	POLICY	
WHISTLEBLOWER POLICY		
CONTROLLER: GENERAL COUNSEL & COMPANY SECRETARY	OWNER: CEO	
REVIEWED: OCTOBER 2021	SCHEDULED REVIEW: OCTOBER 2022	

1. **PURPOSE**

The Purpose of this Policy is to outline who can report improper conduct in relation to Tasracing and its employees, and how this can be done in accordance with the applicable legislative whistleblower regimes.

This Policy also aims to encourage people within Tasracing who are aware of improper conduct to speak up and make a disclosure, ensure that whistleblowers are protected and supported, ensure that disclosures are dealt with appropriately, confidentially and in a timely manner, and help deter wrongdoing.

Our Values, Code of Conduct and policies guide our everyday conduct. Employees have a professional responsibility to speak up and report unethical behaviour. We will not tolerate any corrupt, illegal or other improper conduct by our employees, officers (including directors), members, contractors or the taking of detrimental action against those who come forward to disclose such conduct.

2. **WHAT MATTERS ARE COVERED UNDER THIS POLICY?**

Some examples of improper conduct that is reportable under this Policy includes, but is not limited to:

- *illegal or unlawful activity* (non-compliance or breach of the law, including theft, fraud or money laundering);
- *corrupt conduct* (taking a bribe in exchange for favourable treatment of an industry participant);
- *conduct that constitutes detrimental action against a person who makes a disclosure* (threats, abuse or other forms of harassment directly or indirectly against the whistleblower);

Matters not covered by this Policy include general employment grievances or complaints that are not connected to matters which are able to be reported under this Policy. Examples include interpersonal conflicts with other employees, decisions about your employment, transfers or promotions, or a decision about the terms and conditions of your employment. These types of matters should be attempted to be resolved with managers at first instance. If unable to be resolved at management level quickly and efficiently, these matters should be dealt with in accordance with the

Safety Issue Resolution Procedure, Workplace Bullying, Discrimination & Harassment Policy and/or our Code of Conduct.

3. **TERMINOLOGY**

- Reporting improper conduct is also known as '**making a disclosure**'.
- Someone who makes a disclosure of improper conduct in accordance with this policy is referred to as a '**whistleblower**'.
- The '**State regime**' refers to the whistleblower regime set out under the *Public Interest Disclosure Act 2002* (Tas).
- The '**Federal regime**' refers to the whistleblower regime set out under the *Corporations Act 2001* (Cth) (**Corporations Act**) and the *Tax Administration Act 1953* (Cth) (**Tax Act**).
- The use of '**we**', '**us**' and '**our**' throughout this Policy refers to Tasracing.
- '**Whistleblower Policy**' or '**Policy**' refers to this Policy and collectively refers to the set of procedures on how whistleblowers can make disclosures under the Federal regime (**Annexure A**) and the Public Interest Disclosure Procedures which covers disclosures under the State regime (**Annexure B**).

4. **BACKGROUND**

Understanding the whistleblower regimes can be confusing because there are potentially two that apply to whistleblowers under this Policy – the State regime and the Federal regime. They operate separately to each other. The two regimes may overlap in some circumstances due to the types of disclosures that are eligible for protection under both regimes. This Policy was drafted having consideration to both. The Federal regime is covered in **Annexure A** and the State regime is covered in **Annexure B**.

We recognise that it may be difficult to navigate the State and Federal regimes as they can overlap. We will support any concerned potential whistleblower to navigate the legislative framework involved. If anyone is unclear about the processes or protections available, or simply wants further information, please contact:

- Ann Swain, General Counsel & Company Secretary: a.swain@tasracing.com.au,

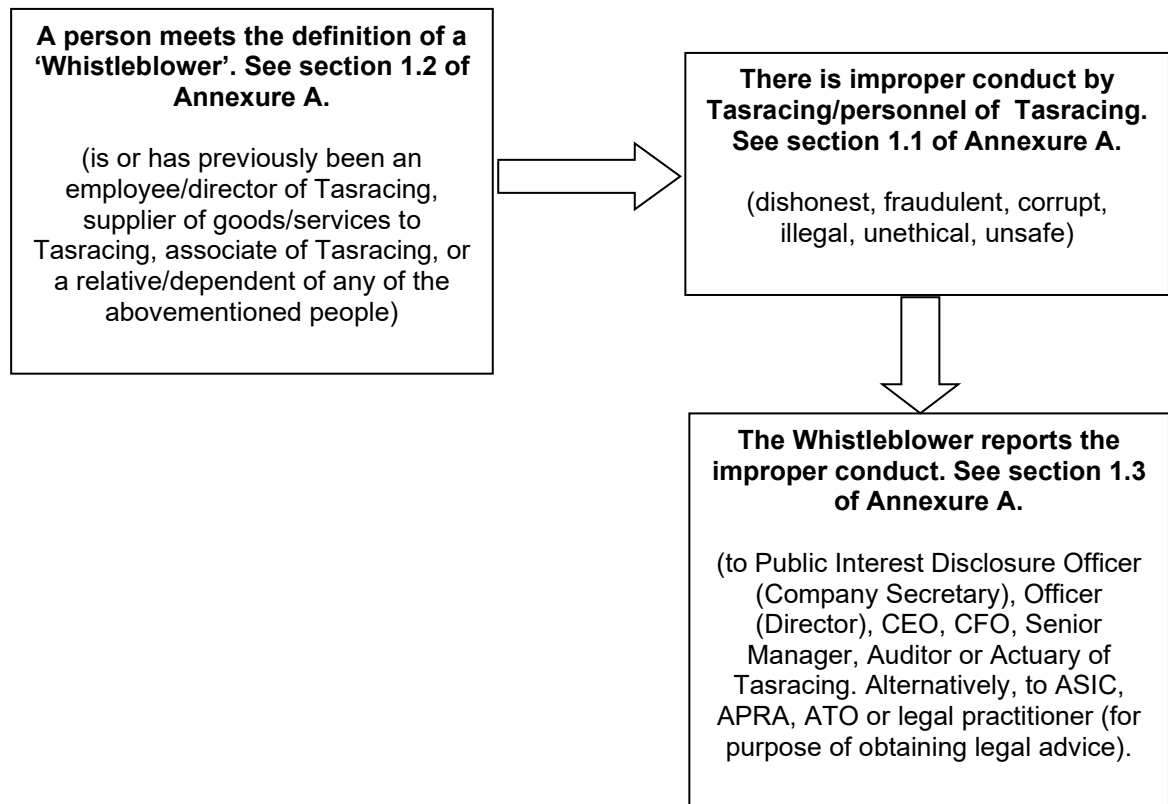
who is an eligible recipient of disclosures under both the State and Federal regimes.

Where a disclosure is eligible for protection under both the Federal and State regime, Tasracing considers that the Federal regime will automatically apply to the disclosure. The State regime may apply in consultation with the whistleblower.

In this instance, it is recommended that the procedure in **Annexure A** is followed in first instance in relation to disclosures under this Policy.

5. HOW DISCLOSURE WORKS

A flowchart is provided on the following page which summarises the key aspects of disclosure under the Federal whistleblower regime under **Annexure A**. However, please read **Annexure A** in full for further details about the process.



6. SCOPE

This Policy applies to all Tasracing employees, officers (including directors). Further, it also applies eligible whistleblowers in accordance with the Federal regime, including Tasracing employees (past and present), contractors (past and present) and all other categories of people identified in section 1.2 and 2.2 in Annexure A in this Policy (such as associates of Tasracing and relatives, dependents or spouses of current and former employees, contractors, consultants, service providers, suppliers and business partners).

The Federal regime applies to Tasracing volunteers. Under the State regime, volunteers can make disclosures as a member of the public and should be referred to the Ombudsman or Integrity Commission.

7. POLICY STATEMENT

Tasracing is committed to promoting the highest standard of conduct within the organisation and to facilitating the making of disclosures of improper conduct and wrongdoing. As such, this Policy will also:

- A) encourage disclosures of improper conduct;
- B) outline the legal protections for whistleblowers; and
- C) support Tasracing's values under Tasracing's Code of Conduct Manual and encourage ethical behaviour throughout the organisation.

8. ROLES AND RESPONSIBILITIES

Audit and Risk Committee (ARC): has responsibility for approving this Policy, and ensuring any organisational risks highlighted by any disclosures are addressed and mitigated by Tasracing.

Principal Officer: the Chief Executive Officer is the Principal Officer under the PID Act. The Principal Officer is eligible to receive disclosures under the Federal and State regime.

Public Interest Disclosure Officer: the General Counsel and Company Secretary is eligible to receive disclosures as the Public Interest Disclosure Officer under the State and Federal regimes.

Federal Eligible Recipients: all officers (including directors), CEO, CFO and senior managers are eligible recipients of disclosures under the Federal regime.

Employees: all employees have the responsibility for complying with this Policy.

9. COMPLIANCE

All Tasracing employees and officers (including directors) are responsible for complying with this Policy. Any breaches of this Policy will be treated seriously and may result in disciplinary action (including termination) being undertaken, particularly in relation to breaches of whistleblower protections. Penalties may also apply to breaches of this Policy, as the procedures in this Policy are modelled on legislative requirements.

Any employee, officer or contractor who is aware of a breach of this Policy must disclose this breach to their manager, People & Culture Manager or the Company Secretary.

While protection is provided to legitimate whistleblowers under this Policy, deliberately false, malicious or vexatious allegations of improper conduct or detrimental action will not be tolerated.

Training will be provided to employees and officers of Tasracing on an annual basis to ensure compliance with this Policy.

10. POLICY REVIEW CYCLE

This Policy is to be reviewed and endorsed by the ARC every three years, or when there is a significant change to the external environment or internal organisational structure. The ARC is responsible for approving this Policy.

11. AVAILABILITY OF THIS POLICY

This Policy is easily accessible on Tasracing's internal intranet page for staff members (The Trough) and external website to the public (<http://tasracingcorporate.com.au>).

For employees, this Policy will also be available where hard copies of policies are kept on site.

