



Australian Government

Australian Research Council

Policy and Procedures for dealing with Public Interest Disclosure

Assessment and Investigation of reports made under the
Public Interest Disclosure Act 2013

RESEARCH for a creative, innovative and productive Australia



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Revision History

This document will be reviewed and assessed in line with any changes to legislation.

Version	Date	Authorisation Name	Authorisation Position
1.0	August 2014	Lyndall Marshall	Assistant Director Human Resources
1.1	January 2015	Lyndall Marshall	Assistant Director Human Resources
1.2	July 2017	Lyndall Marshall	Assistant Director Human Resources

CEO COMMITMENT

I am committed to ensuring that the ARC maintains the highest standards of ethical and accountable conduct and in ensuring that individuals who make public interest disclosures are provided with the protections available under the *Public Interest Disclosure Act 2013* (PID Act).

The PID Act promotes the integrity and accountability of the Commonwealth public sector by creating a framework to facilitate the reporting of suspected wrongdoing and to ensure the timely and effective investigation of reports.

The public interest disclosure scheme replaces the whistleblowing provisions of the Public Service Act 1999 and aims to remove barriers which prevent people who work in the public sector from speaking up about serious problems that impact on public administration. It also provides protections against reprisals for those who make public interest disclosures.

Public interest disclosures are beneficial in identifying:

- conduct that needs correction
- weak or flawed systems which may make the agency vulnerable
- inefficiency and financial loss, and
- risks to the health or safety of staff or the community.

I encourage all staff (employees and contractors) to familiarise yourself with these procedures.

Professor Susan Thomas

Chief Executive Officer

1. INTRODUCTION

Reporting of disclosable conduct

1. The ARC recognises its responsibilities to effectively manage disclosable conduct that is reported by ARC staff in accordance with the provisions of the *Public Interest Disclosure Act 2013* (PID Act). The ARC will take active steps to support and to protect persons who make disclosures under the PID Act.
2. The ARC recognises that it is important to have an effective system for reporting and investigating disclosable conduct. Some of the potential benefits of such a system are reducing the work health and safety risks to our workers, saving money and making our programs and processes more efficient. Another potential benefit is increasing the confidence of our staff in the way the ARC is managed.
3. The ARC will seek to manage its responsibilities under the PID Act in accordance with the requirements of this Act and in the interests of disclosers and the ARC.

What is disclosable conduct?

4. The full definition of disclosable conduct is set out in section 29 of the PID Act (Attachment A). This definition applies for the purposes of these procedures. A flow chart detailing the decisions required to support the application of the PID Act is also included at Attachment B.
5. In summary, disclosable conduct is conduct by an agency or by a public official that:
 - a. contravenes a law of the Commonwealth, a State or a Territory, or
 - b. occurs in a foreign country and contravenes a law in force in that country that applies to the agency or public official and that corresponds to a law in force in the Australian Capital Territory, or
 - c. perverts, or attempts to pervert, the course of justice or involves corruption of any other kind, or
 - d. constitutes maladministration, including conduct that:
 - is based on improper motives
 - is unreasonable, unjust or oppressive, or
 - is negligent, or
 - e. is an abuse of public trust, or
 - f. is fabrication, falsification, plagiarism or deception in relation to scientific research, or misconduct in relation to scientific analysis, scientific evaluation or the giving of scientific advice, or
 - g. results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act, or
 - h. unreasonably results in a danger to the health and safety of a person or unreasonably results in or increases the risk of a danger to the health and safety of a person, or
 - i. results in a danger to the environment or results in or increases the risk of a danger to the environment, or
 - j. is prescribed by the PID Rules, or
 - k. is engaged in by a public official that:
 - involves abuse of the public official's position, or
 - could, if proved, give reasonable grounds for disciplinary action against the public official.

6. It does not matter whether the disclosable conduct occurred before or after 15 January 2014.
7. It does not matter whether the public official who carried out the alleged conduct has ceased to be a public official since the time the conduct is alleged to have occurred, but it is necessary that they carried out the conduct in connection with their position as a public official.

2. THE DISCLOSURE PROCESS

Making a disclosure under the PID Act

8. All public officials and former public officials are entitled to make a disclosure under the PID Act.
9. All APS employees in the ARC and former employees who were in the ARC are entitled to make a disclosure under the PID Act.
10. All contracted service providers and their employees who provide, or who provided, services to the ARC under a contract made by the ARC on behalf of the Commonwealth are entitled to make a disclosure under the PID Act.
11. A public interest disclosure may be made anonymously or openly.
12. A public interest disclosure may be made orally or in writing.
13. Where a public official makes a public interest disclosure, they do not have to state or intend that they are doing so under the PID Act.
14. Where a public official is considering making a disclosure, they should, in the first instance, contact one of the ARC's Authorised Officers to get information about making a public interest disclosure under the PID Act.
15. Employees in the ARC may make a disclosure of disclosable conduct to their supervisor or manager, or to an Authorised Officer in the ARC, or, in certain circumstances, to an Authorised Officer in another agency or to the Ombudsman
16. The employees or officers or former employees or officers of contracted service providers may make a disclosure of disclosable conduct to an Authorised Officer in the ARC or, in certain circumstances, to an Authorised Officer in another agency or to the Ombudsman.
17. The names and contact details of the ARC's Authorised Officers are set out on the ARC's website at www.arc.gov.au.
18. Wherever possible, an employee in the ARC should make their public interest disclosure to an Authorised Officer rather than to their supervisor or manager. Where a supervisor or manager considers that an employee in the ARC is proposing to make a public interest disclosure, they should invite the employee to discuss the matter with, and make their disclosure to, an Authorised Officer in the ARC, and should advise the employee of the identity and contact details of the ARC's current Authorised Officers.

Note: Authorised Officers in the ARC have been trained in receiving public interest disclosures and they can provide information about how to make a public interest disclosure and about the protections given to disclosers under the PID Act.

Note: This paragraph does not prevent an employee in the ARC from making a disclosure to their supervisor or manager, if they wish to do so.
19. The information contained in a disclosure should be clear and factual, and should, as far as possible, avoid speculation, personal attacks and emotive language. It should contain supporting evidence where that is available to the discloser and should, where possible, identify any witnesses to the disclosable conduct.

20. A potential discloser should not investigate a matter themselves before making a disclosure.
21. A person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.
22. A person who is considering making a disclosure should be aware that making a disclosure does not entitle them to protection from the consequences of their own wrongdoing.
23. Once a public interest disclosure has been made, it cannot be withdrawn. But a discloser may state that they do not wish the disclosure to be investigated and they may refuse to consent to their name and contact details being provided to the CEO.
24. A person who has made a disclosure under the PID Act should not discuss the details of their disclosure with anyone who does not have a need to know about it. Discussions with these people will not be protected by the PID Act.
25. A supervisor or manager or Authorised Officer who receives a disclosure of disclosable conduct from a public official must deal with the disclosure in accordance with the PID Act and in accordance with the *Public Interest Disclosure Standard 2013* and these procedures.
26. The ARC will, where possible, provide the following support to public officials who make disclosures relating to the ARC:
 - a. advising the public official of his or her rights and obligations under the PID Act
 - b. informing the discloser of the progress of the investigation (in the event the ARC decides to investigate the disclosable conduct)
 - c. advising the discloser of the availability of the Employee Assistance Program
 - d. ensuring that the identity of the discloser is kept as confidential as far as is reasonably practicable
 - e. where there are concerns about the health and safety of an employee, liaising with the relevant staff responsible for work health and safety at the ARC and taking appropriate action after consultation with the discloser
 - f. providing the opportunity for disclosers to be accompanied by a support person when making a disclosure or in attending any subsequent interviews or meetings. This option would also be available to a person who is subject to an allegation of wrongdoing.

3. PROCEDURES FOR SUPERVISORS AND MANAGERS

27. Where a public official in the ARC discloses information to their supervisor or manager and that supervisor or manager has reasonable grounds to believe that the information concerns, or could concern, disclosable conduct, the supervisor or manager must, as soon as practicable, give the information to an Authorised Officer in the ARC.
28. Where such a disclosure is made to an employee's supervisor or manager, that person must make a written record of the fact of the disclosure, and if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure.
29. The supervisor or manager must ask the discloser to sign the record of the disclosure, where this is practicable.
30. At the time a supervisor or manager gives information to an Authorised Officer under paragraph 27, they must also give the Authorised Officer their written assessment of any risks that reprisal action might be taken against the person who disclosed the information to the supervisor or manager.
31. Where a supervisor or manager has given information to an Authorised Officer under paragraph 27, they must inform the discloser that they have given the information to an Authorised Officer in the ARC and advise the discloser of the name and contact details of that Authorised Officer.

4. PROCEDURES FOR AUTHORISED OFFICERS

Authorised Officer must advise disclosers and potential disclosers about the PID Act

32. Where:

- a. a person discloses, or is proposing to disclose, information to an Authorised Officer which the Authorised Officer has reasonable grounds to believe may be disclosable conduct, and
- b. the Authorised Officer has reasonable grounds to believe that the person may be unaware of what the PID Act requires for the disclosure to be an internal disclosure, and
- c. the Authorised Officer is aware of the contact details of the person

the Authorised Officer must:

- d. inform the person that the disclosure could be treated as an internal disclosure for the PID Act, and
- e. explain to the person what the PID Act requires for a disclosure to be an internal disclosure, and
- f. explain to the person the protections provided by the PID Act to persons who make disclosures under the Act, and
- g. advise the person of any orders or directions that may affect disclosure of the information.

Authorised Officer must decide whether or not to allocate a disclosure

- 33. Where a public official, or a person who has been a public official, makes a disclosure of disclosable conduct directly to an Authorised Officer in the ARC, the Authorised Officer must make a written record of the fact of the disclosure and, if the disclosure is not in writing, they must make a written record of the substance of the disclosure and of the time and date of the disclosure.
- 34. The Authorised Officer must ask the discloser to sign the written record of the disclosure, where this is practicable.
- 35. Where a disclosure has been given to or made to an Authorised Officer, the Authorised Officer must use their best endeavours to decide on the allocation of the disclosure within 14 days after the disclosure is given to or made to the Authorised Officer.
- 36. An Authorised Officer who receives a disclosure must decide whether they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an internal disclosure.

Note: The basis on which an Authorised Officer could be satisfied of this include: that the disclosure has not been made by a person who is, or was, a public official; that the disclosure is not about disclosable conduct; that the person who is alleged to have carried out the disclosable conduct was not a public official at the time they are alleged to have carried out that conduct; and that the disclosure is not otherwise a public interest disclosure within the meaning of the PID Act.

- 37. Where an Authorised Officer receives a disclosure, the Authorised Officer may make such inquiries as they think fit, for the purposes of deciding the allocation of the disclosure, including for the purposes of deciding whether the disclosure is an internal disclosure or not.
- 38. Where the Authorised Officer is aware of the contact details of the discloser, they must, as soon as practicable after receiving the disclosure and before allocating the disclosure, ask the discloser whether the discloser:
 - a. consents to the Authorised Officer giving the discloser's name and contact details to the CEO, and
 - b. wishes the disclosure to be investigated.

39. The Authorised Officer must make a written record of the discloser's responses (if any) to the questions referred to in paragraph 38.
40. Where a discloser does not respond within 7 days to the question referred to:
- a. in paragraph 38.a—the discloser is taken not to have consented to the disclosure of their name and contact details to the CEO, and
 - b. in paragraph 38.b—the discloser is taken to wish the disclosure to be investigated.

Where an Authorised Officer decides that a disclosure that has been made to them is not to be allocated, they must, where the discloser's contact details are known to the Authorised Officer, advise the discloser in writing that the disclosure is not to be allocated, by sending them a completed **Form 1**.

41. The Authorised Officer must keep an appropriate written record of:
- a. the fact that the discloser was informed under paragraph 40
 - b. the day and time the discloser was informed
 - c. the means by which the discloser was informed, and
 - d. the content of the information that was given to the discloser.
42. Where the Authorised Officer is unable to inform the discloser of the decision not to allocate the disclosure, the Authorised Officer must keep an appropriate written record of the fact that they did not inform the discloser of this decision.

Where Authorised Officer allocates an internal disclosure

43. An Authorised Officer must obtain the consent of an Authorised Officer in another agency before the first Authorised Officer can allocate an internal disclosure to that other agency.
44. Where an Authorised Officer in the ARC allocates a disclosure to an agency (including to the ARC) they must complete **Form 2** and send it to the principal officer of that agency.
45. The Authorised Officer must copy the completed **Form 2** to the relevant contact officer in the Ombudsman's office, or must provide the information required on the relevant form provided.
46. Where the Authorised Officer is aware of the contact details of the discloser the Authorised Officer must inform the discloser of the fact of the allocation, and of the content of the allocation, using a completed **Form 3**, as soon as reasonably practicable.
47. Where the Authorised Officer allocates a disclosure and informs a discloser under paragraph 46, the Authorised Officer must complete **Form 3A** and must retain this as a written record of:
- a. the decision to allocate (including the name of each agency to which the disclosure has been allocated)
 - b. the reasons for the decision to allocate
 - c. where the allocation is to another agency—the consent provided by the agency to which the allocation has been made
 - d. the fact that the discloser was informed
 - e. the day and time the discloser was informed
 - f. the means by which the discloser was informed, and
 - g. the content of the information that was given to the discloser when they were informed.

48. Where the Authorised Officer allocates a disclosure and is unable to inform the discloser of the allocation decision under paragraph 46, the Authorised Officer must complete **Form 3A** and must retain this as a written record of:
- a. the decision to allocate (including the name of each agency to which the disclosure has been allocated)
 - b. the reasons for the decision to allocate
 - c. where the allocation is to another agency—the consent provided by the agency to which the allocation has been made, and
 - d. the fact that the discloser was not informed of the allocation decision.
49. Where an Authorised Officer in the ARC allocates a disclosure, they must conduct a risk assessment based on a checklist of risk factors and must have regard to any assessment of risk provided under these procedures by the discloser's supervisor or manager.
50. The Ombudsman's 'Agency Guide to the Public Interest Disclosure Act 2013', which can be found at http://www.ombudsman.gov.au/docs/Agency_Guide_To_PID_Act_V1_Dec_2013.pdf provides information on how to carry out a risk assessment.

5. ANONYMOUS DISCLOSURES

51. All persons, including public officials, persons who have been public officials and others, are encouraged to make public interest disclosures in an anonymous way if they wish to do so.

Where the discloser provides no name and no contact details or where the discloser provides no name but provides anonymous contact details

52. A disclosure is anonymous if the identity of the discloser is not revealed and no contact details for the discloser are provided. It is also anonymous if the discloser does not disclose their name but does provide anonymous contact details.
53. Merely because a supervisor or manager or Authorised Officer has received a disclosure of one of these kinds that concerns disclosable conduct does not mean that it is not, or cannot become, a disclosure for the purposes of the PID Act.
54. Where a supervisor or manager receives a disclosure of one of these kinds they must refer it to an Authorised Officer as soon as is reasonably practicable.
55. Where an Authorised Officer receives a disclosure of one of these kinds they must consider whether to exercise the power in section 70 of the PID Act to determine on their own initiative that a person who has disclosed information to them is a public official in relation to the making of the disclosure. However, if the Authorised Officer cannot contact the discloser in writing, no determination can be made, because the Authorised Officer must be able to give written notice of the determination to the individual (see s 70(1)).
56. It is anticipated that an Authorised Officer would make this decision having regard to whether it is in the public interest and in the ARC's interests to have the disclosure dealt with as a disclosure under the PID Act.
57. Where a discloser requests the Authorised Officer to make a determination under section 70, the Authorised Officer must make a decision on this request and must inform the discloser accordingly, and if the Authorised Officer's decision is to decline the request to make a determination under section 70, they must also give the discloser reasons for their decision.
58. Where an Authorised Officer decides to make a determination under section 70 that the Act has effect as if the individual had been a public official, the Authorised Officer should seek legal advice on the drafting of the written notice.

59. The written notice must be given to the individual. A copy of the determination notice should also be given to the CEO at the same time as **Form 2**.

