



ASIC

Australian Securities & Investments Commission

Public interest disclosures policy and procedures

April 2014

About this document

This document sets out the policy and procedures for handling reports made by ASIC staff members about suspected wrongdoing (public interest disclosures), and for providing protection against victimisation or discrimination for the staff member 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 ASIC workers, including contractors and temporary staff.

Policy application is subject to adoption by the Chief Legal Officer.

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.

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

Version	Reviewer	Comments	Approved	Date
1.0	Commission Counsel		Yes	April 2014

Policy location

This policy is published on myASIC and 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;
 - (b) ensuring that public officials 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 Agencies (including ASIC) are required to have a policy and procedures in place to investigate public interest disclosures, and provide protection against victimisation or discrimination for public officials who make disclosures in accordance with the appropriate procedure. These policies and procedures have been developed to ensure that such disclosures are investigated promptly and fairly. They set out the principles and processes for handling reports made to ASIC by public officials about wrongdoing, and for providing protection against victimisation or discrimination 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 or civil liability or 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 or emergency 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) Code of Conduct procedures;
 - (b) *Fraud control policy*; and
 - (c) Information Sheet 107 *Guidelines for managing allegations of misconduct against ASIC staff members* (INFO 107).

ASIC commitment

- 5 ASIC is committed to a culture of high ethical standards and compliance, with the obligations on staff of the Commonwealth Government, including the Australian Public Service (APS) Values, Employment Principles and Code of Conduct, the PID Act and the *Financial Management Accountability Act 1997*.
- 6 ASIC supports the reporting by staff at all levels, of all breaches of the APS code of conduct and of other wrongdoing and misconduct. ASIC supports protection for those who make those reports from victimisation and discrimination as a result of making the report. ASIC recognises the value of transparency and accountability in its administrative and management practices.

About this policy

- 7 This policy is set as follows:
 - (a) Section B sets out who can make a public interest disclosure;
 - (b) Section C sets out what constitutes a public interest disclosure;
 - (c) Section D deals with what is disclosable conduct;
 - (d) Section E sets out the protections afforded to public officials who make public interest disclosures in accordance with the PID Act;
 - (e) Section F explains how an internal public interest disclosure should be made to ASIC;
 - (f) Section G explains what we do when we receive an internal public interest disclosure;
 - (g) Section H explains how we allocate internal public interest disclosures, and how we investigate disclosures allocated to ASIC;
 - (h) Section I sets out how we report on public interest disclosures made to ASIC;
 - (i) Section J contains a description of the roles and responsibilities of ASIC staff members in relation to public interest disclosures; and
 - (j) Section K lists other relevant material.

B Who can make a public interest disclosure

Public officials

- 8 A public interest disclosure can be made by any current or former public official. ‘Public official’ is defined broadly in the PID Act and includes Commonwealth public servants, staff members of statutory agencies (whether employed under the *Public Service Act 1999* or otherwise), members of the Australian Defence Force, appointees of the Australian Federal Police, Parliamentary Service employees, directors or staff members of Commonwealth companies, statutory office holders or other persons who exercise powers under a Commonwealth law, and individuals and organisations that provide goods or services under a Commonwealth contract and their officers or employees: s69 of the PID Act.
- 9 Accordingly, people who can make a public interest disclosure include current or former:
- (a) ASIC staff, including temporary or contract staff;
 - (b) ASIC Commissioners;
 - (c) service providers contracted to ASIC; and
 - (d) officers or employees of service providers contracted to ASIC.
- Throughout this document the term ‘ASIC staff members’ is used to refer collectively to these people.
- 10 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 (s70 of the PID Act). For more information about authorised officers, see paragraph 39. For more information about deeming people to be public officials, see paragraphs 59–60.

Who can make a disclosure to ASIC

- 11 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 public official belonging to ASIC; and
 - (b) the disclosure relates to conduct by another agency and ASIC is their current or last agency.

C What is a public interest disclosure?

