

Assessment of disclosure form (Attachment 1)

Public Interest Disclosures Act 2002

File number:

Date of assessment:

Name of assessing officer:

Summary of disclosure:

Include details of how the disclosure was received, the subject of the disclosure and details of the allegations.

An assessment of disclosure form will usually need to be completed for each disclosure. This means, for example, that if a discloser is complaining about three different public officers, this constitutes three disclosures and three assessments may be required.

Part I: Is the disclosure a protected disclosure?

Question 1: Is the discloser a public officer?

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

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

Yes No

Please provide details if relevant:

Question 2: Is the disclosure about a public officer?

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

Yes No

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

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

Yes No

Please provide details:

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

Yes No

If no, provide details:

Question 5: Does the disclosure relate to improper conduct?

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

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

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

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

Yes No

Please provide details:

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

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

Yes No

Assessment of Answers to Part I Questions

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

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

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

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

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

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

Yes No

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

Yes No

If yes, please provide details

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

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

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

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

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

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

Yes No

Provide reasons for your decision and attach evidence if available

Next steps

Notify the discloser and the Ombudsman of the assessment determination. Use the notification template attached to the public interest disclosure procedures when notifying the Ombudsman.

If the answer is no, the assessment is complete and Part 4 does not need to be completed. The Ombudsman will review the determination.

If the answer is yes, the public interest disclosure must be investigated unless a ground exists not to under s64 of the Act.

Part 4 - Is there a ground under s64 not to investigate the public interest disclosure?

Question 1: Is the public interest disclosure trivial, vexatious, misconceived or lacking in substance?

Yes No

If yes, provide details. Compelling reasons will be required to justify not investigating on this ground:

Question 2: Has the subject matter of the public interest disclosure already been adequately dealt with by the Ombudsman or a public body, statutory authority, Commonwealth statutory authority, commission, court or tribunal?

Yes No

If yes, please provide details

Question 3: Has the discloser commenced proceedings in a commission, court or tribunal in relation to the same matter, and does that commission, court or tribunal have power to order remedies similar to those available under this Act?

Yes No

If yes, please provide details

Question 4: Did the discloser:

- **have knowledge for more than 12 months of the public interest disclosure matter before making the disclosure; and**
- **fail to give a satisfactory explanation for the delay in making the disclosure?**

Yes No

If yes, provide details of this issue being put to the discloser and analysis concerning why any explanation provided was not satisfactory:

Question 5: Does the public interest disclosure relate solely to the personal interests of the discloser?

Yes No

Most disclosures will contain some element of personal interest. This should only be used as a basis to not investigate in clear circumstances.

If yes, please provide details:

Question 6: Is the public interest disclosure based on false or misleading information?

Yes No

If yes, please provide details and consider whether an offence may have been committed under s87 of the Act.

Question 7: Has the matter the subject of the public interest disclosure already been determined AND this additional disclosure fails to provide significant or substantial new information?

Yes No

If yes, please provide details

Assessment of Answers to Part 4 Questions

If the answers to **ALL** the questions in Part 4 are no, the disclosure **must** be investigated in accordance with the public interest disclosure procedures. Referral to the Ombudsman can occur if internal investigation is not possible or appropriate.

If the answer is yes to **one or more of the above questions**, will the public interest disclosure be investigated?

Although the public interest disclosure may not need to be investigated if an answer to any of the Part 4 questions is yes, it may still be appropriate to investigate in some circumstances.

Yes No

Provide reasons for your decision:

Notify the discloser and the Ombudsman if it is decided not to investigate. The Ombudsman will review the decision. Use the notification template attached to the public interest disclosure procedures when notifying the Ombudsman.

Summary

Part	Question	Answer
Part 1	Is the disclosure a protected disclosure?	
Part 2	Should the protected disclosure be referred to the Integrity Commission?	
Part 3	Is the protected disclosure a public interest disclosure?	
Part 4	Should the public interest disclosure be investigated?	

Approval

Approved by:

Name of Public Interest Disclosure Officer or Principal Officer:

Date of approval: