

# 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 and details of the allegations.

## Part 1: Is the disclosure a protected disclosure?

**Question 1: Is the discloser a public officer?**

*The discloser needs to be a current public officer. If the discloser is anonymous, it is enough to be satisfied that the discloser is a public officer.*

*If they are 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:

**Question 2: Has the disclosure been made to the right person or body?**

*See s7 of the Act.*

Yes       No

Please provide details:

**Question 3: Is the disclosure about a public officer?**

*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 4: Improper conduct**

Is the disclosure about:

- 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?

*The discloser needs to believe that the public officer has engaged, is engaging or proposing to engage in the improper conduct. At this stage, the assessment is simply limited to determining whether the conduct objectively falls within one of the categories above. For example, a discloser may believe that stealing a single pen is serious or significant improper conduct but it does not objectively fall within that definition due to the minor nature of the theft.*

Yes       No

Please provide details:

**Question 5: 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, consider contacting the Integrity Commission to discuss a referral 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 now 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: In your opinion as a delegate, 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**
- **failed 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 employees including potential witnesses         |
| <input type="checkbox"/> The subject of the disclosure | <input type="checkbox"/> Other (e.g. Tasmanian Government, the general public) |

## Type of risk / possible harm

Such as:

- Adverse employment action
- Workplace injury
- Physical violence
- Verbal abuse
- Stress
- Untenable work environment
- Withdrawal of cooperation due to fear of reprisal/lack of support
- Reputational damage
- Risk to public safety
- Misuse of public funds
- Disruption to functioning of public body

Please provide details:

## Likelihood risk/s will occur

- Unlikely
- Possible
- Likely

## Considerations:

- Can confidentiality be maintained?
- Is the discloser (or others) concerned about reprisals?
- How many public officers are involved in the alleged improper conduct?
- What is their level of seniority?

- What is the seriousness of the alleged conduct?
- Is there a history of conflict in the workplace?

**Please provide your reasons:**

### Seriousness of consequences if risk/s occurs

- Minor
- Moderate
- Major

### Considerations:

- What is the potential impact if the risk occurs?
- Will the impact be limited, with the person able to readily deal with it?
- Will the impact have consequences which will affect the person's work or their personal and home life?
- Will the consequences be short-term, medium-term or long-term?

**Please provide your reasons:**

### Evaluation of level of risk

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
- proactively advising the subject of the disclosure of the consequences of taking reprisal action
- altering reporting structures
- increasing monitoring of the work environment
- standing down or temporarily relocating the subject of the disclosure 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, investigation occurring  
*Notification to be made within 14 days of decision*
- Section 34 – Determination that disclosure is 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 35 – Determination that disclosure is not a public interest disclosure  
*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
- Risk assessment
- Disclosure assessment
- Full 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):
  - 
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