



ASIC
Australian Securities &
Investments Commission

Public interest disclosures policy and procedures

October 2023

About this document

This document sets out the policy and procedures for handling reports made by current and former public officials in ASIC about suspected wrongdoing (public interest disclosures), and for providing protection against reprisals for the individual making the report.

This policy supports ASIC's values of **ACCOUNTABILITY**, **PROFESSIONALISM** and **TEAMWORK**.

Policy ownership

Commission Counsel is responsible for the development and implementation of this policy.

Policy application

This policy applies to all persons working for ASIC, including non-ongoing staff, contractors and subcontractors, and has been approved by the Chair of ASIC as ASIC's principal officer under the *Public Interest Disclosure Act 2013*.

Policy approval and review

This policy will be reviewed at least every two years. Suggestions regarding this policy should be directed to the Commission Counsel team.

This policy has been reviewed and approved by the following parties on the following dates.

Version	Reviewer	Comments	Approved	Date
1.0	Commission Counsel	Version 1	Yes	April 2014
1.1	Manager, Professional Standards	Update to list of authorised officers	Yes	May 2017
1.2	Chief Legal Officer	Amended to reflect new delegation arrangements	Yes	August 2018
1.3	Chief Legal Officer	Update to list of authorised officers	Yes	October 2018
1.4	Chair	<p>Amendments to reflect ASIC's status as a prescribed authority under s72(1)(p)(ii) of the <i>Public Interest Disclosure Act 2013</i> (PID Act).</p> <p>Additional information on:</p> <ul style="list-style-type: none"> • criteria for external disclosures; • protections for PID investigation witnesses; • confidentiality of PID information and operation of the <i>Freedom of Information Act 1982</i> (FOI Act); • the assessment of risk of reprisals; • when disclosers may speak to others about their disclosure; and • when PID-related information may be disclosed <p>Updates to Figure 3 to reflect processes for dealing with an internal disclosure</p>	Yes	August 2021

Version	Reviewer	Comments	Approved	Date
1.4 (cont.)	Chair	<p>Updates to Table 1:</p> <ul style="list-style-type: none"> • new 'investigator' role and responsibilities; and • additional detail on other roles <p>Additional guidance for authorised officers and investigators regarding allocation of matters and notifications to disclosers</p> <p>Inserted information dealing with the application to ASIC of the <i>Law Enforcement Integrity Commissioner Act 2006</i> from 1 January 2021</p>	Yes	August 2021
1.5	Commission Counsel	Amendments required by enactment of the <i>National Anti-Corruption Commission Act 2022</i> (NACC Act) and the <i>PID Amendment (Review) Act 2023</i>	Yes	October 2023

Policy location

This policy is published on ASICengage and on ASIC's website.

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A What this policy is about

- 1 The [Public Interest Disclosure Act 2013](#) (PID Act) came into effect on 15 January 2014. The purpose of the PID Act is to promote the integrity and accountability of the Commonwealth public sector by:
 - (a) encouraging and facilitating the making of disclosures of wrongdoing by public officials and former public officials;
 - (b) ensuring that public officials (current and former), including contracted and subcontracted service providers for a Commonwealth contract, who make protected disclosures are supported and protected from adverse consequences related to the making of a disclosure; and
 - (c) ensuring that disclosures are properly investigated and dealt with.
- 2 Under s59(3) of the PID Act, agencies (including ASIC) must have procedures in place to facilitate and deal with public interest disclosures and (under s59(9)) provide protection against reprisals that have been, or may be, taken in relation to disclosures made by public officials in accordance with the appropriate procedure. These procedures have been developed to ensure that such disclosures are investigated promptly, thoroughly and fairly. They set out the principles and processes for handling reports made to ASIC about wrongdoing, and for providing protection against reprisals for the person making the report.
- 3 Public officials must use one of the proper avenues outlined in this policy to gain the protections available under the PID Act. Those protections include confidentiality and immunity from criminal, civil liability or administrative liability as well as disciplinary action. A public official will not receive these protections if they give information to someone outside of Government unless the conditions for an external, emergency or legal practitioner disclosure are met: see Section C, ‘What is a public interest disclosure?’. Further, they may be in breach of their duty to maintain appropriate confidentiality in relation to official information they have gained in the course of their work, or be subject to other civil, criminal or disciplinary action.
- 4 This policy complements ASIC’s existing notification, investigation and complaint handling schemes, including:
 - (a) ASIC’s Code of Conduct and Grievance Handling Procedures for resolving breaches of ASIC’s Code of Conduct and other workplace grievances;
 - (b) ASIC’s Fraud and Anti-corruption Policy and Fraud Control Plan; and
 - (c) Information Sheet 107 *Guidelines for managing complaints about ASIC officers* ([INFO 107](#)).

ASIC commitment

- 5 ASIC is committed to a culture of high ethical standards and compliance, with the obligations on staff of an Australian Government agency, including the ASIC [Code of Conduct](#), the PID Act, the *National Anti-Corruption Commission Act 2022* (NACC Act) and the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- 6 ASIC supports the reporting by staff at all levels of all breaches of the ASIC [Code of Conduct](#) and of other wrongdoing and misconduct. ASIC supports protection for those who make those reports from reprisals as a result of making the report. We recognise the value of transparency and accountability in our practices.

B Who can make a public interest disclosure?

Public officials

7 A public interest disclosure can be made by any current or former public official. The definition of ‘public official’ in the PID Act (s69) is broad, and includes:

- (a) staff members of Government departments, which may include staff members employed under the *Public Service Act 1999* (APS employees);
- (b) staff members of an agency, other than APS employees (as defined in the PID Act) who perform duties for an agency;

Note: By virtue of s71(1)(a) of the PID Act, ASIC is defined as an *agency* for the purposes of the PID Act, due to its status as a *non-corporate Commonwealth entity*. This is consistent with the definition of *Commonwealth entities* under s10(1)(d) and s11(b) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). ASIC is specified as a *non-corporate Commonwealth entity* under s8(1A)(a) of the ASIC Act.

- (c) the principal officer of an agency;

Note: As defined by item 10 of s73(1) of the PID Act, *the chief executive officer, or the head, however described, of the agency*. For the purposes of ASIC, that is the Chair.

- (d) statutory officeholders of an agency;
- (e) contracted service providers to an agency;
- (f) members of the Australian Defence Force;
- (g) appointees of the Australian Federal Police;
- (h) Parliamentary Service employees (within the meaning of the *Parliamentary Service Act 1999*);
- (i) directors or staff members of Commonwealth companies, statutory officeholders or other persons who exercise powers under a Commonwealth law; and
- (j) individuals and organisations that provide goods or services under a Commonwealth contract and their officers or employees and subcontractors.

8 Accordingly, people who can make a public interest disclosure include current or former:

- (a) ASIC staff members;
- (b) ASIC Commissioners; and
- (c) service providers contracted or sub-contracted to ASIC and their officers and employees.

Note: Throughout this document the terms ‘public officials working for ASIC’ and ‘persons working for ASIC’ are used to refer collectively to these people.

- 9 A person who is not a current or former public official may also be deemed to be a public official by an authorised officer if the authorised officer believes on reasonable grounds that the person has information that concerns disclosable conduct and the individual has disclosed, or proposes to disclose, the information to the authorised officer: see s70 of the PID Act. For more information on authorised officers, see paragraphs 77–84. For more information on deeming people to be public officials, see paragraphs 85–86.

Who can make a disclosure to ASIC?

- 10 A current or former public official can make a public interest disclosure to ASIC if:
- (a) the disclosure relates to conduct by ASIC or a person working for ASIC; or
 - (b) the disclosure relates to conduct by another agency and ASIC is the discloser's current or last agency.

C What is a public interest disclosure?

- 11 There are five categories of public interest disclosure:
- (a) *internal disclosure*—a disclosure within Government, to an authorised officer or a supervisor, concerning suspected or probable illegal conduct or other wrongdoing (see paragraphs 13–14);
 - (b) *external disclosure*—a disclosure to anybody, if the discloser believes an internal disclosure of the information has not been adequately dealt with, and if wider disclosure satisfies public interest requirements (see paragraph 18);
 - (c) *emergency disclosure*—a disclosure to anybody if there is substantial and imminent danger to health or safety (see paragraph 19);
 - (d) *a legal practitioner disclosure*—a public official can make an external disclosure or emergency disclosure to a legal practitioner for the purposes of seeking legal advice or professional assistance in relation to the official’s actual or proposed disclosure elsewhere (i.e. an internal disclosure, an emergency disclosure or an external disclosure—see paragraph 20); and
 - (e) *a NACC disclosure*—a disclosure concerning suspected or probable illegal conduct or other wrongdoing which also meets the criteria for a disclosure to the National Anti-Corruption Commission (NACC) under the NACC Act (paragraph 22).
- 12 For an overview of what a public interest disclosure is, see Figure 1.

Internal disclosure

- 13 An internal disclosure has the following essential elements:
- (a) a person who is, or has been, a public official (or a person who is deemed to be a public official);
 - (b) disclosing to an authorised internal recipient (either their principal officer, supervisor or manager, or an authorised officer of their agency)—or if the conduct relates to another agency, an authorised officer of that agency;

Note: For the purposes of this policy, a supervisor or manager at ASIC is any public official who supervises the discloser.
 - (c) information that tends to show, or the discloser believes on reasonable grounds tends to show, one or more instances of disclosable conduct within an Australian Government agency or by a public official..

- 14 A discloser may also make an internal disclosure to an authorised officer of the Commonwealth Ombudsman if the discloser believes on reasonable grounds that it would be appropriate for the Commonwealth Ombudsman to investigate the disclosure.
- 15 Where an internal disclosure made to ASIC raises a serious or systemic corruption issue, ASIC is required to refer the corruption issue to the NACC: see paragraph 34.

