

Public Interest Disclosure Procedure

Public Interest Disclosures Act 2002 (Tas)

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1 Statement of support

The City of Launceston (CoL) is committed to the aims and objectives of the *Public Interest Disclosures Act 2002* (Tas) (the Act). The CoL will promote a top down approach to proper conduct by its employees, officers or members. Further to this CoL will strive:

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

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

The CoL will take all reasonable steps to protect people who make such a disclosure from any detrimental action in reprisal for making the disclosure, and to protect their welfare. It will also afford natural justice to all parties involved in the investigation of a disclosure.

2 Purpose of these procedures

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by members, officers or employees of the CoL. The procedures are also intended to assist its members, officers and employees to understand the way in which the Act operates and needs to be administered.

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

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

At the CoL, the other policies and procedures to which you might refer include:

- [22-PI-030 Code of Conduct Policy](#)

- [22-PI-036 Workplace Behaviour Policy](#)
- [22-PI-034 Issue Resolution Policy](#)

The procedures have been prepared in accordance with Guidelines and Standards published by the Ombudsman under section 38(1)(c) of the Act. These Guidelines and Standards can be seen on the Ombudsman's website at: www.ombudsman.tas.gov.au.

3 The purpose of the Act

The Act commenced operation on 1 January 2004. It was substantially amended by the *Public Interest Disclosures Amendment Act 2009* (Tas). The purposes of the Act are contained in its long title. These are:

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

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

4 How the Act works

Briefly, the Act works in this way:

- It gives certain people – “public officers” and “contractors” – the right to make a disclosure about “improper conduct” or “detrimental action” to certain integrity agencies, other persons and bodies (Part 2 of the Act, particularly section 6)¹.
- It provides certain statutory protections for protected disclosures (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” (sections 30 and 33). In other words a disclosure which, in the case of decision-making by the Ombudsman, meets the requirements of section 30(2), or, in the case of decision-making by the public body, meets the requirements of section 33(2).

¹ Note that section 7A of the Act permits a person to whom a disclosure may be made under Part 2 of the Act to treat a person who is not a public officer or contractor as a contractor for the purposes of the Act, if they consider that it would be in the public interest to do so. A disclosure by a contractor is not . ¹ Members of the public may also make disclosures in limited circumstances, when the Ombudsman or Integrity Commission deems this in the public interest under section 7A.

- Subject to exceptions, it requires investigation by the Ombudsman or public body of any protected disclosure which is found to be a public interest disclosure (sections 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 (sections 39A and 77A).
- It controls the manner in which a disclosure is investigated, and provides powers in this respect.
- In the case of investigation by the Ombudsman, it gives the Ombudsman the power to provide a report and may recommend that action be taken in light of the investigation (section 56).
- In the case of an investigation by a public body which results in a finding that the alleged conduct occurred, it obliges the public body to take action to prevent that conduct from continuing or recurring, and to take action to remedy any harm or loss which may have arisen (section 75).

A flow chart, which depicts the way in which a public body should deal with a disclosure made to it under the Act, is at Attachment 1 to this document. It is important to note that a person does not have to expressly reference the Act when making a disclosure in order to be eligible for protection, if all the requirements in the Act are otherwise met.

5 Roles and responsibilities

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

5.1 Members, officers and employees

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

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

5.2 Principal Officer

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

- preparing procedures for approval by the Ombudsman;
- receiving public interest disclosures and ensuring they are dealt with in accordance with the Act;
- ensuring the protection of witnesses;
- ensuring the application of natural justice in the public body's procedures;

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

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

5.3 Public Interest Disclosure Officers

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

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

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

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

See the cover page for a list of Col's Public Interest Disclosure officers.

5.4 Investigator

Where the CoL has determined that a disclosure is a public interest disclosure, or where the Ombudsman has referred a disclosed matter to the CoL 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 the public body or a consultant engaged for that purpose.

5.5 Welfare manager

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

- examine the immediate welfare and protection needs of a person who has made a disclosure, and seek to foster a supportive work environment;
- advise the discloser of the legislative and administrative protections available to him or her;²
- listen and respond to any concerns of harassment, intimidation, victimisation or other detrimental action which may be occurring in reprisal for making the disclosure; and
- so far as is practicable, protect the identity of the discloser in the course of carrying out these responsibilities.

A welfare manager may be a person from within the public body or a consultant engaged for that purpose.

6 Who can make a disclosure?

6.1 Public officers

Any current public officer³ can make a disclosure to the CoL under the Act. This includes:

- all employees and councillors of the CoL, Council volunteers are not considered public officers, but could make a disclosure to the Ombudsman or Integrity Commission about a public body as a member of the public.