6. DECIDING WHETHER OR NOT TO INVESTIGATE

60. The CEO must, as soon as practicable after receiving an allocation of a disclosure from an Authorised Officer (whether from within or outside the ARC) consider whether to exercise the discretion under section 48 of the PID Act not to investigate the disclosure under the PID Act.
61. In broad terms, the CEO may decide not to investigate (or may decide to discontinue an investigation already begun) if:
- a. the discloser is not a current or former public official (and a determination has not been made under section 70 of the PID Act), or
 - b. the information does not to any extent concern serious disclosable conduct, or
 - c. the disclosure is frivolous or vexatious, or
 - d. the disclosure is substantially the same as a disclosure that has been investigated under the PID Act, or
 - e. the disclosure is substantially the same as a disclosure that has already been investigated, or is currently being investigated, under another law of the Commonwealth or under the executive power of the Commonwealth, and
 - it would be inappropriate to conduct another investigation at the same time, or
 - the CEO is reasonably satisfied that there are no matters that warrant further investigation, or
 - f. the discloser has informed the CEO that they do not wish the disclosure to be pursued and the CEO is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation, or
 - g. it is impracticable to investigate the disclosure because:
 - the discloser has not revealed their name and contact details, or
 - the discloser has refused, or has failed or is unable, to give the investigator the information they requested, or
 - of the length of time since the conduct occurred.
62. Where an Authorised Officer allocates an internal disclosure to the CEO, and the CEO has been given the contact details of the discloser, the CEO must, within 14 days after the disclosure was allocated to the ARC, inform the discloser in writing using **Form 3** that the CEO may decide not to investigate the disclosure, or not to investigate the disclosure further, and the CEO must inform the discloser of the grounds on which a decision not to investigate, or not to investigate further, may be made.
63. Guidance on factors that might go towards the exercise of the power in section 48 is provided in the Ombudsman's 'Agency Guide to the Public Interest Disclosure Act 2013', which can be found at http://www.ombudsman.gov.au/docs/Agency_Guide_To_PID_Act_V1_Dec_2013.pdf

Decision not to investigate

64. Where the CEO decides under section 48 of the PID Act not to investigate a disclosure, and where they have been informed of the name and contact details of the discloser, the CEO must, as soon as reasonably practicable, inform the discloser of that decision, of the reasons for that decision and of other courses of action that may be available to the discloser under other laws of the Commonwealth, by completing **Form 4** and sending it to the discloser.

65. Where the CEO decides under section 48 of the PID Act not to investigate a disclosure under Division 2 of Part 3 of the PID Act, the CEO must, as soon as reasonably practicable, inform the Ombudsman of that decision, and of the reasons for that decision, by completing **Form 6** and sending it to the relevant contact in the Ombudsman's Office, or by completing the relevant online form prepared by the Ombudsman's office.

Decision to investigate

66. Where the CEO has considered exercising the discretion under section 48 of the PID Act and has decided that they are required to investigate the disclosure, and where the CEO has been given the name and contact details of the discloser, the CEO must inform the discloser that they are required to investigate the disclosure, and inform the discloser of the estimated length of the investigation by completing **Form 5** and sending it to the discloser.
67. Where the CEO decides to investigate the disclosure and starts to investigate the disclosure but then decides not to investigate the disclosure further under section 48, the CEO must:
- a. where the CEO has been informed of the discloser's contact details—inform the discloser of that decision, of the reasons for the decision and of other courses of action that might be available to the discloser under other laws of the Commonwealth by completing **Form 4A** and sending it to the discloser; and
 - b. inform the Ombudsman of that decision and the reasons for that decision by completing **Form 6**
 - c. and sending it to the relevant contact in the Ombudsman's office, or by completing the relevant online form provided by the Ombudsman's office.

7. PROCEDURES FOR INVESTIGATORS

68. Where the CEO has decided under paragraph 66 to commence an investigation into an internal disclosure, they may conduct the investigation as they think fit.
69. The CEO must be independent and unbiased in the matter. The CEO must ensure that they do not have an actual or perceived conflict of interest.
70. The CEO may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as the CEO thinks fit.
71. When conducting an investigation the CEO must ensure that a decision whether evidence is sufficient to prove a fact is made on the balance of probabilities.
72. Despite paragraphs 68 and 70, the CEO, in conducting an investigation under these procedures, must comply with:
- a. the *Public Interest Disclosure Standard 2013*, and
 - b. to the extent they are relevant to the investigation:
 - any rules relating to fraud that are made for the purposes of the *Public Governance, Performance and Accountability Act 2013*, and
 - these procedures, and
 - the procedures established under s 15(3) of the *Public Service Act 1999*.

Interviewing witnesses

73. Subject to any restrictions imposed by a law of the Commonwealth other than the PID Act, and subject to any requirement to conduct the investigation in accordance with any rules relating to fraud that are made for the purposes of the *Public Governance, Performance and Accountability Act 2013*, the investigator must ensure that, if a person is interviewed as part of the investigation of an internal disclosure, that person is informed of:
- a. the identity and function of each person conducting the interview, and
 - b. the process of conducting an investigation, and
 - c. the authority of the investigator under the PID Act to conduct an investigation, and
 - d. the protections provided to the person by section 57 of the PID Act, and
 - e. the person's duty:
 - if they are a public official—to use their best endeavours to assist the investigator in the conduct of an investigation under the PID Act (subject to the public official's privilege against incriminating themselves or exposing themselves to a penalty), and
 - not to take or threaten to take reprisal action against the discloser, and
 - subject to the PID Act, not to disclose the identity of the person who made the disclosure.
74. Where the investigator conducts an interview as part of an investigation, at the end of the interview, the interviewee must be given an opportunity to make a final statement or comment or express a position. The investigator must include any final statement, comment or position in the record of the interview.
75. The investigator must ensure that an audio or visual recording of any interview carried out as part of the investigation is not made without the interviewee's knowledge.
76. Where the investigator is aware of the discloser's identity and considers that it is necessary to reveal the discloser's identity to a witness, the investigator must consult with the discloser, where practicable, before proceeding.

