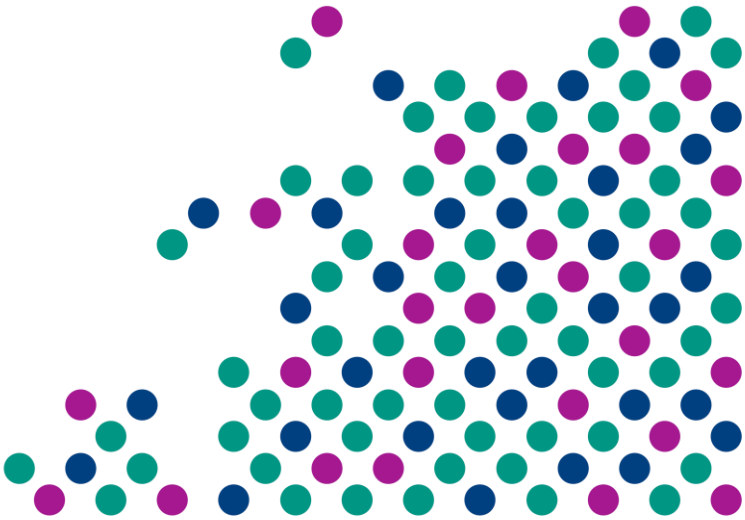
Disclosure Procedures

Public Interest Disclosures Act 2002 (Tas)

Corporations Act 2001 (Cth)

Revised: September 2026



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Once printed this is an uncontrolled document.

All Hydro Tasmania, Entura, Momentum Energy and AETV employees and contractors must comply with all relevant laws and regulations, policies, procedures and supporting resources.

[1] Minor update only to August 2024 version to to include current PID Officers, amend the *Be Heard* service information and update the position title of the executive owner of the procedures

1 Introduction and context

Hydro Tasmania values transparency and accountability in the public sector, including in the administration of its own powers and duties.

Hydro Tasmania is committed to the aims and objectives of the:

- *Public Interest Disclosures Act 2002 (Tas)* (**PID Act**);
- the additional whistleblower protections introduced into the *Corporations Act 2001 (Cth)* by the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act* 2019 (**Corporations Act**); and
- *Integrity Commission Act 2009 (Tas)* (**IC Act**.)

Together, the PID Act, the IC Act, and the relevant provisions of the Corporations Act are referred to in this Procedure as "the **Legislation**".

Hydro Tasmania does not tolerate improper conduct by its employees, officers or members, or the taking of detrimental action against those who come forward to disclose such conduct.

Hydro Tasmania values transparency and accountability in its administrative and management practices and recognises the value of internal reporting as one of the main ways in which improper conduct is uncovered. Hydro Tasmania actively encourages the making of disclosures related to the type of conduct to which the Legislation is directed.

Hydro Tasmania will take all reasonable steps to:

- protect the welfare of people who make such a disclosure, particularly to protect them from any detrimental action in reprisal for making the disclosure;
- ensure that the matters disclosed are properly investigated and dealt with; and
- afford procedural fairness to all parties involved in the investigation of a disclosure.

2 Hydro Tasmania Disclosure Procedure

This procedure should be read in conjunction with Hydro Tasmania's **Disclosure Policy**.

This procedure sets out how:

- public officers[2] and contractors can make disclosures about improper conduct or reprisal action;
- disclosures are assessed;

[2] As defined in s 4(2) of the PID Act.

- public interest disclosures are investigated; and
- Hydro Tasmania protects disclosers and affords procedural fairness[3] to those being investigated.

These procedures are designed to complement normal communication channels between managers and employees. Employees are encouraged to continue to raise appropriate matters at any time with their manager and to use existing grievance procedures within the organisation where appropriate.

This procedure has been prepared in accordance with *Guideline Two: Procedures for Public Bodies* published by Ombudsman Tasmania (**Ombudsman**) under s 38(1)(c) of the PID Act, and adapted to incorporate the whistleblower provisions under the Corporations Act. The Guideline can be accessed on the Ombudsman's website at www.ombudsman.tas.gov.au. This procedure can be found on Hydro Tasmania's public website and the internal Hydro Tasmania intranets.

This procedure is intended to satisfy the obligations under both the PID Act and s 1317AI of the Corporations Act. Where a disclosure is to be managed under both the Corporations Act and the PID Act, to the extent of any inconsistency between the legislative regimes, Hydro Tasmania will comply with the Corporations Act.

