

# Public Interest Disclosures

Department of Premier and Cabinet  
Procedure

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Tasmanian  
Government

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## **I STATEMENT OF SUPPORT**

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The Department of Premier and Cabinet (DPAC) is committed to the aims and objectives of the *Public Interest Disclosures Act 2002* (the Act).

DPAC does not tolerate improper conduct by its employees or officers, or the taking of detrimental action against those who disclose such conduct.

DPAC 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.

DPAC will take all reasonable steps to protect people who make disclosures from any detrimental action, 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**

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These Procedures intend to assist DPAC officers and employees to understand the way in which the Act operates, how it is administered, and to set out how DPAC will respond if it receives a disclosure of improper conduct.

Their purpose is to:

- a) provide for disclosures of improper conduct or detrimental action by DPAC or its officers or employees to be made by people who are “public officers” in DPAC, or by people who are or have been “contractors” with DPAC for the supply of goods or services;
- b) provide for such disclosures to be made to the Secretary (the Principal Officer) or to a delegated Public Interest Disclosure Officer (people who are or have been contractors can make disclosures to the Ombudsman or the Integrity Commission);
- c) ensure that officers and employees are protected if they disclose improper conduct or detrimental action; and
- d) establish a system for reporting, assessing and investigating such disclosures.

The 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 where appropriate.

These Procedures draw upon the provisions of the *Public Interest Disclosure Act 2002* (the Act). DPAC Officers and employees should refer to the Act for additional detail.

### 3 HOW THE ACT WORKS

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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 s 6);
- 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 preliminary determination as to whether the protected disclosure is a “public interest disclosure” (ss 30 and 33). In other words, a disclosure which, in the case of decision-making by the Ombudsman, meets the requirements of s 30(2), or, in the case of decision-making by the public body, meets the requirements of s 33(2);
- 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 (ss 39 and 63);
- it requires such investigation to be conducted as soon as practicable (ss 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 recommend that action be taken in light of the investigation (s 56); and
- 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 (s 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 I 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.

## **4 COMPARISON WITH THE INTEGRITY COMMISSION ACT**

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The Act and the *Integrity Commission Act 2009* (IC Act) work very differently.

Perhaps the most important difference is that the IC Act does not contain any provisions which protect a person who makes a complaint under that Act from detrimental action by way of reprisal. The provision of such protection is a key feature of the Act.

Other important differences are:

- the fact that anyone can make a complaint under the IC Act, whereas the right to make a disclosure under the Act is given only to a current public officer and a contractor;
- in the types of conduct to which the Act applies. A disclosure may be made under the Act about proposed conduct, whereas the IC Act only concerns past conduct;
- the fact that a disclosure under the Act may be oral, whereas a complaint under the IC Act must be in writing; and
- the different processes which each Act applies to a matter brought forward under it.

A person who is trying to decide which Act to proceed under should consider seeking legal advice on what is the best course for them to take.

It is possible for a disclosure which is made under the Act to be dealt with under the IC Act – see Part 4A of the Act.

## 5 MEANING OF TERMS

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In these Procedures<sup>1</sup> –

“contractor” means

- (a) *a person who at any time has entered into a contract with a public body<sup>2</sup> for the supply of goods or services to, or on behalf of, the public body;<sup>3</sup> or*
- (b) *an employee of the contractor; or*
- (c) *a subcontractor engaged by the contractor to fulfil all or part of a contract with a public body for the supply of goods or services to, or on behalf of, the public body;*

“detrimental action” includes

- (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 are:**

- 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, his or her family or friends; and
- discrimination against the discloser or his or her family and associates in applications for jobs, permits or tenders.

“discloser” means a “public officer” or a “contractor” who makes a disclosure of improper conduct or detrimental action;

“improper conduct” means conduct that

- (a) *constitutes an illegal or unlawful activity; or*
- (b) *is corrupt conduct<sup>4</sup>; or*
- (c) *constitutes maladministration; or*
- (d) *constitutes professional misconduct; or*
- (e) *constitutes a waste of public resources; or*

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<sup>1</sup> Italicised terms are derived directly from the Act; non-italicised terms are specific to these Procedures.

<sup>2</sup> For the purposes of these Procedures, “public body” is taken to mean the Department of Premier and Cabinet.

<sup>3</sup> This would include building and construction works and services.

