



Ombudsman Tasmania

*Public Interest Disclosures Act 2002*

# **Whistleblower / Public Interest Disclosure Procedures**

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## 1. Statement of Support

TasWater values transparency and accountability in how we carry out our activities, and we encourage and support disclosures that reveal improper conduct.

We are subject to the public interest disclosures regime established under the *Public Interest Disclosures Act 2002* (Tas) (**PID Act**), as well as similar regimes under the *Corporations Act 2001* (Cth) (**Corps Act**) and the *Taxation Administration Act 1953* (Cth) (**TAA**) (the **Acts**) Each of these regimes enable disclosures of improper conduct to be made, assessed, investigated and resolved, and each afford protections to the person making such a disclosure.

TasWater has a Whistleblower Policy that complies with the requirements of the Corps Act and TAA. To the extent of any inconsistency with these Procedures, the Whistleblower Policy prevails. Relevant references to the Corps Act and TAA regime have also been included in this procedure to assist in further understanding of the application of the dual regimes to TasWater.

For the purposes of these procedures, disclosures made under any of the relevant Acts will be referred to as “disclosures”.

Our aim is to ensure that we:

- promote behaviours that support our vision to be a trusted and respected provider of essential services that is making a positive difference to Tasmania;
- deter wrongdoing in accordance with our Risk Management and Corporate Governance Frameworks;
- to encourage and facilitate disclosures of improper conduct by public officers;
- ensure that individuals who disclose suspected wrongdoing can do so safely, securely and with confidence that they will be protected and supported;
- ensure that disclosures are dealt with appropriately and on a timely basis;
- ensure that all parties involved with those disclosures are treated with procedural fairness (natural justice);
- provide transparency around our procedures for receiving, handling and investigating disclosures made in accordance with the PID Act and Corps Act;
- support TasWater’s values and behaviours, Code of Conduct and other relevant policies and procedures;
- meet our legal and regulatory obligations; and
- align with the ASX Corporate Governance Principles and Recommendations (where possible) and other relevant standards.

## 2. Purpose of these procedures

These procedures set out how:

- current or former employees, directors, contractors and a spouse or relative of one of those people can make disclosures about improper conduct or reprisal action;
- disclosures are assessed;

- public interest disclosures are investigated; and
- TasWater protects disclosers and affords procedural fairness<sup>1</sup> to those being investigated.

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. Other relevant policies, standards and procedures are as follows:

- TASPOL26 Whistleblower Policy
- TASCDS03 Code of Conduct
- TASPOL15 Fraud and Corruption Prevention Policy
- TASPOL25 Conflicts of Interest Standard
- TASPOL16 Procurement Standard
- THRPOL01 Workplace Behaviour Policy.

The procedures have been prepared in accordance with the Ombudsman's *Guideline Two: Procedures for Public Bodies* and ASIC's *Regulatory Guide 270 - Whistleblower Policies and Information Sheet 238*. These guidelines and information can be accessed via:

- on the Ombudsman's website at: [www.ombudsman.tas.gov.au](http://www.ombudsman.tas.gov.au); and
- ASIC's website at: <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/>.

### 3. How the Acts work

#### **PID Act**

Briefly, the PID Act works in this way:

- it gives certain people – *public officers* and *contractors* – the right to make disclosures about *improper conduct* or *detrimental action* to certain integrity agencies, other persons and bodies (Part 2 of the PID Act, particularly section 6);<sup>2</sup>
- it provides certain statutory protections for *protected disclosures*, even if the discloser does not reference the PID Act (Part 3);

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<sup>1</sup> Referred to as natural justice in the PID Act.

<sup>2</sup> Members of the public may also make disclosures in limited circumstances, when the Ombudsman or Integrity Commission deems this in the public interest under section 7A PID Act.

- it dictates how the recipient of the disclosure is to deal with it (Parts 4 to 8 of the PID Act);
- 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 PID Act;
- where the disclosure is handled by the Ombudsman or a public body, it requires a determination as to whether the protected disclosure is a *public interest disclosure* (sections 30 and 33 PID Act);
- subject to exceptions, it requires investigation by the Ombudsman or public body of any public interest disclosure (sections 39 and 63 PID Act);
- 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 (sections 39A and 77A PID Act);
- it controls the manner in which a disclosure is investigated, and provides investigative powers; and
- 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 (section 75 PID Act).

A flow chart, which depicts the way in which a public body should deal with a disclosure, is [Attachment 4](#) to this document.

### **Corps Act & TAA**

The relevant regimes under the Corps Act and the TAA work in very similar ways to that established under the PID Act, with the common objectives of:

- facilitating the making of disclosures in relation to improper conduct;
- investigation and resolution of disclosures made;
- protection and support for the discloser; and
- the appropriate treatment of the person who is the subject of the disclosure during an investigation (i.e. ensuring natural justice).

Whistleblowers under the Corps Act is broader than under the PID Act and includes:

- current or former employee;
- officer (Director or company secretary);
- person who has supplied goods or services to TasWater, including as a volunteer;
- spouse, relative or dependant of one of the people referred to above, or a dependant of such an individual's spouse.

### ***Determining which Act applies to the disclosure***

A person making a disclosure will rarely specify whether the disclosure is intended to be made under the PID Act, the Corps Act, or the TAA. From a practical perspective, there are only a few key differences between the regimes established under the State and Federal legislation – for example, who may make a disclosure, and to whom it may be made.

These procedures detail how disclosures can be made, and how they will be managed, regardless of which Act they might technically fall under. Where a disclosure is made under the Corps Act or the TAA, and a different approach is required than set out in the PID Act, this is detailed in the relevant section of the procedures.

## **4. Roles and responsibilities**

This part explains the roles and responsibilities of individuals within TasWater under the Acts.

### **4.1. Officers, employees and members of the public**

TasWater employees and officers, including directors (employees) and members of the public (if the improper conduct or detrimental action is in the public interest) are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

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

### **4.2. Principal Officer**

The Principal Officer has primary responsibility for ensuring that the provisions of the Acts are implemented by TasWater. Section 62A of the PID 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 PID Act;
- ensuring the protection of witnesses;
- ensuring the application of procedural fairness in TasWater's procedures;
- ensuring the promotion of the importance of public interest disclosures and general education about the Whistleblower Policy and Procedure under the Acts to all employees, and ensuring easy access to information about the Whistleblower Policy and Procedure, 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 all of these functions and powers to a Public Interest Disclosure Officer.



### 4.3. Public Interest Disclosure Officer (Whistleblower Investigation Officer)

A Public Interest Disclosure Officer is appointed by the Principal Officer under section 62A(2) of the PID Act. They hold a delegation from the Principal Officer which enables them to:

- act as a contact point for general advice about the operation of the Acts 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 from a public officer made orally or in writing;
- record 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 PID Act (that is, “a protected disclosure”);
- impartially assessing under section 33 of the PID 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; and
- administrative functions to support the role under the Acts, as required.

The above principles and functions apply equally to the role of the Public Interest Disclosure Officer in assessing disclosures under the Corps Act and TAA.

See How to Make a Disclosure factsheet and Part 7 below for a list of TasWater’s Public Interest Disclosure officers.

### 4.4. Investigator

Where it is determined that a disclosure is a disclosure that qualifies for protection under the Acts, or where the Ombudsman has referred a public interest disclosure to TasWater for investigation, the Principal Officer will appoint an investigator to investigate the matter in accordance with the Acts. An investigator may be a person from within TasWater, may be the Public Interest Disclosure Officer (Whistleblower Protection Officer) or a consultant engaged for that purpose.

### 4.5. Welfare Manager (Whistleblower Protection Officer)

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 develop a support plan for them;

- advise the discloser of the legislative and administrative protections available to them;<sup>3</sup>
- 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 employed by TasWater or a consultant engaged for that purpose. They must not be responsible for assessing or investigating the disclosure.

## 4.6. Roles under the Corps Act and TAA

The terminology is slightly different in the Corps Act, but the Principal Officer and Public Interest Disclosure Officers are both authorised by TasWater to receive disclosures under the Corps Act.

In addition, directors, auditors, an actuary, or an individual's lawyer can receive disclosures under the Corps Act. They must ensure they comply with the requirements of the Corps Act.

## 5. Who can make a disclosure?

### 5.1 Current or former employees and officers

Any current or former employees or officers can make a disclosure to TasWater under the Acts. This includes full or part time, fixed term, temporary or casual employees of TasWater.

#### 5.1. Contractors and suppliers

Under the PID Act current or past contractors and sub-contractors can make disclosures about public bodies, not public officers. Disclosures about public bodies must be made to the Ombudsman or the Integrity Commission, not directly to TasWater. Public Interest Disclosure officers should refer any contractors wanting to make a disclosure to either of these bodies.

