

# CONTACTING EXTERNAL BODIES

FS6

Stage 1

Allegation or suspicion

You may need to notify or consult with external bodies about allegations or suspicions of misconduct. Some organisations may also have an obligation to notify their insurer of certain matters.

Consider the nature of the allegations and any formal notification processes your organisation has in place. This may impact on whether the notification is a formal process, or a simple contact to ask for advice. You may be able to seek general advice without giving specifics.

It is important to consider notifications as early in the process as possible. Failure to notify an external body at an appropriate time may undermine the investigation and the outcomes.

In some cases, your notification may be valuable intelligence. You may not be aware of other information held by the body to which you are reporting the alleged misconduct.

## Department for Education, Children and Young People

Mandatory notification requirements apply for certain legislated occupations when a person under the age of 18 years has been abused or is at risk of harm.

## Equal Opportunity Tasmania

Most public sector organisations have a code of conduct or policy that states that employees must treat everyone with respect and without harassment, victimisation or discrimination. Allegations of misconduct may therefore involve matters that may also be the subject of a complaint under the *Anti-Discrimination Act 1998 (Tas)*.

Regardless of whether a complaint has been made to the Anti-Discrimination Commissioner, [Equal Opportunity Tasmania](#) (EOT) will be able to provide general advice about whether the alleged behaviour may have a discriminatory component or otherwise may amount to a contravention of the *Anti-Discrimination Act*.

If a complaint is made to and accepted by the Anti-Discrimination Commissioner, it will be investigated by the Commissioner in any manner that is appropriate to the circumstances. This may include, for example, deferring consideration of the complaint until the internal handling of the matter has concluded. There are time limits on making a complaint to EOT, and once a complaint has been lodged there are legally specified timeframes for addressing certain matters.

Privacy provisions under the *Anti-Discrimination Act* prevent EOT from providing information to an organisation about whether it has received a complaint. Therefore, your organisation should seek advice from the source about whether a complaint has also been made under the *Anti-Discrimination Act*.

Where the Anti-Discrimination Commissioner is handling a complaint against one of your employees, consideration should be given to ensuring that your organisation does not act in a way that may preference the respondent or seek to defend the behaviour in ways that could compromise the outcomes of the investigation. This may happen, for example, if one of the parties is indemnified or provided with legal assistance to defend the complaint and the other isn't.

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## Integrity Commission

The [Integrity Commission](#) is available for advice on managing alleged misconduct.

The Commission encourages all public sector organisations to notify it of alleged misconduct, particularly alleged serious misconduct. This does not trigger a Commission investigation. Rather, it provides valuable intelligence to help the Commission better understand misconduct risks in the Tasmanian public sector. It also enables the Commission to assist public sector organisations to respond to misconduct as it arises, and to improve their ethical framework. For more information, see [Making a Notification](#).

You can also seek advice on whether you should refer the matter to the Commission for investigation. The Commission has greater investigative powers than other organisations and is well placed to investigate particularly serious or complex misconduct.

## Office of Local Government (councils)

The Office of Local Government (OLG) in the Department of Premier and Cabinet has jurisdiction over non-compliance with the *Local Government Act 1993* ([Tas](#)) by both councillors and, in some instances, council employees. This includes offences committed under provisions related to pecuniary interests, disclosure of confidential information, improper use of information, and misuse of office.

The OLG can investigate alleged non-compliance and pursue prosecutions with the appropriate authorities. Your council may investigate the alleged non-compliance with the *Local Government Act* to collect information and evidence, and then refer the material to the OLG. You can contact the OLG for advice on these matters, and further information is available on its [website](#).

## Ombudsman Tasmania

Contact [Ombudsman Tasmania](#) for advice on protected and public interest disclosures under the *Public Interest Disclosures Act 2002* ([Tas](#)), and on handling external complaints.

The Ombudsman's jurisdiction extends to the administrative actions of public sector organisations. The Ombudsman also has special functions in relation to the *Personal Information Protection Act 2004* ([Tas](#)) and the *Right to Information Act 2009* ([Tas](#)). A complaint about a breach of the *Personal Information Protection Act* can be dealt with by the Ombudsman if the complainant has raised the matter with the organisation and is not satisfied with the response.

## Professional regulatory bodies

Consider whether you have a duty to notify or consult with a professional regulatory body. Examples include the Australian Health Practitioner Regulation Agency, the Teachers Registration Board of Tasmania, and the Legal Profession Board of Tasmania.

## State Service Management Office (Tasmanian State Service)

In the Tasmanian State Service, the Employer is the Minister administering the *State Service Act 2000* ([Tas](#)). The Employer has delegated specific powers relating to the management of misconduct to the Head of the State Service and Heads of Agency.

The [State Service Management Office](#) (SSMO) provides advice to agencies on how to manage misconduct, including suspensions, in a manner that is consistent with employment law, the policy directions of the Employer, and the intent of the *State Service Act*.

The Employer has also determined through the delegation framework that the Director of SSMO must be consulted on all decisions to terminate employment in the State Service.

## Tasmania Police

You should contact the police when the allegations are particularly serious and may involve conduct contrary to the *Criminal Code Act 1924 (Tas)* or federal criminal laws, especially if the conduct is potentially ongoing.

In these circumstances, your organisation should contact police before notifying the person who is under suspicion. You may also consider contacting police for advice about offences that fall under legislation such as the *Police Offences Act 1935 (Tas)*.

Where a crime may have been committed, it is not the responsibility of your organisation to decide if the employee should be prosecuted. This responsibility lies with the appropriate authorities. There is no general offence for a failure to report a crime in Tasmania, but there are crimes relating to failures to report in particular circumstances, such as in regard to deaths and the treatment of children. If you are unsure, you should contact police for advice using the process outlined below.

Referral to the police does not negate any responsibilities your organisation has to deal with the matter internally.

*Depending on your organisation's governance framework, there may be certain matters you must report to the police.*

*In the State Service, this includes – under Treasurer's Instruction FC-4 – any material losses that are caused, or suspected*

*to have been caused, by theft, fraud, misappropriation or other criminal act.*

## Police referral process

If you are unsure if the matter warrants referral to police, you may seek advice through the office of the police commander of your police district. This can be done by contacting the administration sergeant for your district – the contact details are in the following table. If you are unsure about which police district you fall into, details can be found in the [Department of Police, Fire and Emergency Management annual report](#).

Correspondence to the administration section of each district is managed on a week day basis. If you email rather than call, the intent of the correspondence should be made clear in the email. The email should provide basic details with key contacts. Tasmania Police will then allocate an appropriate person to make contact to obtain information so that advice can be provided.

Early contact and discussion at the lowest appropriate level is the preferred approach – often a telephone call can quickly confirm whether a formal referral is necessary. You will be able to discuss with police whether the matter may be criminal in nature, and whether it warrants referral.

If you are sure that your matter warrants a referral to police, you may formally refer it to your district commander's office, or else through your principal officer to the Commissioner of Police.

<b>Southern District:</b> <i>Hobart and surrounds</i>	Email: <a href="mailto:Southern.Administration.Sergeant@police.tas.gov.au">Southern.Administration.Sergeant@police.tas.gov.au</a> Telephone: (03) 6173 2220
<b>Northern District:</b> <i>Launceston and surrounds</i>	Email: <a href="mailto:Northern.District.Administration@police.tas.gov.au">Northern.District.Administration@police.tas.gov.au</a> Telephone: (03) 6777 3811
<b>Western District:</b> <i>Burnie, Devonport, Queenstown and surrounds</i>	Email: <a href="mailto:Western.District.Administration@police.tas.gov.au">Western.District.Administration@police.tas.gov.au</a> Telephone: (03) 6477 7207

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#### What happens if police decide to investigate?

A police investigation does not remove any requirements for internal actions to be taken.

Moreover, there is no general requirement to halt a disciplinary investigation while a police investigation is undertaken. However, there may be industrial case law that applies to your particular type of organisation in this situation. You should seek advice if you have any doubts.

You should seek and take police advice on whether you can continue handling the matter internally. From a welfare perspective, it is generally better for the disciplinary investigation to continue.

Police may require you to halt your investigation if it could prejudice or interfere with the criminal investigation. Police may also tell you not to inform the respondent of the allegations. However, it is rare for police to request the halt of a disciplinary investigation.

If you are required to halt the handling of the matter, you should contact police at regular intervals to see if this is still necessary. It may be possible for you to continue when police have finished collecting evidence.

You should not stop your disciplinary investigation because police have decided not to investigate.

*In some situations, your organisation will be the 'complainant' in the criminal case. This is most likely to apply if an employee has been charged with theft from your organisation.*

*In this situation, your organisation will need to be willing to act as the complainant for the charges to continue.*

#### What happens if the respondent is prosecuted?

The processes and objectives of the criminal and disciplinary systems are different.

This means that the concept of 'double jeopardy' has no application in this situation.

You should not stop your handling of the matter because there has been a decision not to prosecute the employee, or because the prosecution fails. Similarly, you should not halt your handling of the matter because of a successful prosecution.

Examples of conduct that may amount to both misconduct and an offence	
theft	omission to perform a duty
assault	extortion
driving under the influence	corruption
bribery and the acceptance of gifts and benefits	making a false statement
perverting the course of justice	unauthorised access to and/or misuse of information
perjury	inserting false information as data
fraud	damaging computer data

#### WorkSafe Tasmania

Consider if the matter involves a work health and safety issue and whether there are any mandatory reporting requirements.

At the time of writing, incidents with mandatory reporting requirements to [WorkSafe Tasmania](#) included:

- death
- serious injury or serious illness (requiring immediate hospitalisation or medical treatment), and
- dangerous incidents (for example a fire, explosion, infrastructure collapse, chemical spill or leak, electric shock). [FS6]