<sup>4</sup> Note that ‘corrupt conduct’ is also defined in the Act. Refer S.3 - interpretation

- (f) *constitutes a danger to public health or safety or to both public health and safety; or*
- (g) *constitutes a danger to the environment; or*
- (h) *is misconduct, including breaches of applicable codes of conduct; or*
- (i) *constitutes detrimental action against a person who makes a public interest disclosure under the Public Interest Disclosures Act 2002 (the Act) –*  
*that is serious or significant as determined in accordance with guidelines issued by the Ombudsman;*

Note that paragraph (b) leads to another definition in s 3, being that of “corrupt conduct” –

*"corrupt conduct" means –*

- (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 his or her 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).*

Note that, for the right of disclosure under s 6 to apply, the improper conduct (including corrupt conduct) must be serious or significant as determined in accordance with guidelines issued by the Ombudsman. The guidelines can be accessed at [www.ombudsman.tas.gov.au](http://www.ombudsman.tas.gov.au).

#### **Examples of “corrupt conduct”**

- 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 sells confidential information.

#### **Examples of other types of “improper conduct”**

- To avoid closure of a town's only industry, an environmental health officer ignores or conceals evidence of illegal dumping of waste;
- an agricultural officer delays or declines imposing quarantine to allow a financially distressed farmer to sell diseased stock; and

- a building inspector tolerates poor practices and structural defects in the work of a leading local builder, giving rise to a risk to public health or safety.

“principal officer” means the Secretary, DPAC;

“protected disclosure” means a disclosure of improper conduct or detrimental action made in accordance with Part 2 of the Act. The protections provided by Part 3 of the Act only apply where the disclosure made is a protected disclosure.

S.16 provides that *“a person who makes a protected disclosure is not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for making the protected disclosure”*;

“public interest disclosure” means a protected disclosure of improper conduct or detrimental action in relation to which DPAC is 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 his or her capacity as a public officer, or*
- *has taken, is taking or proposes to take detrimental action in reprisal for the making of the protected disclosure;*

“public officer” means an officer or employee of DPAC;

“recipient” means the person to whom the disclosure is made, i.e. the Public Interest Disclosure Officer or the Principal Officer.

## **6 ROLES AND RESPONSIBILITIES - DPAC**

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### **6.1 Officers and employees**

Officers and employees of DPAC are encouraged to report known or suspected incidences of improper conduct or detrimental action under the Act.

DPAC officers and employees must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure.

### **6.2 Principal Officer (Secretary DPAC)**

The Principal Officer has primary responsibility for ensuring that the provisions of the Act are implemented in accordance with section 62A of the Act.

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

The Principal Officer is responsible for ensuring that disclosers and witnesses are protected from detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

### **6.3 Public Interest Disclosure Officer**

A *Public Interest Disclosure Officer* is appointed by the Principal Officer under s 62A(2) of the Act, and holds a delegation which enables them to exercise the statutory powers and functions given to the Principal Officer by the Act.

The responsibilities of a *Public Interest Disclosure Officer* generally include:

- acting as a contact point for general advice about the operation of the Act;
- 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);
- impartially assessing the allegation and determining whether it is a protected disclosure;
- impartially assessing 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.

### **6.4 Investigator**

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

### **6.5 Welfare manager**

The welfare manager 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;
- listen and respond to any concerns of harassment, intimidation, victimisation or other detrimental action which may be occurring in reprisal for making 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.

## 7 OPTIONS FOR REPORTING DISCLOSURES

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### 7.1 Disclosure to persons within DPAC

Disclosures of improper conduct or detrimental action by an officer or employee of DPAC may be made to:

- the Principal Officer; or
- a Public Interest Disclosure Officer.

DPAC officers and employees should refer to IPAC<sup>5</sup> for a list of Public Interest Disclosure Officers.

It is not a requirement that the person contemplating making a disclosure refers to the Act, or is aware of the Act, to make a valid disclosure.

Where a person is contemplating making a disclosure and is concerned about approaching the Principal Officer or a Public Interest Disclosure Officer in the workplace, he or she can call the relevant officer and request a meeting in a discreet location away from the workplace.

A disclosure about the Principal Officer should be immediately referred to the Ombudsman.

Note that if the disclosure is about DPAC it can only be made to the Ombudsman or the Integrity Commission. Given the normal functions of the Integrity Commission focus on individual misconduct it is recommended that you consider the different protections provided under the Act and the IC Act in deciding whether to refer the matter to the Ombudsman or the Integrity Commission.<sup>6</sup>

### 7.2 Disclosure to the Ombudsman or the Integrity Commission

There are some situations in which a disclosure may only be made to a single entity. Either the Ombudsman or the Integrity Commission will be able to give advice on the most suitable entity to receive the disclosure, but the Ombudsman has overall responsibility for the administration of the Act.