12. REFERENCES

- *Australian Securities and Investments Commission Act 2001* (Cth)
- *Banking Act 1959* (Cth)
- Code of Conduct Manual (dated May 2020)
- *Corporations Act 2001* (Cth)
- *Financial Sector (Collection of Data) Act 2001* (Cth)
- *Income Tax Assessment Act 1936* (Cth)
- *Insurance Act 1973* (Cth)
- *Life Insurance Act 1995* (Cth)
- *National Consumer Credit Protection Act 2009* (Cth)
- Ombudsman's Guidelines and Standards for procedures to be followed by Public Bodies
http://www.ombudsman.tas.gov.au/publications_and_media/guidelines/pid/guideines_and_standards
- *Public Interest Disclosures Act 2002* (Tas)
- *Superannuation Industry (Supervision) Act 1993* (Cth)
- *Tax Administration Act 1953* (Cth)
- *Tax Agent Services Act* (Cth)
- Workplace Bullying, Discrimination and Harassment Policy

13. **DOCUMENT CONTROL**

Date	Version	Author	Approved by
October 2021	1.0	Legal Counsel - Compliance	Audit & Risk Committee at meeting on 29 October 2021

ANNEXURE A – WHISTLEBLOWER PROCEDURE AND PROTECTIONS UNDER THE CORPORATIONS ACT 2001 (CTH) AND TAX ADMINISTRATION ACT 1953 (CTH) – ‘FEDERAL REGIME’

1. DISCLOSURES UNDER THE CORPORATIONS ACT 2001 (CTH)

In order to make a disclosure qualifying for protection under the *Corporations Act 2001* (Cth) (**Corporations Act**), the following requirements in sections 1.1 – 1.3 in Annexure A of this Policy must be satisfied:

1.1 THE MATTER MUST BE A DISCLOSABLE MATTER

Disclosable matters under the Corporations Act involve information:

- a) where the whistleblower has reasonable grounds to suspect that the information concerns misconduct, or an improper state of affairs or circumstances in relation to Tasracing, or a related body corporate of Tasracing; and
- b) without limiting section 1.1(a), where the whistleblower has reasonable grounds to suspect that the information indicates that Tasracing or its related body corporate (including its employees or officers) has engaged in conduct that:
 - (i) constitutes an offence against, or a contravention of, a provision of any of the following:
 - (A) the Corporations Act;
 - (B) the *Australian Securities and Investments Commission Act 2001* (Cth);
 - (C) the *Banking Act 1959* (Cth);
 - (D) the *Financial Sector (Collection of Data) Act 2001* (Cth);
 - (E) the *Insurance Act 1973* (Cth);
 - (F) the *Life Insurance Act 1995* (Cth);
 - (G) the *National Consumer Credit Protection Act 2009* (Cth);
 - (H) the *Superannuation Industry (Supervision) Act 1993* (Cth);
 - (I) an instrument made under an Act referred to in clauses 1.1(b)(i)(A) – 1.1(b)(i)(H); or
 - (ii) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
 - (iii) represents a danger to the public or the financial system or

(iv) is prescribed by the regulations.

The following table provides some examples of what would constitute disclosable matters and matters that are not disclosable:

Disclosable matters	Matters that are not disclosable
Illegal conduct, such as theft, dealing in, or use of illicit drugs, violence of threatened violence, and criminal damage against property	Disclosable matters do not include disclosures solely relating to personal work-related grievances
Offering or accepting a bribe	An interpersonal conflict between the whistleblower and another employee
Fraud, money laundering or misappropriation of funds	A decision that does not involve a breach of workplace laws
Financial irregularities	A decision about the engagement, transfer or promotion of the whistleblower
Failure to comply with, or breach of, legal or regulatory requirements	A decision about the terms and conditions of engagement of a whistleblower, or decision to suspend/terminate engagement of a whistleblower

**A personal work-related grievance may still qualify for protection if it includes information about misconduct or another matter that is disclosable.*

For matters that are not disclosable, please refer to Tasracing's Code of Conduct Manual or consult Tasracing's People & Culture Manager.

1.2 **ONLY 'ELIGIBLE WHISTLEBLOWERS' TO MAKE DISCLOSURES**

Only 'eligible whistleblowers' can make protected disclosures.

An eligible whistleblower is an individual who is, or has been, any of the following in relation to Tasracing:

- a) an officer or employee (e.g. current and former employees who are permanent, part-time, fixed term or temporary, interns, secondees, managers and directors);
- b) suppliers of services or goods to Tasracing (whether paid or unpaid), including their employees (e.g. current and former contractors, consultants, service providers and business partners, whether paid or unpaid);
- c) an associate of Tasracing; or

- d) a relative, dependant or spouse of an individual referred to above in section 1.2(a) to (c) (e.g. relatives, dependants or spouses of current and former employees, contractors, consultants, service providers, suppliers and business partners).

1.3 ONLY 'ELIGIBLE RECIPIENTS' TO RECEIVE DISCLOSURES

A whistleblower needs to make a disclosure to an 'eligible recipient' within Tasracing. Eligible recipients should notify Tasracing's Public Interest Disclosure Officer once a disclosure is received, subject to the whistleblower's consent. This is to ensure Tasracing's systems for safeguarding whistleblowers can commence as soon as practicable.

a) An 'eligible recipient' includes:

- (i) an officer (i.e. a director or company secretary) or senior manager (i.e. a person within Tasracing other than a director or a company secretary, who participates in decision making that substantially affects the business, including financially) of Tasracing or a related body corporate of Tasracing (CEO and CFO is included in this category);
- (ii) an auditor, or a member of an audit team conducting an audit, of Tasracing or a related body corporate of Tasracing;
- (iii) an actuary of Tasracing or a related body corporate of Tasracing; or
- (iv) a person authorised by Tasracing to receive disclosures (i.e. Public Interest Disclosure Officer).

b) Whistleblowers can also make a disclosure to:

- (i) a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions of the Corporations Act;
- (ii) the Australian Securities and Investments Commission (ASIC), the Australia Prudential Regulation Authority (APRA) or any other Commonwealth authority that is prescribed under the Corporations Act (these entities publish information on how disclosures may made to them); and
- (iii) a member of Federal or State Parliament or a journalist in certain circumstances. You are encouraged to read the below information on public interest disclosure and emergency disclosure on this matter.