Public officials performing their ordinary function

- 16 A public official whose ordinary functions include sharing, with their supervisor or an authorised officer, information about wrongdoing within an agency, will not meet the requirements for making an internal disclosure if the disclosure is made in the course of performing the discloser's ordinary functions as a public official.
- 17 If a public official in such a role intends to make a public interest disclosure, they must clearly express that intent when making the disclosure.

External disclosure

- 18 A person who has made an internal disclosure can make an external disclosure to any person other than a foreign public official if all of the following conditions are met:
- (a) the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of suspected or probable illegal conduct or other wrongdoing;
 - (b) on a previous occasion, the discloser made an internal disclosure of information that consisted of, or included the information now disclosed;
 - (c) the disclosure is not, on balance, contrary to the public interest;
 - (d) no more information is disclosed than is reasonably necessary to identify the suspected or probable illegal conduct or other wrongdoing;
 - (e) the information does not include intelligence information, including sensitive law enforcement information;
 - (f) none of the conduct with which the disclosure is concerned relates to an intelligence agency; and
 - (g) one of the following apply:
 - (i) an internal investigation was not completed within the 90-day timeframe or the timeframe approved by the Commonwealth

Ombudsman (see paragraphs 103–117 for more information on internal investigations);

- (ii) they believe on reasonable grounds that the investigation was inadequate; or
- (iii) they believe on reasonable grounds that the relevant agency took inadequate action after the investigation was completed.

Emergency disclosure

19 In exceptional circumstances, an emergency disclosure to any person, except a foreign public official, may be made if all of the following conditions are met:

- (a) the discloser reasonably believes there is substantial and imminent danger to the health or safety of one or more persons or to the environment;
- (b) the extent of information disclosed is only what is reasonably necessary to alert the recipient to the substantial and imminent danger;
- (c) exceptional circumstances exist preventing the discloser from disclosing the matter internally—or, if already disclosed internally and the report is not yet finished, justifying this course of action; and
- (d) no intelligence information, including sensitive law enforcement information, is disclosed.

Disclosure to a lawyer

20 A discloser may give information to an Australian legal practitioner for the purposes of obtaining legal advice or professional assistance about a disclosure they have made or will be making, provided that intelligence information, including sensitive law enforcement information, is not disclosed: see s41 of the PID Act for more information about intelligence information. The legal practitioner should have a security clearance if national security or other protected information is being discussed.

Disclosure to the National Anti-Corruption Commission (NACC)

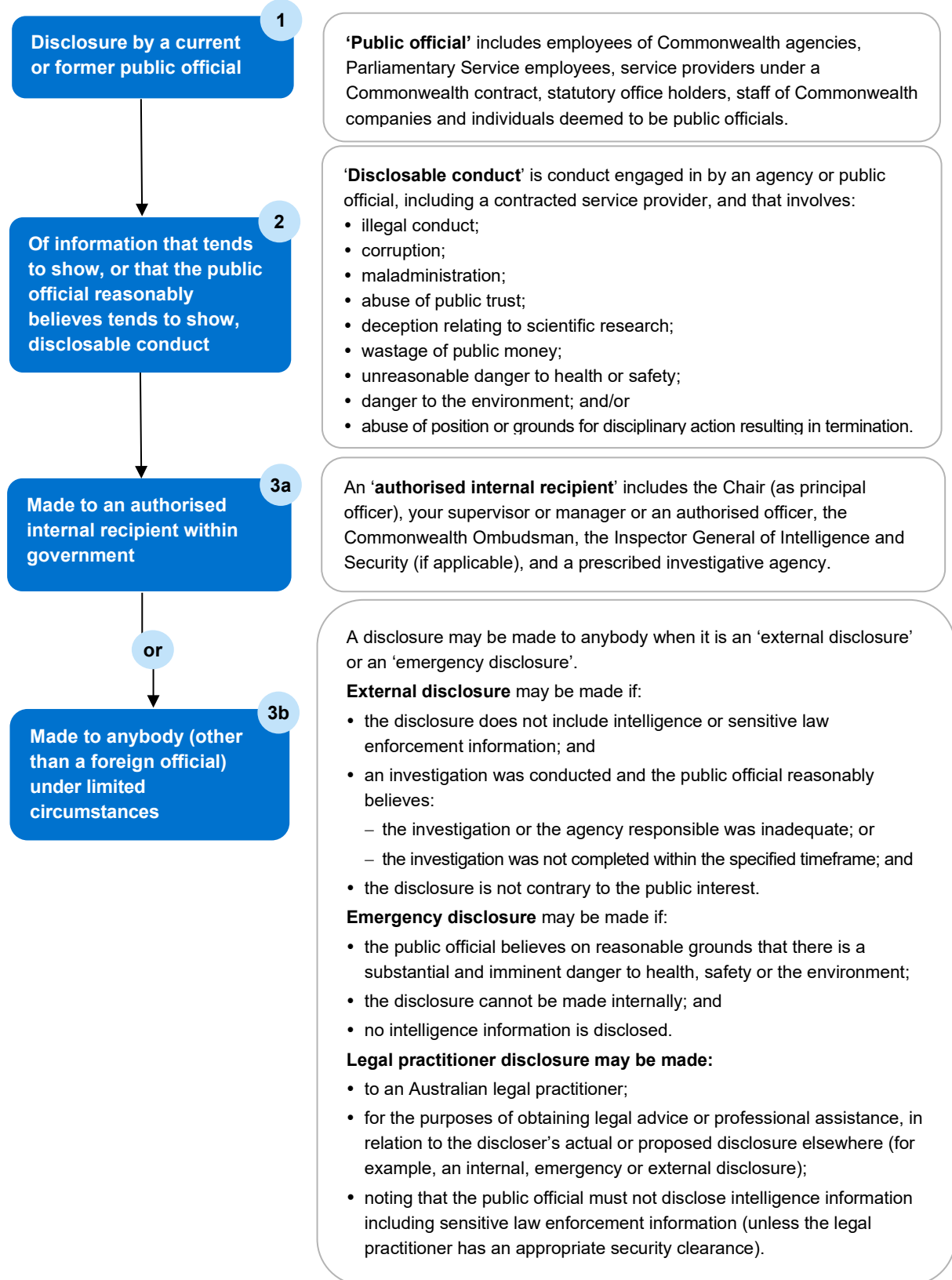
21 A discloser may give information directly to the NACC and it will be treated as a public interest disclosure if:

- (a) the disclosure is made by a current or former public official;

- (b) the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of suspected or probable illegal conduct or other wrongdoing; and
- (c) the disclosure also satisfies the requirements for a disclosure to the NACC (refer to s23 of the NACC Act for the definition of a NACC disclosure).

22 Any person may refer a corruption issue to the NACC—see s32 of the NACC Act. If, while investigating a disclosure, ASIC becomes aware of a corruption issue that concerns a current or former ASIC staff member and suspects serious or systemic corrupt conduct, ASIC must refer this conduct to the NACC—see s35 of the NACC Act.

Figure 1: What is a public interest disclosure?



Note 1: Personal work-related conduct is not disclosable conduct unless it could constitute reprisal or is otherwise significant—see paragraph 27; Note 2: See Table 3 in the appendix for the accessible version of this figure.

D What is disclosable conduct?

- 23 Public officials are encouraged to report all conduct that they believe on reasonable grounds tends to show disclosable conduct. This means conduct by ASIC or another agency, by a public official in connection with their position, and by contracted Commonwealth service providers in connection with entering into or giving effect to the contract that, in their honestly and reasonably held opinion:
- (a) contravenes a Commonwealth, state or territory law;
 - (b) occurred in a foreign country and contravenes a foreign law that applies to the agency, official or service provider;
 - (c) perverts the course of justice;
 - (d) is corrupt;
 - (e) constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent;
 - (f) is an abuse of public trust;
 - (g) results in wastage of public money or public property;
 - (h) unreasonably endangers health and safety;
 - (i) endangers the environment; or
 - (j) is prescribed by the public interest disclosure rules.
- 24 Disclosable conduct also includes conduct by a person working for ASIC involving the abuse of their position as a public official, and conduct that could be reasonable grounds for disciplinary action against them that would result in the termination of the official's engagement or appointment. It does not matter if the person has ceased to work at or for ASIC since the conduct occurred.
- 25 Examples of disclosable conduct within ASIC could include:
- (a) misuse of information or material acquired in the course of performing official duties;
 - (b) performance of official duties dishonestly or with inappropriate partiality;
 - (c) substantial mismanagement of public resources; and
 - (d) fraud—dishonestly obtaining a benefit, or causing a loss, by deception or other means—as defined in ASIC's Fraud and Anti-corruption Policy.

What is not disclosable conduct?

- 26 Conduct is not disclosable conduct if it relates only to a person's disagreement with:
- (a) a policy or proposed ASIC policy; or
 - (b) amounts, purposes or priorities, or expenditure or proposed expenditure, relating to such a policy or proposed policy.

Personal work-related conduct

- 27 The PID Act provides that personal work-related conduct is not disclosable conduct. Personal work-related conduct is conduct engaged in by one public official in relation to another public official that has personal implications for the second public official and that occurred in relation to the second official's engagement or appointment and/or in the course of their employment or exercise of their functions and powers as a public official. It includes, but is not limited to, conduct relating to:
- (a) interpersonal conflict, such as bullying or harassment;
 - (b) change in a person's duties;
 - (c) disciplinary action;
 - (d) adverse decisions about promotion or temporary acting arrangements;
 - (e) terms and conditions of employment or engagement; or
 - (f) suspension or termination.
- 28 Personal work-related conduct is generally **not** considered to be disclosable conduct unless the personal work-related conduct:
- (a) amounts to reprisal action,
 - (b) is of such a significant nature that it would undermine public confidence in an agency, or
 - (c) has other significant implications for an agency.