Where the disclosure is against a public body, the disclosure should be made to the Ombudsman.

Instead of disclosing to a person in DPAC, a disclosure about improper conduct or detrimental action by DPAC or any of its members, officers or employees may be made directly to the Ombudsman or to the Integrity Commission.<sup>7</sup>

Internet: [www.ombudsman.tas.gov.au](http://www.ombudsman.tas.gov.au)

Email: [ombudsman@ombudsman.tas.gov.au](mailto:ombudsman@ombudsman.tas.gov.au)

Phone: 1800 001 170

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<sup>5</sup> [http://intranet.dpac.tas.gov.au/resources/human\\_resources/public\\_interest\\_disclosure](http://intranet.dpac.tas.gov.au/resources/human_resources/public_interest_disclosure)

<sup>6</sup> See below.

<sup>7</sup> The IC Act does not contain any provisions which protect a person who makes a complaint under that Act from detrimental action by way of reprisal. The provision of such protection is a key feature of the PID Act.

Internet: [www.integrity.tas.gov.au](http://www.integrity.tas.gov.au)  
Email: [integritycommission@integrity.tas.gov.au](mailto:integritycommission@integrity.tas.gov.au)  
Phone: 1300 720 289

## 8 CONFIDENTIALITY

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DPAC will take:

- all reasonable steps to protect the identity of a discloser; and
- all reasonable care to protect the privacy of witnesses and of the person against whom the disclosure has been made.

DPAC will ensure that all relevant files, whether paper or electronic, are kept securely.<sup>8</sup> An electronic record will be created for the disclosure, marked as being a *Public Interest Disclosures Act* matter.

## 9 MAKING A DISCLOSURE

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### 9.1 *Actions upon receipt of the disclosure*

The recipient may ask the discloser to put the disclosure in writing.

Alternatively, if the disclosure is oral, the recipient may make a file note, which records:

- the time when the disclosure was made;
- the circumstances under which it was made; and
- so far as is possible, the exact words used by the discloser.

Unless the recipient is the Principal Officer (or the disclosure is about the Principal Officer), the Public Interest Disclosure Officer will inform the Principal Officer of the disclosure, and provide the Principal Officer with a copy of the disclosure, or record of the disclosure, and of any accompanying documents.

If the disclosure is about the Principal Officer, it will be referred directly to the Ombudsman.

### 9.2 *Is it a protected disclosure?*

The protections provided by the Act to disclosers (contained in Part 4 of the Act) only apply where the disclosure made is a 'protected disclosure'. This is defined in section 14 as a disclosure made in accordance with Part 2 of the Act.

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<sup>8</sup> Security access will be limited to the Principal Officer and the relevant Public Interest Disclosure Officer, the investigator, and the welfare manager.

As soon as possible after the receipt of a disclosure will be assessed by the recipient to determine whether it has been made in accordance with Part 2 of the Act.

The following need to be asked in carrying out this assessment:

- has the disclosure been made by a public officer or contractor? Note that disclosures by contractors must be made to the Ombudsman or the Integrity Commission.
- does the disclosure concern improper conduct or detrimental action?
- did the alleged conduct or action occur more than 3 years before the commencement of the Act – i.e. on or after 1 January 2001? and
- has the disclosure been made to the appropriate person?

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

The recipient will inform the discloser as soon as practicable as to whether the disclosure is a protected disclosure, and of their reasons for coming to that conclusion.

If the disclosure is assessed as being a protected disclosure:

- the discloser will be referred to Part 3 of the Act, which details the protections which the Act provides;
- the discloser will be informed of the process which will be followed with respect to the disclosure; and
- the recipient will 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 copy of the assessment will also be given to the Principal Officer.

### **9.3 *Is the disclosure a public interest disclosure?***

Following determination that a disclosure is a protected disclosure and within 45 days of the disclosure, the recipient is to assess whether the disclosure is a public interest disclosure. In determining whether the disclosure is a public interest disclosure, the public body must be satisfied that the disclosure shows or tends to show the public officer to whom the disclosure relates:

- (a) has engaged, is engaging 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 section 19 of the Act.

Where the recipient concludes that it is a public interest disclosure, he or she will -

1. document the reasons for the conclusion;
2. advise the Principal Officer (if not the person receiving the disclosure);

3. notify the Ombudsman within 14 days of the decision;
4. notify the person making the disclosure within 14 days of the decision (unless it is an anonymous disclosure), and
5. proceed to investigation (see Section 11).

