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1. Introduction

Based on the *Public Interest Disclosures Act 2002*, these procedures are to encourage and facilitate the making of disclosures of improper conduct (or detrimental action) by public officers and public bodies. The Act and these procedures provides protection from reprisals to persons who make disclosures in accordance with the Act, and establishes a system for the matters disclosed to be properly investigated and for rectifying action to be taken.

1.1 Statement of support

The Department of Justice (the Department) is committed to the aims and objectives of the *Public Interest Disclosures Act 2002*. It does not tolerate improper conduct by its employees, officers or members, nor the taking of reprisals against those who come forward to disclose such conduct.

The Department recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal corrupt conduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

The Department will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure. It will also afford natural justice to the person who is the subject of the disclosure.

1.2. Purpose of these procedures

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by the Department or its employees. The system enables such disclosures to be made to the Secretary or to one of the nominated protected disclosure officers.

Disclosures may be made by state servants or by contractors or former contractors who have or had a contract with the Department for the supply of goods or services.

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. As an alternative, staff may make a disclosure of improper conduct or detrimental action under the Act in accordance with these procedures.

1.3. Objects of the Act

The *Public Interest Disclosures Act 2002* commenced operation on 1 January 2004. The purpose of the Act is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies. The Act provides protection to persons who make disclosures in accordance with the Act, and establishes a system for the matters disclosed to be investigated and rectifying action to be taken.

1.4. Definitions of key terms

Three key concepts in the reporting system are improper conduct, corrupt conduct and detrimental action. Definitions of these terms are set out below.

1.4.1 Improper conduct

A disclosure may be made about improper conduct by a public body or public official. Improper conduct means conduct that is corrupt, a substantial mismanagement of public resources, or conduct involving substantial risk to public health or safety or to the environment. The conduct must be serious enough to constitute, if proved, a criminal offence or reasonable grounds for dismissal.

Examples

To avoid closure of a town's only industry, an environmental health officer ignores or conceals evidence of illegal dumping of waste.

An agricultural officer delays or declines imposing quarantine to allow a financially distressed farmer to sell diseased stock.

A building inspector tolerates poor practices and structural defects in the work of a leading local builder.

1.4.2 Corrupt conduct

Corrupt conduct means:

- conduct of any person (whether or not a public official) that adversely affects the honest performance of a public officer's or public body's functions;
- the performance of a public officer's functions dishonestly or with inappropriate partiality;
- conduct of a public officer, former public officer or a public body that amounts to a breach of public trust;
- conduct by a public officer, 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 official functions; or
- a conspiracy or an attempt to engage in the above conduct.

Examples

A public officer takes a bribe or receives a payment other than his or her wages or salary 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.

1.4.3 Detrimental action

The Act makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure (s.19). Detrimental action includes:

- action causing injury, loss or damage;
- intimidation or harassment; and
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.
- threats of the above.

Examples

A public body refuses to appoint a person who made a disclosure and was a successful applicant to a position through a fair selection process.

A public body demotes, transfers, isolates in the workplace or changes the duties of a discloser due to the making of a disclosure.

A person threatens, abuses or carries out other forms of harassment directly or indirectly against the discloser, his or her family or friends.

A public body discriminates against the discloser or his or her family and associates in subsequent applications for jobs, permits or tenders.

1.4.4 Public Officer

Public Officer is defined as an employee or officer of the State Service and those persons appointed pursuant to legislation administered by the Department of Justice ([list of legislation](#)). It includes members and chairpersons of boards, committees and commissions.

1.5. Confidentiality

The Department will take all reasonable steps to protect the identity of the discloser. Maintaining confidentiality is crucial in ensuring reprisals are not made against a discloser.

The Act requires any person who receives information due to the handling or investigation of a protected disclosure, not to disclose that information except in certain limited circumstances. Disclosure of information in breach of s.23 constitutes an offence that is punishable by a maximum fine of 60 penalty units (\$6000) or six months imprisonment or both.

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

- where exercising 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 criminal proceedings for certain offences in the Act.

However, the Act 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.

