

Podiatrists Registration Board of Tasmania

Public Interest Disclosure Act 2002 Procedures

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Approved

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Chairperson

3 December 2004

CONTENTS

1. STATEMENT OF SUPPORT	3
2. PURPOSE OF THESE PROCEDURES	3
3. OBJECTS OF THE ACT	3
4. DEFINITIONS OF KEY TERMS.....	3
4.1 Improper conduct.....	4
4.2 Corrupt conduct	4
4.3 Detrimental action.....	5
5. THE REPORTING SYSTEM.....	5
5.1 To the Ombudsman.....	5
5.2 Contact person/s within the Podiatrists Registration Board.....	6
5.3 Disclosures about other persons or bodies	6
6. ROLES AND RESPONSIBILITIES	7
6.1 Contact Person/s	7
6.2 Employees	7
7. CONFIDENTIALITY.....	7
7.1 Maintaining confidentiality	7
7.2 Referral of criminal conduct to the police.....	8
8. INVESTIGATION REPORTS AND RECOMMENDATIONS S.56 & S57.....	8
9. MANAGING THE WELFARE OF THE DISCLOSER.....	9
9.1 Commitment to protecting disclosers	9
9.2 Disclosers implicated in improper conduct s.18.....	9
10. MANAGEMENT OF THE PERSON AGAINST WHOM A DISCLOSURE HAS BEEN MADE	10
11. CRIMINAL OFFENCES.....	10
12. REVIEW S.62.....	11

1. Statement of support

The Podiatrists Registration Board is committed to the aims and objectives of the *Public Interest Disclosures Act 2002* (the Act). It does not tolerate improper conduct by its employees, officers or members, nor the taking of reprisals against those who come forward to disclose such conduct.

The Podiatrists Registration Board recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal corrupt conduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

The Podiatrists Registration Board will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure. It will also afford natural justice to the person who is the subject of the disclosure.

2. Purpose of these procedures

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by the Podiatrists Registration Board or its members or employees. Disclosures may be made by Board members, employees of the Board, employees of other public bodies or by contractors or former contractors who have or had a contract with the Podiatrists Registration Board for the supply of goods or services.

These 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. As an alternative, members and employees may make a disclosure of improper conduct or detrimental action under the Act in accordance with these procedures.

3. Objects of the Act

The *Public Interest Disclosures Act 2002* commenced operation on 1 January 2004. The purpose of the Act is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies. The Act provides protection to persons who make disclosures in accordance with the Act, and establishes a system for the matters disclosed to be investigated and rectifying action to be taken.

4. Definitions of key terms

Three key concepts in the reporting system are improper conduct, corrupt conduct and detrimental action. Definitions of these terms are set out below.

4.1 Improper conduct

A disclosure may be made about improper conduct by a public body or public official. Improper conduct means conduct that is corrupt, a substantial mismanagement of public resources, or conduct involving substantial risk to public health or safety or to the environment. The conduct must be serious enough to constitute, if proved, a criminal offence or reasonable grounds for dismissal.

Examples

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.

A building inspector tolerates poor practices and structural defects in the work of a leading local builder.

See 4.2 below for specific examples of corrupt conduct.

4.2 Corrupt conduct

Corrupt conduct means:

- Conduct of any person (whether or not a public official) that adversely affects the honest performance of a public officer's or public body's functions;
- The performance of a public officer's functions dishonestly or with inappropriate partiality;
- Conduct of a public officer, former public officer or a public body that amounts to a breach of public trust;
- Conduct by a public officer, 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 official functions; or
- A conspiracy or attempt to engage in the above conduct.

Examples

A public officer takes a bribe or receives a payment other than his or her wages or salary in exchange for the discharge of a public duty.

A public officer favours unmeritorious applications for jobs or permits by friends and relatives.

A public officer sells confidential information.

4.3 Detrimental action

The Act makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure (s.19). Detrimental action includes:

- Action causing injury, loss or damage;
- Intimidation or harassment; and
- Discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.
- Threats of detrimental action.

Examples

A public body refuses a deserved promotion of a person who makes a disclosure.

A public body demotes, transfers, isolates in the workplace or changes the duties of a discloser due to the making of a disclosure.