Steps 1 to 4, above, also apply if the recipient concludes that it is not a public interest disclosure. In such a case, the Ombudsman must then review this decision.

#### **9.4 Should the disclosure be referred to another body?**

##### *Referral to the Ombudsman*

The recipient may refer a protected disclosure to the Ombudsman if he/she believes that he/she is not able to complete the investigation satisfactorily.

##### *Referral to the Integrity Commission*

The recipient may refer a protected disclosure to the Integrity Commission where he/she considers that the disclosure relates to misconduct as defined in s 4(1) of the *Integrity Commission Act 2009*.

The recipient must notify the discloser of the referral within a reasonable time (unless the disclosure was made anonymously).

The Integrity Commission may deal with the disclosure under the *Integrity Commission Act*, or it may refer the disclosure to the Ombudsman or a public body, as the case may require, for action by the Ombudsman or public body in accordance with the PID Act.

##### *Referral of criminal conduct to the Police*

It is possible that, before or during an investigation, facts are uncovered that reveal the possibility of a criminal offence. If this happens, DPAC will not commence, or will suspend, the investigation and will consult with the Ombudsman as to the future of the matter. Under section 41 of the Act, the Ombudsman has the power to refer a disclosed matter to the Commissioner of Police for investigation.

If the Ombudsman is satisfied that the disclosed matter should be referred to Tasmania Police, DPAC should consider whether the disclosure should be referred to the Ombudsman under s 68 of the Act.

Once a disclosure is referred to the Commissioner of Police through the Ombudsman, the investigation under the Act process ceases.

There may still be administrative or operational issues which have been identified during the disclosure process or investigation that should be dealt with under other internal processes. 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.

## 10 PROTECTION

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### When does protection commence?

Where DPAC 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, as found in s 6, is that the discloser honestly believes that the alleged improper conduct or detrimental action in fact occurred).

The protection also extends to a person who intends to make a disclosure.

Note that, as provided in s 9, a disclosure can still be made where the discloser cannot identify the person or body to whom or to which the disclosure relates.

### 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 (s 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 (s 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 (s 17(1)(b)).

These last two protections do not apply, however, to a disclosure of information to a person other than the person to whom the protected disclosure was originally made, unless that further disclosure was made in accordance with the Act (see s 17(2) of the Act).

Part 3 also contains various provisions which are intended to protect a discloser from detrimental action by way of reprisal for a protected disclosure. By s 19, the Act makes it an offence to take such detrimental action. By s 20, it creates a liability to pay damages for such detrimental action. In addition s 21, it gives a person who believes that detrimental action has been taken against him or her 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.

## **11 INVESTIGATING A DISCLOSURE**

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### *11.1 Introduction*

The recipient will appoint an investigator to carry out the investigation. The broad objectives of an investigation will be:

- to collate information relating to the allegation as quickly as possible;
- to consider the information collected and to draw conclusions objectively and impartially; and
- to maintain procedural fairness in the treatment of witnesses and generally to all parties involved in the disclosure.

### *11.2 Matters that do not have to be investigated*

Before embarking on the investigation of a public interest disclosure, 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. Those circumstances are if:

- in the opinion of the public body the disclosure is trivial, vexatious, misconceived or lacking in substance;
- the subject matter of the disclosure has already been adequately dealt with by the Ombudsman or a public body, statutory authority, Commonwealth statutory authority, commission, court or tribunal;
- the person making the disclosure has commenced proceedings in a commission, court or tribunal in relation to the same matter, and that commission, court or tribunal has power to order remedies similar to those available under this Act;
- the person making the disclosure had knowledge for more than 12 months of the disclosed matter before making the disclosure and failed to give a satisfactory explanation for the delay in making the disclosure;
- the disclosure relates solely to the personal interests of the person making the disclosure;
- the disclosure is based on false or misleading information; or
- the matter which is the subject of the disclosure has already been determined and the additional disclosure does not provide significant or substantial new information.

Any decision not to proceed with an investigation on a ground specified in s 64 must be made by the Principal Officer.

If the Principal Officer determines that the disclosed matter is not to be investigated, notice of this fact must be given within 14 days to both the Ombudsman and (except in the case of an anonymous disclosure) the person who made the disclosure. Reasons for the decision must accompany the notice.

The Ombudsman is required by s 65(2) to review such a decision. Following the review, the Ombudsman must notify DPAC of his or her decision within a reasonable time. If the Ombudsman on review determines that the disclosure should not be investigated, the matter 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 decide how the matter should be dealt with.

If the Ombudsman determines that the disclosure should be investigated, and the matter is not referred to the Ombudsman for a reason specified in s 68, DPAC must proceed with the investigation.