The Department will ensure all files, whether paper or electronic, are kept securely and can only be accessed by the protected disclosure coordinator, protected disclosure officer, the investigator or welfare manager (in relation to welfare matters). All printed material will be kept in files that are clearly marked as a *Public Interest Disclosures Act* matter, and warn of the criminal penalties that apply to any unauthorised divulging information concerning a protected disclosure. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the files.

Officers involved in managing a complaint will not email documents relevant to a disclosed matter and will ensure all related phone calls and meetings are conducted in private.

2. Roles and responsibilities

2.1 Employees

Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

All employees of the Department have an important role to play in supporting those who have made a legitimate 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.

2.2 Protected disclosure officer

The protected disclosure officer will:

- be 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;
- make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace;
- receive any disclosure made orally or in writing (from internal and external disclosers);
- commit to writing any disclosure made orally;
- impartially assess the allegation and determine whether it is a disclosure made in accordance with Part 2 of the Act (that is, 'a protected disclosure');
- take all necessary steps to ensure the identity of the discloser and the identity of the person who is the subject of the disclosure are kept confidential; and
- forward all disclosures and supporting evidence to the protected disclosure coordinator.

2.3 Protected disclosure coordinator

The protected disclosure coordinator has a central 'clearinghouse' role in the internal reporting system. He or she will:

- receive all disclosures forwarded from the protected disclosure officers;
- receive all phone calls, emails and letters from employees or contractors seeking to make a disclosure;
- impartially assess each disclosure to determine whether it is a public interest disclosure;
- be responsible for carrying out, or appointing an investigator to carry out, an investigation of the public interest disclosure;
- be responsible for carrying out, or appointing an investigator to carry out, an investigation referred to the public body by the Ombudsman;
- be responsible for overseeing and coordinating an investigation where an investigator has been appointed;
- appoint a welfare manager to support the discloser and to protect him or her from any reprisals;
- advise the discloser of the progress of an investigation into the disclosed matter;
- establish and manage a confidential filing system;

- collate and publish statistics on disclosures made;
- take all necessary steps to ensure the identity of the discloser and the identity of the person who is the subject of the disclosure are kept confidential;
- notify the Ombudsman as required; and
- liaise with the Secretary of the Department.

2.4 Investigator

Where the Department has determined the matter is a public interest disclosure, or where the Ombudsman has referred a matter to the Department for investigation, the investigator will be responsible for carrying out an internal investigation into a disclosure. An investigator may be a person from within the organisation or a consultant engaged for that purpose.

2.5 Welfare manager

The welfare manager is responsible for looking after the general welfare of the discloser and will be appointed on a case-by-case basis.

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;
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure; and
- ensure the expectations of the discloser are realistic.

3. The Reporting System

3.1 To the Ombudsman

A disclosure about improper conduct or detrimental action by the Department or its employees, may be made directly to the Ombudsman:

The Ombudsman
99 Bathurst Street
Hobart Tasmania 7000

Internet: www.justice.tas.gov.au/ombudsman
Email: ombudsman@justice.tas.gov.au
Tel: 6233 6217
Toll Free: 1800 001 170

3.2 To contact persons within the Department

Disclosures of improper conduct or detrimental action by employees of the Department may be made to the following officers:

- The protected disclosure coordinator –
Deputy Secretary, Corporate Services
Department of Justice
brian.smith@justice.tas.gov.au
Tel 03 6233 2161

- Protected disclosure officer –
 Manager, Human Resources
 Department of Justice
nigel.mcculloch@justice.tas.gov.au
 Tel 03 6233 2303

Disclosures of improper conduct can also be made to the Secretary –

The Secretary
 Department of Justice
lisa.hutton@justice.tas.gov.au
 Tel 036233 2366

All correspondence, phone calls and emails from internal or external disclosers will be referred to the protected disclosure coordinator.

Where a person is contemplating making a disclosure and is concerned about approaching the protected disclosure coordinator or a protected 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.

3.3 *Alternate Contact Persons*

The following table sets out alternate persons to whom disclosures may be made if the matter is not about the Department of Justice or one of its officers.