- 12 There are four categories of public interest disclosure:
- (a) a disclosure within Government, to an authorised officer or a supervisor, concerning suspected or probable illegal conduct or other wrongdoing (internal disclosure);
 - (b) a disclosure to anybody, if an internal disclosure of the information has not been adequately dealt with, and if wider disclosure satisfies public interest requirements (external disclosure);
 - (c) a disclosure to anybody if there is substantial and imminent danger to health or safety (emergency disclosure); and
 - (d) a disclosure to a lawyer connected with the above matters.

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;
 - (b) disclosing to their supervisor or manager, or an authorised officer of their agency—or if the conduct relates to another agency, an authorised officer of that agency;
 - (c) information which tends to show, or the discloser believes on reasonable grounds tends to show, one or more instances of disclosable conduct.
- 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.

External disclosure

- 15 A person who has made an internal disclosure can make an external disclosure to any person if:
- (a) the internal investigation was not completed within the 90-day timeframe or the timeframe approved by the Commonwealth Ombudsman (see paragraphs 79–90 for more information about internal investigations); or

- (b) they believe on reasonable grounds that the investigation was inadequate; or
 - (c) they believe on reasonable grounds that the relevant agency took inadequate action after the investigation was completed; and
 - (d) it is not, on balance, contrary to the public interest for an external disclosure to be made.
- 16 If making an external disclosure, a public official must not disclose more information than is reasonably necessary to identify the wrongdoing. External disclosures must not disclose intelligence information, including sensitive law enforcement information, and may not be made to a foreign public official.