### ***11.3 Initial investigation process***

Each investigation will vary depending on the circumstances. The following steps may be applied or adapted, depending on the circumstances of the disclosure.

#### Terms of reference

The investigator may be given terms of reference which specify:

- the matters to be investigated;
- the date by which the investigation is to be concluded; and
- the resources available to the investigator for the purposes of the investigation.

#### Timing

The completion date should be as soon as practicable but, in any event, not more than 6 months from the date of the determination that the disclosure is a public interest disclosure.

If at any stage before or during the investigation it appears that the investigation cannot be completed within 6 months, DPAC may apply to the Ombudsman for an extension of up to 6 months in which to complete the investigation.

#### Investigation plan

The investigator may prepare an investigation plan, listing the issues which are to be investigated and describing the steps which the investigator intends to take in investigating each of those issues.

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

### ***11.4 Natural justice***

The principles of natural justice will be observed in the course of the investigation, with respect to all parties involved in the investigation.

This means that:

- 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, or
  - is known to hold any biases which are relevant to the subject-matter of the investigation, or

- in respect of whom there is reasonable ground for apprehending or suspecting bias.

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.

Persons subject to adverse findings

- Any person who is potentially subject to an adverse finding or comment will 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 and their possible consequences.
- This will be done before the investigator forms any conclusions.
- Each such person will be given a reasonable time to respond to the material which is provided to them.

The final investigation report will record and deal with all submissions and evidence which a person has put in their defence.

**11.5 Conduct of the investigation**

Each investigation will vary depending on the circumstances. The following steps may be applied or adapted, depending on the circumstances of the disclosure.

- The investigator may make contemporaneous notes of discussions and phone calls, and may consider audiotaping significant interviews with witnesses.
- Interviews should be conducted in private, and the investigator will take all reasonable steps to protect the identity of the discloser. Where disclosure of the identity of the person cannot be avoided, due to the nature of the allegations, the investigator should warn the discloser and his or her welfare manager of this.

**11.6 Referral of an investigation to the Ombudsman**

DPAC may refer the investigation of a disclosed matter to the Ombudsman where DPAC considers that its own investigation is being obstructed or that it is otherwise not within the capacity of DPAC to complete the investigation.

Any decision as to whether the investigation should be referred to the Ombudsman will be taken by the Principal Officer.

**11.7 Provision of information about the investigation**

The recipient will ensure that the discloser is kept regularly informed concerning the handling of a protected disclosure and an investigation.

The Principal Officer will report to the Ombudsman about the progress of an investigation.

## 12 ACTIONS FOLLOWING AN INVESTIGATION

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### *12.1 Investigator's final report*

At the conclusion of the investigation, the investigator will submit a written report<sup>9</sup> of his or her findings to the Principal Officer. While the circumstances of each matter will vary, in broad terms the report should contain:

- the allegation/s;
- a description of the manner in which the investigation was conducted, 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.

If the investigator has found that conduct disclosed by the discloser has occurred, the investigator may include recommendations as to:

- steps that need to be taken by DPAC to prevent the conduct from continuing or occurring in the future; and
- action that should be taken by DPAC to remedy any harm or loss arising from that conduct.

If relevant, the report will be accompanied by:

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

### *12.2 Action to be taken*

If the Principal Officer is satisfied that the conduct which was the subject of the investigation has occurred, he or she will consider the recommendations in the investigator's report and decide upon the steps which are to be taken to prevent the conduct from continuing or occurring in the future. The Principal Officer will also consider whether any action should be taken to remedy any harm or loss arising from the conduct.

Where the Public Interest Disclosure Officer is responsible for the progress of the investigation and is satisfied that the disclosed conduct has occurred, he or she will recommend to the Principal Officer the action that must be taken.

The Principal Officer will provide a written report to the Premier and the Ombudsman, setting out the findings of the investigation and any remedial steps taken.

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<sup>9</sup> The report will not include any comment adverse to any person unless that person has been given an opportunity to be heard in the matter and their defence is fairly set out in the report.

Where the investigation concludes that the disclosed conduct did not occur, the Principal Officer will report these findings to the Ombudsman and to the discloser.

The Principal Officer will also inform the discloser of the findings of the investigation, and of any steps taken<sup>10</sup> as a result of the findings made.

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<sup>10</sup> S.75 sets out the action to be taken by a public body if it finds that the conduct has occurred.

## 13 THE DISCLOSER'S WELFARE

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The Principal Officer or the Public Interest Disclosure Officer will appoint a welfare manager to support all persons who have made a protected disclosure.