1.3.1 Public Interest Disclosures

A public interest disclosure will qualify for protection when the disclosure of information is made to a journalist or a member of Federal or State Parliament when:

- a) at least ninety (90) days have passed since the whistleblower made the disclosure to ASIC, APRA or a Commonwealth authority prescribed by the regulations;
- b) the whistleblower does not have reasonable grounds to believe that action is being, or has been, taken to address the matters relating to the disclosure; and
- c) the whistleblower has reasonable grounds to believe that making a further disclosure of the information is in the public interest; and
- d) before making the public interest disclosure the whistleblower gave the body which the previous disclosure was made a written notification that:
 - (i) includes sufficient information to identify the previous disclosure; and
 - (ii) states that the whistleblower intends to make a public interest disclosure.

1.3.2 Emergency Disclosure

An emergency disclosure will qualify for protection when the disclosure of information is made to a journalist or a member of Federal or State Parliament when:

- a) the whistleblower has previously made a disclosure to ASIC, APRA or a Commonwealth authority prescribed by the regulations;
- b) the whistleblower has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment;
- c) before making the emergency disclosure, the whistleblower gives the body to which the previous disclosure was made a written notification that:
 - (i) includes sufficient information to identify the previous disclosure; and
 - (ii) states that the whistleblower intends to make an emergency disclosure; and
- d) the extent of the information disclosed in the emergency disclosure is not greater than is necessary to inform the journalist or member of Federal or State Parliament of the substantial and imminent danger.

1.4 HOW DISCLOSURES MUST BE MADE

A disclosure can be made by an eligible whistleblower to any of the eligible recipients or persons listed in section 1.3 in Annexure A of this Policy.

Tasracing encourages disclosures to a senior manager or an officer (Chief Executive Officer (CEO), Chief Financial Officer (CFO) or Company Secretary) in the first instance where possible. A disclosure can be made confidentially and directly to any such individual, in person, by phone or email. In comparison, disclosures under the

State regime within Tasracing should only be made to the CEO or Public Interest Disclosure Officer (General Counsel & Company Secretary).

If a disclosure relates to the CEO, CFO or Company Secretary, the disclosure should be made to one of the recipients in section 1.3(b).

Disclosures can be made at any time (including outside of business hours) and can be made anonymously if necessary. Further information about anonymous disclosures is provided directly below.

Anonymous Disclosure

A disclosure can be made anonymously and be protected by the Corporations Act. A whistleblower can remain anonymous throughout the whole disclosure process. A whistleblower can refuse to answer any questions that may reveal the whistleblower's identity at any time. Anonymous whistleblowers should supply Tasracing with contact details so that Tasracing can ask follow-up questions, keep the whistleblower updated and provide feedback.

Measures to protect a whistleblower's identity are further discussed below in section 1.5 of Annexure A of this Policy.

1.5 LEGAL PROTECTIONS FOR WHISTLEBLOWERS

The following legal protections are available to whistleblowers who make a disclosure regarding a disclosable matter covered by the Corporations Act:

- identity protection (confidentiality);
- protection from detrimental acts or omissions;
- protection from civil, criminal and administrative liability; and
- compensation and other remedies.

The legal protections available to whistleblowers are discussed in further detail below.

1.5.1 Identity Protection (Confidentiality)

- a) It is illegal for a person to disclose the identity of a whistleblower, or disclose information that is likely to lead to the identification of a whistleblower, unless a person discloses the identity of the whistleblower to:
 - (i) ASIC, APRA or a member of the Australian Federal Police;
 - (ii) A legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the Corporations Act; or

- (iii) a person or body prescribed by the regulations; or
 - (iv) with the whistleblower's consent.
- b) A person can also disclose the information contained in a disclosure with or without the whistleblower's consent if:
 - (i) the information does not include the identity of the whistleblower;
 - (ii) the information is reasonably necessary to investigate the issues raised in the disclosure; and
 - (iii) Tasracing takes all reasonable steps to reduce the risk that the whistleblower will be identified from the information.

1.5.2 Protection from Detrimental Acts or Omissions

- a) A person cannot:
 - (i) engage in detrimental conduct towards a whistleblower in relation to a disclosure, if:
 - A. the person believes or suspects that the whistleblower (or any other person) made, may have made, proposes to make or could make a disclosure that qualifies for protection; and
 - B. the belief or suspicion is the reason, or part of the reason, for the detrimental conduct; or
 - (ii) make a threat to cause detriment to the whistleblower (or another person) in relation to a disclosure. Threats may be express or implied, conditional or unconditional. A whistleblower (or another person) who has been threatened in relation to a disclosure does not have to actually fear that the threat will be carried out.
- b) The Corporations Act defines Detriment to include (without limitation) any of the following:
 - (i) dismissal of an employee;
 - (ii) injury of an employee in his or her employment;
 - (iii) alteration of an employee's position or duties to his or her disadvantage;
 - (iv) discrimination between an employee and other employees of the same employer;
 - (v) harassment or intimidation of a person;
 - (vi) harm or injury to a person, including psychological harm;

- (vii) damage to a person's property;
- (viii) damage to a person's reputation;
- (ix) damage to a person's business or financial position; and
- (x) any other damage to a person.