Person/Body who is the subject of the disclosure	Person/Body to whom the disclosure must be made
Member, officer or employee of a public body (other than the police force)	That public body, or State Service Commissioner (if applicable) or The Ombudsman
Public body	The Ombudsman
Member of the police force	The Commissioner of Police
The Commissioner of Police	The Ombudsman
Member of Parliament (Legislative Council)	President of the Legislative Council
Member of Parliament (House of Assembly)	Speaker of the House of Assembly
Councillor	The Ombudsman

4. **Collating and publishing statistics**

The protected disclosure coordinator will establish a secure register to record the information required to be published in the annual report pursuant to section 86 of the Act, and to generally keep account of the status of public interest disclosures. The register will be confidential and will not record any information that may identify the discloser.

The register will contain the following information:

- the number and types of disclosures made to public bodies during the year;

- the number of disclosures referred to the Ombudsman for determination as to whether they are public interest disclosures;
- the number of disclosures determined by the public body to be public interest disclosures that it investigated during the year;
- the number and types of disclosed matters referred to the public body by the Ombudsman for investigation;
- the number and types of disclosures referred by the public body to the Ombudsman for investigation;
- the number and types of investigations taken over from the public body by the Ombudsman;
- the number and types of disclosed matters that the public body has declined to investigate;
- the number and types of disclosed matters that were substantiated upon investigation and the action taken on completion of the investigation; and
- any recommendations made by the Ombudsman that relate to the public body.

5. Receiving and assessing disclosures

The following questions are designed to assist in the assessment process when a complaint is lodged.

5.1 *Has the disclosure been made in accordance with Part 2 of the Act?*

Where a disclosure has been received by the protected disclosure officer or by the protected disclosure coordinator, he or she will assess whether the disclosure has been made in accordance with Part 2 of the Act and is, therefore, a protected disclosure.

Has the disclosure been made to the appropriate person?

For the disclosure to be responded to by the Department, it must concern an employee, member or officer of the Department. If the disclosure concerns an employee, officer or member of another public body, the person who has made the disclosure must be advised of the correct person or body to whom the disclosure should be directed. (See the table in 5.3).

Does the disclosure contain the essential elements of a protected disclosure?

To be a protected disclosure, a disclosure must satisfy the following criteria:

- did a public officer or contractor make the disclosure?
- does the disclosure relate to conduct of the Department or one of its officers acting in their official capacity?
- is the alleged conduct either improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure?
- does the person making a disclosure have reasonable grounds for believing the alleged conduct has occurred?

Where a disclosure is assessed to be a protected disclosure, it is referred to the protected disclosure coordinator. The protected disclosure coordinator will determine whether the disclosure is a public interest disclosure.

Where a disclosure is assessed not to be a protected disclosure, the matter does not need to be dealt with under the Act. The protected disclosure officer will decide how the matter should be responded to in consultation with the protected disclosure coordinator.

Does the disclosure relate to an alleged breach of the Code of Conduct under the State Service Act 2000?

The Department may refer a protected disclosure to the State Service Commissioner if it reasonably suspects that the disclosure relates to an alleged breach by a State Service officer or employee of the State Service Code of Conduct under the *State Service Act*.

The Department will notify the discloser of the referral within a reasonable time (unless the disclosure is anonymous) (s.29).

The Commissioner may deal with the disclosure under the *State Service Act*, or may refer it to the Ombudsman or public body as the case requires (s.28) to deal with it as a disclosure.

5.2 *Is the disclosure a public interest disclosure? s.33*

Where the protected disclosure officer or coordinator has received a disclosure that has been assessed to be a protected disclosure, the protected disclosure coordinator will determine whether the disclosure amounts to a public interest disclosure. This assessment will be made within 45 days of the receipt of the disclosure.

In reaching a conclusion as to whether a protected disclosure is a public interest disclosure, the protected disclosure coordinator will consider whether the disclosure **shows, or tends to show**, that the public officer 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.