E Protection for public officials making, or assisting in the investigation of, a public interest disclosure

- 29 ASIC is committed to safeguarding the interests of, and will act to protect, public officials who make a public interest disclosure based on an honest and reasonable belief of suspected wrongdoing. ASIC will not tolerate any reprisal action, including dismissal, injury, demotion or discrimination against ASIC staff members who make a public interest disclosure.

Protecting the discloser's identity

- 30 The identity of a public official making a public interest disclosure will, as far as practicable, be kept strictly confidential.
- 31 It is an offence, punishable by six months imprisonment or a fine, or both, to disclose or use information that is likely to enable the identification of the public official making the disclosure unless:
- (a) it is for the purposes of the PID Act;
 - (b) it is for the purposes of an investigation by the Commonwealth Ombudsman;
 - (c) it is for the purposes of a Commonwealth law or prescribed state or territory law;
 - (d) the public official consents to the use or disclosure of the information; or
 - (e) the information has previously been lawfully published.
- 32 We will make every reasonable effort to protect the identity of a public official who makes a public interest disclosure to ASIC. However, in some circumstances we must take action under the PID Act that would reveal, or would be likely to reveal, the identity of the public official. For example, investigating the disclosure effectively or taking action to protect the public official from reprisals may involve revealing their identity, or could lead to other ASIC staff members guessing their identity. In these circumstances, we will discuss these issues with the discloser before dealing further with the public interest disclosure.
- 33 Furthermore, we will treat information obtained in the course of an investigation as confidential. It is an offence for a person to disclose or use information obtained in the course of conducting a disclosure investigation

or in connection with their powers and functions under the PID Act, subject to certain exceptions: see paragraph 113.

- 34 Disclosers should be aware that PID authorised officers and PID investigators are mandated to refer a public interest disclosure which they suspect involves serious or systemic corruption to the NACC (and despite the application of the secrecy provisions of the PID Act).
- 35 Documents associated with a disclosure are **not** automatically exempt from the operation of the *Freedom of Information Act 1982* (FOI Act), although a range of exemptions may apply to certain agencies, and to certain documents or parts of documents. Applications for access to these documents under the FOI Act will be considered in accordance with standard process under that Act.
- 36 A public official can make a public interest disclosure anonymously or using a pseudonym: see paragraphs 37–38.

Anonymous disclosures

- 37 A public official who makes a public interest disclosure may use a pseudonym or remain anonymous, including when making the disclosure to the authorised officer. Anonymous disclosures will be investigated to the extent possible. However, the following factors may assist the discloser to assess whether they wish to identify themselves, or at least provide a means of contact:
- (a) the PID Act sets out obligations for ASIC in respect of the protection of disclosers' identities so that they remain confidential (subject to limited exceptions);
 - (b) section 59 of the PID Act requires agencies to have procedures in place to manage the risk associated with the making and investigation of public interest disclosures. This requires ASIC to undertake an assessment of the risk of reprisals against the discloser and witnesses and, following this assessment, to put strategies in place to protect the discloser from reprisal. A risk assessment cannot be undertaken if the identity of the discloser is not known;
 - (c) if the discloser cannot be contacted for the purpose of obtaining further information, this may hinder ASIC's ability to assess the matter for allocation and/or undertake an investigation; and
 - (d) if the discloser cannot be contacted, they cannot be updated on the progress of the matter, including the outcome of the investigation.
- 38 A public official who has made an anonymous disclosure may disclose their identity at a later stage to seek the protections of the PID Act.

Immunity

- 39 Public officials who make a public interest disclosure are immune from civil, criminal or administrative liability (including disciplinary action) for making the disclosure. No contractual or other right or remedy can be exercised against them. The public official also has absolute privilege in proceedings for defamation in respect of the public interest disclosure.
- 40 However, these protections do not apply if the discloser:
- (a) knowingly makes a false or misleading statement; or
 - (b) makes the disclosure knowing that it breaches a designated publication restriction—these are certain restrictions (listed at s8 of the PID Act) that generally concern court or tribunal orders protecting the identity of people, and witness protection and law enforcement mechanisms.
- 41 Furthermore, making a public interest disclosure does not confer immunity from criminal or other liability for the discloser’s own conduct.

Reprisal

- 42 Reprisal occurs if someone causes or threatens to cause, by an act or omission, any detriment to another person because they believe or suspect that person, or anyone else, has made, may have made, could make or intends to make a public interest disclosure. Taking, or threatening to take, a reprisal against a person is a criminal offence.
- 43 ‘Detriment’ includes any disadvantage, including dismissal, injury in employment, discrimination against other employees, or alteration of position to the employee’s detriment.
- 44 Public officials can also apply for injunctions to stop reprisals, and can seek orders for compensation for loss, damage or injury arising from a reprisal.
- 45 Administrative action that is reasonable to protect the discloser from detriment is not a reprisal. Further, making a disclosure does not exclude the discloser from reasonable management action for any unsatisfactory performance or wrongdoing on their part. Such action is not a reprisal.
- 46 Public officials working for ASIC who have made a public interest disclosure are encouraged to tell the person to whom they made their disclosure if they believe they are being, or may be, subject to a reprisal.
- 47 When a person working for ASIC makes a public interest disclosure, we will ensure that a thorough risk assessment is conducted. This will identify any risks related to a PID investigation, including to the person who reported the suspected wrongdoing and any witnesses asked to provide information, as well as strategies to deal with those risks. When necessary, the authorised officer

will appoint an appropriate support person to assist the discloser: see also paragraphs 87–92.

Protection for witnesses in a PID investigation

- 48 Public officials have an obligation to use their best endeavours to assist an investigator with a PID investigation.
- 49 The PID Act provides certain protections for public officials who provide assistance with an investigation. Public officials who give information, produce a document or answer a question during the course of an investigation will have immunity from any civil or criminal action for providing such assistance if:
- (a) it has been requested by the investigator; and
 - (b) it is relevant to the investigation.
- 50 However, this immunity does not apply to liability in proceedings for:
- (a) an offence against sections of the Criminal Code (a schedule to the *Criminal Code Act 1995*) that is, s137.1 (giving false or misleading information), s137.2 (producing false or misleading documents), s144.1 (making a false document) or s145.1 (using a false document) that relates to the information, document or answer, as the case may be; or
 - (b) breaching a designated publication restriction.
- 51 Furthermore, providing assistance by way of giving information, documents or answers does not confer immunity from criminal or other liability for the witness's own conduct.
- 52 If interviewed as part of an investigation, witnesses will be informed of the following matters:
- (a) the identity and function of each individual conducting the interview;
 - (b) the process of conducting an investigation;
 - (c) the authority of the investigator to conduct the investigation; and
 - (d) the protections provided by s57 of the PID Act.
- 53 Witnesses will also be informed of the following matters:
- (a) whether any audio or video recording of the interview is being made;
 - (b) when an interview ends, the opportunity to make a final statement or comment, or express a position; and
 - (c) that any final statement, comment or position is included in the record of the interview.

F How to make a public interest disclosure to ASIC

- 54 In order to gain the protections afforded by the PID Act, public officials, including ASIC staff members, must make a disclosure in accordance with the requirements outlined in this policy, which are based on the PID Act.
- 55 A discloser does not need to identify their report of wrongdoing as a public interest disclosure for it to qualify as a public interest disclosure.
- 56 Disclosers may remain anonymous, meaning disclosers do not have to identify themselves to anyone including the authorised officer who receives the disclosure. Alternatively, a discloser may want to use a pseudonym in circumstances where the discloser is identifiable to their manager and/or the authorised officer but wishes to hide their identity from others.
- 57 Current ASIC staff members can make a public interest disclosure to either their manager or supervisor, or to an authorised officer of ASIC. Other public officials can make a public interest disclosure relating to ASIC to an authorised officer of ASIC. (They may also make a public interest disclosure to their manager or an authorised officer of their current agency: see ‘Internal disclosure’, paragraphs 13–14.) Individuals and entities that provide goods and services to ASIC under a Commonwealth contract who wish to make a disclosure concerning suspected wrongdoing related to entering or giving effect to that contract can make a disclosure to an authorised officer of ASIC.
- 58 ASIC’s authorised officers are:
- (a) the ASIC Chair;
 - (b) Regional Commissioners;
 - (c) Commission Counsel;
 - (d) ASIC’s Chief Risk Officer; and
 - (e) other officers, as authorised by the ASIC Chair from time to time.