1.5.3 Protection from Civil, Criminal and Administrative Liability

A whistleblower has legal protections in relation to a disclosure, including not being subject to:

- a) liability (e.g. legal action against the whistleblower for breach of an employment contract);
- b) criminal liability (e.g. potential prosecution of a whistleblower for unlawfully releasing information); and
- c) administrative liability (including disciplinary action for making the disclosure).

However, these protections do not grant immunity for any misconduct that a whistleblower has engaged in that is revealed in the whistleblower's disclosure.

1.5.4 Compensation And Other Remedies

The courts can make numerous orders to provide compensation and other remedies to whistleblowers and other employees if they:

- a) suffer loss, damage or injury because of a disclosure; or
- b) if Tasracing did not take reasonable precautions or exercise due diligence to avoid the detrimental conduct.

However, Tasracing cannot provide legal advice regarding any of the above matters and encourages any whistleblowers to seek independent legal advice.

1.6 SUPPORT FOR WHISTLEBLOWERS AND PROTECTION FROM DETRIMENT

Tasracing has adopted a number of measures to support whistleblowers and protect them from detriment. These include ensuring that:

- a) all disclosures are treated in confidence;
- b) only relevant and limited staff are involved in handling and investigating the disclosure;
- c) the whistleblower will be referred to in gender-neutral language to staff that are not involved in the investigation;
- d) all documentation and correspondence will be stored electronically with restricted access;

- e) support services under the Employee Assistance Program are available;
- f) flexible working conditions for the whistleblower are provided if necessary (including the ability to work remotely) and relocation of other staff involved in the disclosure is a viable option;
- g) Tasracing's Code of Conduct Manual is reviewed in accordance with a review schedule and all staff are provided training accompanied with this; and
- h) the whistleblower is aware that they can seek independent legal advice and have the ability to contact government bodies such as ASIC or APRA to obtain advice if they believe they have been subject to detrimental conduct.

1.7 INVESTIGATION OF DISCLOSURES

Tasracing's investigation procedure regarding disclosures is documented in the following numbered steps:

1. Upon receipt of a disclosure, Tasracing will start assessing the disclosure and consider the application of the State and Federal whistleblower legislative regimes.
2. After initial assessment, Tasracing will respond to the whistleblower (if possible) and work with them to ensure they have understanding of the legislative context around the disclosure.
3. If it is determined that the Federal legislative regime applies (more specifically, the whistleblower provisions under the Corporations Act) then Tasracing will appoint an investigator to carry out the investigation.
4. Once an investigator has been appointed, the scope and timeframe for completing the investigation can be determined. The investigation should be conducted by parties independent from the whistleblower and the individuals mentioned in the disclosure.
5. If contact details for the whistleblower are available, the whistleblower will be provided with regular updates throughout the investigations process.
6. Tasracing will adhere to the confidentiality and procedural fairness principles (described in section 1.8 of Annexure A of this Policy) that underpin the disclosure system under the Corporations Act during the investigation process.

Tasracing may not be able to conduct an investigation if the disclosure is made anonymously and the whistleblower has not provided contact details.

1.8 ENSURING FAIR TREATMENT OF PERSONS INVOLVED IN DISCLOSURES

Tasracing will implement the following procedures to ensure the fair treatment of persons involved in disclosures:

- a) all disclosures are treated in strict confidence;
- b) only relevant and limited staff are involved in handling and investigating the disclosure; and
- c) Tasracing may engage external parties to assist with the investigation of disclosures to ensure impartiality, if necessary.

Support services under the Employee Assistance Program are also available to any employees involved.

2. DISCLOSURES UNDER THE TAX ADMINISTRATION ACT 1953 (CTH)

The whistleblower provisions under the *Tax Administration Act 1953 (Cth)* (**Tax Act**) are similar to those under the Corporations Act. Thus, we will outline only some of the provisions and differences in Annexure A of this Policy below but we will provide a link to additional information in section 2.4 where further details can be found about whistleblowing under the Tax Act.

In order to make a disclosure qualifying for protection under the Tax Act, the following requirements in sections 2.1 – 2.3 of Annexure A of this Policy must be satisfied:

2.1 THE MATTER MUST BE A DISCLOSABLE MATTER

Disclosable matters under the Tax Act involve information:

- a) where the whistleblower has reasonable grounds to suspect that the information concerns misconduct, or an improper state of affairs or circumstances in relation to the tax affairs of Tasracing, or an associate of Tasracing (within the meaning of section 318 of the *Income Tax Assessment Act 1936 (Cth)*); and
- b) where the whistleblower considers that the information may assist the eligible recipient to perform functions or duties in relation to tax affairs of Tasracing or associate.

2.2 ONLY 'ELIGIBLE WHISTLEBLOWERS' TO MAKE DISCLOSURES

Only 'eligible whistleblowers' can make protected disclosures.