3 The purpose of the PID Act

The purposes of the PID Act are to:

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

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

[3] Referred to as natural justice in the PID Act.

4 How the PID Act works

Briefly, the PID Act works in this way:

- it gives certain people, particularly *public officers* and *contractors* the right to make a disclosure about *improper conduct* or *detrimental action* to certain integrity agencies, other persons and bodies (Part 2 of PID Act, particularly s 6);[4]
- it provides certain statutory protections for people who make a *protected disclosure*, even if the discloser does not reference the PID Act (Part 3);
- it dictates how the recipient of the disclosure is to deal with it (Parts 4A to 8);
- it treats the Ombudsman as the oversight agency in relation to the operation of the PID Act, including the default investigator, monitor of investigations by public bodies, and setter of standards under the PID Act;
- where a disclosure is handled by the Ombudsman or a public body, they are required to make a preliminary determination as to whether the protected disclosure is a *public interest disclosure* (ss 30 and 33);
- subject to exceptions, the PID Act requires investigation by the Ombudsman or public body of any public interest disclosure (ss 39 and 63);
- it requires such investigation to be conducted as soon as practicable but if it is being conducted by a public body, not more than six months from the date of the determination that the disclosure is a public interest disclosure (ss 39A and 77A);
- it controls the manner in which a disclosure is investigated, and provides 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 (s 75).

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

5 Comparison with the Integrity Commission Act

The PID Act and the IC Act work very differently.

A key difference is that the IC Act does not contain any provisions to protect a person making a complaint under the IC Act, and specifically from detrimental action by way of reprisal. The provision of such protection is a key feature of the PID Act.

[4] Members of the public may also make disclosures in limited circumstances, when the Ombudsman or Integrity Commission deems this in the public interest under s 7A.

Other important differences between the PID Act and IC Act are:

- anyone can make a complaint under the IC Act, whereas the right to make a disclosure under the PID Act is given only to *current* public officers and contractors;
- the types of conduct to which the PID Act applies;[5]
- under the PID Act, a disclosure may be made about current or proposed conduct, whereas the IC Act only concerns past conduct;
- disclosures under the PID Act may be oral, whereas a complaint under the IC Act must be in writing; and
- the different processes which each Act applies to a matter brought under it.

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

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

6 Comparison with the Corporations Act

Hydro Tasmania is also regulated by the Corporations Act.

The PID Act obligations are more comprehensive than those in the Corporations Act, but the Corporations Act recognises a broader category of discloser.

In addition to the categories of persons who may make a public interest disclosure under the PID Act, the Corporations Act allows disclosures by:

- Paid/unpaid suppliers and their employees – this deviates from the PID Act which requires suppliers to have a contractual relationship prior to being eligible to make disclosure/s;
- Associates of the person (or entity) – under the definition of s 15 of the Corporations Act; and
- Relatives and dependents of any person who meets the definition of an eligible discloser.

The Corporations Act also includes former role-holders of any of the positions included. Whilst these classes of persons are not expressly captured by the PID Act, if it is in the public interest to do so, there is a discretion for Hydro Tasmania to accept disclosures from those groups of persons (s 7A).

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

Disclosures under the Corporations Act may be made to:

- any officer or senior manager of the entity;
- an auditor, actuary, legal practitioner or any other person authorised by the entity to receive disclosures.

In the case of the Hydro Tasmania, this includes the Principal Officer and the Public Interest Disclosure Officer. Refer sections 7.2 and 7.3 of this procedure for further details.

As Hydro Tasmania is governed by both the PID Act and the Corporations Act, both of which contain a whistleblowing regime, Hydro Tasmania will undertake any actions required by this procedure subject to its statutory obligations under the Corporations Act. In the case of any conflict, Hydro Tasmania may consult with the Ombudsman's Office to determine a way forward.

7 Roles and responsibilities

This part explains the roles and responsibilities under the PID Act of individuals within Hydro Tasmania.

7.1 Members, officers and employees

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

All members, officers and employees of Hydro Tasmania 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. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

7.2 Principal Officer

The Principal Officer has primary responsibility for ensuring that the provisions of the PID Act are implemented by the Hydro Tasmania. At Hydro Tasmania, our CEO is the Principal Officer. 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 natural justice in Hydro Tasmania's procedures;

- ensuring the promotion of the importance of public interest disclosures and general education about the PID Act to all staff, and ensuring easy access to information about the PID Act and Hydro Tasmania's procedures; and
- providing access to confidential employee assistance programs and appropriately trained internal support staff for those involved in the process.

The Principal Officer may delegate all these functions to a Public Interest Disclosure Officer.

7.3 Public Interest Disclosure Officer

A Public Interest Disclosure Officer is appointed by the Principal Officer under s 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 PID 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);
- record in writing the details of any disclosure which is made orally;
- impartially assess the allegation and determine whether it is a disclosure made in accordance with Part 2 of the PID Act (that is "a protected disclosure");
- impartially assess under s 33 of the PID Act whether a disclosure is a "public interest disclosure"; and
- take 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.

Please refer to section 11.1 of this procedure for Hydro Tasmania's Public Interest Disclosure Officers.

7.4 Investigator

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

7.5 Welfare Manager

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

- examine the immediate welfare and protection needs of a person who has made a disclosure and develop a support plan for them;
- advise the discloser of the legislative and administrative protections available to them;
- 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 while carrying out these responsibilities.

A Welfare Manager may be a person employed by Hydro Tasmania or a consultant engaged for that purpose. They must not be the responsible for assessing or investigating the disclosure.

8 Who can make a disclosure?

For assistance in determining who can make a disclosure, please refer to Table 1 in section 4.3 of Hydro Tasmania's Disclosure Policy.

8.1 Public officers

Any current public officer[6] can make a disclosure to Hydro Tasmania under the PID Act.

8.2 Contractors

Current or past contractors and sub-contractors can make disclosures about public bodies, not public officers, but they can only make a disclosure to the Ombudsman or the Integrity Commission not to Hydro Tasmania. Public Interest Disclosure officers should refer any contractors wanting to make a disclosure to either of these bodies.

8.3 Members of the public

Members of the public can make a disclosure about a public body, and may be treated in the same way as a contractor if it is in the public interest to do so, but they can only make the disclosure to the Ombudsman or Integrity Commission. The Ombudsman or Integrity Commission 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.

[6] This can include a public officer from another public body.

8.4 Anonymous persons

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

8.5 Additional categories of discloser under Corporations Act

Under the Corporations Act, relatives of public officers and suppliers to Hydro Tasmania can make disclosures. Refer to section 6 of this procedure for further details.

9 What can a disclosure be made about?

A disclosure can be made about one or more public officers or a public body itself. If a disclosure relates to Hydro Tasmania as a whole or the Principal Officer of Hydro Tasmania, it should be referred to the Ombudsman or Integrity Commission as internal investigation would not be appropriate.

9.1 Improper conduct

Disclosures about public officers need to relate to improper conduct by that 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 this Act –

that is serious or significant as determined in accordance with guidelines issued by the Ombudsman.[7]

Examples of improper conduct include:

- 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; and
- a principal officer spends $15,000 of public money on a staff Christmas party.

9.2 Corrupt conduct

Corrupt conduct is further defined in s 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).

Examples of corrupt conduct include:

- an employee takes a bribe in exchange for the discharge of a public duty;
- an employee favours unmeritorious applications for jobs or permits by friends and relatives; and
- an employee accesses and discloses criminal record information at the request of a friend, without any legitimate reason.

[7] See Public Interest Disclosure Guideline One: Serious or Significant Improper Conduct, available at www.ombudsman.tas.gov.au

9.3 Detrimental action

Detrimental action, or reprisal action, against a discloser can be a form of improper conduct. It is defined in s 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.

10 Where to make a disclosure

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

Officer or public body to which the disclosure relates	Where the disclosure may be made
A member, officer or employee of Hydro Tasmania	Hydro Tasmania; or The Integrity Commission; or The Ombudsman
The Principal Officer (CEO) of Hydro Tasmania; or Hydro Tasmania as a whole	The Ombudsman; or The Integrity Commission
The Ombudsman	The Joint Standing Committee on Integrity
A person employed in an office of a Minister, Parliamentary Secretary or other MP	The Ombudsman

A member of Parliament (including Hydro Tasmania's shareholding Ministers)	The President of the Legislative Council, if the member is a member of the Legislative Council; or The Speaker of the House of Assembly, if the member is a member of the House of Assembly.

The Corporations Act provides protections for disclosers who make disclosures to certain regulatory bodies and in some circumstances, to recipients such as legal practitioners and auditors.

For assistance in determining where to make a disclosure, please refer to Table 1 in section 4.3 of Hydro Tasmania's Disclosure Policy

11 How to make a disclosure

11.1 Public Interest Disclosure Officers

Disclosures to Hydro Tasmania can be made to the Principal Officer (Chief Executive Officer) or the following Public Interest Officers:

- **Denita Gould**
  Corporation Secretary
  denita.gould@hydro.com.au
- **Kate Bradshaw**
  Senior Legal Counsel
  kate.bradshaw@hydro.com.au
- **Madeleine Farrar**
  Governance Counsel
  madeleine.farrar@hydro.com.au

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

Other people may be delegated as Public Interest Disclosure Officers to add to the list above, and the list of such officers will be communicated to all employees via the Hydro Tasmania intranet. If someone wants to make a disclosure about the Principal Officer or Hydro Tasmania, they should be referred to the Ombudsman or the Integrity Commission.

11.2 Written or oral disclosure

It is preferable that a disclosure be made in writing. It should be addressed to the Hydro Tasmania, marked for the attention of the Principal Officer or Public Interest Disclosure Officer. Disclosures can also be made to "Be Heard"; Hydro Tasmania's independent reporting service. The contact details are as follows:

Entity	Contact Details

Hydro Tasmania	Postal address	Attention: Public Interest Disclosure Officer GPO Box 355 HOBART TAS 7001
	Address	4 Elizabeth Street HOBART TAS 7000
	Website	www.hydro.com.au
	Email	corporation.secretary@hydro.com.au
	Phone	1300 360 441
"Be Heard" Hydro Tasmania's Independent Reporting Service (managed by Core Integrity)	Postal address	beheard@hydro PO Box 730, Milsons Point NSW 1565
	Website	Be Heard (hydro.com.au)
	Email	speakup@coreintegrity.com.au
	Phone	1800 324 775

A public officer can also make an oral disclosure over the phone or in person to a Public Interest Disclosure Officer. An oral disclosure should be made in private.

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

11.3 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

or at

Level 6, 86 Collins Street
HOBART TAS 7000

Website: www.ombudsman.tas.gov.au
Email: ombudsman@ombudsman.tas.gov.au
Phone: 1800 001 170

11.4 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 IC Act 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

or at

Level 2
Surrey House
199 Macquarie Street
HOBART TAS 7000

Website: www.integrity.tas.gov.au
Email: contact@integrity.tas.gov.au
Phone: 1300 720 289

12 Confidentiality

Hydro Tasmania will take all reasonable steps to protect the identity of a discloser. Maintaining confidentiality is crucial in ensuring detrimental action is not taken against the discloser in reprisal for making the disclosure.

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

Section 23 of the PID 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 this section constitutes an offence that is punishable by a maximum fine of 60 penalty units or a term of imprisonment not exceeding six (6) months or both.

Penalties also apply under the Corporations Act for breaching confidentiality regarding a disclosure.

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

The PID Act prohibits 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 be consulted before any action is taken.

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

All printed material will be kept in files that are clearly marked as confidential, and all materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the files.

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.

13 Assessing the disclosure

The PID Act requires 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 PID Act. In order to do so it must satisfy the following prerequisites:

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

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

The next step is to 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 a public officer has, is or is proposing to engage in improper conduct.

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

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

Unless the recipient is the Principal Officer (or the disclosure is about the Principal Officer), the recipient should immediately inform the Principal Officer of the disclosure, and should provide the Principal Officer with a copy of the disclosure or record of the disclosure, and of any accompanying documents.

Contact the Ombudsman for advice if the disclosure is:

- From a contractor;
- From a member of the public; or
- About the Principial Officer (CEO) of Hydro Tasmania or about Hydro Tasmania as an entity.

13.2 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 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 public officers, this constitutes three disclosures and three assessments should be completed.

If it is determined that it is a protected disclosure, the discloser should be given information about the protections in the PID Act (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 should also be completed.

13.3 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 Hydro Tasmania to identify whether or not the PID Act or Corporations Act apply. Consider discussing with the discloser whether they wish to make a public interest disclosure if it appears their concerns would meet the threshold.

Those matters that 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.

13.4 Risk Assessment

A risk assessment should occur as soon as possible after the disclosure has been assessed as being a protected disclosure under the PID Act. The risk assessment template at Attachment 2 should be completed by the Principal Officer or Public Interest Disclosure Officer and any appropriate risk mitigation action required be implemented. 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.