Under the Corps Act a person or an employee of a person or entity who has supplied goods or services to TasWater, which includes paid, unpaid and volunteers, can make a disclosure.

#### 5.2. 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, Integrity

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<sup>3</sup> See [Protection](#) below for details of the legislative protections.

Commission and/or ASIC (where required to be referred) determines 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.

### 5.3. Relative or dependant of officers, employees, contractors or suppliers

Any relative or dependant of a current or former TasWater officer or employee, contractors or suppliers, and their employees may also make a disclosure. The Ombudsman, Integrity Commission and/or ASIC (where required to be referred) will determine whether a relative or dependant are protected under the Acts.

Under the Corps Act a relative or dependent of a current or former employees, contractors or suppliers, and their employees can make a whistleblower report to the following parties:

- TasWater's auditor or actuary
- A person specifically authorised by TasWater to receive whistleblower disclosures (Director, officer, senior manager, auditor)
- TasWater's Speakup Integrity hotline
- Australian Securities and Investments Commission (ASIC)
- Australian Prudential Regulation Authority (APRA)
- The employee's lawyer.

### 5.4. Anonymous persons

An anonymous disclosure may be accepted if the person receiving it is satisfied that the disclosure is being made by an eligible person as set out in this Procedure.

If the person receiving it is satisfied that an anonymous disclosure is from a contractor, the disclosure should be referred to the Ombudsman and it can be investigated in accordance with the Corps Act.

## 6. What can a disclosure be made about?

A disclosure can be made about one or more employees or officers of TasWater or TasWater itself. If a disclosure relates to TasWater as a whole or the Principal Officer of TasWater (CEO), it should be referred to the Ombudsman or Integrity Commission as internal investigation would not be appropriate.

### 6.1. Improper conduct

Disclosures about TasWater employees or officers need to relate to improper conduct by that employee or officer, in the past, present or future (proposed action).

Section 3 of the PID Act defines improper conduct as:

- 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 the PID Act –

that is serious or significant as determined in accordance with guidelines issued by the Ombudsman.<sup>4</sup> Examples of improper conduct include:

- misuse or unauthorised use of property belonging to TasWater, including credit cards or fuel cards; and/or
- disclosing information to a potential tender that provides an unfair advantage compared to others in the marketplace.

## 6.2. Corrupt conduct / Misconduct

Corrupt conduct is further defined in section 3 of the PID Act as:

- 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 their 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 above.

Misconduct is defined in section 1317AA of the Corps Act as:

- a. fraud, negligence, default, breach of trust or duty;
- b. an improper state of affairs, or circumstances (unlawful conduct, systemic issues, unethical business practices or behaviour);
- c. a breach of the law;

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<sup>4</sup> See Public Interest Disclosure Guideline One: Serious or Significant Improper Conduct, available at [www.ombudsman.tas.gov.au](http://www.ombudsman.tas.gov.au)

d. danger to the public, or the financial system.

Examples of corrupt conduct or misconduct include:

- a TasWater officer takes a bribe in exchange for the discharge of their duty;
- a TasWater manager favours unmeritorious applications for jobs or permits by friends and relatives; and

### 6.3. Detrimental action

Detrimental action, or reprisal action, against a discloser can be a form of improper conduct. It is defined in section 3 of the PID Act, as including:

- 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.

Examples of detrimental action include:

- 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, their family or friends; and
- discrimination against the discloser or their family and associates in applications for jobs, permits or tenders.

## 7. Where to make a disclosure

For the protections in the PID Act and/or Corps Act to apply, a disclosure needs to be made to the right person or body. The following table sets this out, in accordance with section 7 of the PID Act and section 1317AAC of the Corps Act:

Public Officer to which the disclosure relates	Where the disclosure may be made
An officer or employee of TasWater	<p><u>Internally:</u></p> <ul style="list-style-type: none"><li>- Chief Executive Officer (Principal Officer)</li><li>- Public Interest Disclosure Officer (PID Officer)</li><li>- Confidential Whistleblower hotline (Speakup Integrity)</li></ul> <p><u>Externally:</u></p> <ul style="list-style-type: none"><li>- The Integrity Commission</li><li>- The Ombudsman</li></ul>

