

Information sheet

Making disclosures to the Integrity Commission

This information is for public sector employees (including contractors) who wish to disclose matters to the Integrity Commission under the *Public Interest Disclosures Act 2002* (PID Act).

This guidance is not for members of the public who wish to make a complaint to the Integrity Commission.

What is a disclosure?

The *PID Act* is Tasmania's **whistleblower** legislation. The *PID Act* provides protection for certain people who make complaints – called **disclosures** – about alleged improper conduct by a public officer or public body.

The process for managing a disclosure under the *PID Act* is different to the process for managing a complaint under the *Integrity Commission Act 2009* (IC Act).

Disclosures to the Integrity Commission

We assess every complaint we receive under the *IC Act* to decide whether it is also a disclosure under the *PID Act*. We then decide whether to deal with the complaint under the *IC Act* or the *PID Act*.

This means that a disclosure made under the *PID Act* will usually be dealt with under the *IC Act* if it contains allegations of misconduct.

A person does not need to say that they are making a disclosure for it to be considered a disclosure under the *PID Act*.

We can receive disclosures about:

- ▼ public bodies other than the Police Service (see section 4 of the *PID Act*)
- ▼ public officers (see section 4 of the *PID Act*)
- ▼ State Service Agencies, and
- ▼ people employed under the *Parliamentary Privilege Act 1898*.

However, some disclosures must be made directly to the Ombudsman (see *PID Act*, section 7). These include disclosures about:

- ▼ local government councillors (must be made to the Ombudsman)
- ▼ the Auditor-General (must be made to the chairperson of the Public Accounts Committee)
- ▼ the Ombudsman (must be made to the Joint Standing Committee on Integrity), and
- ▼ the Commissioner of Police (must be made to the Ombudsman).

Disclosures made directly to the Integrity Commission may still receive the full protections of the *PID Act* while the matter is with us. However, we can only take action if the disclosure contains a complaint about **misconduct**, as defined in the *IC Act*. Otherwise, we may refer the disclosure to the Ombudsman or a relevant public body.

What protections are available?

Different protections are provided to complainants under the *IC Act* and the *PID Act*. The *IC Act* provides protection for anonymity. The *PID Act* provides public officers with protections from:

- ▼ civil or criminal liability or any liability arising from an administrative process (including disciplinary action) for making the disclosure (see section 16)
- ▼ committing an offence by disclosing information over which an Act imposes confidentiality (section 17(1)(a))
- ▼ breaching an obligation to maintain confidentiality over the information disclosed (section 17(1)(b)), and
- ▼ reprisal for having made a disclosure (section 19).

What happens if I am subject to reprisal

If you believe that you have been subject to reprisal (known as **detrimental action** under the *PID Act*), you may make another public interest disclosure about that detrimental action.

What can be disclosed?

A public interest disclosure is a disclosure of 'improper conduct' that is 'serious or significant'. **Improper conduct** may include:

- ▼ illegal activity
- ▼ corrupt conduct
- ▼ endangering public health, safety or the environment
- ▼ misusing or wasting government funds
- ▼ maladministration, and
- ▼ breaches of professional codes of conduct.

Serious or significant is defined under the [Ombudsman's guidelines](http://www.ombudsman.tas.gov.au/public-interest-disclosures/guidelines): www.ombudsman.tas.gov.au/public-interest-disclosures/guidelines.

What will the Integrity Commission do with a disclosure?

When we receive a disclosure, we can:

- ▼ deal with it under the *IC Act*, noting the protections under the *PID Act*, or
- ▼ refer the disclosure to the Ombudsman or a public body as if the disclosure had been made to the Ombudsman or that public body.

If we choose to deal with the disclosure under the *IC Act* and later refer it to a public body, we will inform the public body that we assessed the complaint to be a disclosure under the *PID Act*. However, the public body must make its own decision about whether the matter is a disclosure under the *PID Act*.

Sometimes, a disclosure will be made to the Ombudsman or a public body that relates to an allegation of misconduct. In these circumstances, the Ombudsman or public body can refer the disclosure to us as if it had been made directly to us in the first place.

‘Improper conduct’ is different to ‘misconduct’

Improper conduct has a broader definition than **misconduct**. Misconduct can sometimes also be improper conduct. There are several important differences between improper conduct under the *PID Act* and misconduct under the *IC Act*.

Notably, improper conduct may relate to a public body, but misconduct can only be committed by a person. See our website for the [definition of misconduct](http://www.integrity.tas.gov.au/reporting/what-is-misconduct): www.integrity.tas.gov.au/reporting/what-is-misconduct.

Examples

Officer A solicits a bribe to decide who should receive a contract:

- ▼ This could be improper conduct.
- ▼ This could also be misconduct.
- ▼ A disclosure about this can be made to the Ombudsman, the Integrity Commission or the public body where Officer A is employed.

Agency B fails to perform its functions adequately:

- ▼ This could be improper conduct.
- ▼ This is not misconduct.
- ▼ A disclosure about this can be made to the Ombudsman or to the agency.

Officer C prints a document on 30 single-sided pages instead of 15 double-sided pages:

- ▼ This is not improper conduct (it is not serious or significant).
- ▼ This is not misconduct.

Manager D unfairly terminates Officer E's employment:

- ▼ This could be improper conduct.
- ▼ This could also be misconduct.
- ▼ A disclosure about this can be made to the Ombudsman, the Integrity Commission or the public body where Manager D and Officer E are employed.

Councillor E votes in favour of their own application at a council meeting:

- ▼ This could be improper conduct.
- ▼ This could also be misconduct.
- ▼ A disclosure about this can be made to the Ombudsman only (given that disclosures about certain officers such as councillors must be made to the Ombudsman). You could make a complaint about this to the Integrity Commission, but we could not deal with it under the *PID Act*.



The Integrity Commission can help

We are available to provide support and assistance with identifying, reporting, investigating, managing and preventing misconduct: contact@integrity.tas.gov.au or 1300 720 289.

For more Integrity Commission resources go to www.integrity.tas.gov.au/resources.