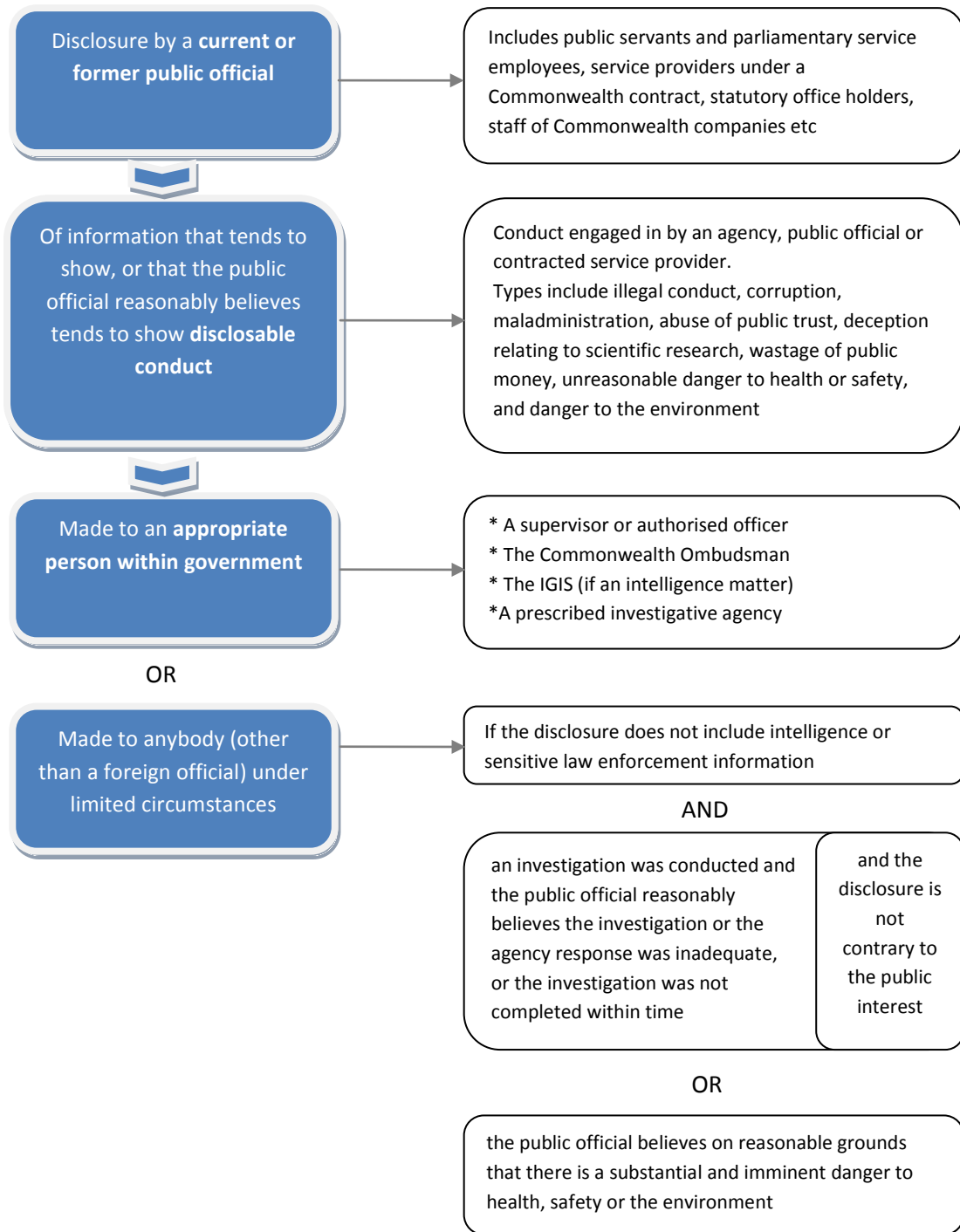
Emergency disclosures

- 17 In exceptional circumstances, emergency disclosures may be made if the discloser reasonably believes there is substantial and imminent danger to health or safety or to the environment, provided that:
- (a) the extent of information disclosed is only what is reasonably necessary to alert the recipient to the substantial and imminent danger;
 - (b) 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
 - (c) no intelligence information, including sensitive law enforcement information, is disclosed.

Disclosure to a lawyer

- 18 A discloser may give information to a lawyer for the purposes of obtaining legal advice or professional assistance about making a disclosure provided that intelligence-related matters or sensitive law enforcement matters are not disclosed. The lawyer should have a security clearance if national security or other protected information is being discussed.

Figure 1: What is a public interest disclosure?



Note: IGIS = Inspector-General of Intelligence and Security.

D What is disclosable conduct?

- 19 Public officials are encouraged to report all conduct by:
- (a) ASIC;
 - (b) ASIC staff members in connection with their position at ASIC; or
 - (c) a contracted Commonwealth service provider in connection with entering into, or giving effect, to the contract,
- which, in their honestly and reasonably held opinion, shows or tends to show conduct that:
- (d) contravenes a Commonwealth, state or territory law;
 - (e) contravenes a foreign law;
 - (f) perverts the course of justice;
 - (g) is corrupt;
 - (h) constitutes maladministration including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent;
 - (i) is an abuse of public trust;
 - (j) results in wastage of public money or public property;
 - (k) unreasonably endangers health and safety;
 - (l) endangers the environment; or
 - (m) is prescribed by the public interest disclosure rules.
- 20 Disclosable conduct also includes conduct by an ASIC staff member involving the abuse of their position as a public official, and conduct that could be reasonable grounds for disciplinary action against the ASIC staff member. It does not matter if the person has ceased to be an ASIC staff member since the conduct occurred.
- 21 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;
 - (d) fraud—such as theft, bribery or unlawful use of Commonwealth computers, vehicles, telephones and other property services—as defined in Section 4 of ASIC’s *Fraud control policy*; and
 - (e) bullying or harassment.

What is not disclosable conduct?

- 22 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.

E Protection for public officials making a public interest disclosure

- 23 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

- 24 The identity of a public official making a public interest disclosure will, as far as practicable, be kept strictly confidential.
- 25 It is an offence, punishable by six months imprisonment or a fine, 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 law;
 - (d) the public official consents to the use or disclosure of the information; or
 - (e) the information has previously been lawfully published.
- 26 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 are required to 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 public official before dealing further with the public interest disclosure.
- 27 A public official can make a public interest disclosure anonymously: see paragraphs 43–44.

Immunity

- 28 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.
- 29 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) which generally concern court or tribunal orders protecting the identity of people, and witness protection and law enforcement mechanisms.
- 30 Making a public interest disclosure under this policy does not confer immunity from criminal or other liability on a person who participated in conduct which they subsequently disclose.
- 31 When an ASIC staff member makes a public interest disclosure, we will ensure that a thorough risk assessment is conducted. This will identify any risks to the person who reported the suspected wrongdoing, as well as strategies to deal with those risks. ASIC will appoint an appropriate support officer to assist the person who has made the public interest disclosure.

Reprisal

- 32 Reprisal occurs if someone causes, by an act or omission—or threatens—any detriment to another person because they believe or suspect that person, or anyone else, may have made or intends to make a public interest disclosure. Taking a reprisal against a person is a criminal offence.
- 33 ‘Detriment’ includes any disadvantage including dismissal, injury in their employment, discrimination between them and other employees or alteration of their position to their disadvantage.
- 34 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.
- 35 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.
- 36 ASIC staff members 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.

F How to make a public interest disclosure to ASIC

- 37 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. 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.
- 38 Current ASIC staff members can make a public interest disclosure to either their manager 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’ at paragraphs 13–15.)
- 39 Our authorised officers are the:
- (a) ASIC Chairperson;
 - (b) Regional Commissioners;
 - (c) Commission Counsel; and
 - (d) other officers as authorised by the ASIC Chairperson from time to time.
- A full list of authorised officers is found on ASIC’s intranet.
- 40 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
SYDNEY NSW 2000
- 41 However, a public interest disclosure may be made orally or in writing to any of ASIC’s authorised officers or to the discloser’s manager.
- 42 If a disclosure is made orally, 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.

Anonymous disclosures

- 43 A public official who makes a public interest disclosure may remain anonymous, including to the authorised officer who receives the disclosure. Anonymous disclosures will be acted on whenever possible. However, the

following are reasons why disclosers may wish to identify themselves, or at least provide a means of contact:

- (a) the PID Act requires that the discloser's identity be kept confidential (subject to limited exceptions);
- (b) it will be difficult to ensure protection from reprisal if the identity of the discloser is not known;
- (c) if the discloser cannot be contacted for the purpose of obtaining further information to satisfy the authorised officer that the conduct has occurred, the matter may not proceed or it will be difficult to conduct an investigation; and
- (d) the discloser cannot be contacted to be updated on the progress of the matter, including the outcome of the investigation.

44 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.

Information to be provided when making a report of suspected wrongdoing

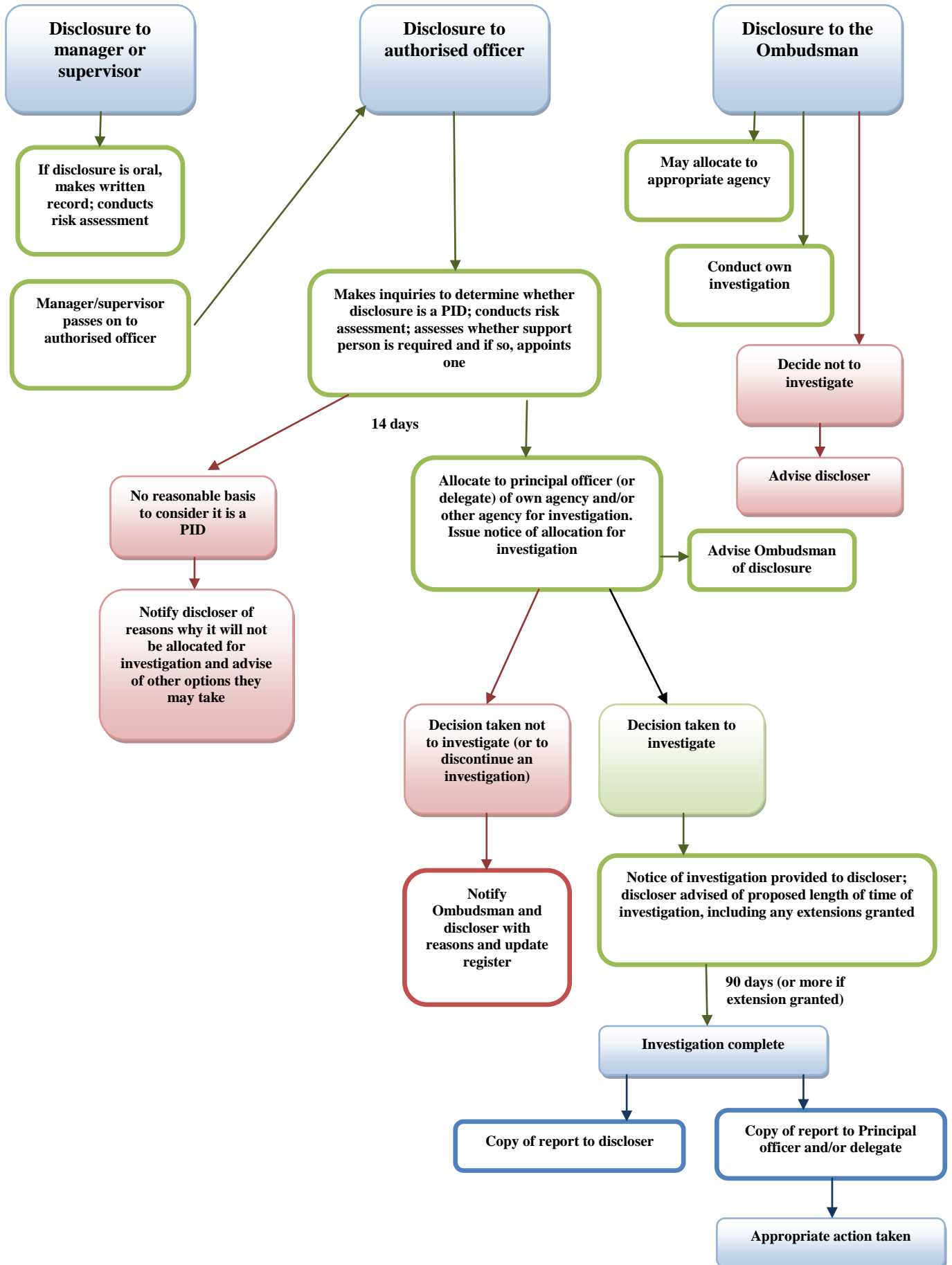
- 45 In order to assist us to determine how to proceed in relation to a report of suspected wrongdoing, a discloser may provide the following information:
- (a) if not an anonymous disclosure, their name and contact details;
 - (b) the nature of the wrongdoing;
 - (c) who they think committed the wrongdoing;
 - (d) when and where the wrongdoing occurred;
 - (e) relevant events surrounding the issue;
 - (f) whether the discloser did anything in response to the wrongdoing;
 - (g) the names of others who know about the wrongdoing and have allowed it to continue;
 - (h) whether they are concerned about possible reprisal as a result of making the disclosure; and
 - (i) 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.
- 46 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 as it may hinder any future investigation. The sooner a matter is raised as a concern, the easier it will be for us to take action.

G Receiving a public interest disclosure

Manager

- 47 Current ASIC staff members may make a public interest disclosure to their manager. A manager who receives a public interest disclosure should take the following steps.
- 48 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 about ASIC's authorised officers, see paragraph 39. A verbal disclosure must be recorded in writing by the person to whom it is made. The person making the disclosure should be asked to endorse the record as accurate.
- 49 The manager should be careful to ensure that they comply with their confidentiality requirements: see paragraphs 24–27. In particular, the discloser's consent should be obtained to provide their identity to the authorised officer.
- 50 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 about risk assessments, see paragraphs 61–64. Managers will also monitor the workplace for potential reprisals against the discloser.
- 51 The manager will provide support to the discloser, including by:
- (a) providing information to the discloser about the PID Act and ASIC's policy and procedures;
 - (b) advising the discloser of other support options, including people and development and ASIC's employee assistance program; and
 - (c) if necessary, arranging for the appointment of a support person to assist the discloser, who is responsible for regularly checking on the wellbeing of the discloser.
- 52 Managers should also be aware that a public interest disclosure can be made without the discloser identifying that the disclosure is made under the PID Act. For example, an ASIC staff member may be unaware of the PID Act but still approach their manager about misconduct by ASIC or another agency.
- 53 See Section J for more information about the role of managers in public interest disclosures.