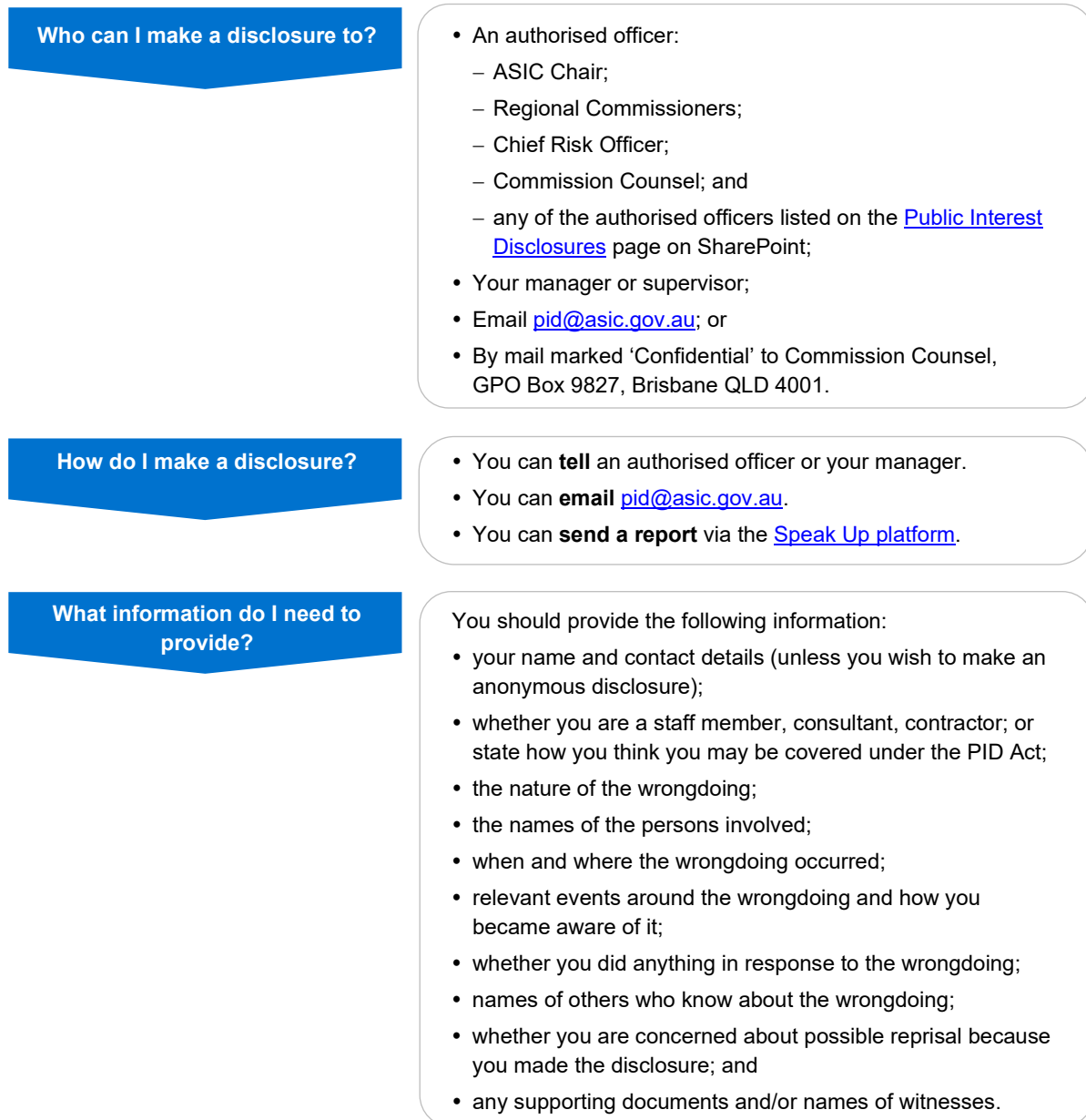
Note: A full list of authorised officers can be found on the [Public Interest Disclosures](#) page in ASIC’s ‘People & Development Hub’ SharePoint site.

- 59 We prefer that public interest disclosures to authorised officers be made by:
- (a) emailing the disclosure to pid@asic.gov.au; or
 - (b) posting the disclosure, marked ‘Confidential’ to:

Commission Counsel
GPO Box 9827
BRISBANE QLD 4001

- 60 However, a public interest disclosure may also be made verbally or in writing to any of ASIC’s authorised officers or to the discloser’s manager, or via ASIC’s internal reporting platform, [Speak Up](#).
- 61 If a disclosure is made verbally, a written record of what was said will be made and the public official making the disclosure will be asked to sign the record as being correct.

Figure 2: How to make a public interest disclosure to ASIC—Summary



Information to be provided when making a report of suspected wrongdoing

- 62 To assist us to determine how to proceed in relation to a report of suspected wrongdoing, the following information will be helpful for a discloser to provide:
- (a) if not an anonymous disclosure, their name and contact details;
 - (b) the nature of the suspected wrongdoing;
 - (c) who they think committed the suspected wrongdoing;
 - (d) when and where the suspected wrongdoing occurred;
 - (e) relevant events surrounding the suspected wrongdoing including how they became aware of it;
 - (f) whether the discloser did anything in response to the suspected wrongdoing, including whether they have reported it to anyone else and if so, what that person has done to fix, stop or prevent it;
 - (g) whether they are concerned about possible reprisal as a result of making the disclosure; and
 - (h) any supporting documentation, such as file notes or a diary of events, and the names of any people who witnessed the conduct, or who may be able to verify what the discloser is saying.
- 63 Disclosers should be clear and factual and avoid speculation, personal attacks or emotive language when making their report. Disclosers should not attempt to investigate the matter before making the disclosure because it may hinder any future investigation. The sooner a matter is raised as a concern, the easier it will be for ASIC to take action.
- 64 Disclosers should not discuss the details of their disclosure with anyone who does not need to know about it. Discussions with people who are not performing a function under the PID Act about the disclosure may not be covered by the protections in the PID Act. Disclosers should also be prepared to provide further information to assist the investigator.

Other mechanisms for reporting wrongdoing

- 65 Depending on the particular subject matter, another ASIC policy may provide a more appropriate mechanism for investigation of the matter. In particular, staff are encouraged to report workplace grievances and suspected breaches of the ASIC [Code of Conduct](#) to People & Development, to be handled under the Procedure for Investigating Code of Conduct and other Grievances.

- 66 Staff may wish to discuss their reporting options with their manager or an authorised officer. When a matter concerns disclosable conduct, it remains open to the staff member to make a public interest disclosure for the purposes of the PID Act.

G Roles and responsibilities

- 67 Responsibility for managing public interest disclosures runs across ASIC. Certain staff have specific responsibilities but everyone working for ASIC has responsibilities under the PID Act to support ASIC's compliance with its public interest disclosure obligations.
- 68 The responsibilities of specific staff in relation to public interest disclosures are set out in Table 1.

Table 1: Roles and responsibilities

Role	Responsibilities
Principal officer (ASIC Chair)	<ul style="list-style-type: none"> • Foster a culture of disclosure, and ensure managers at all levels in ASIC fully support reports of wrongdoing and are committed to ensuring appropriate action is taken. • Establish procedures for ASIC to facilitate and deal with public interest disclosures, which must include: <ul style="list-style-type: none"> – assessing risks that reprisals may be taken in relation to disclosures, and – providing for confidentiality of investigative processes. • Ensure staff are aware of the procedures and the protections available. • Appoint authorised officers to receive disclosures, and receive disclosures themselves (as the principal officer is also an authorised officer). • Ensure ASIC has sufficient authorised officers to be readily accessible to public officials and that public officials are aware of their identities. • Ensure disclosures are properly investigated, investigation reports are prepared and appropriate action is taken in response to an investigation report. • Take reasonable steps to protect staff from detriment or reprisal, or threats of detriment or reprisal, if they make a disclosure. • Provide ongoing training and education on the PID Act to all ASIC staff members and ensure PID officers are given training and education appropriate for their position within a reasonable time. • Notify the discloser and Commonwealth Ombudsman at various stages in handling a disclosure. • Provide information and assistance to the Commonwealth Ombudsman, including in relation to PID Act annual reporting.

Role	Responsibilities
Manager/Supervisor	<ul style="list-style-type: none"> • Be knowledgeable about the PID Act and this policy, particularly in relation to what is 'disclosable conduct', as well as confidentiality requirements and the obligation to inform an authorised officer if disclosable conduct is reported to them. • Receive reports of disclosable conduct from staff in their team, and provide the information to an authorised officer as soon as reasonably practicable • Explain to a discloser: <ul style="list-style-type: none"> – that their disclosure could be treated as an internal disclosure; – the procedures under the PID Act for the disclosure to be given to an authorised officer, allocated to an agency and investigated; – the circumstances, if any, in which a disclosure must be referred to an agency under another law of the Commonwealth; and – the civil and criminal protections the PID Act provides to protect disclosers and witnesses from reprisal action. • Strictly maintain confidentiality in relation to the identity of a discloser and the content of their disclosure. • Be approachable to staff who wish to raise concerns. • Ensure staff complete the mandatory ASIC's Essentials Module training and undergo available PID training when offered. • Confront any workplace prejudices about making a disclosure and ensure staff are aware of ways to submit an anonymous disclosure or by using a pseudonym. • Increase management supervision of the workplace to minimise risk of reprisal if necessary. • Ensure identified problems in the workplace are corrected (or support measures by ASIC to do so). • Set an example for staff through their own conduct and ethical approach.

Role	Responsibilities
Authorised officer	<p data-bbox="448 309 663 331"><i>Assisting disclosers</i></p> <ul data-bbox="448 344 1394 801" style="list-style-type: none"> <li data-bbox="448 344 1043 367">• Explain the requirements of the PID Act to disclosers. <li data-bbox="448 385 1394 622">• Where information is disclosed or proposed to be disclosed to the authorised officer, and the authorised officer reasonably believes it could concern disclosable conduct: <ul data-bbox="472 456 1394 622" style="list-style-type: none"> <li data-bbox="472 456 1394 519">– inform the discloser that the disclosure could be treated as an internal disclosure for the purposes of the PID Act; <li data-bbox="472 528 970 551">– explain the requirements of the PID Act; and <li data-bbox="472 568 1337 622">– advise the person of any designated publication restrictions that may affect the disclosure. <li data-bbox="448 640 1394 730">• Take reasonable steps to protect public officials who belong to ASIC against reprisals that have been, or may be, taken in relation to a public interest disclosure that has been made, may have been made, is proposed to be made or could be made. <li data-bbox="448 748 1358 801">• Advising a discloser about the circumstances, if any, in which a disclosure must be referred under another law of the Commonwealth, including to the NACC. <p data-bbox="448 824 687 846"><i>Receiving disclosures</i></p> <ul data-bbox="448 860 1394 1003" style="list-style-type: none"> <li data-bbox="448 860 1347 922">• Receive disclosures from current or former ASIC staff members about disclosable conduct. <li data-bbox="448 936 1315 958">• Receive disclosures from other public officials about conduct concerning ASIC. <li data-bbox="448 976 1385 999">• Deem a person to be a public official to facilitate the making of a public interest disclosure. <p data-bbox="448 1021 687 1043"><i>Assessing disclosures</i></p> <ul data-bbox="448 1057 1369 1236" style="list-style-type: none"> <li data-bbox="448 1057 1369 1120">• Assess reported information to determine whether it is a disclosure for the purposes of the PID Act. <li data-bbox="448 1133 1206 1155">• Make preliminary inquiries necessary to make an allocation decision. <li data-bbox="448 1173 1283 1227">• Refer a corruption issue identified in the disclosure to the NACC as soon as reasonably practicable. <p data-bbox="448 1249 687 1272"><i>Allocating disclosures</i></p> <ul data-bbox="448 1285 1394 1608" style="list-style-type: none"> <li data-bbox="448 1285 1342 1348">• Allocate all or part of the disclosure to the principal officer of ASIC and/or another agency that has agreed to handle the disclosure. <li data-bbox="448 1361 1326 1451">• Inform the principal officer of each relevant agency and the Commonwealth Ombudsman of allocation decisions and associated information (including, if the discloser consents, the discloser's identity). <li data-bbox="448 1464 963 1487">• Inform the discloser of the allocation decision. <li data-bbox="448 1505 1369 1527">• Consent to the allocation of a disclosure by an authorised officer of another agency. <li data-bbox="448 1545 1337 1608">• Advise the discloser of a decision not to allocate, the reasons why and any other course of action that may be available under Commonwealth law.