Where the protected disclosure coordinator concludes that the disclosure amounts to a public interest disclosure (s.34), he or she will:

- notify the person who made the disclosure of that conclusion; and
- notify the Ombudsman; and
- proceed to investigate the disclosed matter -see 10 (Investigations) below.

Where the protected disclosure coordinator concludes that the disclosure is not a public interest disclosure (s.35), he or she will:

- notify the person who made the disclosure of that conclusion; and
- advise that person that he or she may request the public body to refer the disclosure to the Ombudsman for a formal determination as to whether the disclosure is a public interest disclosure, and that this request must be made within 28 days of the notification.

In either case, the protected disclosure coordinator will make the notification within 14 days of the conclusion being reached by the public body. Notification to the discloser is not necessary where the disclosure has been made anonymously.

5.3 *Referral of criminal conduct to the police*

It is possible that before or during an investigation facts are uncovered that reveal a potential criminal offence. If this happens, the Department will not commence, or will suspend, the investigation and will seek the advice of 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, the Department will request the Ombudsman to take over the investigation for the purpose of referring it to the Commissioner of Police.

An early referral may avoid interference with the evidentiary trail. Referral through the Ombudsman also will avoid any question of a breach of confidentiality under s.23 of the Act. Once a disclosure is referred to the Commissioner through the Ombudsman, the investigation under the *Public Interest Disclosures Act* process ceases.

In some instances, depending on the nature of the evidence and the seriousness of the alleged offence, the Ombudsman may decide, after consultation with the Commissioner of Police, that the disclosed matter will not be referred to the police for investigation. If this occurs, the Department will continue with its investigation under the Act.

6. Investigations

6.1 Introduction

The Department will investigate every disclosure referred to it for investigation by the Ombudsman under s.42 of the Act.

Unless the matters set out in 10.2 below apply, or the matter has been referred to the Commissioner of Police in accordance with 9.3 above, the Department will investigate every disclosure that it receives and determines is a public interest disclosure under s.33 of the Act.

The protected disclosure coordinator will appoint an investigator to carry out the investigation.

The objectives of an investigation will be:

- 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 the person who is the subject of the disclosure; and
- to make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.

6.2 *Matters that do not have to be investigated*

The Department may, in certain circumstances decide not to investigate a disclosed matter. These are –

- if in its opinion the disclosure is trivial, vexatious, misconceived or lacking in substance; or
- if 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

- if 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
- if 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.

Where the protected disclosure coordinator decides not to investigate a disclosed matter he or she will, within 14 days:

- notify the person who made the disclosure of that decision, and the reasons for the decision; and
- advise the person that he or she may request the public body to refer the disclosure to the Ombudsman for a determination as to whether the disclosed matter is to be investigated and this request must be made within 28 days of the notification.

If the person does request a referral to the Ombudsman, the Department will immediately refer the matter to the Ombudsman.

6.3 Terms of reference

Before commencing an investigation, the protected disclosure coordinator will draw up terms of reference and obtain authorisation for those terms by the Secretary. The terms of reference will set a date by which the investigation report is to be received, and will describe the resources available to the investigator to complete the investigation within the time set. The protected disclosure coordinator may approve, if reasonable, an extension of time requested by the investigator. The terms of reference will require the investigator to make regular reports to the protected disclosure coordinator who, in turn, is to keep the Ombudsman informed of general progress.

6.4 Investigation plan

The investigator will prepare an investigation plan for approval by the protected disclosure coordinator. The plan will list the issues to be substantiated and describe the avenue of inquiry. It will address the following issues:

- What is being alleged?
- What are the possible findings or offences?
- What are the facts in issue?
- How is the inquiry to be conducted?
- What resources are required?

At the commencement of the investigation, the discloser should be:

- Notified by the investigator that he or she has been appointed to conduct the investigation;
- Asked to clarify any matters; and
- Asked to provide any additional material he or she might have.

The investigator will be sensitive to the discloser's possible fear of reprisals and will be aware of the statutory protections provided to the discloser.

6.5 Natural justice

The principles of natural justice will be followed in any investigation of a public interest disclosure. The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process.