A person threatens, abuses or carries out other forms of harassment directly or indirectly against the discloser, his or her family or friends.

A public body discriminates against the discloser or his or her family and associates in subsequent applications for jobs, permits or tenders.

5. The reporting system

5.1 To the Ombudsman

A disclosure about improper conduct or detrimental action by the Podiatrists Registration Board, its members or its employees, may be made directly to the Ombudsman:

The Ombudsman
99 Bathurst Street
Hobart Tasmania 7000

Internet: www.justice.tas.gov.au/ombudsman
Email: ombudsman@justice.tas.gov.au

Tel: 6233 6217 or 1300 766 725

The Ombudsman will deal with the disclosure and subsequent investigation (if any) in accordance with the requirements of the *Public Interest Disclosures Act 2002*.

5.2 Contact person/s within the Podiatrists Registration Board

Given the size and organisational structure of the Podiatrists Registration Board, it is considered that all disclosures with regard to officers, members or employees of the Podiatrists Registration Board would be best dealt with by the Ombudsman.

The Podiatrists Registration Board however, will appoint a Contact Person from whom persons can obtain information with regard to making disclosures

If a person makes a disclosure to the Contact Person, the Contact Person will, with the consent of the discloser, refer the disclosure to the Ombudsman.

Despite the above, if the Contact Person accepts a disclosure, or if the Ombudsman refers a disclosed matter to the Podiatrists Registration Board for investigation, the Contact Person will deal with the disclosure in accordance with the Ombudsman's Guidelines as set out at <http://www.justice.tas.gov.au/ombudsman/PID.html>

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5.3 Disclosures about other persons or bodies

If an officer or employee wishes to make a disclosure about the actions of a person or body not associated with the Podiatrists Registration Board, the following table sets out the persons to whom disclosures may be made.

Person/Body who is the subject of the disclosure	Person/Body to whom the disclosure must be made
Member, officer or employee of a public body (other than the police force)	The Ombudsman
Public body	The Ombudsman
Member of the police force	The Commissioner of Police
The Commissioner of Police	The Ombudsman
Member of Parliament (Legislative Council)	President of the Legislative Council
Member of Parliament (House of Assembly)	Speaker of the House of Assembly
Councillor	The Ombudsman

6. Roles and responsibilities

6.1 Contact Person/s

The Contact person/s will:

- Take all reasonable steps to protect the identity of the discloser. Maintaining confidentiality is crucial in ensuring reprisals are not made against a discloser.
- Be a contact point for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct or detrimental action;
- Provide assistance as and when directed by the Ombudsman;
- Act as a liaison person as and when directed by the Ombudsman; and
- Act as, or appoint a welfare manager as and when directed by the Ombudsman.

6.2 Employees

Employees, members and contractors to the Podiatrists Registration Board are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

All employees of the Podiatrists Registration Board have an important role to play in supporting those who have made a legitimate disclosure. They must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

7. Confidentiality

7.1 Maintaining confidentiality

Maintaining confidentiality is crucial in ensuring reprisals are not made against a discloser.

The Act requires any person who receives information due to the handling or investigation of a protected disclosure, not to disclose that information except in certain limited circumstances. Disclosure of information in breach of s.23 constitutes an offence that is punishable by a maximum fine of 60 penalty units (\$6000) or six months imprisonment or both.

The circumstances in which a person may disclose information obtained about a protected disclosure include:

- Where exercising the functions of the public body under the Act;
- When making a report or recommendation under the Act;
- When publishing statistics in the annual report of a public body; and
- In criminal proceedings for certain offences in the Act.

However, the Act prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the discloser. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report.

While the Ombudsman will be responsible for the management of the disclosure, the Podiatrists Registration Board will ensure all files, whether paper or electronic, are kept securely and can only be accessed by the Ombudsman the Contact Officer or welfare manager (in relation to welfare matters) in relation to a specific matter. All printed material will be kept in files that are clearly marked as a *Public Interest Disclosures Act* matter, and warn of the criminal penalties that apply to any unauthorised divulging information concerning a protected disclosure. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely, and in the manner directed by the Ombudsman, if so directed.

The Podiatrists Registration Board will not email documents relevant to a disclosed matter and will ensure all phone calls related to the matter are conducted in private.