Role	Responsibilities
Investigator acting as delegate of the Chair	<ul style="list-style-type: none"> • Investigate public interest disclosures (as a delegate of the principal officer), including preparing an investigation report when applicable. • Comply with the standards made under the PID Act relating to the conduct of investigations. • Refer a corruption issue identified in the disclosure to the NACC as soon as reasonably practicable. • Make certain notifications to a discloser for the purposes of an investigation, such as: <ul style="list-style-type: none"> – that they are required to investigate the disclosure, and the estimated length of the investigation; or – that they have decided not to investigate the disclosure, or not to investigate it further, the reasons for that decision, and other courses of action that might be available to the discloser under other laws of the Commonwealth. • Monitor the risk of reprisal to ASIC officers, as concerned with any public interest disclosure they are investigating.
Discloser	<ul style="list-style-type: none"> • Not discuss details of their disclosure with anyone who does not need to know about it. • Use best endeavours to assist the investigator in the conduct of an investigation. • Not investigate the matter which is the subject of the disclosure, before making the disclosure or during an investigation.
All ASIC staff members	<ul style="list-style-type: none"> • Use best endeavours to assist the investigator while conducting an investigation. • Keep confidential the identity of a discloser and anyone against whom an allegation has been made, if the staff member becomes aware of those matters. • Provide assistance and support to staff in relation to a public interest disclosure. • Report to a manager/supervisor or authorised officer any threats or reprisal action in relation to a disclosure. • Use best endeavours to assist the Commonwealth Ombudsman in the performance of their functions under the PID Act. • Share in responsibility for a strong workplace culture by: <ul style="list-style-type: none"> – reporting matters where there is evidence that shows or tends to show disclosable conduct; and – identifying areas where there may be opportunities for wrongdoing to occur because of inadequate systems or procedures, and proactively raise those with management.

H Receiving a public interest disclosure

69 Figure 3 provides an overview of the process for receiving and dealing with an internal disclosure. Disclosures under the PID Act can be made to the discloser's manager or supervisor or to an authorised officer appointed by the Chair under the PID Act.

Manager

70 A discloser does not need to identify their report of wrongdoing as a public interest disclosure for it to qualify as a public interest disclosure. Managers must be able to identify whether information received qualifies as a public interest disclosure. For example, a person working for ASIC may be unaware of the PID Act but still approach their manager about misconduct by ASIC or another agency. Sections B–C provide guidance regarding who can make a public interest disclosure and what is disclosable conduct.

71 If the manager has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, they must give that information to one of ASIC's authorised officers as soon as is reasonably practicable. For information on ASIC's authorised officers, see paragraph 58. A verbal disclosure must be recorded in writing as soon as practicable by the person to whom it is made. The person making the disclosure should also be asked to endorse the record as accurate.

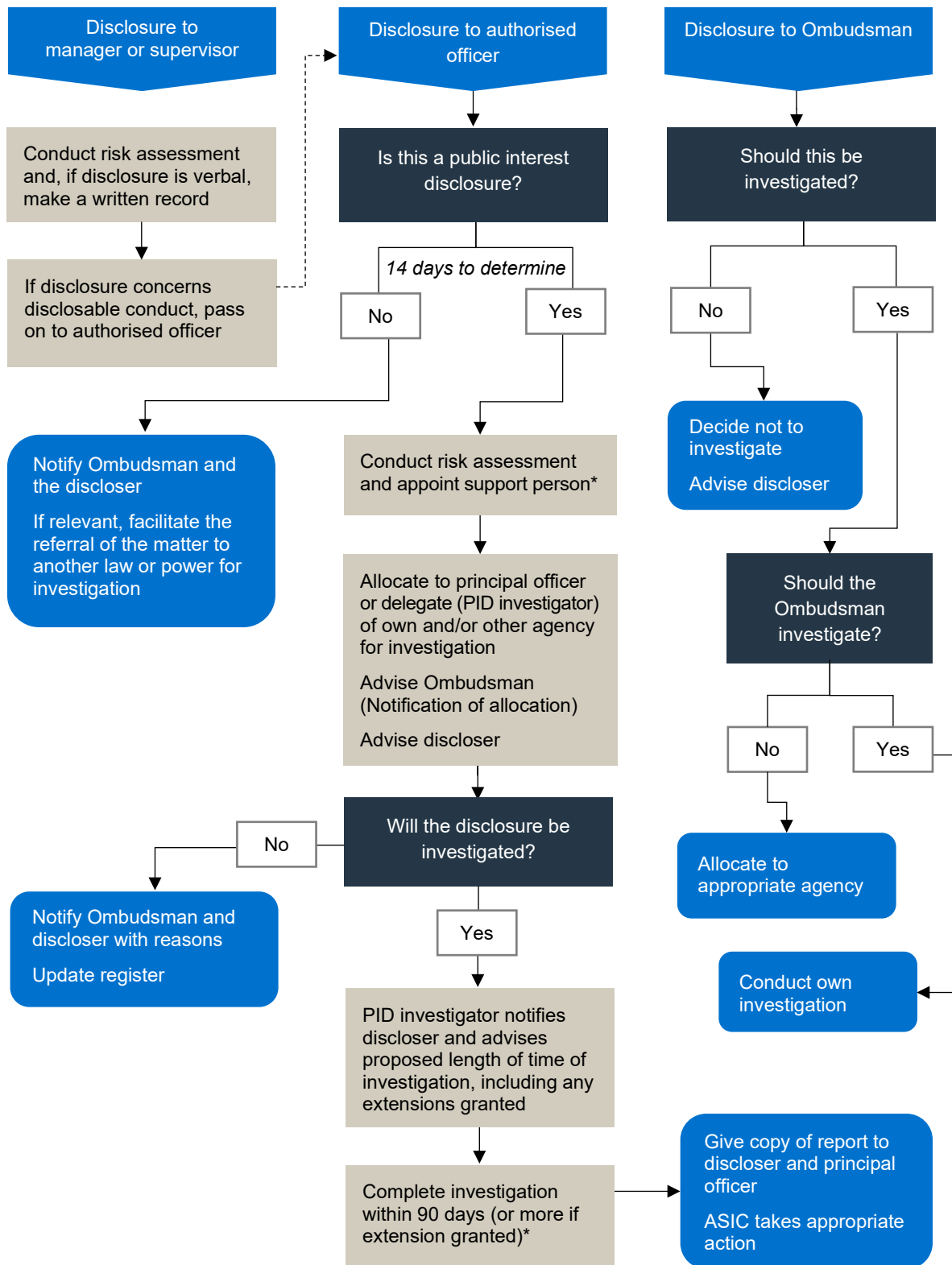
72 Under the PID Act, the manager must ensure they explain the following matters to a discloser:

- (a) that their disclosure could be treated as an internal disclosure;
- (b) that their disclosure will be given to an authorised officer, allocated to an agency and investigated by the agency to which the disclosure is allocated;
- (c) the circumstances (if any) in which a disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth; and
- (d) the civil and criminal protections of the PID Act to protect disclosers and witnesses from reprisal action.

73 The manager will provide further support to the discloser, including by:

- (a) advising the discloser of other support options, including People & Development and ASIC's employee assistance program; and
- (b) if necessary, arranging the appointment of a support person to assist and be responsible for regularly checking on the wellbeing of the discloser.