The Department will have regard to the following principles in ensuring procedural fairness:

- the person who is the subject of the disclosure is entitled to know the allegations made against him or her and will be given the right to respond. This does not mean the person must be advised of the allegation as soon as the disclosure is received or the investigation has commenced;
- if the investigator is contemplating making a report adverse to the interests of any person, that person will be given the opportunity to put forward further material that may influence the outcome of the report and that person's defence should be fairly set out in the report;
- all relevant parties to a matter will be heard and all relevant submissions will be considered;
- a decision will not be made until all reasonable inquiries have been completed;
- the investigator or any decision maker will not have a personal or direct interest in the matter being investigated;
- all proceedings will be carried out fairly and without bias. Care will be taken to exclude perceived bias from the process; and
- the investigator will be impartial in assessing the credibility of the disclosers and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report.

6.6 Conduct of the investigation

The investigator will make notes of all discussions and phone calls, and all interviews with witnesses will be taped. All information gathered in an investigation will be stored securely either in confidential storage in records together with any information held electronically on disc or CD. Interviews will be conducted in private and the investigator will 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 will warn the discloser and his or her welfare manager of this probability.

It is in the discretion of the investigator to allow any witness to have legal or other representation or support during an interview. If a witness has a special need for legal representation or support, permission may be granted. The requirement for legal representation will be considered on a case by case basis.

6.7 Referral of an investigation to the Ombudsman

The protected disclosure coordinator will make a decision regarding the referral of an investigation to the Ombudsman where, on the advice of the investigator:

- The investigation is being obstructed by, for example, the non-cooperation of key witnesses.

If the investigation has revealed conduct that may constitute a criminal offence, the Ombudsman will be consulted as to whether the investigation should be referred to the Tasmania Police.

6.8 Reporting requirements

The protected disclosure coordinator will ensure the discloser is kept regularly informed concerning the handling of a protected disclosure and an investigation.

The protected disclosure coordinator will report to the Ombudsman about the progress of an investigation.

Where the Ombudsman or the discloser requests information about the progress of an investigation, that information will be provided within 28 days of the date of the request. However, if the giving of the information would endanger the safety of another person or may prejudice the conduct of the investigation.

7. Action taken after an investigation

7.1 Investigator's final report

At the conclusion of the investigation, the investigator will submit a written report of his or her findings to the protected disclosure coordinator. The report will contain:

- the allegation/s;
- an account of all relevant information received and, if the investigator has rejected evidence as being unreliable, the reasons for this opinion being formed;
- the conclusions reached and the basis for them; and
- any recommendations arising from the conclusions.

Where the investigator has found that the conduct disclosed by the discloser has occurred, recommendations made by the investigator will include:

- the steps that need to be taken by the Department to prevent the conduct from continuing or occurring in the future; and
- any action that should be taken by the Department to remedy any harm or loss arising from the conduct.

The steps to be taken may include breach of the code of conduct proceedings if the person is a state servant or 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, such matters should be referred to Tasmania Police.

The report will be accompanied by:

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

Where the investigator's report includes an adverse comment against any person, that person will be given the opportunity to respond and his or her defence will be fairly included in the report.

The report is not to disclose particulars likely to lead to the identification of the discloser.

7.2 Action to be taken ss.75 and 76

If the protected disclosure coordinator is satisfied that the investigation has found that the disclosed conduct has occurred, he or she will recommend to the Secretary the action that must be taken to prevent the conduct from continuing or occurring in the future. The protected disclosure coordinator may also recommend that action be taken to remedy any harm or loss arising from the conduct.

The protected disclosure coordinator will provide a written report to the Minister, the Ombudsman and the discloser setting out the findings of the investigation and any remedial steps taken.

Where the investigation concludes that the disclosed conduct did not occur, the protected disclosure coordinator will report these findings to the Ombudsman and to the discloser.

8. Managing the welfare of the discloser

8.1 Commitment to protecting disclosers

The Department is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of protected disclosures. The protected disclosure coordinator is responsible for ensuring disclosers are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

The protected disclosure coordinator will appoint a welfare manager to all persons who have made a protected disclosure. The welfare manager will:

- examine the immediate welfare and protection needs of a person who has made a disclosure and, where the discloser is an employee, seek to foster a supportive work environment;
- advise the discloser of the legislative and administrative protections available to him or her;
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure;
- keep an accurate record of all aspects of the case management of the discloser including all contact and follow-up action; and
- ensure the expectations of the discloser are realistic.

