of the public body to complete the investigation. An investigation can also be referred to the Ombudsman if evidence of possible criminal conduct is found, to enable the Ombudsman to refer the matter to Tasmania Police for investigation (see [Referral of criminal conduct to the Commissioner of Police](#) above for more detail).

Any decision as to whether the investigation should be referred to the Ombudsman will be made by the Principal Officer.

12.9 Provision of information about the investigation

The Principal Officer or the Public Interest Disclosure Officer must ensure that the discloser is kept regularly informed concerning the handling of a protected disclosure and an investigation.

The Principal Officer must report to the Ombudsman about the progress of an investigation.

⁷ Accessible at <https://www.integrity.tas.gov.au/publications/prevention-resources/guides>.

Section 74 of the Act requires a public body, at the request of the Ombudsman or the person who made the disclosure, to give the Ombudsman or that person reasonable information about the investigation. The information must be given within 28 days of the request.

However, as provided in s 74(3), such information does not have to be given to the discloser if:

- it has already been given to the person; or
- the giving of the information would endanger the safety of another or may prejudice the conduct of the investigation.

13 Action taken after an investigation

13.1 Investigator's final report

At the conclusion of the investigation, the investigator must submit a written report of his or her findings to the Principal Officer. The report should contain:

- the allegation/s;
- a description of the manner in which the investigation was conducted, with sufficient detail to demonstrate that procedural fairness was observed;
- an account of all relevant information received;
- details of the evidence and submissions supplied by any person against whom an adverse finding is made, and the evaluation of that material by the investigator; and
- the findings made and conclusions reached, and the basis for them.

Note in particular that the report should not include any comment adverse to any person unless that person has been given an opportunity to be heard in the matter and their defence is fairly set out in the report (see part 13.5 of these procedures).

With a view to potential action by the public body under s 75 of the Act, if the investigator has found that conduct disclosed by the discloser has occurred, the investigator may wish to include recommendations as to:

- any steps that need to be taken by PAHSMA to prevent the conduct from continuing or occurring in the future; and

- any action that should be taken by PAHSMA to remedy any harm or loss arising from that conduct.

The steps to be taken may include bringing disciplinary proceedings against the person responsible for the conduct, and referring the matter to an appropriate authority for further consideration. For example, if the investigation has revealed conduct that may constitute a criminal offence, consideration should be given to whether the matter should be referred to Tasmania Police, unless this has previously occurred.

The report must be accompanied by:

- the transcript or other record of any oral evidence taken, including audio or video recordings; and
- all documents, statements or other exhibits received by the officer and accepted as evidence during the course of the investigation.

The report must not disclose particulars likely to lead to the identification of the discloser: s 23(2).

13.2 Action to be taken

If the investigation makes a finding that a public officer has engaged, is engaging or proposes to engage in improper conduct, PAHSMA must, in accordance with s75, take all reasonable steps to prevent the conduct from continuing or occurring in the future and may take action to remedy any loss or harm arising from the conduct. The Principal Officer should take into consideration any recommendations in the investigator's report, but can take different or broader action if appropriate.

Where the Public Interest Disclosure Officer is responsible for the progress of the investigation and is satisfied that the disclosed conduct has occurred, he or she will recommend to the Principal Officer the action that must be taken.

The Principal Officer will provide a written report to the Minister for the Arts and Heritage and the Ombudsman, setting out the findings of the investigation and any remedial steps taken. The report must not disclose particulars likely to lead to the identification of the discloser. The Ombudsman will also be provided with the full internal investigation report and accompanying evidence. See the notification template at Attachment 3.

As required by s 77 of the Act, the Principal Officer will also inform the discloser of the findings of the investigation, and of any steps taken under s 75 as a result of the findings made.

Where the investigation concludes that the disclosed conduct did not occur, the Principal Officer will report these findings to the Ombudsman, in accordance with the notification template at Attachment 3, and to the discloser.

14 Managing the welfare of the discloser

14.1 Commitment to protecting disclosers

PAHSMA is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of protected disclosures. The Principal Officer is responsible for ensuring that disclosers and witnesses are protected from detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

The Principal Officer or the Public Interest Disclosure Officer must appoint a welfare manager to support all persons who have made a protected disclosure. This must occur within five working days of the protected disclosure being received. See part 8.5 for the responsibilities of a Welfare Manager.

The Welfare Manager must contact the discloser as soon as possible and not more than five working days after being appointed. The Welfare Manager must also provide advice about what the discloser should do if they believe that a colleague/s or a relative/s is being subjected to detrimental action. The advice will include what level of information it is necessary for them to provide.

All employees will be advised that it is an offence for a person to take detrimental action in reprisal for a protected disclosure (s 19). The maximum penalty is a fine of 240 penalty units or two years imprisonment, or both. The taking of detrimental action in breach of this provision can also be grounds for making a disclosure under the Act and can result in an investigation.

See part 6.5 for further details as to what constitutes detrimental action.

A discloser who believes that they are being subjected to detrimental action in reprisal for having made the disclosure should report it to the Principal Officer or a Public Interest Disclosure Officer, as this can be a potential further protected disclosure. If they believe that the reprisal is not being effectively dealt with by PAHSMA, they may report the matter to the Ombudsman. A report of detrimental action may qualify as a protected disclosure under the Act.

14.2 Keeping the discloser informed

The Principal Officer or the Public Interest Disclosure Officer must ensure that the discloser is kept informed of action taken in relation to his or her disclosure, and the time frames that apply. The discloser must be informed of the objectives of any investigation that takes place, the findings of the investigation, and the steps taken by PAHSMA to address any improper conduct that has been found to have occurred. The discloser must be given reasons for all decisions made by PAHSMA in relation to a disclosure. All communication with the discloser must be in plain English.

14.3 Occurrence of detrimental action

If a discloser reports an incident of detrimental action allegedly taken in reprisal for the making of the disclosure, the welfare manager must:

- record details of the incident
- advise the discloser of his or her rights under the Act, and
- advise the Principal Officer of the detrimental action.

The taking of detrimental action in reprisal for the making of a disclosure can be an offence under the Act as well as grounds for making a further disclosure. Where such detrimental action is reported, the Public Interest Disclosure Officer or the Principal Officer will assess the report as a new disclosure under the Act, and it will be dealt with accordingly.

14.4 Discloser implicated in improper conduct

Where a person who makes a disclosure is implicated in misconduct, PAHSMA will handle the disclosure and protect the discloser from reprisals in accordance with the Act, the Ombudsman's guidelines and these procedures. At the same time PAHSMA acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. Section 18 of the Act specifically provides that a person's liability for his or her own conduct is not affected by the person's disclosure of that conduct under the Act. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The Principal Officer will make the final decision as to whether disciplinary or other action will be taken against a discloser. Where disciplinary or other action relates to conduct that is the subject of the person's disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with.

In all cases where disciplinary or other action is being contemplated, the Principal Officer must be satisfied that it has been clearly demonstrated that:

- the intention to proceed with disciplinary action is not causally connected to the making of the disclosure (as opposed to the content of the disclosure or other available information);
- there are good and sufficient grounds that would fully justify action against any non-discloser in the same circumstances; and
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The Public Interest Disclosure Officer or Principal Officer will thoroughly document the process, including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for the making of the disclosure. The Public Interest Disclosure Officer or Principal Officer will clearly advise the discloser of the proposed action to be taken, and of any mitigating factors that have been taken into account. They should advise the discloser that they can raise any concerns about the action taken being a potential reprisal with the Ombudsman.

15 Management of the person against whom a disclosure has been made

PAHSMA recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures. When a person who is the subject of the disclosure is made aware of the allegations or of an investigation, they should be provided with an appropriate contact person to whom to direct queries. Information about employee assistance programs or other supports should also be provided, if appropriate.

PAHSMA will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure during the assessment and investigation process. Where an investigation does not substantiate a disclosure, the fact that the investigation has been carried out, the results of the investigation, and the identity of the person who is the subject of the disclosure will remain confidential.

The Public Interest Disclosure Officer or Principal Officer will ensure that the person who is the subject of any disclosure investigated by or on behalf of PAHSMA is afforded procedural fairness in accordance with these procedures.

Where the allegations in a disclosure have been investigated, and the person who is the subject of the disclosure is aware of the allegations or of the investigation, the Public Interest Disclosure Officer or Principal Officer will formally advise the person who is the subject of the disclosure of the outcome of the investigation.

PAHSMA will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed, the Principal Officer of PAHSMA will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

16 Offences

PAHSMA will ensure officers appointed to handle protected disclosures and all other employees are aware of the following offences created by the Act:

- Section 19(1)

This provision makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made. The section provides for a maximum penalty of a fine of 240 penalty units or two years imprisonment, or both.