Figure 3: Dealing with an internal disclosure



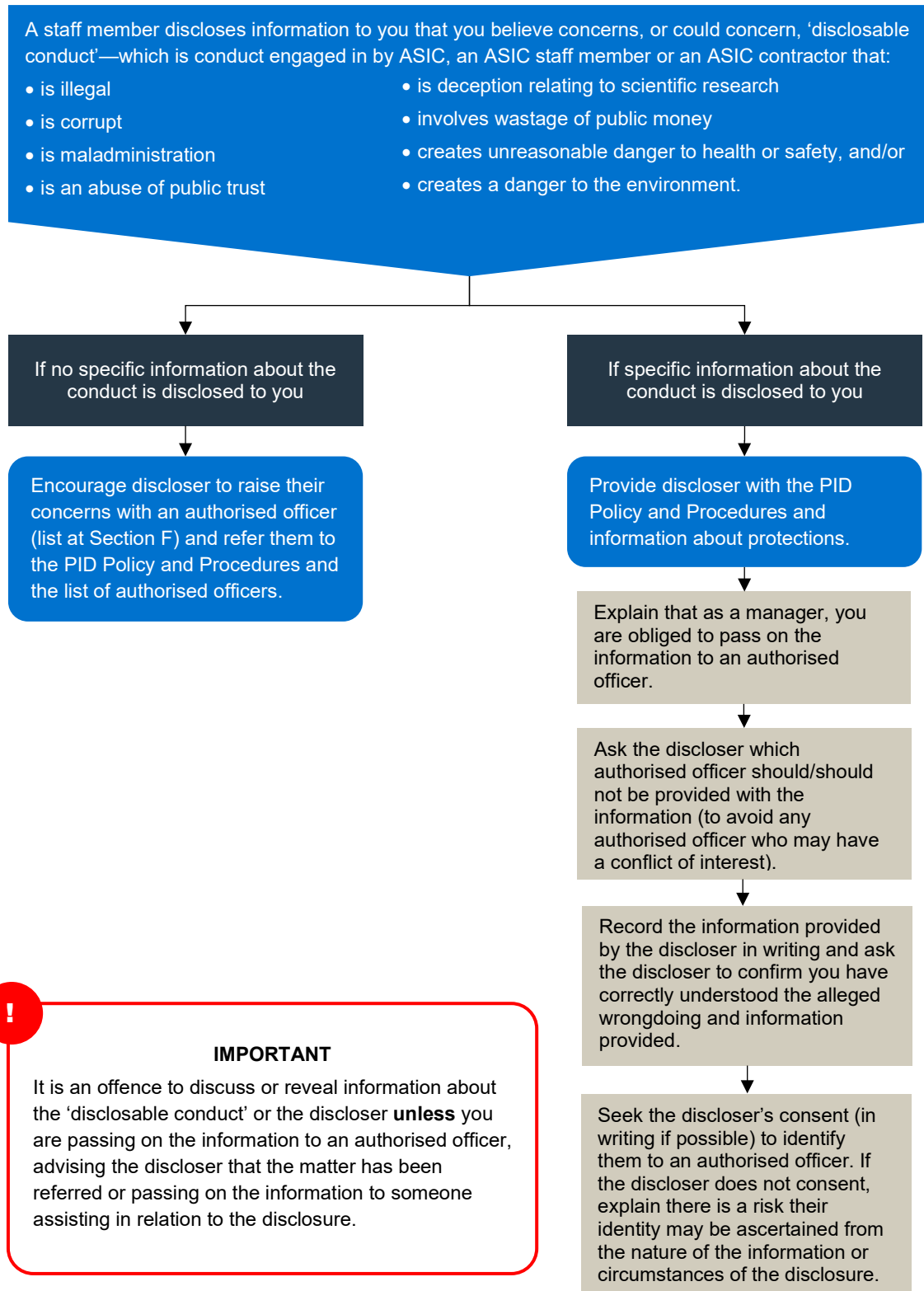
***If the authorised officer or investigator identifies serious or systemic corruption, ASIC must notify the NACC and continue to allocate/investigate the disclosure, unless the NACC issue a stop order. If the NACC issue a stop order, ASIC must advise the Ombudsman.**

Note: See Table 4 in the appendix for the full text shown in this figure (accessible version).

- 74 The manager should be careful to ensure that they comply with their confidentiality requirements: see paragraphs 30–36. In particular, the discloser’s consent should be obtained to provide their identity to the authorised officer.
- 75 If the discloser does not consent to their identity being disclosed, the manager will also conduct a risk assessment of reprisals against the discloser. For information on risk assessments, see paragraphs 87–92. Managers will also monitor the workplace for potential reprisals against the discloser.
- 76 See also Section G for more information on the role of managers in public interest disclosures.

Authorised officer

- 77 Authorised officers may receive public interest disclosures through a discloser’s manager or supervisor, or directly from a discloser.
- 78 Authorised officers will review the information they have received and decide whether it is a public interest disclosure under the PID Act. An authorised officer must allocate the handling of a disclosure within 14 days of becoming aware of the disclosure, unless they are satisfied that there is no reasonable basis on which the disclosure could be considered an internal public interest disclosure. For what constitutes an internal public interest disclosure, see paragraphs 13–14.
- 79 Examples of where an authorised officer may be satisfied that there is no reasonable basis for information to be considered an internal public interest disclosure include where the information does not involve the actions of a Commonwealth agency, public official or contracted service provider, or where the information concerns an individual’s disagreement with ASIC policy. It may also be the case that:
- (a) there is no information that ‘tends to show’ disclosable conduct; or
 - (b) the discloser could not, on reasonable grounds, believe that the information tends to show disclosable conduct.
- 80 Authorised officers need to bear in mind, however, that a discloser is not required to prove their allegation, only to provide sufficient information to put ASIC on notice that disclosable conduct may have occurred.

Figure 4: Dealing with an internal disclosure—summary for managers

Note: See Table 5 in the appendix for the full text shown in this figure (accessible version).

- 81 If an authorised officer decides the information does not constitute a disclosure, the authorised officer should make a record of the decision and reasons and, if reasonably practicable, should inform the discloser of:
- (a) the reasons why the disclosure has not been allocated; and
 - (b) any other courses of action that might be more appropriate or available to the discloser under other ASIC policies or laws of the Commonwealth.
- 82 An authorised officer may also, if required, make any inquiries and obtain further information before making a decision about allocating the matter for investigation. This is not the same as an investigation, and conclusions will not be reached about the substance of the disclosure. Rather, information can be sought to assist the authorised officer to reach a decision about allocating the disclosure.
- 83 If, and when, an authorised officer identifies that the public interest disclosure may involve a serious or systemic corruption issue, they must refer the corruption issue to the NACC (under s35 NACC Act), and advise the discloser (if it is possible) they have done so. Unless the NACC Commissioner issues a stop action direction, this will not prevent the authorised officer from continuing their assessment of the public interest disclosure.
- 84 Authorised officers should be careful to ensure they comply with their confidentiality requirements: see paragraphs 30–36. Authorised officers should also email the Professional Standards Unit at Professional.Standards.Unit@asic.gov.au, for assistance in establishing a secure electronic file to keep records of the handling of any public interest disclosure.

Deemed public officials

- 85 If an individual has disclosed, or proposes to disclose, to an authorised officer information that concerns disclosable conduct which they received when they were not a public official, the authorised officer may, by written notice, determine that the PID Act applies to their disclosure: see s70 of the PID Act.
- 86 An authorised officer may make the determination regardless of whether or not the person requested it. If the person does request that the authorised officer make such a determination, the authorised officer must, if they refuse, inform the person of the reasons for the refusal.

Risk assessment

- 87 As soon as is practicable following the receipt of a public interest disclosure, an assessment of the risk of reprisals against the discloser and witnesses must be undertaken.
- 88 The risk assessment will be conducted by the authorised officer receiving the disclosure, the discloser’s manager if the disclosure is first made to them and the discloser wishes to remain anonymous, or another appropriate person.
- 89 The assessment will be conducted to determine:
- (a) the likelihood of reprisals or related workplace conflict occurring; and
 - (b) the potential consequences if they do occur, including the discloser’s immediate and long-term wellbeing and the cost to ASIC.
- 90 The discloser and the discloser’s manager are likely to be the best sources of information for conducting the risk assessment. The person conducting the assessment should use the checklist of risk factors in Table 2.
- 91 Strategies will be put in place to prevent or contain any risks identified from the risk assessment. The risk assessment will be monitored and reviewed on an ongoing basis.
- 92 See Section G for more information on the role of authorised officers in public interest disclosures.

Table 2: Checklist of indicators of a higher risk of reprisal or workplace conflict

Indicator	Considerations for risk assessment
Threats or past experience	<ul style="list-style-type: none"> • Has a specific threat against the discloser been received? • Is there a history of conflict between the discloser and the subjects of the disclosure, management, supervisors or colleagues? • Is there a history of reprisals or other conflict in the workplace? • Is it likely that the disclosure will exacerbate this?
Confidentiality unlikely to be maintained	<ul style="list-style-type: none"> • Who knows that the disclosure has been made or was going to be made? • Has the discloser already raised the substance of the disclosure or revealed in the workplace their disclosure or intention to make a disclosure? • Who in the workplace is aware of the actual or intended disclosure and/or the discloser’s identity? • Is the discloser’s immediate work unit small? • Are there circumstances, such as the discloser’s stress level, that will make it difficult for them to not discuss the matter with people in their workplace? • Will the discloser become identified or suspected when the existence or substance of the disclosure is made known or investigated? • Can the disclosure be investigated while maintaining confidentiality?

Indicator	Considerations for risk assessment
Significant reported wrongdoing	<ul style="list-style-type: none"> • Are there allegations about individuals in the disclosure? • Who are those individuals' close professional and social associates within the workplace? • Is there more than one wrongdoer involved in the matter? • Is the reported wrongdoing serious? • Is the disclosure particularly sensitive or embarrassing for any subjects of the disclosure, senior management, the agency or the Government? • Do these people have the intent to take reprisals—for example, because they have a lot to lose? • Do these people have the opportunity to take reprisals—for example, because they have power over the discloser?
Vulnerable discloser	<ul style="list-style-type: none"> • Is or was the reported wrongdoing directed at the discloser? • Are there multiple subjects of the disclosure? • Is the disclosure about a more senior officer? • Is the discloser employed part time or on a casual basis? • Is the discloser isolated—for example, geographically or because of shift work? • Are the allegations unlikely to be substantiated—for example, because there is a lack of evidence? Is the disclosure being investigated outside your organisation?

Note: Adapted from NSW Ombudsman, [Assessing risk of reprisals and conflict](#), Public interest disclosures guideline C4, p 4.