An eligible whistleblower is an individual who is, or has been, any of the following in relation to Tasracing:

- a) an officer or employee (e.g. current and former employees who are permanent, part-time, fixed term or temporary, interns, secondees, managers and directors);
- b) suppliers of services or goods to Tasracing, including their employees (e.g. current and former contractors, consultants, service providers and business partners);

- c) an associate of Tasracing (within the meaning of section 318 of the *Income Tax Assessment Act 1936* (Cth)); or
- d) a relative, dependant or spouse of an individual referred to above in section 2.2(a) to (c) (e.g. relatives, dependants or spouses of current and former employees, contractors, consultants, service providers, suppliers and business partners).

2.3 ONLY 'ELIGIBLE RECIPIENTS' TO RECEIVE DISCLOSURES

A whistleblower needs to make a disclosure to an 'eligible recipient'.

An 'eligible recipient' includes:

- a) an auditor, or a member of an audit team conducting an audit, of Tasracing or a related body corporate of Tasracing;
- b) a registered tax agent or BAS agent (within the meaning of the *Tax Agent Services Act 2009* (Cth)) who provides tax agent services (within the meaning of that Act) or BAS services (within the meaning of that Act) to the entity;
- c) a person authorised by Tasracing to receive disclosures that may qualify for protection under the Tax Act as described in clause 1.4 of Annexure A;
- d) a person or body prescribed;
- e) a director, company secretary or senior manager of Tasracing (within the meaning of the Corporations Act);
- f) any other employee or officer (within the meaning of the Corporations Act) of Tasracing who has functions or duties that relate to the tax affairs of Tasracing (CFO); and
- g) a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions of the Tax Act.

2.4 ADDITIONAL INFORMATION ABOUT DISCLOSURES UNDER THE TAX ACT

Additional information about other key aspects of the whistleblower provisions under the Tax Act, such as legal protections and compensation and other remedies available to whistleblowers, is available from the Australian Taxation Office via the following link: <https://www.ato.gov.au/general/gen/whistleblowers/>

In relation to whistleblowing under the Tax Act, Tasracing will:

- a) support whistleblowers and protect them from detriment through using the measures referred to in section 1.6;

- b) investigate disclosures that qualify for protection in accordance with the measures identified in section 1.7; and
- c) ensure fair treatment of the persons involved in disclosures in accordance with the measures identified in section 1.8.

ANNEXURE B - PUBLIC INTEREST
DISCLOSURE PROCEDURES - 'STATE REGIME'

Tasracing Pty Ltd
ACN 137 188 286

Ladbrokes Park Elwick
6 Goodwood Road,
GLENORCHY TAS 7010

Public Interest Disclosure Procedures
(Public Interest Disclosures Act 2002)

Date of Issue: September 2021

These procedures follow the Model Procedures provided by Ombudsman
Tasmania (issued 25 November 2020, version 1.1 updated 8 April 2021)

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1. Statement of Support

Tasracing is committed to fostering a culture of ethical behaviour where you feel safe and are encouraged to speak up on matters or conduct that concern you. We strongly encourage you to speak up if you suspect or witness any matters of concern. This could be anything from serious misconduct to observing something that does not quiet feel right.

Our Values, Code of Conduct and policies guide our everyday conduct. We have a professional responsibility to speak up and report unethical behaviour. We will not tolerate any corrupt, illegal or other improper conduct by our employees, officers, members, contractors or the taking of detrimental action against those who come forward to disclose such conduct.

We are committed to the purposes of the *Public Interest Disclosures Act 2002* (**the Act**), which are primarily:

- to encourage and facilitate disclosures of improper conduct by public officers;
- to protect persons making those disclosures and others from reprisals;
- to allow for the matters disclosed to be properly investigated and dealt with; and
- to provide all parties involved with those disclosures with procedural fairness (referred to as natural justice in the Act).

We recognise the value of transparency and accountability in the Act's administrative and management practices, and supports the making of disclosures that reveal the type of conducts covered by it.

The Public Interest Disclosure Procedures (**procedures**) describe the protections available to you, what matters are reportable, how you can report your concerns without fear of detriment, and how Tasracing will support and protect you.

The procedures apply to Tasracing members, directors and employees (including full-time, part-time, casual and fixed term). If a disclosure is from a contractor, a member of the public, volunteers or about the Principal Officer or Tasracing, it must be referred to the Ombudsman or the Integrity Commission.

The procedures are available on Tasracing's corporate website and intranet.

2. Purpose of these procedures

These procedures set out how:

- public officers and contractors can make disclosures about improper conduct or reprisal action;
- disclosures are assessed;
- public interest disclosures are investigated; and
- Tasracing protects disclosers and affords procedural fairness¹ to those being investigated.

These procedures do not apply to personal work-related grievances, such as inter-personal conflicts between employees, a decision to discipline an employee or other matters that have an implication for that person personally rather than for the organisation as a whole. Matters of this nature should be reported to your supervisor or the People & Culture Manager.

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 provided in our Workplace Bullying, Discrimination & Harassment Policy, the Code of Conduct and the Complaints Management and Procedures Policy. They are available on Tasracing's intranet page.

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

3. How the Act works

Briefly, the 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 Act, particularly s 6);²

¹ Referred to as natural justice in the Act.

² 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.

- it provides certain statutory protections for *protected disclosures*, even if the discloser does not reference the Act (Part 3);
- it dictates how the recipient of the disclosure is to deal with it (Parts 4 to 8);
- it treats the Ombudsman as the oversight agency in relation to the operation of the Act, including the default investigator, monitor of investigations by public bodies, and setter of standards under the Act;
- where the disclosure is handled by the Ombudsman or a public body, it requires a determination as to whether the protected disclosure is a *public interest disclosure* (ss 30 and 33);
- subject to exceptions, it 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.