7.2 Referral of criminal conduct to the police

Notwithstanding the requirements for confidentiality, in some circumstances a disclosure may be referred by the Ombudsman to Tasmania Police for criminal investigation.

It is possible that before or during an investigation facts are uncovered that reveal a potential criminal offence. Under section 41 of the Act, the Ombudsman has the power to refer a disclosed matter to the Commissioner of Police for investigation.

If this occurs, the discloser will still be entitled to protection under the Act, however the investigation will proceed as a normal criminal investigation and the discloser may be required to assist the Police in the investigation process.

8. Investigation Reports and Recommendations s.56 & s57

If the Ombudsman is satisfied that the investigation has found that the disclosed conduct has occurred, he or she will report to either the Chairperson of the Podiatrists Registration Board or the relevant Minister and may make recommendations as to the action that is to be taken to prevent the conduct from continuing or occurring in the future; or the action to be taken to remedy any harm or loss arising from the conduct.

If requested by the Ombudsman, and in accordance with s.57 of the Act the Chairperson will notify the Ombudsman of any action taken to give effect to the Ombudsman's recommendations, or if action not taken, the reasons why.

Where the investigation concludes that the disclosed conduct did not occur, the Ombudsman will report these findings to the Chairperson or Minister. The Ombudsman will also advise the discloser of the outcome of the investigation.

9. Managing the welfare of the discloser

9.1 Commitment to protecting disclosers

The Podiatrists Registration Board is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of protected disclosures and, if requested by the Ombudsman or it is appropriate in the circumstances of a case, will appoint a welfare manager to manage the welfare of the discloser.

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 or victimisation in reprisal for making disclosure; and
- Ensure the expectations of the discloser are realistic.

All employees will be advised that it is an offence for a person to take detrimental action in reprisal for a protected disclosure (s.19). The maximum penalty is a fine of 240 penalty units (\$24,000) or two years imprisonment or both. The taking of detrimental action in breach of this provision can also be grounds for making a disclosure under the Act and can result in an investigation.

Detrimental action includes:

- Causing injury, loss or damage;
- Intimidation or harassment; and
- Discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business (including the taking of disciplinary action);
- Threats of detrimental action.

9.2 Disclosers implicated in improper conduct s.18

The Podiatrists Registration Board 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 Chairperson will make the final decision on the advice of the Ombudsman as to whether disciplinary or other action will be taken against a discloser where the disclosure is an employee of the Podiatrists Registration Board. Where the discloser is a member of the Podiatrists Registration Board the Ombudsman will make

recommendations to the Chairperson of the Board. 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 Chairperson must be satisfied that it has been clearly 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 good and sufficient grounds that would fully justify action against any non-discloser in the same circumstances; and
- There are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The Chairperson will thoroughly document the process including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for the making of the disclosure. The Chairperson will clearly advise the Ombudsman of the proposed action to be taken, and of any mitigating factors that have been taken into account.

10. Management of the person against whom a disclosure has been made

The Podiatrists Registration Board recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures. The Contact Person (Secretary of the Podiatrists Registration Board) will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure at all times during and after the assessment and investigation process.

The Podiatrists Registration Board will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are found to be clearly wrong or unsubstantiated by the Ombudsman.

11. Criminal offences

The Podiatrists Registration Board will ensure the officer appointed to assist with protected disclosures and all other employees are aware of the following offences created by the Act:

1. It is an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made. The Act provides a maximum penalty of a fine of 240 penalty units (\$24,000) or two years imprisonment or both (s.19).
2. It is an offence for a person to divulge information obtained as a result of the handling or investigation of a protected disclosure without legislative authority. The Act provides a maximum penalty of 60 penalty units (\$6,000) or six months imprisonment or both (s.23).

3. It is an offence for a person to obstruct the Ombudsman in performing his responsibilities under the Act. The Act provides a maximum penalty of 240 penalty units (\$24,000) or two years imprisonment or both (s.54).
4. It is an offence for a person to knowingly provide false information under the Act with the intention that it be acted on as a disclosed matter. The Act provides a maximum penalty of 240 penalty units (\$24,000) or two years imprisonment or both (s.87).

12. Review s.62

These procedures will be reviewed to ensure they meet the objectives of the Act and accord with the Ombudsman's guidelines.