Public Officer to which the disclosure relates	Where the disclosure may be made
	<p>In addition to the above you may also make a disclosure under the Corps Act or TAA to:</p> <ul style="list-style-type: none"> <li>- A TasWater Officer or Senior Manager</li> <li>- A TasWater Board Director</li> <li>- An auditor <u>conducting an audit of TasWater</u></li> </ul>
<p>The Principal Officer (CEO) or Public Interest Disclosure (PID) officer/s of TasWater<sup>5</sup></p>	<p><u>Externally:</u></p> <ul style="list-style-type: none"> <li>- The Integrity Commission</li> <li>- The Ombudsman</li> </ul> <p>For disclosures under the Corps Act or TAA to:</p> <ul style="list-style-type: none"> <li>- The Australian Securities &amp; Investments Commission (ASIC)</li> <li>- The Australian Prudential Regulation Authority (APRA)</li> <li>- A Legal Practitioner.</li> </ul>
<p>If the disclosure is about TasWater, as opposed to an individual of TasWater</p>	<p><u>Externally:</u></p> <ul style="list-style-type: none"> <li>- The Ombudsman</li> <li>- The Integrity Commission</li> </ul> <p>For disclosures under the Corps Act or TAA to:</p> <ul style="list-style-type: none"> <li>- The Australian Securities &amp; Investments Commission (ASIC)</li> <li>- The Australian Prudential Regulation Authority (APRA)</li> <li>- A Legal Practitioner</li> </ul>

## 8. How to make a disclosure

Public officers can make a disclosure about other public officers of TasWater orally or in writing to the following officers:

- the Chief Executive Officer (Principal Officer);
- a Public Interest Disclosure Officer individually; or
- TasWater’s Confidential Whistleblower Hotline (Speakup Integrity) (details below).

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<sup>5</sup> As an internal investigation of the disclosure would be inappropriate due to conflict of interest

## 8.1. Public Interest Disclosure Officers

The following staff are public interest disclosure officers and can receive disclosures:

- General Counsel and Company Secretary: Kate Crawford – 0437 559 278
- Deputy General Counsel: Stephanie Collins – 0457 065 013

E-mail: [whistleblower@taswater.com.au](mailto:whistleblower@taswater.com.au)

Alternatively, you can make a disclosure for assessment by the public interest disclosure officers through the Confidential Whistleblower Hotline (details below).

If someone wants to make a disclosure about the Principal Officer or TasWater, they should be referred to the Ombudsman or the Integrity Commission.

## 8.2. Written or oral disclosure

It is preferable that a disclosure be made in writing. It should be addressed to the public body, marked for the attention of the Principal Officer or PID Officer. A disclosure can be sent, delivered or left at:

- TasWater – Attention Principal Officer (or PID Officer), GPO Box 1393, Hobart TAS 7001 or via email to [whistleblower@taswater.com.au](mailto:whistleblower@taswater.com.au); or
- TasWater’s Confidential Whistleblower Hotline (Speakup Integrity):

- Scan the QR Code:



- Email: [TasWaterspeakup@coreintegrity.com.au](mailto:TasWaterspeakup@coreintegrity.com.au)
- Online disclosure at: <https://speakup.coreintegrity.com.au/taswater>
- Post: TasWater c/o Core Integrity, PO Box 730, Milsons Point NSW 1565

A public officer can also make an oral disclosure over the phone or in person to a PID Officer. An oral disclosure should be made in private. If a public officer is concerned about making a disclosure in person in the workplace, they can call or email the PID Officer to request a meeting in a location away from the workplace.

An oral disclosure can be made by calling the Principal Officer, the PID Officer or the Confidential Whistleblower Hotline on 1800 758 004.

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

### 8.3. Disclosure to the Ombudsman

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

Ombudsman Tasmania  
GPO Box 960  
HOBART TAS 7001

Level 6, 86 Collins Street  
HOBART TAS 7000

Website: [www.ombudsman.tas.gov.au](http://www.ombudsman.tas.gov.au)  
Email: [ombudsman@ombudsman.tas.gov.au](mailto:ombudsman@ombudsman.tas.gov.au)  
Phone: 1800 001 170

### 8.4. 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:

Integrity Commission  
GPO Box 822  
HOBART TAS 7001

Level 2  
Surrey House  
199 Macquarie Street  
HOBART TAS 7000

Website: [www.integrity.tas.gov.au](http://www.integrity.tas.gov.au)  
Email: [contact@integrity.tas.gov.au](mailto:contact@integrity.tas.gov.au)  
Phone: 1300 720 289

### 8.5. Disclosure under the Corps Act and TAA

In addition to the above, disclosures that fall under the Corps Act or TAA can be disclosed to ASIC as follows:

Australian Securities and Investments Commission  
GPO BOX 9827  
Melbourne VIC 3001  
Phone: 1300 300 630 (within Australia) =61 3 5177 5407 (outside Australia)

Online: <https://asic.gov.au/about-asic/contact-us/reporting-misconduct-to-asic/make-a-report-of-misconduct-to-asic/>

Online enquiry: <https://www.edge.asic.gov.au/008/inquiryV001?get/landingPage/t=7c41c25096652166d5306edfe853eb9f1c8d44e7>



## 9. Confidentiality

TasWater 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 in reprisal for making the disclosure.