4. Roles and responsibilities

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

4.1. Members, officers and employees

Members, officers and employees (**public officers**) of Tasracing are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

All public officers of Tasracing 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 Act are implemented by Tasracing. Section 62A of the Act provides that the Principal Officer has responsibility for:

- preparing procedures for approval by the Ombudsman;
- receiving public interest disclosures and ensuring they are dealt with in accordance with the Act;
- ensuring the protection of witnesses;
- ensuring the application of procedural fairness in Tasracing's procedures;
- ensuring the promotion of the importance of public interest disclosures and general education about the Act to all staff, and ensuring easy access to information about the Act and the 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 of these functions and powers to a Public Interest Disclosure Officer.

4.3. Public Interest Disclosure Officer

A Public Interest Disclosure Officer is appointed by the Principal Officer under s 62A(2) of the Act. They hold a delegation from the Principal Officer pursuant to Tasracing's Delegations Manual which enables them to:

- act as a contact point for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct or detrimental action;
- 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 assess the allegation and determine whether it is a disclosure made in accordance with Part 2 of the Act (that is, "a protected disclosure");
- impartially assess under s 33 of the Act whether a disclosure is a "public interest disclosure";

- 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; and
- undertake administrative functions to support the role under the Act, as required.

Tasracing's Public Interest Disclosure officer is Ann Swain, General Counsel & Company Secretary.

4.4. Investigator

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

4.5. 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;³
- 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 Tasracing or a consultant engaged for that purpose. They must not be responsible for assessing or investigating the disclosure.

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

5. Who can make a disclosure?

5.1. Public officers

Any current public officer⁴ (which includes employees, officers and members of Tasracing) can make a disclosure to Tasracing under the Act.

Volunteers for Tasracing are unlikely to be considered as a public officer. However, volunteers who are not public officers can still make disclosures though as a member of the public and should be referred to the Ombudsman or Integrity Commission.

5.2. 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 Tasracing. Public Interest Disclosure officers should refer any contractors wanting to make a disclosure to either of these bodies.

5.3. 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.

5.4. 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 Act). If the person is satisfied that an anonymous disclosure is from a contractor it should be referred to the Ombudsman.

⁴ This can include a public officer from another public body

6. 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 Tasracing as a whole or the Principal Officer of Tasracing, it should be referred to the Ombudsman or Integrity Commission as internal investigation would not be appropriate.

6.1. 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 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.⁵

Examples of improper conduct include:

⁵ See Public Interest Disclosure Guideline One: Serious or Significant Improper Conduct, available at www.ombudsman.tas.gov.au

- failure to comply with or breach of legal or regulatory requirements;
- selling Tasracing property for personal gain;
- theft, fraud, money laundering or misappropriation of funds; and
- a principal officer spends \$15,000 of public money on a staff Christmas party.

6.2. Corrupt conduct

Corrupt conduct is further defined in s3 of the 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:

- a public officer takes a bribe in exchange for a favourable treatment of an industry participant;
- non-compliance of the Recruitment and Selection Policy and the public officer favours unmeritorious applications for jobs or permits by friends and relatives;
- a public officer sells confidential information to an external party; and
- non-compliance of the Procurement Policy and Procedures and the public officer engaging their friends, family or relatives to undertake services.

6.3. 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 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 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 Act:

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

Officer or public body to which the disclosure relates

Where the disclosure may be made

In any other case, including if the disclosure is about a public body as opposed to an individual public officer

the Ombudsman; or
the Integrity Commission

8. How to make a disclosure

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

- the Chief Executive Officer – who is the Principal Officer of the public body, for the purposes of the Act; and
- the General Counsel & Company Secretary – who is the delegated Public Interest Disclosure Officer.

8.1. Public Interest Disclosure Officer

Tasracing’s Public Interest Disclosure Officer is Ann Swain, the General Counsel & Company Secretary.

If someone wants to make a disclosure about the Principal Officer or Tasracing, 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 Public Interest Disclosure Officer. A disclosure can be sent, delivered or left at:

Post:
Tasracing Pty Ltd
PO Box 730
GLENORCHY TAS 7010

Hand delivered:
Tasracing Pty Ltd
6 Goodwood Road
GLENORCHY TAS 7010

Via email: a.swain@tasracing.com.au

Phone: (03) 6212 9336 (General Counsel & Company Secretary)

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. If a public officer is concerned about making a disclosure in person in the workplace, they can call or email the Public Interest Disclosure Officer to request a meeting in a location away from the workplace.

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

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

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

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

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

9. Confidentiality

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

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

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

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

It may be necessary to consider disclosing information where:

- it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to the person who is the subject of the disclosure;
- the investigating body believes that the disclosure of the identifying information is necessary for the matter to be effectively investigated; or

- the identity of the discloser is likely to be guessed from the circumstances of the disclosure and the risks for the discloser are better managed if their identity is known and specific warnings or risk management actions can be taken.

In these circumstances, the person who made the disclosure should first be consulted before any action is taken. Consider obtaining permission in writing from the discloser prior to identifying them.

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

All printed and electronic material will be kept in files that are clearly marked as confidential, and all materials relevant to an investigation, such as interview recordings, 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 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 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 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 Tasracing,
 - 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.