The welfare manager will provide advice about what the discloser should do if they believe that a colleague/s or associate is being subjected to detrimental action.

A discloser who believes that they are being subjected to detrimental action should report it to the Principal Officer or a Public Interest Disclosure Officer.

If they believe that the detrimental action is not being effectively dealt with by DPAC, they may report the matter to the Ombudsman.

### *13.1 Keeping the discloser informed*

The recipient will inform the discloser of action taken in relation to his or her disclosure, and the time frames that apply.

The discloser will be informed of the objectives of any investigation that takes place, the findings of the investigation, and the steps taken by DPAC to address any improper conduct that has been found to have occurred.

The discloser will be given reasons for all decisions made by DPAC in relation to a disclosure.

### *13.2 Occurrence of detrimental action*

If a discloser reports an incident of detrimental action allegedly taken, the welfare manager will:

- record details of the incident;
- advise the discloser of his or her rights under the Act; and
- advise the Principal Officer of the detrimental action.

The taking of detrimental action can be an offence against the Act as well as grounds for making a further disclosure. Where such detrimental action is reported, the recipient will assess the report as a new disclosure under the Act, and it will be dealt with in accordance with these procedures.

### *13.3 Discloser implicated in improper conduct*

Where a discloser is implicated in misconduct, DPAC will handle the disclosure and protect the discloser from detrimental action in accordance with the Act, the Ombudsman's guidelines and these procedures<sup>11</sup>.

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<sup>11</sup> DPAC 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 demonstrated that:

- the intention to proceed with disciplinary action is not causally connected to the making of the disclosure (as opposed to the content of the disclosure or other available information);
- there are sufficient grounds that would fully justify action against any non-discloser in the same circumstances; and
- there are sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The recipient will thoroughly document the process, including the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in reprisal for the making of the disclosure.

The recipient will advise the discloser of the proposed action to be taken, and of any mitigating factors that have been taken into account.

## **14 SUPPORT FOR SUBJECTS OF DISCLOSURE**

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DPAC will support employees and officers who are the subjects of disclosure during the handling and investigation of disclosures.

DPAC will take all reasonable steps to protect 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.

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.

DPAC will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are wrong or unsubstantiated.

If the matter has been publicly disclosed, the Principal Officer will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

## **15 APPROVAL AND REVIEW OF THESE PROCEDURES**

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These procedures were approved by the Ombudsman under s 60(3) of the Act on 29 August 2017.

The procedures will be submitted to the Ombudsman for review at least once in each 3 year period to ensure they meet the objectives of the Act and accord with the Guidelines and Standards published by the Ombudsman under s 38(1)(c) of the Act.

The date by which the procedures must be submitted to the Ombudsman for review is 29 August 2020.

## **16 REPORTING OBLIGATIONS IN DPAC'S ANNUAL REPORT**

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Under the *Public Interest Disclosures Act 2002*, DPAC is required to include the following in its Annual Report:

- a) Information as to how persons may obtain or access copies of current procedures
- b) The number and types of disclosures made to DPAC during the year and the number of those disclosures that were determined to be public interest disclosures
- c) The number of disclosures determined by DPAC to be public interest disclosures that it investigated during the year
- d) The number and types of disclosed matters referred to DPAC during the year by the Ombudsman
- e) The number and types of disclosed matters referred during the year by DPAC to the Ombudsman to investigate
- f) The number and types of investigations of disclosed matters taken over by the Ombudsman from DPAC during the year
- g) The number and types of disclosed matters that the public body has decided not to investigate during the year
- h) The number and types of disclosed matters that were substantiated on investigation and the action taken on completion of the investigation
- i) Any recommendations of the Ombudsman under this Act that relate to the public body.

### *Appendix I - Matters that do not have to be investigated*

Section 64 specifies certain circumstances under which a public body may legitimately decide not to investigate. Those circumstances are –

- if in the opinion of the public body the disclosure is trivial, vexatious, misconceived or lacking in substance
- if the subject matter of the disclosure has already been adequately dealt with by the Ombudsman or a public body, statutory authority, Commonwealth statutory authority, commission, court or tribunal
- if the person making the disclosure has commenced proceedings in a commission, court or tribunal in relation to the same matter, and that commission, court or tribunal has power to order remedies similar to those available under this Act
- if the person making the disclosure had knowledge for more than 12 months of the disclosed matter before making the disclosure and failed to give a satisfactory explanation for the delay in making the disclosure
- if the disclosure relates solely to the personal interests of the person making the disclosure
- if the disclosure is based on false or misleading information, or
- if the matter which is the subject of the disclosure has already been determined and the additional disclosure does not provide significant or substantial new information.