13.5 Referral of a protected disclosure to the Integrity Commission

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

Hydro Tasmania must notify the discloser of the referral under s 29D of the PPID 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.

13.6 Is the disclosure a public interest disclosure?

Once a disclosure has been assessed as being a protected disclosure, a further determination must be made as to whether it is a public interest disclosure. The Principal Officer or Public Interest Disclosure Officer must make this determination under s 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 s 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 s 35.

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

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 s 42 for investigation under the PID Act or the Ombudsman will deal with the disclosed matter.

13.7 Referral of criminal conduct to the Commissioner of 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, Hydro Tasmania will not commence, or will suspend, the investigation and will consult with the Ombudsman as to the future conduct of the matter. Under s 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, Hydro Tasmania should consider whether the disclosure should be referred to the Ombudsman under s 68 of the PID 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 through the Ombudsman will also avoid any question of a breach of confidentiality under s 23 of the PID Act. Once a disclosure is referred to the Commissioner of Police 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 Hydro Tasmania. 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.

14 Protection

14.1 When does protection commence?

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

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

14.2 What protection does the PID Act provide?

Part 3 of the PID Act gives various types of protection to a person who makes a protected disclosure. Below is a summary of some elements of Part 3.

A person who makes a protected disclosure:

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

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.

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

- section 19 which makes it an offence to take such detrimental action;
- section 20 which creates a liability to pay damages for such detrimental action; and
- section 21 which gives a 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.

15 Investigations

15.1 Introduction

Any disclosure Hydro Tasmania determines to be a public interest disclosure under s 33 must be investigated, unless there is a good reason not to do so pursuant to s 64.

Hydro Tasmania must investigate every disclosure referred to it for investigation by the Ombudsman under s 63(b).

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

The objectives of an investigation are:

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

15.2 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 specifies certain circumstances under which a public body may legitimately decide not to investigate. Use the assessment of disclosure form at Attachment 1 to assist in assessing whether any of the grounds in s 64 apply.

Any decision not to proceed with an investigation on a ground specified in s 64 must be made by the Principal Officer.

If it is decided that the disclosed matter is not to be investigated, written notice must be given within 14 days of this decision to both the Ombudsman and (except in the case of an uncontactable anonymous discloser) the person who made the disclosure. Reasons for the decision must accompany the notice. Use the notification template at Attachment 3 to provide notice to the Ombudsman.

The Ombudsman will review the decision. If the Ombudsman agrees that the disclosure should not be investigated, the matter does not need to be dealt with under the PID 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.

15.3 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 s 77A(1). If at any stage before or during the investigation it appears that the investigation cannot be completed within six months, Hydro Tasmania may apply to the Ombudsman for an extension of up to a further six months.

15.4 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 in 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 investigation.

15.5 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 sometimes referred to as natural justice in the PID Act.

The principles are a set of procedural standards which need to be met if the right of a person to a fair hearing can be accepted as having been satisfied.

Hydro Tasmania 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
- in respect of whom there is reasonable ground for apprehending or suspecting bias.[8]

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.

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 the information which is adverse to their interests and which is, on an objective basis, credible, relevant and significant to the investigation; and
- the potential findings in view, and their possible consequences.

This must be done before any final conclusions are formed by the investigator.

Each such person must be given a reasonable time to respond to the material which is provided to them.

The investigator must maintain an open mind and must fairly consider all representations which such a person may make.

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

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

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

15.6 Conduct of the investigation

The Integrity Commission's Guide to Managing Misconduct in the Tasmanian Public Sector[9] 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 during 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.

15.7 Referral of an investigation to the Ombudsman

Under s 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.

15.8 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 a protected disclosure and any investigation.

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

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.

[9] Accessible at https://www.integrity.tas.gov.au/publications/prevention-resources/guides.

As provided in s 74(3) 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.

16 Action taken after an investigation

16.1 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 way 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 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 s 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 Hydro Tasmania to prevent the conduct from continuing or occurring in the future; and
- any action that should be taken by the Hydro Tasmania 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.

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 investigation.

16.2 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, Hydro Tasmania must, in accordance with s75, take all reasonable steps to prevent the conduct from continuing or occurring in the future and may take action to remedy any loss or harm arising from the conduct. The Principal Officer should take into consideration any recommendations in the investigator's report but can take different or broader action if appropriate.

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

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

17 Managing the welfare of the discloser

17.1 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 Hydro Tasmania, they may report the matter to the Ombudsman.

17.2 Keeping the discloser informed

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

17.3 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 PID Act; 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 PID Act as well as grounds for making a further disclosure. Where such detrimental action is reported, the Public Interest Disclosure Officer or the Principal Officer will assess the report as a new disclosure under the PID Act, and it will be dealt with accordingly.

17.4 Discloser implicated in improper conduct

Where a person who makes a disclosure is implicated in improper conduct, Hydro Tasmania will handle the disclosure and protect the discloser from reprisals in accordance with the PID Act, the Ombudsman's guidelines and these procedures. At the same time Hydro Tasmania 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 specifically provides that a person's liability for their own conduct is not affected by the person's disclosure of that conduct under the PID 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 considered. They should advise the discloser that they can raise any concerns about the action taken being a potential reprisal with the Ombudsman.

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

Hydro Tasmania 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.

Hydro Tasmania 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 Hydro Tasmania 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.

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

19 Approval and review of these procedures

These procedures were approved by the Ombudsman Tasmania for approval pursuant to s 60(3) of the PID Act on 8 August 2024.

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

Assessment of disclosure form (Attachment 1)

Public Interest Disclosures Act 2002

File number: **Date of assessment:**

Name of assessing officer:

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

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

Part 1: Is the disclosure a protected disclosure?

Question 1: Is the discloser a public officer?

The discloser needs to be a current public officer. See s4(2) and s4(4) of the PID 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 identity the public officer – see s9 of the PID 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 PID 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 PID 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 PID 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 PID Act?

☐ Yes ☐ No

If yes, please provide details

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

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

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

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

☐ Discloser

☐ Your public body

☐ The subject of the disclosure

☐ Other employees including potential witnesses

☐ Other (e.g. Tasmanian Government, the general public)

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

	Impact (Consequence)					
Probability	1. Insignificant	2. Minor	3. Moderate	4. Major	5. Extreme	6. Catastrophic
7. Almost Certain 91% - 100%	7	14	21	28	35	42
6. Likely 61% - 90%	6	12	18	24	30	36
5. Possible 21% - 60%	5	10	15	20	25	30
4. Unlikely 6% - 20%	4	8	12	16	20	24
3. Rare 1% - 5%	3	6	9	12	15	18
2. Extremely Rare <1%	2	4	6	8	10	12

Table A4.2: Probability Table

Probability		
Description	Probability Range	Example Probability
7. Almost Certain	91% – 100%	Event is expected
6. Likely	61% – 90%	Event is likely to occur
5. Possible	21% – 60%	Event may occur, but not likely
4. Unlikely	6% – 20%	Event not expected
3. Rare	1% – 5%	Event extremely unlikely
2. Extremely Rare	< 1%	May only occur in extreme and exceptional circumstances

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:

20 Ombudsman notification template (Attachment 3)

Public Interest Disclosures Act 2002

Public body name:
Hydro-Electric Corporation (trading as Hydro Tasmania)

Date of disclosure:

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

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

Date of notification:

Notification type

☐ Section 34 – Determination that disclosure is a public interest disclosure
Notification to be made within 14 days of decision

☐ Section 35 – Determination that disclosure is not a public interest disclosure
Notification to be made within 14 days of decision

☐ Section 65 – Decision not to investigate public interest disclosure under s 64
Notification to be made within 14 days of decision

☐ Section 76 – Findings of investigation and steps taken under s 75
Investigation to be completed within 6 months unless Ombudsman extension granted