- Section 23(1)

This provision makes it an offence for a person to disclose, except under specified circumstances, information which they have obtained or received in the course of or as a result of a protected disclosure or the investigation of a disclosed matter under the Act. The section provides for a maximum penalty of 60 penalty units or six months imprisonment, or both.

- Section 54

This section creates various offences relating to obstructing the work of the Ombudsman under the Act, including offences relating to misleading the Ombudsman. The section provides for a maximum penalty of 240 penalty units or two years imprisonment, or both.

- Section 87(1)

This provision makes it an offence for a person to knowingly provide false information under the Act to certain officers (including the Ombudsman) with the intention that it be acted on as a disclosed matter. The provision provides for a maximum penalty of 240 penalty units or two years imprisonment, or both.

- Section 87(2)

This section makes it an offence for a person to knowingly provide false information to a person conducting an investigation under the Act. The provision provides for a maximum penalty of 240 penalty units or two years imprisonment, or both.

The value of a penalty unit varies from time to time in accordance with movements in the Consumer Price Index. For more information, see the [Department of Justice website](#)⁶.

17 Approval and review of these procedures

These procedures were approved by the Ombudsman under s 60(3) of the Act (to be inserted). They were updated on 26 April 2021 under Ombudsman instructions and further reviewed on 24 March 2025.

The procedures will be submitted to the Ombudsman for review at least once in each 3-year period to ensure they meet the objectives of the Act and accord with the Guidelines and Standards published by the Ombudsman under s 38(1)(c) of the Act.

The date by which the procedures must be submitted to the Ombudsman for review is March 2028.

⁶ www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation

Assessment of disclosure form (Attachment 1)

Public Interest Disclosures Act 2002

File number:

Date of assessment:

Name of assessing officer:

Summary of disclosure:

Include details of how the disclosure was received, the subject of the disclosure and details of the allegations.

An assessment of disclosure form will usually need to be completed for each disclosure. This means, for example, that if a discloser is complaining about three different public officers, this constitutes three disclosures and three assessments may be required.

Part 1: Is the disclosure a protected disclosure?

Question 1: Is the discloser a public officer?

The discloser needs to be a current public officer. See s4(2) and s4(4) of the Act for the definition of a public officer. If the discloser is anonymous, it is enough to be satisfied that the discloser is a public officer.

If the discloser is a contractor, member of the public or no longer a public officer at the time the disclosure is made, refer them to the Ombudsman or Integrity Commission.

Yes No

Please provide details if relevant:

Question 2: Is the disclosure about a public officer?

A disclosure can be made even if the discloser cannot identify the public officer – see s9 of the Act. If a disclosure is about the principal officer or the public body itself, refer the discloser to the Ombudsman or Integrity Commission.

Yes No

Question 3: Has the disclosure been made to the right person or body?

See s7 of the Act and reg 8 of the Public Interest Disclosures Regulations 2013.

Yes No

Please provide details:

Question 4: Does the discloser believe that a public officer has, is or proposes to engage in improper conduct?

Yes No

If no, provide details:

Question 5: Does the disclosure relate to improper conduct?

Is the disclosure about conduct that could objectively fall within one of the categories of improper conduct, i.e:

- conduct that constitutes an illegal or unlawful activity; or
- corrupt conduct; or
- conduct that constitutes maladministration; or
- conduct that constitutes professional misconduct; or
- conduct that constitutes a waste of public resources; or
- conduct that constitutes a danger to public health or safety or to both public health and safety; or
- conduct that constitutes a danger to the environment; or
- misconduct, including breaches of applicable codes of conduct; or
- conduct that constitutes detrimental action against a person who makes a public interest disclosure under this Act –

that is serious or significant as determined in accordance with guidelines issued by the Ombudsman?

For example, a discloser may believe that taking a non-confidential work file home is serious or significant improper conduct but it may not objectively fall within that definition.

Yes No

Please provide details:

Question 6: Does the disclosure concern conduct that occurred on or after 1 January 2001?

This is the only time limitation that is relevant when assessing if a disclosure is a protected disclosure. Delays in making a disclosure any time on or after 1 January 2001 can be relevant when deciding whether to investigate a public interest disclosure under s64 of the Act.

Yes No

2.1.1 Assessment of Answers to Part 1 Questions

If **ALL** the answers to the above are yes, the disclosure is a protected disclosure.

The discloser should be notified as soon as possible, if the disclosure is a protected disclosure and the assessment of whether it is a public interest disclosure has not been undertaken simultaneously.