Any decision not to proceed with an investigation on a ground specified in s 64 must be made by the Principal Officer.

If the Principal Officer determines that the disclosed matter is not to be investigated on a ground specified in s 64, notice of this fact must be given within 14 days to both the Ombudsman and (except in the case of an anonymous disclosure) the person who made the disclosure. Reasons for the decision must accompany the notice.

The Ombudsman is required by s 65(2) to review such a decision. Following the review, the Ombudsman must notify the DPAC of his or her decision within a reasonable time. If the Ombudsman on review determines that the disclosure should not be investigated, the matter 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 decide how the matter should be dealt with.

## *Appendix 2 - Criminal offences*

The following offences are created by the Act:

- Section 19(1)

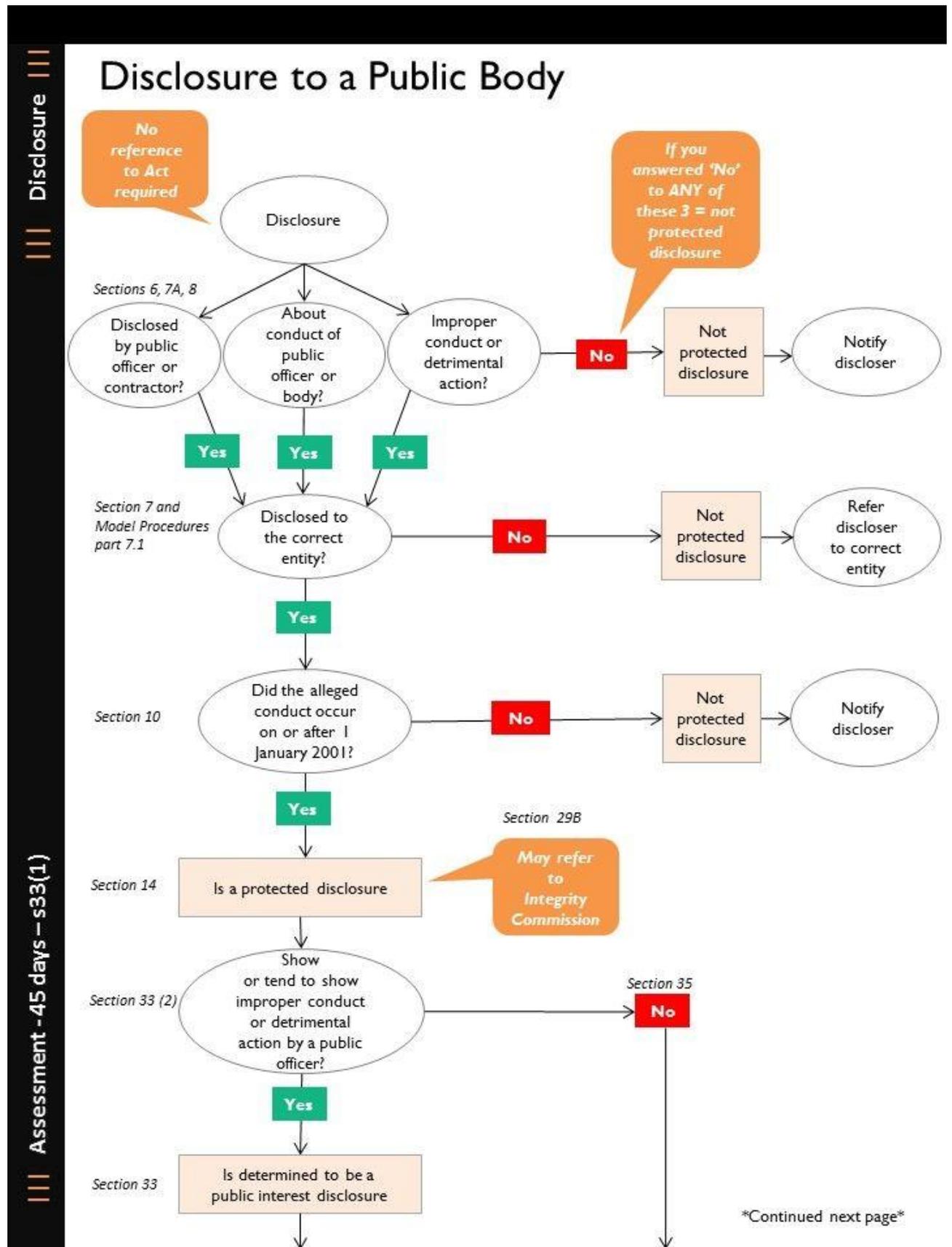
This provision makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made. The section provides for a maximum penalty of a fine of 240 penalty units or two years imprisonment, or both.
- Section 23(1)