Procedural fairness

77. Procedural fairness does not require that a person against whom allegations are made must be advised as soon as a disclosure is received or as soon as an investigation is commenced.
78. Procedural fairness may require that the discloser's identity be revealed to the person who is the subject of the disclosure.
79. Where the investigator in preparing the report of their investigation proposes to:
- a. make a finding of fact, or
 - b. express an opinion that is adverse to the discloser, to a public official who is the subject of the disclosure or to another person:

the investigator must give the person who is the subject of that proposed finding or opinion a copy of the evidence that is relevant to that proposed finding or opinion and must give the person a reasonable opportunity to comment on it.

Note: Paragraph 79 will not apply where the investigation does not make substantive findings or express adverse opinions but instead simply recommends or decides that further investigation action should or should not be taken or will or will not be taken.

80. In deciding whether evidence is sufficient to prove a fact the investigator must make their decision on the balance of probabilities.

81. The investigator must ensure that a finding of fact in a report of an investigation under the PID Act is based on logically-probative evidence.
82. The investigator must ensure that the evidence that is relied on in an investigation is relevant.
- Note: In broad terms, evidence is relevant to an investigation if it is of consequence to the matter under investigation and makes the existence of a fact more probable or less probable than it would be without the evidence.

Time limits

83. The investigator has 90 days from the date the disclosure was allocated in which to complete the investigation.
84. It is possible to seek one or more extensions of time from the Ombudsman.
85. A request to the Ombudsman for an extension of time must be made where an investigation has not been completed within 70 days of the date the disclosure was allocated.
86. A request to the Ombudsman for an extension should include reasons why the investigation cannot be completed within the time limit, the views of the discloser and an outline of action taken to progress the investigation.
87. An investigation that is not completed within the time limit does not become invalid.

8. REPORTS OF INVESTIGATIONS

88. In preparing a report of an investigation under the PID Act the investigator must comply with the PID Act, the *Public Interest Disclosure Standard 2013* and these procedures.
89. A report of an investigation under the PID Act must set out:
- a. the matters considered in the course of the investigation, and
 - b. the duration of the investigation, and
 - c. the investigator's findings (if any), and
 - d. the action (if any) that has been, is being or is recommended to be taken, and
 - e. any claims made about, and any evidence of, detrimental action taken against the discloser, and the ARC's response to those claims and that evidence
- and, where relevant, must:
- f. identify whether there have been one or more instances of disclosable conduct, and
 - g. identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct (if any) relates, and
 - h. explain the steps taken to gather evidence, and
 - i. set out a summary of the evidence, and
 - j. set out any findings and recommendations made based on that evidence.
90. Where an investigator has completed a report of an investigation under the PID Act, and where they have been informed of the discloser's contact details, the investigator must, as soon as practicable, advise the discloser in writing by completing **Form 7**:
- a. that the report has been completed, and
 - b. whether the report was completed within the time limit provided for by the PID Act.
91. The investigator must, within a reasonable time of preparing a report of an investigation under the PID Act, give a copy of the report to the discloser.

92. Despite paragraph 91, the investigator may delete from the copy of the report given to the discloser any material:
- a. that is likely to enable the identification of the discloser or another person, or
 - b. the inclusion of which would result in the copy being a document:
 - that is exempt for the purposes of Part IV of the *Freedom of Information Act 1982*, or
 - having, or being required to have, a national security or other protective security classification, or
 - containing intelligence information.
93. Despite paragraph 91, the investigator must delete from the copy of a report given to the discloser any material which would result in the report contravening a designated publication restriction.

9. CONFIDENTIALITY

94. The investigation of the disclosure is to be conducted in as confidential a manner as is possible. In particular, the identity of both the discloser and the person alleged to have engaged in the disclosable conduct is not to be revealed except where this is reasonably necessary for the effective investigation of the disclosure (including because of the need to afford procedural fairness).
95. Any interviews conducted by an Authorised Officer or an investigator are to be conducted in private.
96. Any interviews with the discloser are to be arranged so as to avoid, to the extent practicable, the identification of the discloser by other staff of the ARC.

10. RECORD-KEEPING

97. Where an Authorised Officer is required to keep a record under these procedures, the record may be kept in hard copy or in an electronic form or in both. Access to these records must be restricted to the Authorised Officers, delegates (including investigators) or other employees in the ARC who require access in order to perform some function under the PID Act or for the purposes of another law of the Commonwealth (for example, under the *Work Health and Safety Act 2011* or the *Public Service Act 1999*).
98. Where a form is required to be sent under these procedures, a copy of the completed form must be kept.
99. All records made for the purposes of the PID Act in accordance with these procedures must be marked as 'in-confidence' and hard copies must be stored in an appropriate storage container.
100. Any email messages sent by Authorised Officers or delegates that contain identifying information must be clearly marked 'to be read by named addressee only'.
101. Where a person will cease being an Authorised Officer in the ARC (including because of resignation or movement to another agency), their PID records must be transferred to another Authorised Officer in the ARC.