If ANY of the answers to the above are no, the disclosure is not protected and the Act does not apply. Refer the discloser to the appropriate body and/or handle the matter under complaint or grievance policies.

In either case, the discloser should be given reasons in writing. A copy of the assessment should be given to the Principal Officer without delay, where the person who carried out the assessment is not the Principal Officer.

Part 2: Should the protected disclosure be referred to the Integrity Commission?

Does the disclosure relate to misconduct, as defined in the *Integrity Commission Act 2009*?

Yes No

If yes, should the disclosure be referred to the Integrity Commission under section 29B of the Act?

Yes No

If yes, please provide details

If the disclosure is referred, the assessment process is complete after the discloser is notified of the referral.

Part 3: Is the protected disclosure a public interest disclosure?

Are you satisfied that the protected disclosure shows, or tends to show, that the public officer to whom the disclosure relates –

- a) has engaged, is engaged or proposes to engage in improper conduct in his or her capacity as a public officer; or
- b) has taken, is taking or proposes to take detrimental action in contravention of s 19 of the Act?

A mere allegation without substantiation is not sufficient – the disclosure must contain evidence or point to its existence (name documents, refer to potential witnesses etc) that shows or tends to show that the public officer is, has, or is proposing to engage in improper conduct.

This determination under s33 of the Act must be made within 45 days of the disclosure being received.

Yes No

Provide reasons for your decision and attach evidence if available

2.1.2 Next steps

Notify the discloser and the Ombudsman of the assessment determination. Use the notification template attached to the public interest disclosure procedures when notifying the Ombudsman.

If the answer is no, the assessment is complete and Part 4 does not need to be completed. The Ombudsman will review the determination.

If the answer is yes, the public interest disclosure must be investigated unless a ground exists not to under s64 of the Act.

Part 4 - Is there a ground under s64 not to investigate the public interest disclosure?

Question 1: Is the public interest disclosure trivial, vexatious, misconceived or lacking in substance?

Yes No

If yes, provide details. Compelling reasons will be required to justify not investigating on this ground:

Question 2: Has the subject matter of the public interest disclosure already been adequately dealt with by the Ombudsman or a public body, statutory authority, Commonwealth statutory authority, commission, court or tribunal?

Yes No

If yes, please provide details

Question 3: Has the discloser commenced proceedings in a commission, court or tribunal in relation to the same matter, and does that commission, court or tribunal have power to order remedies similar to those available under this Act?

Yes No

If yes, please provide details

Question 4: Did the discloser:

- have knowledge for more than 12 months of the public interest disclosure matter before making the disclosure; and
- fail to give a satisfactory explanation for the delay in making the disclosure?

Yes No

If yes, provide details of this issue being put to the discloser and analysis concerning why any explanation provided was not satisfactory:

Question 5: Does the public interest disclosure relate solely to the personal interests of the discloser?

Yes No

Most disclosures will contain some element of personal interest. This should only be used as a basis to not investigate in clear circumstances.

If yes, please provide details:

Question 6: Is the public interest disclosure based on false or misleading information?

Yes No

If yes, please provide details and consider whether an offence may have been committed under s87 of the Act.

Question 7: Has the matter the subject of the public interest disclosure already been determined AND this additional disclosure fails to provide significant or substantial new information?

Yes No

If yes, please provide details

2.1.3 Assessment of Answers to Part 4 Questions

If the answers to ALL the questions in Part 4 are no, the disclosure **must** be investigated in accordance with the public interest disclosure procedures. Referral to the Ombudsman can occur if internal investigation is not possible or appropriate.

If the answer is yes to **one or more of the above questions**, will the public interest disclosure be investigated?

Although the public interest disclosure may not need to be investigated if an answer to any of the Part 4 questions is yes, it may still be appropriate to investigate in some circumstances.

Yes No

Provide reasons for your decision:

Notify the discloser and the Ombudsman if it is decided not to investigate. The Ombudsman will review the decision. Use the notification template attached to the public interest disclosure procedures when notifying the Ombudsman.

Summary

Part	Question	Answer
Part 1	Is the disclosure a protected disclosure?	
Part 2	Should the protected disclosure be referred to the Integrity Commission?	
Part 3	Is the protected disclosure a public interest disclosure?	
Part 4	Should the public interest disclosure be investigated?	