I Allocation and investigation

Decision to allocate

- 93 If the authorised officer is satisfied the requirements for a public interest disclosure have been met, they must endeavour to allocate the disclosure for investigation to one or more agencies within 14 days of receiving the disclosure.
- 94 In deciding which agency to allocate a public interest disclosure to, the authorised officer must have regard to the following principles:
- (a) an agency should only handle a disclosure if some of the disclosable conduct relates to that agency;
 - (b) the Commonwealth Ombudsman should only handle a disclosure if some of the disclosable conduct relates to an agency that is not an intelligence agency or the Inspector-General of Intelligence and Security;
 - (c) the Inspector-General of Intelligence and Security should only handle a disclosure if some of the disclosable conduct relates to an intelligence agency; and
 - (d) investigative agencies prescribed by rules made by the Minister under the PID Act should only handle a disclosure if those agencies have the power to investigate the disclosure other than under the PID Act.

Circumstances under which PIDs may not be allocated

- 95 There are two circumstances in which an authorised officer can decide not to allocate a disclosure:
- (a) when there is no reasonable basis on which the disclosure of information could be considered as being a public interest disclosure— for example:
 - (i) the disclosure is an internal disclosure about the conduct of a state government employee;
 - (ii) the disclosure amounts only to an assertion that officials within a particular team are corrupt; or
 - (iii) the disclosure is comprised only of personal work-related conduct, and which does not meet the criteria for an exemption; and
 - (b) when the conduct disclosed would be more appropriately investigated by another law or power of the Commonwealth. This will only be in circumstances where investigation under another law or power is **more** appropriate than investigation under the PID Act.

Note: A disclosure that raises a corruption issue must be referred to the NACC but should continue to be handled in accordance with the PID Act unless the NACC Commissioner issues a stop action direction in relation to the disclosure.

Notification to receiving agency

- 96 If a decision is made by an authorised officer that a disclosure should be allocated to another agency, an authorised officer of that agency must consent to the allocation.
- 97 The principal officer of the receiving agency must be informed of the following matters:
- (a) the allocation to their agency;
 - (b) the information that was disclosed;
 - (c) the suspected disclosable conduct; and
 - (d) the discloser's name and contact details (if these are known to the authorised officer and the discloser consents).
- 98 It is expected that most internal public interest disclosures made to ASIC authorised officers will be about conduct relating to ASIC and should therefore be allocated to ASIC for handling. In these cases, the authorised officer must give the notification of the allocation to the ASIC Chair.

Notification to the Commonwealth Ombudsman

- 99 The authorised officer must also notify the Commonwealth Ombudsman of the matters advised to the principal officer of the receiving agency, although less detail of the disclosable conduct is required. Authorised officers should use the relevant [notification of allocation form](#) prepared by the Commonwealth Ombudsman.

Notification to the discloser

- 100 The authorised officer must advise the discloser, if contact details are known, of their decision to allocate the matter for investigation as soon as practicable. This notice may be given in the same document as the notification of an investigation decision (see paragraphs 108–111) if the decisions are close in time.
- 101 The discloser should also be informed about the principal officer's powers to decide not to investigate the disclosure or stop investigating the disclosure.

Records

- 102 The authorised officer must make a written record of the allocation decision, the reasons for the decision and the agency's consent, as well as full details of whether and how the discloser was notified.

Investigation decision

- 103 Once a public interest disclosure has been allocated to ASIC, the Chair or Chair's delegate must investigate the disclosure unless they exercise their discretion not to investigate.
- 104 The ASIC Chair has delegated the investigation powers under the PID Act to ASIC staff members. The Business Rules for these powers set out those staff members who have appropriate experience to investigate public interest disclosures. These staff members are referred to as investigators in this document.
- 105 An investigator may exercise their discretion not to investigate (or to discontinue an investigation) if one of the following applies:
- (a) the discloser is not a current or former public official;
 - (b) the information does not, to any extent, concern serious disclosable conduct (see paragraph 106);
 - (c) the disclosure is frivolous or vexatious;
 - (d) the disclosure is the same or substantially the same as another disclosure that has been or is being investigated under the PID Act;
 - (e) the conduct disclosed would be more appropriately investigated under another law or power;
 - (f) the disclosure is the same or substantially the same as another disclosure that has been or is being investigated under another Commonwealth law and;
 - (i) it would be inappropriate to conduct another investigation at the same time; or
 - (ii) the ASIC Chair or investigator is reasonably satisfied that there are no matters that warrant further investigation;
 - (g) the discloser has informed the investigator or the ASIC Chair that the discloser does not wish the investigation to be pursued, and the investigator or ASIC Chair is satisfied that there are no further matters that warrant investigation; or
 - (h) it is impracticable to investigate the disclosure because:
 - (i) of the age of the information;

- (ii) the discloser has not revealed their name or contact details; or
- (iii) the discloser has failed, or is unable, to give the investigator the information or assistance they requested.

106 'Serious disclosable conduct' is not defined in the PID Act. Investigators must consider whether the matters before them in each case amount to serious disclosable conduct. Factors that may be relevant include the following:

- (a) whether the alleged wrongdoing, if proved, involves an offence with a significant penalty or would lead to severe disciplinary or other consequences;
- (b) whether the conduct involves a series of incidents that indicates a course of conduct;
- (c) the level of trust, confidence or responsibility placed in the public official;
- (d) the level of risk to others or to the Commonwealth;
- (e) the harm or potential harm arising from the conduct;
- (f) the benefit or potential benefit derived by the public official or others;
- (g) whether the public official acted with others, and the nature of their involvement;
- (h) any premeditation or consciousness of wrongdoing;
- (i) what the public official ought to have done;
- (j) any applicable codes of conduct or policies; and
- (k) maladministration that relates to significant failure in the administration of government policy, programs or procedures.

107 If an investigator identifies that the public interest disclosure involves a serious or systemic corruption issue, the investigator must refer the corruption issue to the NACC as soon as practicable, and advise the discloser (if it is possible) that they have done so. Unless the NACC Commissioner issues a stop action direction, this will not prevent the investigator from continuing with the investigation.

Notification of investigation decision

108 An investigator must, as soon as reasonably practicable, inform the discloser:

- (a) that they are required to investigate the disclosure and the estimated length of the investigation; or

- (b) that they have decided not to investigate the disclosure, or investigate the disclosure further, as well as the reasons for the decision and other courses of action that might be available to the discloser under the laws of the Commonwealth.
- 109 The investigator may notify the discloser of this decision at the same time the discloser is notified of the allocation decision: see paragraphs 100–101.
- 110 Any decision not to investigate or to discontinue an investigation, including reasons, must be notified to the Commonwealth Ombudsman using the relevant [notification of decision not to investigate form](#) and correctly recorded in the secure register for recording public interest disclosures: see Section J, ‘Reporting and accountability’.
- 111 A decision not to investigate under the PID Act does not prevent any other type of investigation into the matter.

Conducting the investigation

- 112 The investigator must conduct an investigation under the PID Act as they see fit, but:
- (a) subject to the standards published by the Commonwealth Ombudsman (see s74 of PID Act) (currently the *Public Interest Disclosure Standard 2013*); and
 - (b) if relevant, in accordance with, but subject to the PID Act:
 - (i) any rules relating to fraud made for the purposes of the PGPA Act; and
 - (ii) the procedures established under the Public Service Act for the purposes of investigating alleged breaches of the APS Code of Conduct.
- 113 Investigations must be conducted on a strictly confidential basis. As well as the requirement to protect the identity of the discloser (see paragraphs 30–36), it is an offence for a person to disclose or use information obtained in the course of conducting a disclosure investigation or in connection with their powers and functions under the PID Act, unless:
- (a) the disclosure or use is for the purposes of the PID Act;
 - (b) the disclosure or use is for the purposes of, or in connection with, the performance of a function, or the exercise of a power, of the person under the PID Act;
 - (c) the disclosure or use is for the purposes of, or in connection with, taking action in response to a disclosure investigation;

- (d) the information has previously been lawfully published and is not intelligence information; or
 - (e) the information is intelligence information that has previously been lawfully published, and the disclosure or use occurs with the consent of the principal officer of the agency as the source agency for the intelligence information.
- 114 Investigators should contact the Professional Standards Unit, Professional.Standards.Unit@asic.gov.au, for assistance in establishing secure electronic files for the storage of information in relation to the investigation.
- 115 The objectives of an investigation are to:
- (a) collate information relating to the allegation as quickly as possible (this may involve taking steps to preserve documents, materials and equipment);
 - (b) consider the information collected and draw conclusions objectively and impartially;
 - (c) provide procedural fairness in the treatment of witnesses, including the person who made the report, and the person(s) who are the subject of the allegation; and
 - (d) prepare a report on the conclusions drawn.
- 116 If allegations of wrongdoing have been made about a person working for ASIC, that person will not necessarily be told as soon as a disclosure is received or an investigation has commenced, nor will they necessarily be told the identity of the discloser.
- 117 However, persons working for ASIC must be accorded procedural fairness. Unless the investigator is of the view that the allegations are without substance, this generally requires that the person be told about the substance of the allegations and the evidence against them, and that they are given an opportunity to respond. Depending on the nature of the allegations, this may require the investigator to reveal the identity of the discloser, or to reveal information that may allow the person to guess the identity of the discloser. If an investigator is required to take this course of action to properly investigate the disclosure, they will discuss this with the discloser first.

Criminal conduct

- 118 If, during an investigation, an investigator suspects, on reasonable grounds, that the information disclosed or other information collected during the investigation is evidence of the commission of an offence punishable by imprisonment for at least two years, the investigator must disclose the information to a member of an Australian police force.

- 119 If an investigator suspects that information is evidence of a less serious criminal offence, then they may disclose the information to a member of an Australian police force.