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 (\$24,000) 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.

Detrimental action includes:

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

8.2 Keeping the discloser informed

The protected disclosure coordinator and the discloser will determine a mechanism to ensure the discloser is kept informed of the matter. The discloser will be informed of the objectives of an investigation, the findings of an investigation, and the steps taken by the Department to address any improper conduct that has been found to have occurred. The discloser will be given reasons for decisions made by the Department in relation to a protected disclosure. All communication with the discloser will be in plain English.

8.3 Occurrence of detrimental action

If a discloser reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action taken in reprisal for the making of the disclosure, the welfare manager will:

- record details of the incident;
- advise the discloser of his or her rights under the Act; and
- advise the protected disclosure coordinator or Secretary of the detrimental action.

The taking of detrimental action in reprisal for the making of a disclosure can be an offence against the Act as well as grounds for making a further disclosure. Where such detrimental action is reported, the protected disclosure coordinator will assess the report as a new disclosure under the Act. Where the protected disclosure coordinator is satisfied that the disclosure is a public interest disclosure, it must be further investigated by the Department.

8.4 Disclosers implicated in improper conduct

Where a person who makes a disclosure is implicated in misconduct, the Department will handle the disclosure and protect the discloser from reprisals in accordance with the Act, the Ombudsman's guidelines and these procedures. The Department 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 breach of the code of conduct action.

The Secretary will make the final decision on the advice of the protected disclosure coordinator as to whether breach of the code of conduct proceedings will be taken against a discloser. Where action relates to conduct that is the subject of the person's disclosure, any breach of the code of conduct action will only be taken after the disclosed matter has been appropriately dealt with.

In all cases where breach of the code of conduct action is being contemplated, the Secretary must be satisfied that it has been clearly demonstrated that:

- the intention to proceed with breach of the code of conduct action is not related to an underlying factor by 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 breach of the code of conduct action.

The protected disclosure coordinator will document the process including recording the reasons why the Secretary has determined further action is being taken, and the reasons why the action is not in retribution for the making of the disclosure. The protected disclosure coordinator will clearly advise the discloser of the proposed action to be taken, and of any mitigating factors that have been taken into account.

9. Management of the person against whom a disclosure has been made

The Department recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures. The Department 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 investigations do not substantiate disclosures, 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 protected disclosure coordinator will ensure the person who is the subject of any disclosure investigated by or on behalf of a public body is:

- informed as to the substance of the allegations;
- given the opportunity to answer the allegations before a final decision is made;
- informed as to the substance of any adverse comment that may be included in any report arising from the investigation; and has
- his or her defence set out fairly in any report.

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 the fact of the investigation, the protected disclosure coordinator will formally advise the person who is the subject of the disclosure of the outcome of the investigation.

The Department 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 Secretary will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

10. Criminal offences

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

1. It is an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made. The Act provides a maximum penalty of a fine of 240 penalty units (\$24,000) or two years imprisonment or both (s.19).
2. It is an offence for a person to divulge information obtained as a result of the handling or investigation of a protected disclosure without legislative authority. The Act provides a maximum penalty of 60 penalty units (\$6,000) or six months imprisonment or both (s.23).
3. It is an offence for a person to obstruct the Ombudsman in performing his responsibilities under the Act. The Act provides a maximum penalty of 240 penalty units (\$24,000) or two years imprisonment or both (s.54).
4. It is an offence for a person to knowingly provide false information under the Act with the intention that it be acted on as a disclosed matter. The Act provides a maximum penalty of 240 penalty units (\$24,000) or two years imprisonment or both (s.87).

11. Review

These procedures will be reviewed on an annual basis to ensure they meet the objectives of the Act and accord with the Ombudsman's guidelines.