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

6.3 Members of the public

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

6.4 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 section 8 of the Act). If the person is satisfied that an anonymous disclosure is from a contractor it should be referred to the Ombudsman.

² See [Protection](#) below for details of the legislative protections.

³ This can include a public officer from another public body

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

7.1 *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.⁴

Examples of improper conduct include:

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

⁴ See Public Interest Disclosure Guideline Two: Serious or Significant Improper Conduct, available at www.ombudsman.tas.gov.au

- an agricultural officer delays or declines imposing quarantine to allow a financially distressed farmer to sell diseased stock; and
- a principal officer spends \$15,000 of public money on a staff Christmas party.

7.2 Corrupt conduct

Corrupt conduct is further defined in section 3 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 the discharge of a public duty;
- a public officer favours unmeritorious applications for jobs or permits by friends and relatives; and
- a Public Officer accesses and discloses third-party personal information at the request of a friend, without any legitimate reason.

7.3 Detrimental action

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

8 Where to make a disclosure

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

Officer or public body to which the disclosure relates	Person to whom the disclosure may be made
a member, officer or employee of a public body other than the Police Service or a State Service Agency	that public body; or the Integrity Commission; or the Ombudsman
a member, officer or employee of a public body that is a State Service Agency	that State Service Agency; or the Integrity Commission; or the Ombudsman
The principal officer of a public body or State Service Agency	the Ombudsman; or the Integrity Commission
a member of the Police Service, other than the Commissioner of Police	the Commissioner of Police
the Commissioner of Police	the Ombudsman
a member of the Legislative Council	the President of the Legislative Council
a member of the House of Assembly	the Speaker of the House

Officer or public body to which the disclosure relates	Person to whom the disclosure may be made
a Councillor, within the meaning of the <i>Local Government Act 1993</i> (Tas)	the Ombudsman
a person employed under the provisions of the <i>Parliamentary Privilege Act 1898</i> (Tas)	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
The Principal Officer of City of Launceston or City of Launceston as a whole	the Ombudsman; or the Integrity Commission
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

9 How to make a disclosure

- Public officers can make a disclosure about other public officers of the CoL orally or in writing to the following officers:
- The Chief Executive Officer – who is the “Principal Officer” of the public body, within the terms of the Act.
- A Public Interest Disclosure Officer.

9.1 Public Interest Disclosure Officers

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

- General Manager Organisational Services
- Manager People and Culture
- Manager Governance

9.2 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 18-28 St John Street, Launceston Tas, 7250 or;

Louise.foster@launceston.tas.gov.au

Leanne.purchase@launceston.tas.gov.au

Roxanne.chugg@launceston.tas.gov.au

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.

9.3 Disclosure to the Ombudsman

A disclosure about improper conduct or detrimental action by the CoL or any of its members, officers or employees may also be made directly to the Ombudsman. The contact details for the Ombudsman are:

The Ombudsman
GPO Box 960
HOBART TAS 7001

or at

Level 6, 86 Collins Street
HOBART TAS 7000

Website: www.ombudsman.tas.gov.au
Email: ombudsman@ombudsman.tas.gov.au
Telephone: 1800 001 170 (free call, though charges for mobile phones may apply)

9.4 Disclosure to the Integrity Commission

A disclosure about improper conduct or detrimental action by CoL or any of its members, officers or employees may also be made directly to the Integrity Commission. The contact details for the Integrity Commission are:

Tasmanian Integrity Commission
GPO Box 822
HOBART TAS 7001

or at

Level 2, Surrey House
199 Macquarie Street

HOBART TAS 7000

Website: www.integrity.tas.gov.au

Email: integritycommission@integrity.tas.gov.au

Phone: 1300 720 289

10 Confidentiality

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

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 due to the handling or investigation of a protected disclosure, not to disclose that information except in certain limited circumstances. Disclosure of information in breach of this section constitutes an offence that is punishable by a maximum fine of 60 penalty units or six months imprisonment, or both.

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

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

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

It may be necessary to consider disclosing information where:

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

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

The CoL 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* (Tas) 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.

11 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 the CoL,
 - 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.

1 1.1 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.⁵ If the disclosure is about the Principal Officer, contact the Ombudsman for advice.

11.2 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 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.

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

11.3 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 the CoL 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.

11.4 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 the CoL. 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.

11.5 Referral of a protected disclosure to the Integrity Commission

The CoL may refer a protected disclosure, as distinct from a public interest disclosure, to the Integrity Commission where it considers that the disclosure relates to misconduct as defined in section 4(1) of the *Integrity Commission Act 2009*. Consideration should also be given to:

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

The CoL must notify the discloser of the referral under section 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.