Approval

Approved by:

Name of Public Interest Disclosure Officer or Principal Officer:

Date of approval:

Risk assessment template (Attachment 2)

Public Interest Disclosures Act 2002

File number:

Date of assessment:

Name of assessing officer:

Risk assessed to:

Please select all relevant options

- | | |
|--|--|
| <input type="checkbox"/> Discloser | <input type="checkbox"/> Other employees including potential witnesses |
| <input type="checkbox"/> Your public body | <input type="checkbox"/> Other (e.g. Tasmanian Government, the general public) |
| <input type="checkbox"/> The subject of the disclosure | |

Type of risk / possible harm

Such as:

- Adverse employment action
- Workplace injury
- Physical violence
- Verbal abuse
- Stress
- Untenable work environment
- Withdrawal of cooperation due to fear of reprisal/lack of support
- Reputational damage
- Risk to public safety
- Misuse of public funds
- Disruption to functioning of public body

Please provide details:

Likelihood risk/s will occur

- | |
|-----------------------------------|
| <input type="checkbox"/> Unlikely |
| <input type="checkbox"/> Possible |
| <input type="checkbox"/> Likely |

2.1.4 Considerations:

- Can confidentiality be maintained?
- Is the discloser (or others) concerned about reprisals?
- How many public officers are involved in the alleged improper conduct?
- What is their level of seniority?
- What is the seriousness of the alleged conduct?
- Is there a history of conflict in the workplace?

Please provide your reasons:

Seriousness of consequences if risk/s occurs

Minor

Moderate

Major

2.1.5 Considerations:

- What is the potential impact if the risk occurs?
- Will the impact be limited, with the person able to readily deal with it?
- Will the impact have consequences which will affect the person's work or their personal and home life?
- Will the consequences be short-term, medium-term or long-term?

Please provide your reasons:

Evaluation of level of risk

Risk occurrence	Minor consequence	Moderate consequence	Major consequence
Unlikely	Low	Low	Medium
Possible	Low	Medium	High
Likely	Medium	High	High

Determine your level of risk:

Steps needed to mitigate risk

Consult with discloser and other parties as required. Possible strategies include:

- maintaining confidentiality as much as possible
- ensuring all parties are aware of their obligations
- when the identity of the discloser will be known or guessed by the subject of the disclosure and/or associates, proactively identifying the discloser (with their written permission) and advising relevant parties of the consequences of taking reprisal action and that their actions are being monitored
- altering reporting structures
- increasing monitoring of the work environment
- standing down the subject of the disclosure
- temporarily relocating the subject of the disclosure or the discloser to a different location/ role
- independently verifying the work performance of the discloser
- providing access to specialist support services if required
- making a statement to all staff or the media to address concerns

Please provide details:

Action to be taken

2.1.6 Considerations:

- risk rating
- ease or difficulty of mitigating risk
- financial cost of taking action
- consequences of not taking action should risk occur

Please provide details of your risk action plan:

Approval

Approved by:

Public Interest Disclosure Officer or Principal Officer – Type Name

Date of approval

Risk assessment review

Risk assessment to be reviewed on (date) or when (event) occurs.

Name of reviewing officer:

Date of assessment:

2.1.7 Notes on changes to risk since last assessment

2.1.8 *Review outcome*

- No change to action plan
- Further action required

Please provide details:

*Thank you to the Queensland Ombudsman for the use of some of its
risk assessment materials in this template.*

Ombudsman notification template (Attachment 3)

Public Interest Disclosures Act 2002

Public body name: Port Arthur Historic Site Management Authority **Date of disclosure:**

Contact person: (include telephone and email contact details)

Date of s 33 determination: (to be made within 45 days of date of disclosure) **Date of notification:**

Notification type

- Section 34 – Determination that disclosure is a public interest disclosure
Notification to be made within 14 days of decision
- Section 35 – Determination that disclosure is not a public interest disclosure
Notification to be made within 14 days of decision
- Section 65 – Decision not to investigate public interest disclosure under s 64
Notification to be made within 14 days of decision
- Section 76 – Findings of investigation and steps taken under s 75
Investigation to be completed within 6 months unless Ombudsman extension granted

Evidence attached

- Copy of original disclosure or record of oral disclosure
- Disclosure assessment
- Risk assessment/s
- Investigation report including:
 - the transcript or other record of any oral evidence taken, including audio or video recordings; and
 - all documents, statements or other exhibits received by the investigator and accepted as evidence during the course of the investigation.
- Any other material used to make determination (list).

Disclosure to a Public Body (Attachment 4 to Model Procedures)