Annexure A

Public Interest Disclosures Act 2002



PUBLIC INTEREST DISCLOSURES LODGEMENT FORM

To¹:

Deputy Secretary **OR**
Manager, Human Resources
Department of Justice
Trafalgar Building, 110 Collins St

OR

The Ombudsman
99 Bathurst St Hobart 7000
GPO Box 960 Hobart 7001

1. PERSONAL DETAILS

Family Name: _____

Given Name: _____ Title (please circle): Mr, Ms, Mrs, Miss

Address: _____

_____ Postcode _____

Home Telephone No: _____ Work Telephone No: _____

Mobile: _____ Email address: _____

2. DISCLOSURE DETAILS

Name of the Public Body the Disclosure Relates To: _____

Are you a public officer?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes, what is your position title?	
Do you work for a public body?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes, which public body?	
Are you or have you ever been a contractor with a public body	<input type="checkbox"/> Yes <input type="checkbox"/> No

¹ A disclosure may be made to either the relevant public body or the Ombudsman except a disclosure about:

- a police officer must be made to the Commissioner of Police;
- a councillor or the Commissioner of Police must be made to the Ombudsman;
- a member of parliament must be made to the Speaker or President as appropriate.

If Yes, which public body and provide details and dates of the contract	
---	--

Does the disclosure relate to one or more individuals?	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	---

If yes, please provide names and positions held by person(s) in the public body	
---	--

Please tick box(es) on the area relevant to your disclosure:

- | | |
|---|---|
| <input type="checkbox"/> Improper conduct | <input type="checkbox"/> Substantial mismanagement of public resources |
| <input type="checkbox"/> Corrupt conduct | <input type="checkbox"/> A substantial risk to public health or public safety |
| <input type="checkbox"/> Detrimental action in response to the making of a disclosure | <input type="checkbox"/> A substantial risk to the environment |

When did the alleged events occur? _____

Summary of disclosure: _____

(Attach additional pages if necessary)

Description of any documentation provided or names of witnesses: _____

Have you reported this information to any other person or agency?	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	---

If yes, please provide details	
--------------------------------	--

**YOU SHOULD READ THE FOLLOWING
INFORMATION AND SIGN AT THE END OF THIS FORM**

3. ACKNOWLEDGMENT

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

I am aware that:

1. I will commit an offence if I knowingly provide false information intending that it be acted on as a disclosed matter.

Penalty: \$24,000 or imprisonment for two (2) years or both

2. I will not be protected by the *Public Interest Disclosures Act 2002* if I subsequently disclose this information to any person other than in accordance with the Act.

Signed: _____

Date: _____

For Office Use Only:

Register Number: _____

**Annexure B
Public Interest Disclosures Act 2002**



PART ONE

ASSESSMENT FORM

Register # _____

**RECEIVING THE DISCLOSURE
ASSESSMENT OF WHETHER INFORMATION IS A PROTECTED DISCLOSURE**

	Tick Box	Notes
Did a public officer or contractor with the public body make the disclosure?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does the disclosure relate to conduct of a public body or public officer acting in their official capacity?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is the alleged conduct either improper conduct or detrimental action?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does the person making a disclosure have reasonable grounds for believing the alleged conduct has occurred?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

If any of the "No" boxes have been ticked then the disclosure is unlikely to be one that the Public Interest Disclosures Act applies to. The Protected Disclosure Officer should ensure a proper record is made of the reasons for the "No" response and should provide his or her response to the discloser.

Is the disclosure a protected disclosure under Part 2 of the Act?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If no, explain why
---	---	--------------------

If Yes, it is a protected disclosure. Proceed to Part 2 to determine if the disclosure is a public interest disclosure. If No, it is not a disclosure under the Act. No further action.

Date disclosure received: _____

Date decision made: _____

Signed: _____ :

Protected Disclosure Officer

PART TWO

Register # _____

ASSESSMENT FORM

DETERMINATION OF DISCLOSURE AS A PUBLIC INTEREST DISCLOSURE

<p>Is the Department of Justice satisfied that the disclosure shows or tends to show that the public officer to whom the disclosure relates –</p> <p>a) has engaged, is engaging or proposes to engage in improper conduct; or</p> <p>b) has taken, is taking or proposes to take detrimental action</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	If no, explain why
---	---	--------------------

Note: The public body must make the determination within 45 days of receipt of the disclosure.