11.6 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 section 33 of the Act within 45 days of the receipt of the disclosure. Use the Assessment of disclosure form at Attachment 1 to ensure you consider all the necessary requirements.

For a disclosure to be a public interest disclosure, the Principal Officer, or their delegated Public Interest Disclosure Officer, must be satisfied that the disclosure shows or tends to show that the public officer to whom the disclosure relates has:

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

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

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

- advise the Principal Officer (if not the person assessing the disclosure);
- notify the Ombudsman within 14 days of the decision using the notification template at Attachment 3;
- notify the person making the disclosure within 14 days of the decision (unless they are anonymous and uncontactable); and
- proceed to investigate the disclosed matter under section 34 of the Act.

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

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

The Ombudsman must then review this decision under section 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 section 42 for investigation under the Act or the Ombudsman will deal with the disclosed matter.

11.7 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, the CoL will not commence, or will suspend, the investigation and will consult with the Ombudsman as to the future conduct of the matter. Under section 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, the CoL should consider whether the disclosure should be referred to the Ombudsman under section 68 of the Act.

Early referral of the matter may avoid interference with the evidentiary trail and so should be done at the first possible opportunity. Referral to the Commissioner through the Ombudsman will also avoid any question of a breach of confidentiality under section 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 the CoL. 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.

12 Protection

12.1 When does protection commence?

Where the CoL 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 section 19 of the Act.

12.2 What protection does the Act provide?

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

A person who makes a protected disclosure:

- is not subject to any civil or criminal liability, or to any liability arising by way of administrative process, for making the protected disclosure (section 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 (section 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 (section 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.

13 Investigations

13.1 Introduction

Any disclosure the CoL determines to be a public interest disclosure under section 33 must be investigated under the Act, unless there is a good reason not to do so pursuant to section 64 the CoL must investigate every disclosure referred to it for investigation by the Ombudsman under section 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.

13.2 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 1 to assist in assessing whether any of the grounds in section 64 apply.

Any decision not to proceed with an investigation on a ground specified in section 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.

13.3 Appointment of investigator and framing of terms of reference

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

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

The terms of reference will specify:

- the matters to be investigated;
- the date by which the investigation is to be concluded;
- the requirement for regular reports to be made to the Principal Officer, including details of compliance with any measures identified in the risk assessment; and
- the resources available to the investigator for the purposes of the investigation.

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

13.4 Investigation plan

The investigator should prepare an investigation plan for approval by the Principal Officer. The plan should list the issues which are to be investigated and describe the steps which the investigator intends to take when investigating each of those issues. The risk assessment should be considered as part of the investigation planning and appropriate steps taken to reduce identified risks during the investigation.

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

13.5 Procedural Fairness

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

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

The CoL 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.⁶

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

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

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

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

13.6 Conduct of the investigation

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

The investigator should make contemporaneous notes of all discussions and phone calls, and audio recordings of significant interviews with witnesses should be made where possible.

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

⁶ 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.

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

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.

13.7 Referral of an investigation to the Ombudsman

Under section 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.

13.8 Provision of information about the investigation

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

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 section 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.

14 Action taken after an investigation

14.1 Investigator's final report

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

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

- the findings made and conclusions reached, and the basis for them.

Note in particular that the report should not include any comment adverse to any person unless that person has been given an opportunity to be heard on the matter and their defence is fairly set out in the report. A public body must take action, under section 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 the CoL to prevent the conduct from continuing or occurring in the future; and
- any action that should be taken by the CoL to remedy any harm or loss arising from that conduct.

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

The report must be accompanied by:

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

14.2 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, the CoL must, in accordance with section 75, take all reasonable steps to prevent the conduct from continuing or occurring in the future and may take action to remedy any loss or harm arising from the conduct. The Principal Officer should take into consideration any recommendations in the investigator's report, but can take different or broader action if appropriate.

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

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

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

15 Managing the welfare of the discloser

15.1 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 the CoL, they may report the matter to the Ombudsman.

15.2 Keeping the discloser informed

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

15.3 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.

15.4 Discloser implicated in improper conduct

Where a person who makes a disclosure is implicated in misconduct, the CoL 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 the CoL acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. Section 18 of the Act specifically provides that a person's liability for his or her own conduct is not affected by the person's disclosure of that conduct under the Act. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

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

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

- the intention to proceed with disciplinary action is not 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.

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

The CoL 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.

The CoL 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 the CoL 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.

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

10 Publishing statistics

Section 86 of the Act requires the CoL to include in its annual report:

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

17 Offences

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

- Section 19(1)

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

- Section 23(1)

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

- Section 54

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

- Section 87(1)

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

- Section 87(2)

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

The value of a penalty unit varies from time to time in accordance with movements in the Consumer Price Index. For more information, see the [Department of Justice website](#)⁸.

18 Approval and review of these procedures

These procedures were approved by the Ombudsman under section 60(3) of the Act on [date of approval].

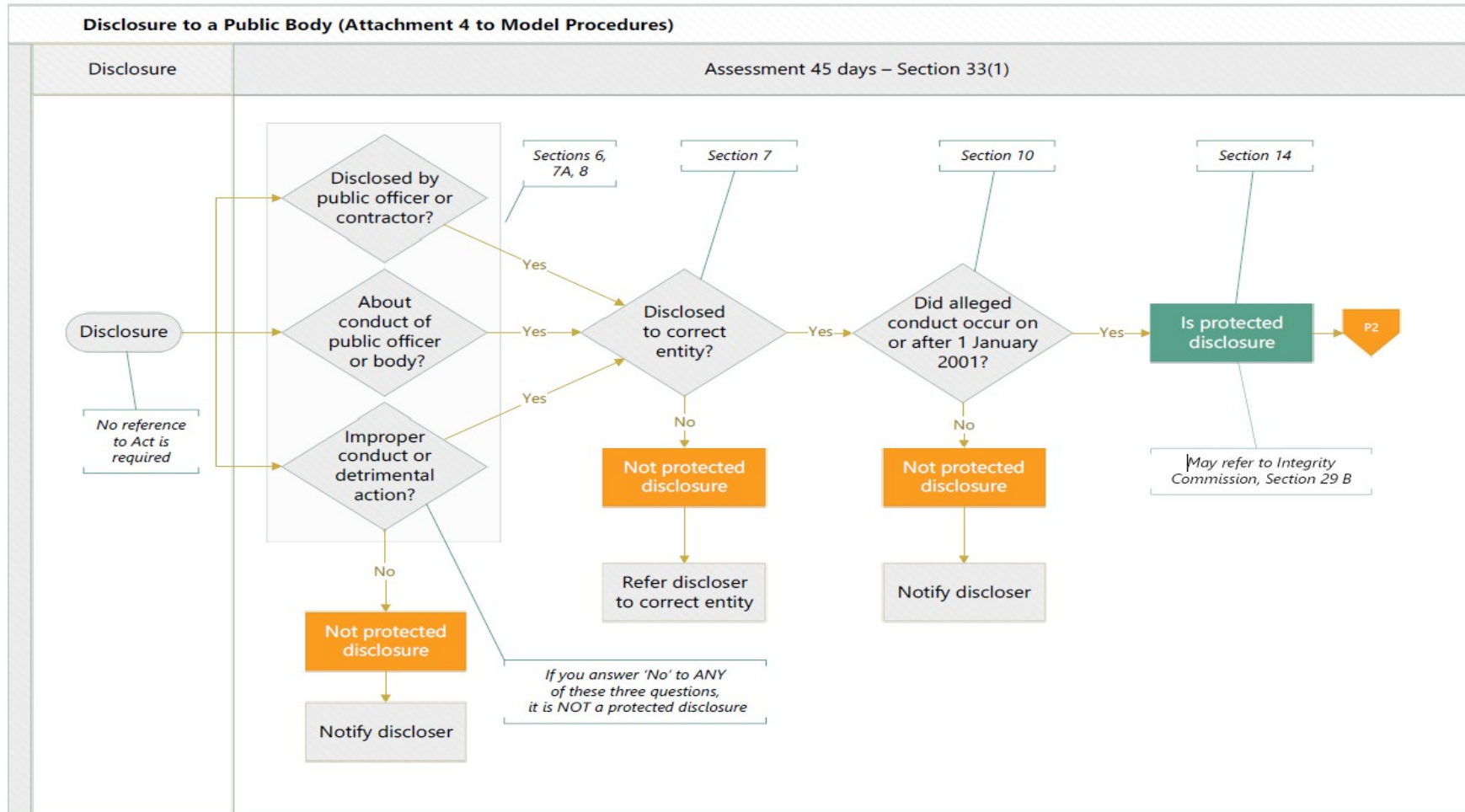
The procedures will be submitted to the Ombudsman for review at least once every three years to ensure they meet the objectives of the Act and accord with the Guidelines and Standards published by the Ombudsman under section 38(1)(c).