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

Section 23 of the PID Act and section 1317AAE of the Corps Act require any person who receives information in the course of or as a result of a protected disclosure or qualifying disclosure, or its investigation, not to disclose that information except in certain limited circumstances. Disclosure of information in breach of the PID Act constitutes an offence that is punishable by a maximum fine of 60 penalty units or six months imprisonment, or both.

Fines and penalties for breaches of whistleblower laws under the Corps Act include criminal and civil penalties for breaching anonymity.

Criminal penalties: for individuals is 60 penalty units, or six months imprisonment, or both and for companies the penalty is equivalent to 600 penalty units.

Civil penalties: for individuals is 5,000 penalty units or three times the benefit derived, or detriment avoided by the disclosure and for companies 50,000 penalty units, or three times the benefit derived, or detriment avoided, or 10 per cent of the entity's annual turnover up to a maximum of 2.5M penalty units.

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 Acts;
- when making a report or recommendation under the Acts;
- when publishing statistics in the annual report of a public body; and
- in proceedings for certain offences under the Acts.

The Acts, however, prohibit the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the discloser. The PID 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 PID 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. Consider obtaining permission in writing from the discloser prior to identifying them.

The TasWater will ensure that all relevant files, whether paper or electronic, are kept securely and can only be accessed by the Principal Officer, PID 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, will also be stored securely with the files. Electronic files should have access restricted to the relevant officers.

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

Section 90 of the PID Act 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 who is the subject of the disclosure.

## 10. Assessing the disclosure

The Acts require the taking of two distinct steps when assessing a disclosure. It first needs to be determined whether or not it qualifies as a protected disclosure, and thus attracts the protections contained in the Acts. In order to do so it must satisfy the following prerequisites:

Step 1:

- has it been made to the correct person or body;
- has it been made to an eligible recipient (Corps Act); and
- if it has been correctly made to TasWater,
  - has it been made by an eligible person as set out in Part 5 of this procedure (or, if the disclosure is anonymous, is the person receiving it satisfied that it is being made by an eligible person);
  - is it about the conduct of an employee or officer of TasWater or is about TasWater itself;
  - does the discloser believe the officer or employee of TasWater, or TasWater itself has, is or is proposing to engage in improper conduct;
  - does the discloser have reasonable grounds to suspect misconduct, improper state of affairs, breach of financial sector law, or Commonwealth offences but they do not need to prove the allegations (Corps Act);

- is it about conduct that could objectively fall within the definition of improper conduct or misconduct under the Acts; and
- does it concern conduct that occurred on or after 1 January 2001?

Step 2:

Determine if it is a public interest disclosure. This requires an assessment of the evidence provided by the discloser to determine if it shows or tends to show an officer or employee or TasWater has, is or is proposing to engage in improper conduct or misconduct.

### 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. The note should record the time 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 ask the discloser to consider putting 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.<sup>6</sup> If the disclosure is about the Principal Officer, contact the Ombudsman for advice.

### 10.2. Is it a protected disclosure?

The protections for disclosers, provided in Part 3 of the PID Act, only apply where the disclosure is a *protected disclosure* made in accordance with Part 2 of the PID 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 PID Act (and the Corps Act or TAA) as soon as possible after it has been received. The assessment of disclosure form 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 officers or employees, this constitutes three disclosures, and three assessments should be completed.

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<sup>6</sup> 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?](#)

If it is determined that it is a protected disclosure, the discloser should be given information about the protections in the Acts (such as a copy of Part 3 of the PID Act). These protections should be explained to the discloser if necessary. The discloser should also be informed of the process which will be followed with respect to the disclosure.

The Principal Officer or a Public Interest Disclosure Officer should also 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. A Risk Assessment in [Attachment 2](#) should also be completed.

### 10.3. Mixed content disclosures

Many disclosures will also contain personal grievances. When conducting assessments of complaints or grievances the assessor needs to be alert to identifying those aspects that could constitute a protected disclosure.