Figure 2: Dealing with an internal disclosure



Authorised officer

- 54 Authorised officers may receive public interest disclosures through a discloser's manager, or directly from a discloser.
- 55 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.
- 56 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 which 'tends to show' disclosable conduct; or
 - (b) the discloser could not, on reasonable grounds, believe that the information tends to show disclosable conduct.
- 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.
- 57 An authorised officer may also, if required, make any inquiries and obtain further information before making a decision about allocating the matter for handling. 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.
- 58 Authorised officers should be careful to ensure they comply with their confidentiality requirements: see paragraphs 24–27. Authorised officers should also contact the [Professional Standards Unit](#) for assistance in establishing a secure electronic file to keep records of the handling of any public interest disclosure.

Deemed public officials

- 59 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: s70 PID Act.
- 60 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

- 61 As soon as is practicable following the receipt of a public interest disclosure, an assessment of the risk of reprisals against the discloser must be undertaken. 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.
- The risk assessment will be conducted by the authorised officer receiving the disclosure, or the discloser's manager if the disclosure is first made to them and the discloser wishes to remain anonymous.
- 62 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 check list of risk factors contained in Table 1.
- 63 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 as necessary.
- 64 See Section J for more information about the role of authorised officers in public interest disclosures.

Table 1: Indicators of a higher risk of reprisal or workplace conflict

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 discloser, 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 their identity in the workplace? • Who in the workplace knows the disclosure'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?
Significant reported wrongdoing	<ul style="list-style-type: none"> • Are there allegations about individuals in the disclosure? • Who are their 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: Risks of poor treatment for reporting wrongdoing identified by research (Brown, AJ (ed.) 2008, *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*, ANU E Press, Canberra, pp. 137–164).

(Adapted from NSW Ombudsman, *Managing risk of reprisal and conflict*, Public Interest Disclosure Guideline C4, P.3)

H Allocation and investigation

Decision to allocate

- 65 If the authorised officer is satisfied the requirements for a public interest disclosure have been met they must endeavour to allocate the handling of the disclosure to one or more agencies within 14 days of receiving the disclosure.
- 66 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 disclosures if some of the disclosable conduct relates to that agency;
 - (b) the Commonwealth Ombudsman should only handle disclosures 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 disclosures 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 disclosures if those agencies have the power to investigate the disclosure other than under the PID Act.

Notification to receiving agency

- 67 Once a decision is made by an authorised officer that a disclosure should be allocated to a particular agency, an authorised officer of that agency must consent to the allocation. Then, 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).
- 68 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 Chairperson.

Notification to Ombudsman

- 69 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 [Notification of allocation](#) form prepared by the Commonwealth Ombudsman.

Notification to the discloser

- 70 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 an investigation decision (see paragraph 76) if the decisions are close in time.

Records

- 71 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 whether the discloser was notified and full details of how that happened.

Investigation decision

- 72 Once an investigation has been allocated to ASIC, the Chairperson must investigate the disclosure unless they exercise their discretion not to investigate.
- 73 The ASIC Chairperson has delegated the investigation powers under the PID Act to various ASIC staff members with appropriate experience to investigate public interest disclosures. These officers are referred to as investigators in this document.
- 74 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 75);
 - (c) the disclosure is frivolous or vexatious;
 - (d) the disclosure is the same or substantially the same as another disclosure which has been or is being investigated under the PID Act;

- (e) the disclosure is the same or substantially the same as another disclosure which 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 investigator is reasonably satisfied that there are no matters that warrant further investigation;
- (f) the discloser has informed the investigator or the ASIC Chairperson that the discloser does not wish the investigation to be pursued, and the investigator or ASIC Chairperson is satisfied that there are no further matters that warrant investigation; or
- (g) 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.

75 'Serious disclosable conduct' is not defined in the PID Act. Investigators are required to 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;
- (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.