Conclusion of investigation

- 120 Investigations must be completed, including the preparation of the report, within 90 days of the date the matter was allocated for investigation. The Commonwealth Ombudsman may grant one or more extensions of time (after receiving a [Request for extension of time](#) form). If an extension is granted, the Commonwealth Ombudsman will inform the discloser and give reasons for the extension. When an extension is granted, the investigator must, as soon as reasonably practicable, inform the discloser of the progress of the investigation.
- 121 At the conclusion of an investigation, a report will be prepared setting out the matters considered, how long the investigation took, any findings that were made, any recommended action or action taken, and any claims or evidence of detrimental action to the discloser and ASIC's response to those claims. The report will be provided to the ASIC Chair.
- 122 The recommendations made in the report may include the following:
- (a) commencing an ASIC Code of Conduct proceeding or other disciplinary process;
 - (b) referral of the matter to the police or another body that can take further action;
 - (c) mediation or conciliation of a workplace conflict;
 - (d) an internal audit or other review of an issue or the operations of a particular team;
 - (e) implementing or changing policies, procedures or practices; or
 - (f) conducting training or awareness programs.
- 123 A copy of the investigation report will be given to the discloser within a reasonable time of it being prepared.
- Note: In certain circumstances the report given to the discloser may have some information redacted, such as when the information is likely to identify another person.
- 124 If no disclosable conduct is found, the discloser is still protected under the PID Act for making the disclosure and ASIC will continue to support the discloser.

Discloser not satisfied with ASIC's actions

- 125 If a discloser is unhappy with the process or how they have been treated by ASIC, they may complain to the Commonwealth Ombudsman. However, they should first seek to discuss their concerns internally by raising these concerns with Commission Counsel.
- 126 A reasonable belief by a discloser that ASIC's investigation or response to the investigation was inadequate is one of the conditions for making an external disclosure: see paragraph 18 for information on when an external disclosure may be made.

J Reporting and accountability

- 127 The status of public interest disclosures made under this policy is recorded in a secure register. The register is confidential and does not record any information that may identify a person who has made a disclosure.
- 128 ASIC reports annually to the Commonwealth Ombudsman about the public interest disclosures that have been made and how they have been addressed. The report includes:
- (a) the number of public interest disclosures received by ASIC-authorised officers during the relevant financial year;
 - (b) the kinds of disclosable conduct to which the public interest disclosures relate;
 - (c) the number of disclosure investigations that the ASIC Chair or a delegate of the Chair conducted during the relevant financial year;
 - (d) the actions that the ASIC Chair has taken during the relevant financial year in response to recommendations in reports relating to those disclosure investigations; and
 - (e) any other information requested by the Commonwealth Ombudsman.

Related information

Legislation

[*Criminal Code Act 1995*](#)

[*Freedom of Information Act 1982*](#)

[*National Anti-Corruption Commission Act 2022*](#)

[*Public Governance, Performance and Accountability Act 2013*](#)

[*Public Interest Disclosure Act 2013*](#)

[*Public Interest Disclosure Standard 2013*](#)

[*Public Service Act 1999*](#)

ASIC policies and guides

[ASIC Values](#)

Bullying Policy

[Code of Conduct](#)

Discrimination and Harassment Policy

Fraud and Anti-corruption Policy and Fraud Control Plan

Guide for Authorised Officers

Guide for PID Investigators

[INFO 107](#) *Guidelines for managing complaints about ASIC officers*

Procedure for Investigating Code of Conduct and other Grievances

Risk of Reprisal Plan

Sexual Harassment Policy

Australian Public Service Commission

Australian Public Service Values, Code of Conduct and Employment Principles

Guides and information sheets published by the Commonwealth Ombudsman

See the [Commonwealth Ombudsman tools and resources](#) webpage for a list of relevant guides and information sheets, including the fact sheets listed below.

PID Fact Sheet *New responsibilities and powers of Authorised Officers*

PID Fact Sheet *New responsibilities and powers of Investigation Officers*

PID Fact Sheet *New responsibilities and powers of Principal Officers*

PID Fact Sheet *New responsibilities and powers of Supervisors*

Appendix: Accessible versions of figures

129 This appendix is for people with visual or other impairments. It provides a text description for the figures in this policy.

Table 3: What is a public interest disclosure?

Components of disclosable conduct	Further information
1. Disclosure by a current or former public official	'Public official' includes employees of Commonwealth agencies, parliamentary service employees, service providers under a Commonwealth contract, statutory office holders, staff of Commonwealth companies and individuals deemed to be public officials.
2. Of information that tends to show, or that the public official reasonably believes tends to show, disclosable conduct	'Disclosable conduct' is conduct engaged in by an agency or public official, including a contracted service provider, and that involves: <ul style="list-style-type: none"> • illegal conduct; • corruption; • maladministration; • abuse of public trust; • deception relating to scientific research; • wastage of public money; • unreasonable danger to health or safety • danger to the environment; and/or • abuse of position or grounds for disciplinary action resulting in termination.
3a. Made to an authorised internal recipient within government	An 'authorised internal recipient' includes the Chair (as principal officer), your supervisor or manager or an authorised officer, the Commonwealth Ombudsman, the Inspector General of Intelligence and Security (if applicable), and a prescribed investigative agency.

Components of disclosable conduct	Further information
<p>or</p> <p>3b. Made to anybody (other than a foreign official) under limited circumstances</p>	<p>A disclosure may be made to anybody when it is an 'external disclosure' or an 'emergency disclosure'.</p> <p>External disclosure may be made if:</p> <ul style="list-style-type: none"> • the disclosure does not include intelligence or sensitive law enforcement information; and • an investigation was conducted and the public official reasonably believes: <ul style="list-style-type: none"> – the investigation or the agency responsible was inadequate; or – the investigation was not completed within time; and • the disclosure is not contrary to the public interest. <p>Emergency disclosure may be made if:</p> <ul style="list-style-type: none"> • the public official believes on reasonable grounds that there is a substantial and imminent danger to health, safety or the environment; • the disclosure cannot be made internally; and • no intelligence information is disclosed. <p>Legal practitioner disclosure may be made:</p> <ul style="list-style-type: none"> • to an Australian legal practitioner; • for the purposes of obtaining legal advice or professional assistance, in relation to the discloser's actual or proposed disclosure elsewhere (for example, an internal, emergency or external disclosure); • noting that the public official must not disclose intelligence information including sensitive law enforcement information (unless the legal practitioner has an appropriate security clearance).

Note: This table sets out the information in Figure 1.

Table 4: Dealing with an internal disclosure

Who receives the disclosure	Process
Manager or supervisor	<p>The manager or supervisor conducts a risk assessment and, if the disclosure is oral, makes a written record.</p> <p>If the disclosure concerns disclosable conduct, the manager or supervisor then passes the disclosure to the authorised officer.</p>

Who receives the disclosure	Process
Authorised officer	<p>Within 14 days, the authorised officer determines whether it is a public interest disclosure (PID):</p> <ul style="list-style-type: none"> • If it is not a PID, they will advise the discloser and explain other options they may take. • If it is a PID, they will: <ul style="list-style-type: none"> – conduct a risk assessment and appoint a support person if required; – allocate it to the principal officer/delegate (PID investigator) of own agency and/or other agency for investigation; – advise the Commonwealth Ombudsman of the disclosure (Notification of allocation); and – advise the discloser. <p>The PID investigator will determine whether the disclosure will be investigated:</p> <ul style="list-style-type: none"> • If disclosure will not be investigated, the Commonwealth Ombudsman and discloser are notified with the reasons, and the register is updated. • If it will be investigated, the discloser is advised of the investigation and of the proposed length of time of the investigation (within 90 days, unless an extension is granted). <p>When the investigation is complete:</p> <ul style="list-style-type: none"> • a copy of the report is provided to the discloser and the principal officer; and • appropriate action is taken by ASIC. <p>NOTE</p> <p>If the authorised officer or investigator identifies serious or systemic corruption, ASIC must notify the NACC and continue to allocate/investigate the disclosure, unless the NACC issue a stop order. If the NACC issue a stop order, ASIC must advise the Ombudsman.</p>
Ombudsman	<p>The Commonwealth Ombudsman determines whether the disclosure should be investigated:</p> <ul style="list-style-type: none"> • If the Ombudsman determines that the disclosure should not be investigated, the discloser will be advised. • If the Ombudsman determines that the disclosure should be investigated, the Ombudsman will then determine whether the disclosure should be: <ul style="list-style-type: none"> – investigated by the Ombudsman; or – allocated to an appropriate agency for further investigation.

Note: This table sets out the information in Figure 3.

Table 5: Dealing with an internal disclosure—summary for manager

Step	Explanation
1	<p>A staff member discloses information to you that you believe concerns, or could concern 'disclosable conduct'—which is conduct engaged in by ASIC, an ASIC staff member or an ASIC contractor that:</p> <ul style="list-style-type: none"> • is illegal; • is corrupt; • is maladministration; • is an abuse of public trust; • is deception relating to scientific research; • involves wastage of public money; • creates unreasonable danger to health or safety; and/or • creates a danger to the environment.
2	<p>Is there specific information about the conduct? <i>If no, go to step 3. If yes, go to step 4.</i></p>
3	<p>Encourage discloser to raise their concerns with an authorised officer (list at Section F) and refer them to the PID Policy and Procedures and the list of authorised officers. <i>Go to note.</i></p>
4	<p>Provide discloser with the PID Policy and Procedures and information about protections. Explain that as a manager, you are obliged to pass on the information to an authorised officer. Ask the discloser which authorised officer should/should not be provided with the information (to avoid any authorised officer who may have a conflict of interest). Record the information provided by the discloser in writing and ask the discloser to confirm you have correctly understood the alleged wrongdoing and information provided. Seek the discloser's consent (in writing if possible) to identify them to an authorised officer. If the discloser does not consent, explain there is a risk their identity may be ascertained from the nature of the information or circumstances of the disclosure. <i>Go to note.</i></p>
Note	<p>IMPORTANT It is an offence to discuss or reveal information about the 'disclosable conduct' or the discloser unless you are passing on the information to an authorised officer, advising the discloser the matter has been referred, or passing on the information to someone assisting in relation to the disclosure.</p>

Note: This table sets out the information in Figure 4.