11. MONITORING AND EVALUATION

102. Each Authorised Officer must provide a monthly, or other period determined by the CEO, report to the CEO specifying the number of public interest disclosures received by the Authorised Officer and the nature of the disclosable conduct for each disclosure (by reference to the relevant item or paragraph in the definition of disclosable conduct in the Act). The report must also include any disclosures that have been allocated to the ARC by another agency's Authorised Officer.
103. The CEO will appoint a delegate to collate the ARC's report to the Ombudsman on public interest disclosures made during the financial year (the monitoring delegate).

104. Each investigator must advise the monitoring delegate of every decision made by the investigator to investigate a disclosure during the financial year.
105. Each delegate of the CEO who takes action in response to a recommendation made in an investigation report must make a report of this action to the monitoring delegate.
106. The monitoring delegate must prepare a report for the CEO's consideration within the time specified by the CEO.
107. The CEO will send the ARC's report to the Ombudsman within the time requested by the Ombudsman or as otherwise agreed with the Ombudsman.

12. CONDUCT A RISK ASSESSMENT

108. When the CEO receives a PID that has been allocated to ARC, he or she will assess the risk that reprisals will be taken against the discloser.
109. In assessing the risk of reprisals, the CEO should use the following risk matrix:

Likelihood of reprisal being taken against a discloser	Likely seriousness of reprisal				
		Minor	Moderate	Major	Extreme
	Almost certain	Medium	High	High	High
	Likely	Medium	Medium	High	High
	Unlikely	Low	Low	Medium	Medium
	Highly unlikely	Low	Low	Low	Medium

Examples of seriousness of reprisals

- Minor: Occasional or one-off action that is likely to have a relatively minor adverse effect on the person (for example, occasional exclusion of the person from a social activity).
- Moderate: Repeated action which is likely to have an adverse effect on the person (for example, routinely failing to "CC" the person on work-related emails).
- Major: Sustained or one-off action which has a significant impact on the person (for example, consistently excluding the person from team discussions or imposing a negative performance assessment on the person).
- Extreme: Action which is likely to have a very severe impact on the person (for example, physical violence or the denial of a promotion opportunity).

Criteria for assessing likelihood of potential reprisals

When considering the likelihood of a reprisal being taken against a discloser, the CEO should take into account all relevant factors, including to the extent relevant:

- the likelihood of the discloser being identified, which may involve a consideration of:
 - the size of the work area in which the discloser is located; and
 - the number of people who are aware of the information leading to the disclosure;
- the number of people implicated in disclosure;
- the subject matter of the disclosure;

- the number of people who are aware of the disclosure or are likely to become aware of the disclosure (for example, through participation in the investigation as witnesses);
- the culture of the workplace;
- whether any specific threats against the discloser have been received;
- whether there are circumstances that will make it difficult for the discloser not to discuss the disclosure in the workplace;
- whether there are allegations about individuals in the disclosure;
- whether there is a history of conflict between the discloser and the subject of the disclosure; and
- whether the disclosure can be investigated while maintaining confidentiality.

Criteria for assessing likely seriousness of potential reprisals

In considering the likely seriousness of any potential reprisal against a discloser, the CEO should take into account all relevant factors, including, to the extent relevant:

- the significance of the issue being disclosed;
- the likely outcome if the conduct disclosed is substantiated;
- the subject matter of the disclosure;
- whether the discloser is isolated;
- whether the discloser is employed on a full-time, part-time or casual basis;
- whether the alleged wrongdoing that is the subject of the disclosure was directed at the discloser; and
- the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure.

When conducting the risk assessment, where consistent with protecting the discloser's confidentiality, the CEO may ask the discloser why they are reporting the wrongdoing and who they might fear a reprisal from, and may also speak to the discloser's supervisor or manager.

Develop a risk mitigation strategy if necessary

Where the risk level is assessed as anything greater than low, the CEO will develop a risk management strategy for mitigating the risk of reprisals being taken against the discloser. This strategy may include some or all of the support measures and, in appropriate circumstances could include raising the matter with employees by reminding staff that taking or threatening to take a reprisal against a discloser is a criminal offence.

Monitor and review risks

The CEO should monitor and review the risk assessment as necessary throughout the investigation process.

ATTACHMENT A – MEANING OF DISCLOSABLE CONDUCT

29 Meaning of *disclosable conduct*

(1) **Disclosable conduct** is conduct of a kind mentioned in the following table that is conduct:

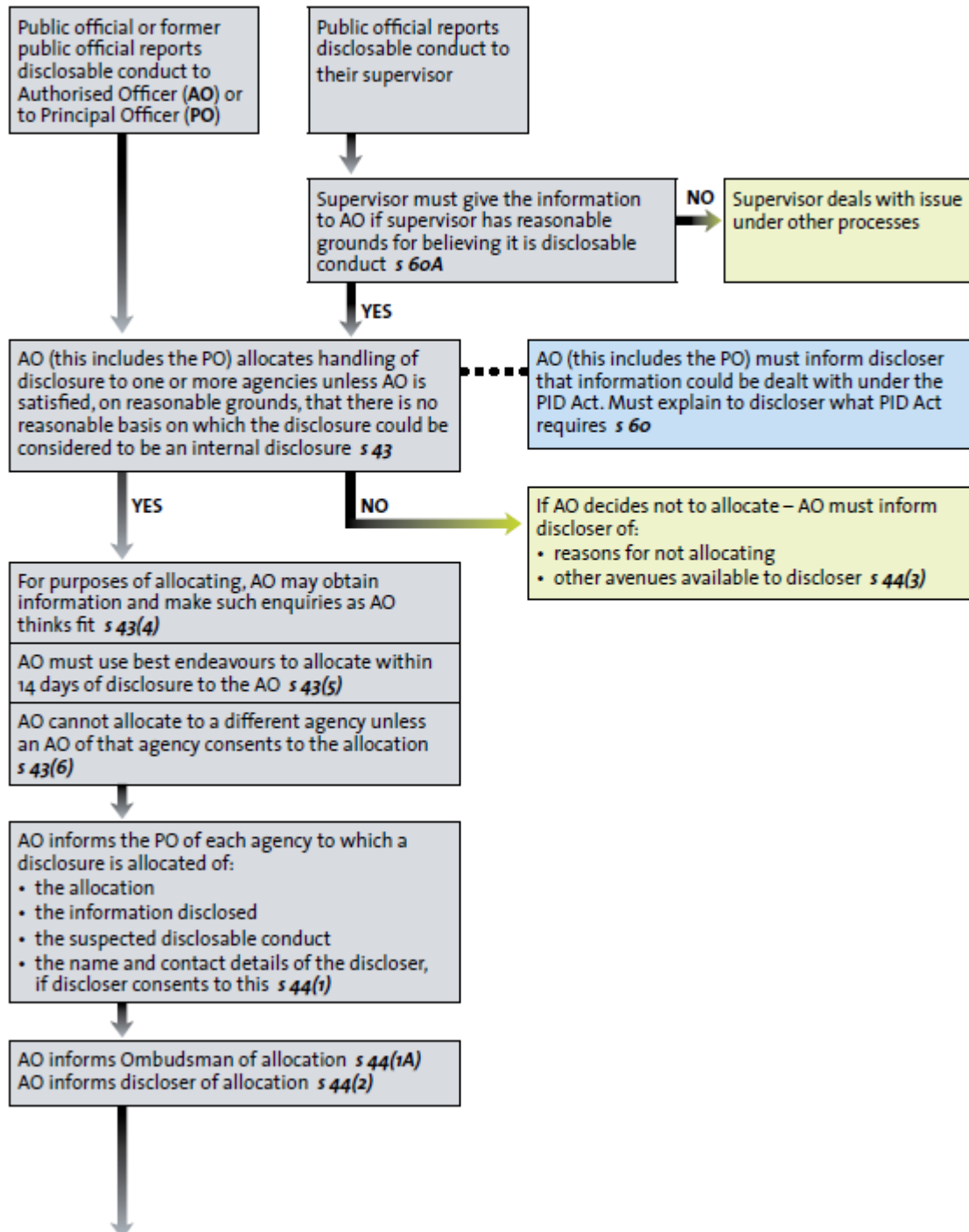
- (a) engaged in by an agency; or
- (b) engaged in by a public official, in connection with his or her position as a public official; or
- (c) engaged in by a contracted service provider for a Commonwealth contract, in connection with entering into, or giving effect to, that contract:

Disclosable conduct	
Item	Kinds of disclosable conduct
1	Conduct that contravenes a law of the Commonwealth, a State or a Territory.
2	Conduct, in a foreign country, that contravenes a law that: <ul style="list-style-type: none">(a) is in force in the foreign country; and(b) is applicable to the agency, public official or contracted service provider; and(c) corresponds to a law in force in the Australian Capital Territory.
3	Conduct that: <ul style="list-style-type: none">(a) perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice; or(b) involves, or is engaged in for the purpose of, corruption of any other kind.
4	Conduct that constitutes maladministration, including conduct that: <ul style="list-style-type: none">(a) is based, in whole or in part, on improper motives; or(b) is unreasonable, unjust or oppressive; or(c) is negligent.
5	Conduct that is an abuse of public trust.
6	Conduct that is: <ul style="list-style-type: none">(a) fabrication, falsification, plagiarism, or deception, in relation to:<ul style="list-style-type: none">(i) proposing scientific research; or(ii) carrying out scientific research; or(iii) reporting the results of scientific research; or