Evidence attached

☐ Copy of original disclosure or record of oral disclosure

☐ Disclosure assessment

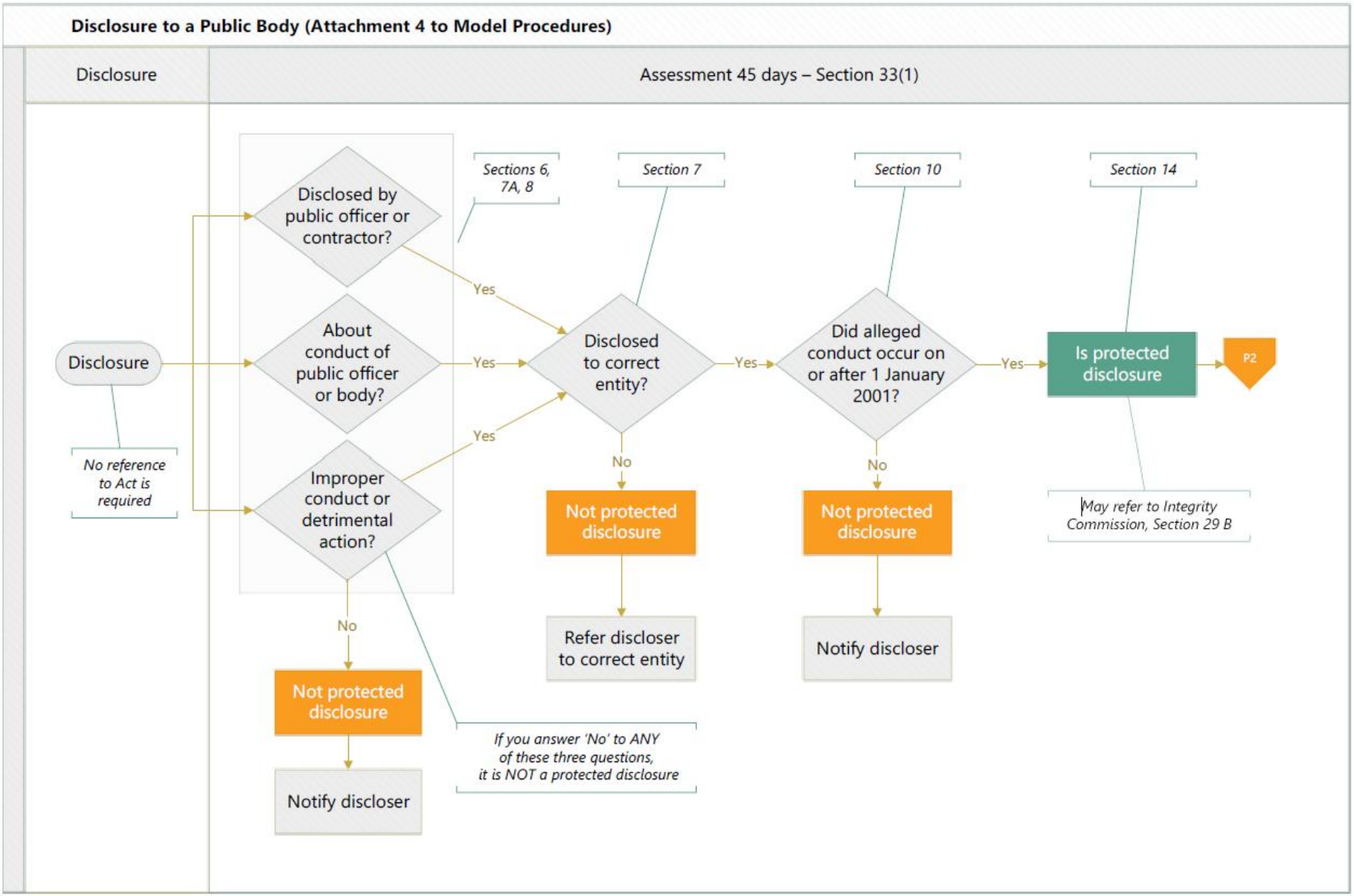
☐ Risk assessment/s

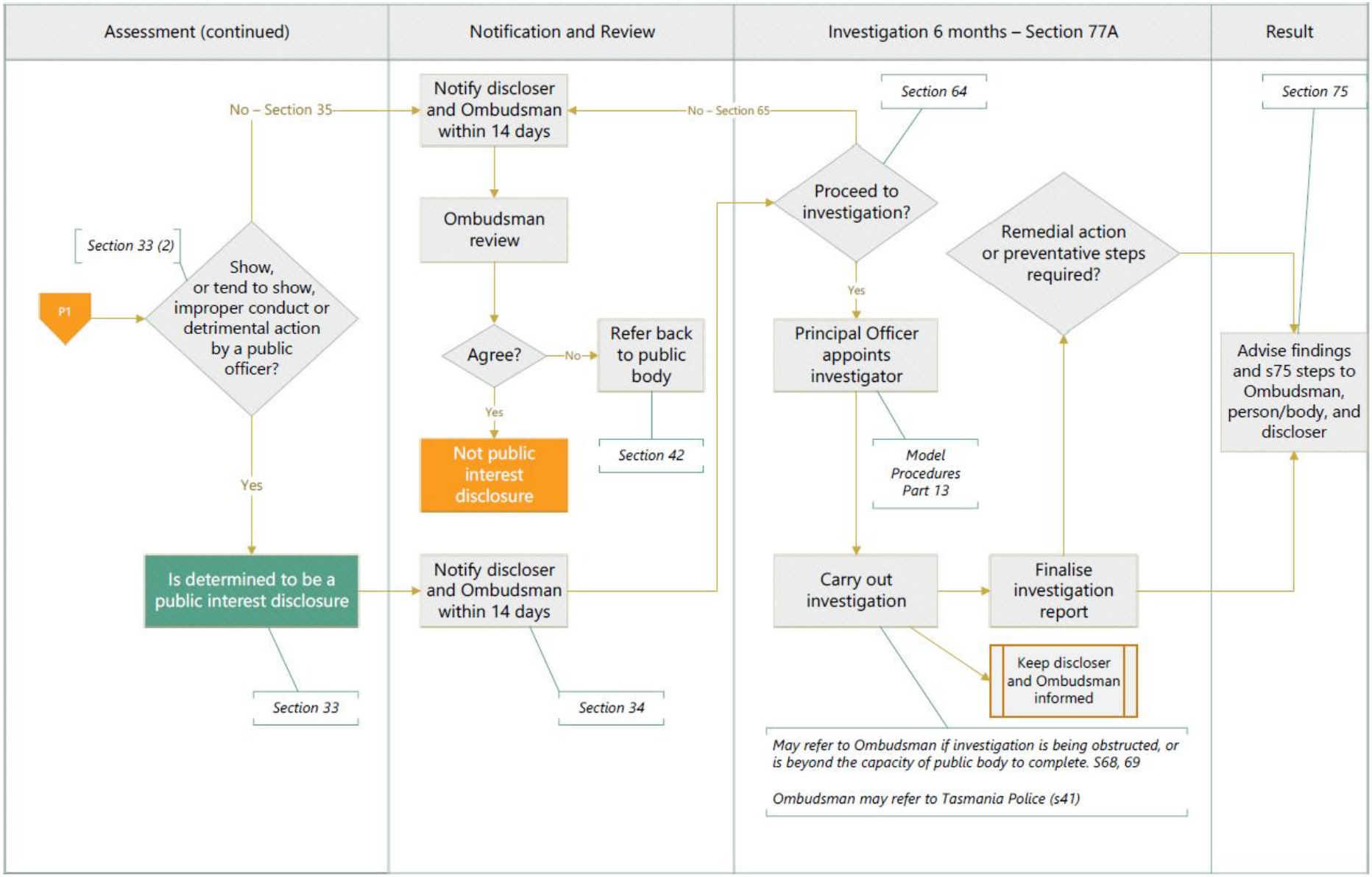
☐ Investigation report including:

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

☐ Any other material used to make determination (list):

-
-
-


Disclosure to a Public Body (Attachment 4 to Model Procedures)
Disclosure
Assessment 45 days – Section 33(1)
Disclosure
No reference to Act is required
Disclosed by public officer or contractor?
About conduct of public officer or body?
Improper conduct or detrimental action?
Sections 6, 7A, 8
Yes
Yes
Yes
No
Not protected disclosure
Notify discloser
If you answer 'No' to ANY of these three questions, it is NOT a protected disclosure
Disclosed to correct entity?
Section 7
No
Not protected disclosure
Refer discloser to correct entity
Yes
Did alleged conduct occur on or after 1 January 2001?
Section 10
No
Not protected disclosure
Notify discloser
Yes
Is protected disclosure
Section 14
P2
May refer to Integrity Commission, Section 29 B


Assessment (continued)
Notification and Review
Investigation 6 months – Section 77A
Result
No – Section 35
Notify discloser and Ombudsman within 14 days
No – Section 65
Section 64
Section 75
Ombudsman review
Proceed to investigation?
Remedial action or preventative steps required?
Section 33 (2)
Show, or tend to show, improper conduct or detrimental action by a public officer?
P1
Agree?
No
Refer back to public body
Yes
Principal Officer appoints investigator
Advise findings and s75 steps to Ombudsman, person/body, and discloser
Not public interest disclosure
Section 42
Model Procedures Part 13
Yes
Is determined to be a public interest disclosure
Notify discloser and Ombudsman within 14 days
Carry out investigation
Finalise investigation report
Keep discloser and Ombudsman informed
Section 33
Section 34
May refer to Ombudsman if investigation is being obstructed, or is beyond the capacity of public body to complete. S68, 69
Ombudsman may refer to Tasmania Police (s41)