It is not a requirement that a discloser specify they are making a disclosure, the onus rests on TasWater to identify whether or not the information constitutes improper conduct or misconduct under the Acts. Consider discussing with the person whether they wish to make a public interest disclosure if it appears their concerns would meet the threshold.

Matters which do not meet the threshold of improper conduct or misconduct under the Acts can be dealt with under a grievance process and those that are more appropriately dealt with under these procedures should be dealt with separately where possible.

### 10.4. Risk Assessment

A risk assessment should occur as soon as possible after the disclosure has been assessed as being a protected disclosure under the Acts. 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. A single assessment can be made of all relevant risks, or you may prefer to undertake separate assessments of the different risks relating to a particular disclosure, such as the risks to the discloser, the subject of the disclosure, any witnesses, or TasWater. The discloser is usually the most able to identify potential reprisal risks, so input should be sought from the discloser and the Welfare Manager in completing the risk assessment. All reasonable steps to reduce risks of reprisal to the discloser should be taken.

### 10.5. Referral of a protected disclosure to the Integrity Commission

TasWater 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 section 4(1) of the *Integrity Commission Act 2009*. Consideration should also be given to:

- 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.

TasWater must notify the discloser of the referral under section 29D of the PID Act within a reasonable time (unless the disclosure was made anonymously).

The Integrity Commission may deal with the disclosure under its legislation, or it may refer the disclosure to the Ombudsman or a public body, as the case may require, for action in accordance with the PID Act.

## 10.6. Is the disclosure a public interest disclosure?

### ***Public Interest Disclosure under the PID Act***

Once a disclosure has been assessed as being a protected disclosure, a further determination must be made as to whether or not it is a public interest disclosure. The Principal Officer or Public Interest Disclosure Officer must make this determination under section 33 of the PID Act within 45 days of the receipt of the disclosure. Use the Assessment of disclosure form at [Attachment 1](#) to ensure you consider all the necessary requirements.

For a disclosure to be a public interest disclosure, the Principal Officer, or their delegated Public Interest Disclosure Officer, must be satisfied that 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 their capacity as a public officer, or
- 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 to meet this threshold. A disclosure must include an indication of the existence of evidence that, if substantiated, would show or tend to show that the alleged improper conduct occurred.

Where the Principal Officer or Public Interest Disclosure Officer determines that the disclosure amounts to a public interest disclosure, they must:

- advise the Principal Officer (if not the person assessing 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 they are anonymous and uncontactable); and
- proceed to investigate the disclosed matter under section 34 of the PID Act.

If the Principal Officer or Public Interest Disclosure Officer determines that the disclosure is not a public interest disclosure, they must:

- advise the Principal Officer (if not the person assessing the disclosure);
- notify the Ombudsman within 14 days of the decision using the notification template at [Attachment 3](#); and
- notify the person making the disclosure within 14 days of the decision (unless they are anonymous and uncontactable) – see section 35 of the PID Act.

The Ombudsman must then review this decision under section 35(2) of the PID Act.

If, on review of the matter, the Ombudsman agrees that the disclosure is not a public interest disclosure, it does not need to be dealt with under the PID 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 a public interest disclosure, it may be referred back to the public body under section 42 of the PID Act for investigation under the PID Act or the Ombudsman will deal with the disclosed matter.

### ***Public Interest Disclosure under the Corps Act***

The requirements of the Corps Act and TAA are less restrictive in terms of process. Generally, if the recipient is satisfied if it is a Corps Act or TAA disclosure it will satisfy the PID Act disclosure requirements, so the same process will be followed as above.

The Corps Act allows for a 'public interest disclosure' to be made to a member of parliament or journalist if it meets the requirements set out in section 1317AAD:

- a disclosure of information by an individual where the individual has previously made a disclosure of that same information, and
- at least **90 days** have passed since the previous disclosure was made, and
- the individual does not have reasonable grounds to believe that action is being taken or has been taken to address the matters to which the previous disclosure related, and
- the individual has reasonable grounds to believe that making a further disclosure of the information in accordance with section 1317AAD (1) would be in the public interest, and
- the individual has notified TasWater that they intend to make a public interest disclosure to a journalist or member of parliament.

## **10.7. Referral of criminal conduct to the Commissioner of Police / Australian Federal Police**

It is possible that, before or during the investigation of a public interest disclosure, facts are uncovered that indicate the possibility that a criminal offence might have been committed. If this happens, TasWater will not commence, or will suspend, the investigation and will consult with the Ombudsman and / or ASIC (as is appropriate) as to the future conduct of the matter.