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.⁶ 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 Act, only apply where the disclosure is a *protected disclosure* made in accordance with Part 2 of the Act.

The Principal Officer or a Public Interest Disclosure Officer should assess whether a disclosure has been made in accordance with Part 2 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

⁶ 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?](#)

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 Act (such as a copy of Part 3 of the 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.

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 Tasracing to identify whether or not the Act applies. Consider discussing with the person 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.

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 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. 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 Tasracing. 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

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

Tasracing must notify the discloser of the referral under s 29D of the 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 Act.

10.6. 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 or not it is a public interest disclosure. The Principal Officer or Public Interest Disclosure Officer must make this determination under s 33 of the Act within 45 days of the receipt of the disclosure. Use the Assessment of disclosure form at Attachment I 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 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 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 Act or the Ombudsman will deal with the disclosed matter.

10.7. 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, Tasracing 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 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, Tasracing should consider whether the disclosure should be referred to the Ombudsman under s 68 of the Act.

Early referral of the matter may avoid interference with the evidentiary trail 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 Act. Once a

disclosure is referred to the Commissioner through the Ombudsman, the investigation under the 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 Tasracing. 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.

11. Protection

11.1. When does protection commence?

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

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

11.2. What protection does the Act provide?

Part 3 of the Act gives various types of protection to a person who makes a protected disclosure. 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.

12. Investigation

12.1. Introduction

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

Tasracing 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 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 specifies certain circumstances under which a public body may legitimately decide not to investigate. Use the disclosure assessment template at Attachment I to assist in assessing whether any of the grounds in s64 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 Act. Importantly, the discloser still retains the protections. The Principal Officer, or the Public Interest Disclosure Officer in consultation with the Principal Officer, will decide how the matter should be dealt with.

If the Ombudsman determines that the disclosure should be investigated, they will advise the Principal Officer.

Section 64 may be reconsidered at a later time during the investigation.

12.3. Employment Direction 5 investigations

This section is not applicable to Tasracing.

12.4. Appointment of investigator and framing of terms of reference

The Principal Officer – not a Public Interest Disclosure Officer - will determine who is to carry out the investigation.

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, Tasracing may apply to the Ombudsman for an extension of up to a further six months.

12.5. Investigation plan

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

12.6. Procedural fairness

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

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

Tasracing 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.⁷

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.

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.

12.7. Conduct of the investigation

The Integrity Commission's Guide to Managing Misconduct in the Tasmanian Public Sector⁸ 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.

⁷ 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.

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

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.

12.8. Referral of an investigation to the Ombudsman

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

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

12.9. Provision of information about the investigation

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

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

As provided by 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.

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 s 75 of the 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 Tasracing to prevent the conduct from continuing or occurring in the future; and
- any action that should be taken by Tasracing 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 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, Tasracing 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 Racing and the Ombudsman, setting out the findings of the investigation and any remedial steps taken. The report must not disclose particulars likely to lead to the identification of the discloser. The Ombudsman will also be provided with the full internal investigation report and accompanying evidence. See the notification template at Attachment 3.

As required by s 77 of the Act, the Principal Officer will also inform the discloser of the findings of the investigation, and of any steps taken under s 75 as a result of 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 Tasracing, they may report the matter to the Ombudsman.

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 Tasracing to address any improper conduct that has been found to have occurred. The discloser must be given reasons for all decisions made by Tasracing 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 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 Act as well as grounds for making a further disclosure. Where such detrimental action is reported, the Public Interest Disclosure Officer or the Principal Officer will assess the report as a new disclosure under the Act, and it will be dealt with accordingly.

14.4. Discloser implicated in improper conduct

Where a person who makes a disclosure is implicated in improper conduct, Tasracing will handle the disclosure and protect the discloser from reprisals in accordance with the Act, the Ombudsman's guidelines and these procedures. At the same time Tasracing acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. Section 18 of the Act specifically provides that a person's liability for 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

Tasracing 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.

Tasracing 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 Tasracing 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.

Tasracing 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 Tasracing 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 s 60(3) of the Act on 24 September 2021.

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 s 38(1)(c).

The date by which the procedures must be submitted to the Ombudsman for review is 24 September 2024.

The Tasracing Board has approved these Procedures on 26 May 2021 to demonstrate their commitment to the aims and objectives of the 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 I: Is the disclosure a protected disclosure?

Question 1: Is the discloser a public officer?

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

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

Yes No

Please provide details if relevant:

Question 2: Is the disclosure about a public officer?

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

Yes No

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

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

Yes No

Please provide details:

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

Yes No

If no, provide details:

Question 5: Does the disclosure relate to improper conduct?

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

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

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

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

Yes No

Please provide details:

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

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

Yes No

Assessment of Answers to Part 1 Questions

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

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

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

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

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

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

Yes No

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

Yes No

If yes, please provide details

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

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

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

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

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

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

Yes No

Provide reasons for your decision and attach evidence if available

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:

Public Interest Disclosure Officer or Principal Officer – Type Name

Date of approval

Risk assessment review

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

Name of reviewing officer:

Date of assessment:

Notes on changes to risk since last assessment

Review outcome

No change to action plan

Further action required

Please provide details:

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

Ombudsman notification template (Attachment 3)

Public Interest Disclosures Act 2002

Public body name:

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)