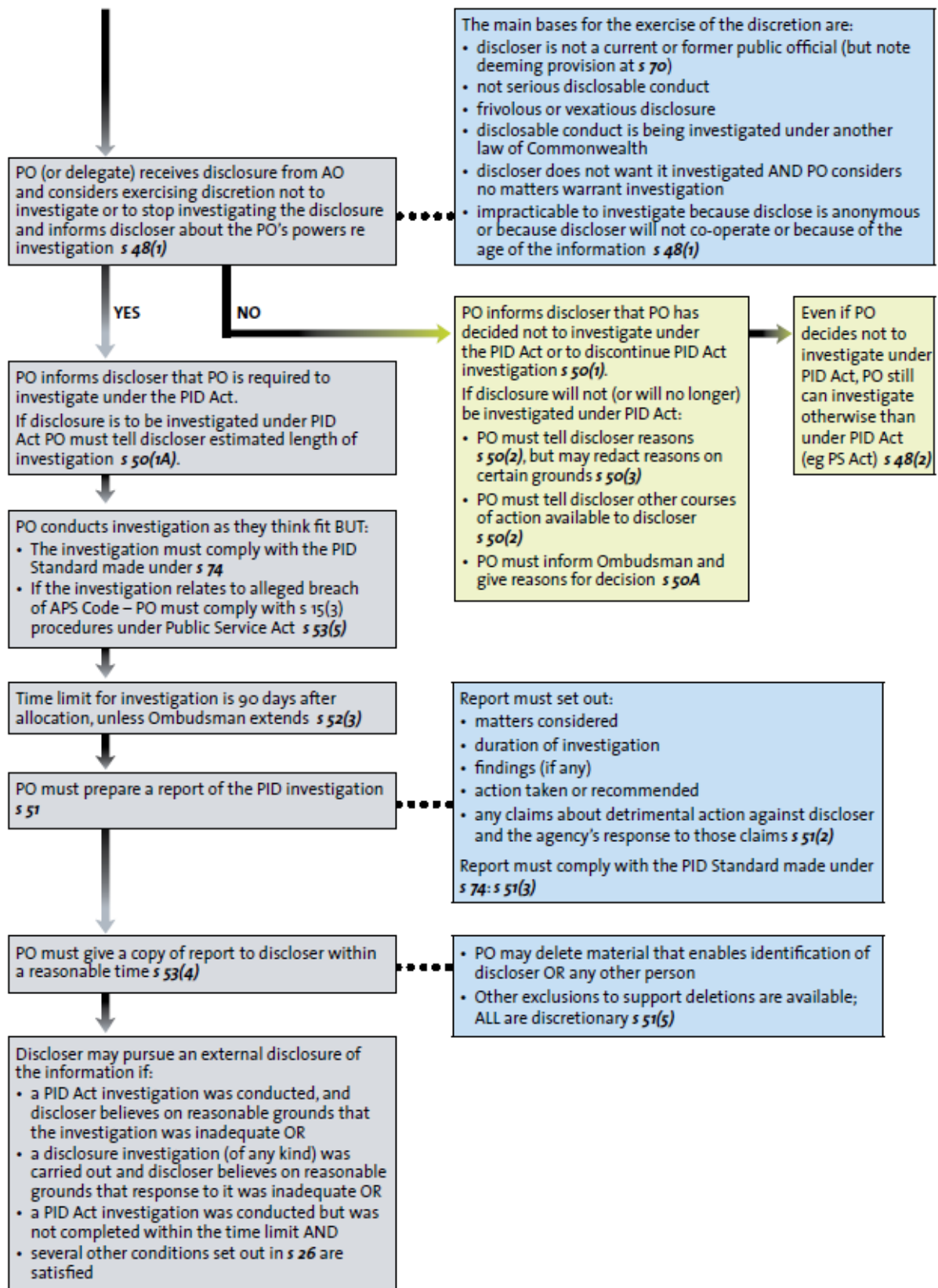
Disclosable conduct	
Item	Kinds of disclosable conduct
	(b) misconduct relating to scientific analysis, scientific evaluation or the giving of scientific advice.
7	<p>Conduct that results in the wastage of:</p> <p>(a) relevant money (within the meaning of the <i>Public Governance, Performance and Accountability Act 2013</i>); or</p> <p>(b) relevant property (within the meaning of that Act); or</p> <p>(c) money of a prescribed authority; or</p> <p>(d) property of a prescribed authority.</p>
8	<p>Conduct that:</p> <p>(a) unreasonably results in a danger to the health or safety of one or more persons; or</p> <p>(b) unreasonably results in, or increases, a risk of danger to the health or safety of one or more persons.</p>
9	<p>Conduct that:</p> <p>(a) results in a danger to the environment; or</p> <p>(b) results in, or increases, a risk of danger to the environment.</p>
10	Conduct of a kind prescribed by the PID rules.
	<p>(2) Without limiting subsection (1), the following are also disclosable conduct:</p> <p>(a) conduct engaged in by a public official that involves, or is engaged in for the purpose of, the public official abusing his or her position as a public official;</p> <p>(b) conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action against the public official.</p> <p>(3) For the purposes of this section, it is immaterial:</p> <p>(a) whether conduct occurred before or after the commencement of this section; or</p> <p>(b) if an agency has engaged in conduct—whether the agency has ceased to exist after the conduct occurred; or</p> <p>(c) if a public official has engaged in conduct—whether the public official has ceased to be a public official after the conduct occurred; or</p> <p>(d) if a contracted service provider has engaged in conduct—whether the contracted service provider has ceased to be a contracted service provider after the conduct occurred.</p>

ATTACHMENT B – PID ACT APPLICATION

PID ACT – Disclosure to an agency



PID ACT – Disclosure to an agency (cont.)



ATTACHMENT C – FORMS

Conduct Disclosure Form - This Form may be used by ARC staff (including staff/supervisors/managers and Authorised Officers) for the purpose of recording disclosures made under the Public Interest Disclosure Procedures (PID).

Checklist - Authorised Officers – allocation of decision – checklist for a disclosure about conduct of a public official employed in an agency.

Form 1 – Decision not to Allocate (Notice to Discloser)

Form 2 – Notice of Allocation (Ombudsman/Agency)

Form 3 – Notice to Allocate (Notice to Discloser)

Form 3 A – Not for File (for File only)

Form 4 – Decision not to Investigate (Notice to Discloser)

Form 4 A – Decision to cease Investigation (Notice to Discloser)

Form 5 – Investigation of Disclosure - (Notice to Discloser)

Form 6 – Decision not to Investigate or to cease Investigation– (Notice to Ombudsman)

Form 7 – Completion of Investigation - (Notice to Discloser)

Form 8 – Request for extension of time – (Notice to Ombudsman)