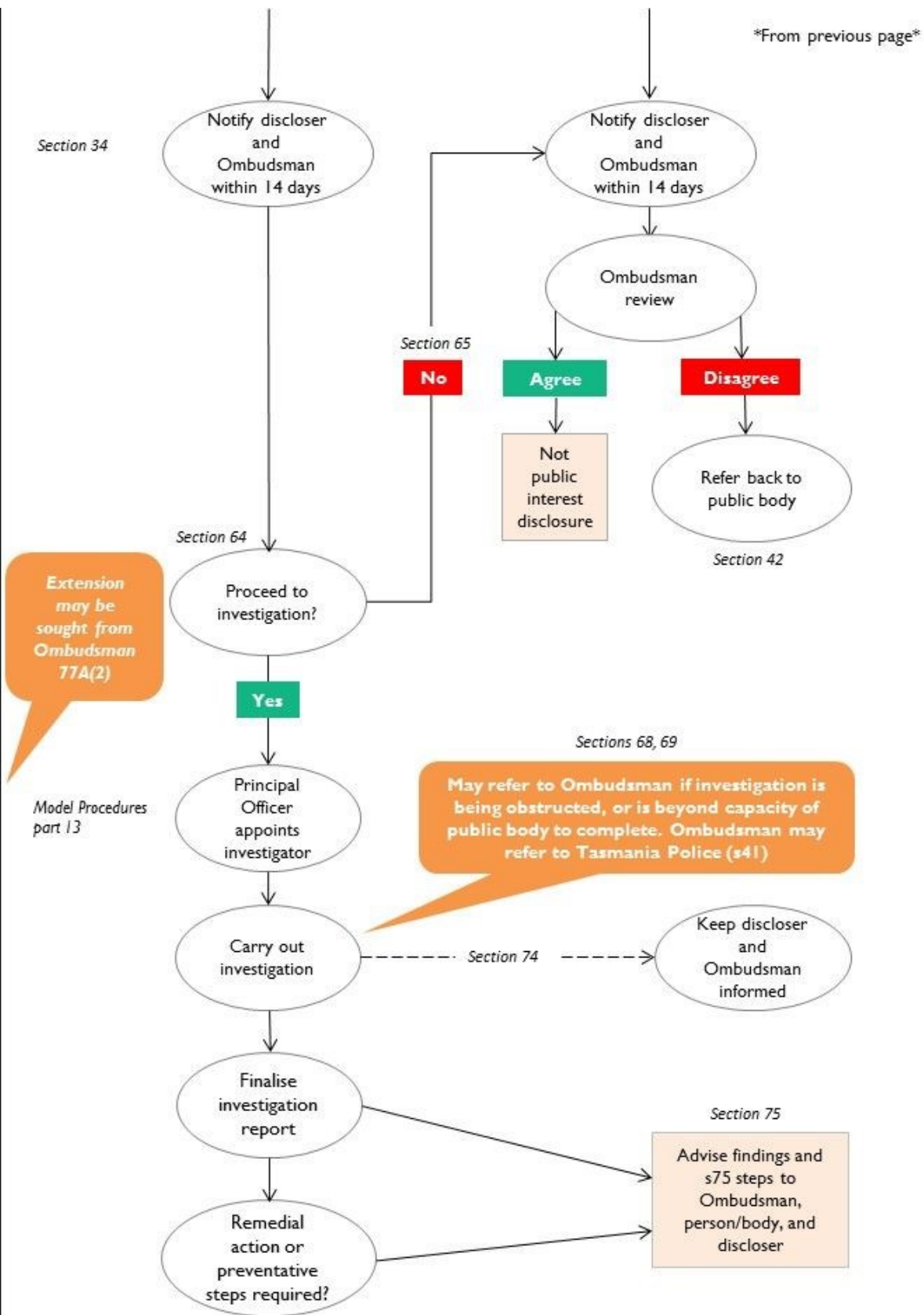
The date by which the procedures must be submitted to the Ombudsman for review is [26 February 2021].

⁸ www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation

Attachment 1: Flowchart

Disclosure to a Public Body





DOCUMENT INFORMATION

Reference number	14-HLPrx-
Version	
Review	
Key function	Governance
System	High Level Procedures
Document type	High Level Procedure
Responsible Directorate	
Approved by	
Action Officer	
Text search key words	public interest disclosure improper corrupt conduct detrimental action whistleblower

To be communicated to (To be identified by Approver) (Insert ✓ in relevant row)		Department/Area only
		Directorate via Director and Managers
	✓	Specific Areas: • General Manager, • Manager Human Resources
	✓	Organisation-wide
	✓	Website
		Intranet (via a link)

Hard copy distribution	Councillors
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