Under section 41 of the PID Act, the Ombudsman has the power to refer a public interest disclosure to the Commissioner of Police for investigation.

If the Ombudsman is satisfied that the disclosed matter should be referred to the Commissioner of Police, TasWater should consider whether the disclosure should be referred to the Ombudsman under section 68 of the Act.

Early referral of the matter may avoid interference with the evidentiary trail and so should be done at the first possible opportunity. Referral to the Commissioner of Police through the Ombudsman will also avoid any question of a breach of confidentiality under section 23 of the PID Act. Once a disclosure is referred to the Commissioner through the Ombudsman, the investigation under the PID Act ceases. There may still be administrative

or operational issues which have been identified during the disclosure process or investigation, however, these should be dealt with under other internal processes of TasWater. 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.

If evidence suggests that a federal criminal offense has occurred, the matter should be referred to the Commonwealth Director of Public Prosecutions (CDPP) for assessment.

Under section 1317AAE of the Corps Act allows a person to report the whistleblower's identity and details of the disclosure to ASIC, APRA or the Australian Federal Police (or a legal practitioner when obtaining legal advice).

## 11. Protection

### 11.1. When does protection commence?

Where TasWater receives a disclosure which complies with the requirements of Part 2 of the PID Act and section 1317AA of the Corps Act, the disclosure immediately attracts the protections set out in the Acts. This is so whether or not the disclosure is factually correct (although one of the requirements of Part 2 of the PID Act is that the discloser genuinely believes that the alleged improper conduct or detrimental action in fact occurred, and it's a requirement of section 1317AA that the disclosure has reasonable grounds to suspect that the information concerns misconduct, or an improper state or affairs or circumstances).

The protection can also extend to a person who intends to make a disclosure – see s19 of the PID Act.

### 11.2. What protection does the Acts provide?

The Acts give various types of protection to a person who makes a protected disclosure.

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;
- 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; 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.

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

The Acts also contain various provisions which are intended to protect a discloser from detrimental action by way of reprisal for a protected disclosure. These are:

- it is an offence to take such detrimental action;
- there is a liability to pay damages for such detrimental action; and

- the person who believes that detrimental action has been taken against them 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.

Penalties apply under the Corps Act (section 1317AC) for actually causing detriment to another person.

## 12. Investigation

### 12.1. Introduction

Any disclosure TasWater determines to be a public interest disclosure must be investigated under the Act, unless there is a good reason not to do so pursuant to section 64 of the PID Act.

TasWater must investigate every disclosure referred to it for investigation by the Ombudsman under section 63(b) of the PID 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 the purpose.

The objectives of an investigation are to:

- collate information relating to the allegation as quickly as possible, which may involve taking steps to protect or preserve documents, materials and equipment;
- consider the information collected and to draw conclusions objectively and impartially; and
- 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 starting an investigation, the Principal Officer or Public Interest Disclosure Officer must first consider whether the disclosed matter needs to be investigated.

Section 64 of the PID specifies certain circumstances under which a public body may legitimately decide not to investigate.

Use the disclosure assessment template at [Attachment 1](#) to assist in assessing whether any of the grounds in section 64 of the PID Act apply.

Any decision not to proceed with an investigation on a ground specified in section 64 of the PID Act 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.

Section 1317AADA of the Corps Act provide that personal work-related grievances do not qualify as a disclosure under the Corps Act that should be investigated, examples provided under the Corps Act include:

- interpersonal conflict between the discloser and another employee;
- a decision relating to engagement, transfer or promotion of the discloser;
- a decision relating to the terms and conditions of engagement of the discloser;
- a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser,

provided that these do not relate to another disclosure and involve detriment caused to the discloser or a threat made to the discloser.

### 12.3. 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.

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 date by which the investigation is to be concluded;
- the requirement for regular reports to be made to the Principal Officer, including details of compliance with any measures identified in the risk assessment; 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 six months from the date of the determination that the disclosure is a public interest disclosure under section 77A(1). If at any stage before or during the investigation it appears that the investigation cannot be completed within six months, TasWater may apply to the Ombudsman for an extension of up to a further six months.

TasWater must provide information to the discloser within 90 days from the date in which the disclosure was made setting out action being taken to address the concerns raised, such as an investigation being undertaken.

## 12.4. 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 when investigating each of those issues. The risk assessment should be considered as part of the investigation planning and appropriate steps taken to reduce identified risks during the investigation.

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

## 12.5. 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.

TasWater 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;
- who is known to hold any biases which are relevant to the subject matter of the investigation; or
- against whom there are reasonable grounds for apprehending or suspecting bias.<sup>7</sup>

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 proposed adverse findings, and their possible consequences.

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<sup>7</sup> The test for establishing the existence of apprehended bias 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 they are required to decide.

This must be done before any final conclusions are formed by the investigator. The person subject to the potential adverse finding must be given a reasonable time to respond.

Despite the above, 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.

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

## 12.6. Conduct of the investigation

The Integrity Commission's Guide to Managing Misconduct in the Tasmanian Public Sector<sup>8</sup> 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 audio recordings of significant interviews with witnesses should be made where possible.

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. The name of the discloser or any particulars which might identify that person must not be revealed unless necessary, and then only with the discloser's knowledge.

## 12.7. Referral of an investigation to the Ombudsman

Under section 68 of the PID 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.

## 12.8. 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 their protected disclosure and any investigation.

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<sup>8</sup> Accessible at <https://www.integrity.tas.gov.au/publications/prevention-resources/guides>.

Section 74 of the PID 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.

As provided by section 74(3) of the PID Act, however, 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 their 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 natural justice 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 on the matter and their defence is fairly set out in the report. A public body must take action, under section 75 of the PID Act, to redress any improper conduct found and try to prevent its recurrence. Accordingly, if the investigator has found that the alleged improper conduct has occurred, the investigator may wish to include recommendations as to:

- any steps that need to be taken by the TasWater to prevent the conduct from continuing or occurring in the future; and
- any action that should be taken by the TasWater 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 or referring the matter to an appropriate authority for further consideration. For example, if the investigation has revealed conduct that may constitute an unreported criminal offence, consideration should be given to whether the matter should be referred to Tasmania Police or the Australian Federal Police.

The internal investigation 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 investigator and accepted as evidence during the course of the investigation.

## 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, TasWater must, in accordance with section 75, 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.

The Principal Officer will provide a written report to the Board of TasWater 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 section 77 of the PID Act, the Principal Officer will also inform the discloser of the findings of the investigation, and of any steps taken under section 75 as a result of those findings having been made.

Where the investigation concludes that the disclosed conduct did not occur, the Principal Officer will report that finding 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. Support for the discloser

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.

The Welfare Manager must contact the discloser as soon as possible and not more than five working days after being appointed.

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 TasWater, they may report the matter to the Ombudsman or ASIC.

### 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 their 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 TasWater to address any improper conduct that has been found to have occurred. The discloser must be given reasons for all decisions made by TasWater 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 a disclosure, the Welfare Manager should:

- record details of the incident;
- advise the discloser of their rights under the Acts; and
- assist the discloser to advise a Public Interest Disclosure Officer or 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 Acts 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 improper conduct, TasWater will handle the disclosure and protect the discloser from reprisals in accordance with the Acts, the Ombudsman's guidelines and these procedures. At the same time TasWater 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 PID Act and section 1317AB of the Corps Act specifically provides that a person's liability for their own conduct is not affected by the person's disclosure of that conduct under the Act. In some circumstances, however, 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 because of 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

TasWater 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.

TasWater 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 TasWater 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.

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

## 16. Approval and review of these procedures

These procedures were approved by the Ombudsman under section 60(3) of the Act on 12 August 2024.

The procedures will be submitted to the Ombudsman for review at least once every three years to ensure they meet the objectives of the Act and accord with the Guidelines and Standards published by the Ombudsman under section 38(1)(c).

The date by which the procedures must be submitted to the Ombudsman for review is 12 August 2027.

# 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 section 4(2) and section 4(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

#### **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 section 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

### 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

**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

- Unlikely
- Possible
- Likely

## 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

### 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

### 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:**

**Date of approval**

Public Interest Disclosure Officer or Principal Officer – Type Name

## Risk assessment review

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

**Name of reviewing officer:**

**Date of assessment:**

### Notes on changes to risk since last assessment

### Review outcome

No change to action plan

Further action required

**Please provide details:**

# Ombudsman notification template (Attachment 3)

*Public Interest Disclosures Act 2002*

**Public body name:**

**Date of disclosure:**

**Contact person:** *(include telephone and email contact details)*

**Date of section 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 section 64  
*Notification to be made within 14 days of decision*
- Section 76 – Findings of investigation and steps taken under section 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)

Disclosure

Assessment 45 days – Section 33(1)