Date determination made:

If the disclosure is a public interest disclosure <i>(Notification must be made within 14 days)</i>	Date
Discloser notified of decision.	
Ombudsman notified of decision	
Refer to Part 3 Assessment for Investigation	

If the disclosure is NOT a public interest disclosure <i>(Notification must be made within 14 days)</i>	Date
Discloser notified of decision and advised may request referral to the Ombudsman for further determination:	
Referred to Ombudsman <i>(if discloser so requests within 28 days of notification)</i>	

Signed: _____

Protected Disclosure Officer

Date: _____

PART THREE

Register #

ASSESSMENT FORM

ASSESSMENT OF WHETHER THE DISCLOSURE SHOULD BE INVESTIGATED

Before commencing the investigation	Tick Box	Notes
Is the matter trivial, vexatious, misconceived or lacking in substance ?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Has the disclosure already been adequately dealt with by another body ? Eg. Ombudsman, court or another public body.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Have proceedings commenced in a commission, court or tribunal that has powers to enforce remedies similar to those under the PID Act 2002 ?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Has the discloser known about the disclosed matter for more than 12 months, and has no satisfactory explanation for the delay ?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

See s.64, *Public Interest Disclosures Act 2002*

If any of the "Yes" boxes have been ticked then the disclosure is unlikely to be one that the Public Interest Disclosures Act requires be investigated. The Protected Disclosure Officer should ensure a proper record is made of the reasons for the "Yes" response and should provide his or her response to the discloser.

Date determination made: _____

If the PID is NOT to be Investigated <i>(Notification must be made within 14 days)</i>	Date
Discloser notified of decision and advised may request referral to the Ombudsman for further determination:	
Referred to Ombudsman <i>(if discloser so requests within 28 days of notification)</i>	

Signed: _____

Protected Disclosure Officer

PART FOUR***CHECKLIST FOR THE PROTECTED DISCLOSURE COORDINATOR***

Investigating Officer's Name: _____

Normal Position of Investigating Officer: _____

Address: _____

Contact Telephone No. _____

Email address: _____

Date Investigation Commenced: _____

	Tick Box
Has the documentation used in the assessment of the disclosure been reviewed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has an investigation plan developed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have terms of reference been developed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Is there a list of people to be interviewed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Confirm that confidentiality will be maintained for: - of the informant's identity? - of the information disclosed? - of the identity of the subject(s) of the disclosure?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Were natural justice rules followed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Were progress report(s) requested by and provided to the Ombudsman or discloser?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Was a final written report prepared?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Annexure C

Public Interest Disclosures Act 2002



MODEL REGISTER

The register below records information about disclosures made to the Department of Justice that have been determined to be protected disclosures.

	File A
Disclosure received (date)	
Type of Disclosure	
Is the disclosure a public interest disclosure Yes/No (date)	
Discloser and Ombudsman notified of determination (date)	
Action taken 1. Investigation; or 2. Declined to investigate s65	
Result of Investigation: 1. Referred to Ombudsman s68 (date) ; or 2. Taken over by Ombudsman s69 (date) ; or 3. Finalised - findings of the public body s75	
Action taken on findings s75	
Report to Ombudsman/ Minister/Council s76 (date)	
Report to discloser s77 (date)	
Implementation of recommendations from Ombudsman ss56, 57, 62	

The register below records information about investigations referred to the Department of Justice by the Ombudsman for investigation.

	<i>File A</i>
Disclosure received from Ombudsman (date)	
Type of Disclosure	
Result of Investigation: 1. Referred to Ombudsman s68 (date); or 2. Taken over by Ombudsman s69 (date); or 3. Finalised - findings of the public body s75	
Action taken on findings s75	
Report to Ombudsman/ Minister/Council s76 (date)	
Report to discloser s77 (date)	
Implementation of recommendations from Ombudsman ss56, 57, 62	