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  

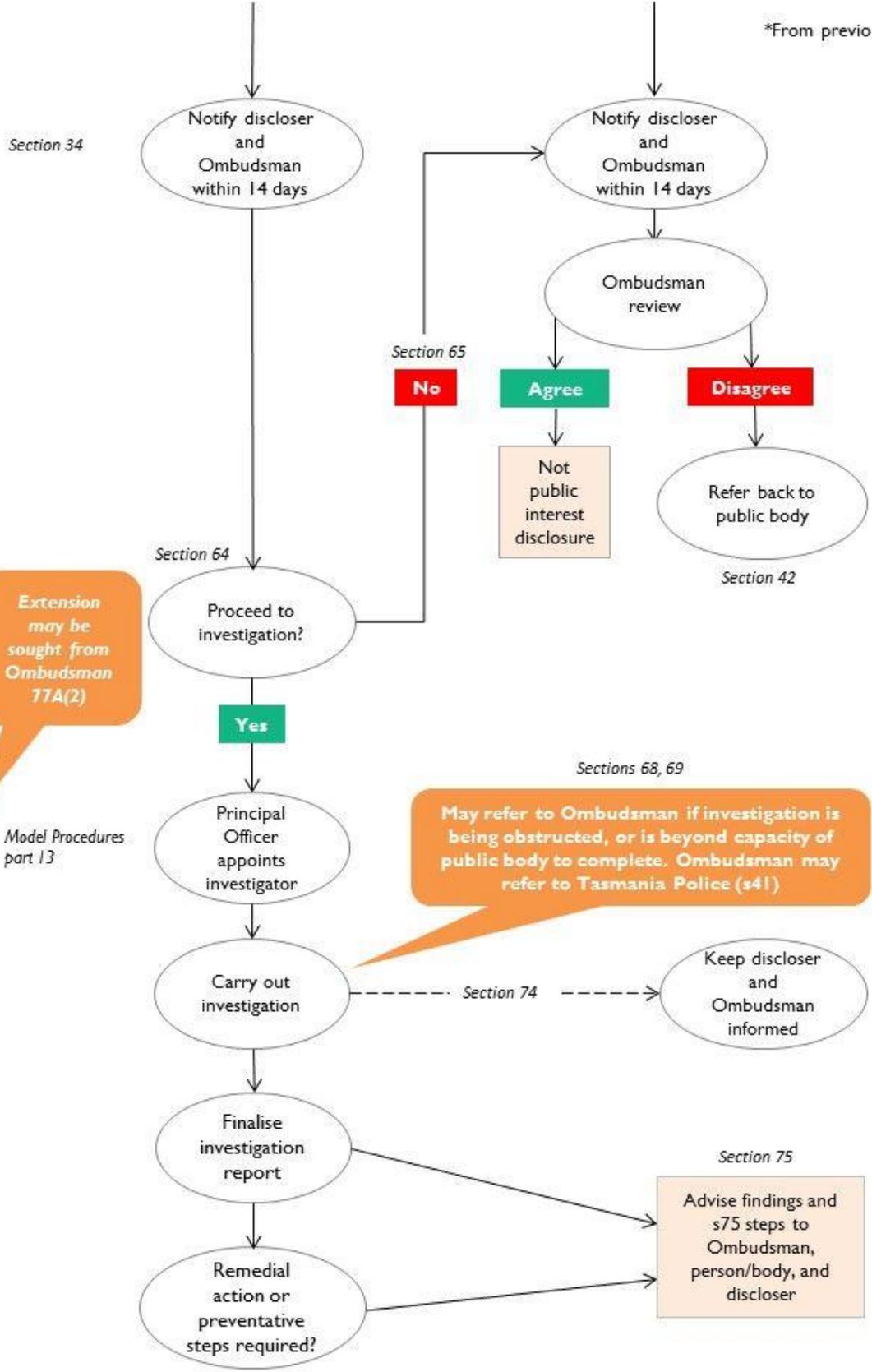
This section creates various offences relating to obstructing the work of the Ombudsman under the Act, including offences relating to misleading the Ombudsman. The section provides for a maximum penalty of 240 penalty units or two years imprisonment, or both.
- Section 87(1)

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.



\*From previous page\*





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