Notification of investigation decision

- 76 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.

The investigator may notify the discloser of this decision in the same document as the discloser is notified of the allocation decision: see paragraph 70.

- 77 Any decision not to investigate or to discontinue an investigation, including reasons, must be notified to the Commonwealth Ombudsman using the [Notification of decision not to investigate](#) form, and correctly recorded in the secure register for recording public interest disclosures: see Section I, 'Reporting and accountability'.

- 78 A decision not to investigate under the PID Act does not prevent any other type of investigation into the matter.

Conducting the investigation

- 79 The investigator must conduct an investigation under the PID Act as they see fit but subject to standards published by the Commonwealth Ombudsman (s74 PID Act) and, if relevant, other Commonwealth Acts and guidelines (e.g. Commonwealth Fraud Control Guidelines for matters relating to fraud on the Commonwealth, or the Public Service Act for Code of Conduct matters).

- 80 Investigations must be conducted on a strictly confidential basis. As well as the requirement to protect the identity of the discloser (see paragraphs 24–27) 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; or
- (b) the information has previously been lawfully published.

Investigators should contact the [Professional Standards Unit](#) for assistance in establishing secure electronic files for the storage of information in relation to the investigation.

- 81 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 who is the subject of the allegation; and
- (d) prepare a report on the conclusions drawn.

82 If allegations of wrongdoing have been made about an ASIC staff member, that staff member 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. However, ASIC staff members must be accorded procedural fairness. Unless the investigator is of the view that the allegations are without substance, this generally requires that the staff member be told about the substance of the allegations and the evidence against them, and be 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 ASIC staff member 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

- 83 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.
- 84 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

- 85 Investigations must be completed, including the preparation of the report, within 90 days of the date the matter was allocated for investigation. The Ombudsman may grant one or more extensions of time (after receiving a [Request for extension of time](#) form). If an extension is granted, the Ombudsman will inform the discloser and give reasons for the extension.

- 86 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 or taken action, 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 Chairperson.
- 87 The recommendations made in the report may include the following:
- (a) commencing a Code of Conduct proceeding under the Public Service Act 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.
- 88 A copy of the investigation report will be given to the discloser within a reasonable time of it being prepared.¹
- 89 If the disclosure is not substantiated, the discloser is still protected under the PID Act for making the disclosure and ASIC will continue to support the discloser.
- 90 The process for dealing with an internal disclosure is set out in Figure 2.

Discloser not satisfied with ASIC's actions

- 91 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.
- 92 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 paragraphs 15–16 for information about when an external disclosure may be made.

¹ In certain circumstances the report given to the discloser may have some information deleted, such as when the information is likely to identify another person.

I Reporting and accountability

- 93 The status of public interest disclosures made under this policy will be recorded in a secure register. The register will be confidential and not record any information that may identify a person who has made a report.
- 94 ASIC will report annually to the Commonwealth Ombudsman about the public interest disclosures that have been made and how they have been addressed. The report will include:
- (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 public interest disclosures relate;
 - (c) the number of disclosure investigations that the ASIC Chairperson conducted during the relevant financial year;
 - (d) the actions that the ASIC Chairperson 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 Ombudsman.

J Roles and responsibilities

Role	Responsibilities
Principal officer	<ul style="list-style-type: none"> – establish procedures for your agency to facilitate and deal with public interest disclosures – ensure staff are aware of the procedures and the protections available – appoint authorised officers to receive disclosures – ensure disclosures are properly investigated – protect staff from detriment or threats of detriment if they make a disclosure – take appropriate action in response to an investigation report – provide information to the Ombudsman
Authorised officer	<ul style="list-style-type: none"> – receive disclosures from current or former ASIC staff members about disclosable conduct – deem a person to be an ASIC staff member (or public official) to facilitate the making of a public interest disclosure – inform the discloser that information that the authorised officer reasonably believes could concern disclosable conduct could be treated as an internal disclosure, explain the requirements of the PID Act and advise the person of any designated publication restrictions that may affect disclosure – assess the disclosure to determine that it is a disclosure for the purposes of the PID Act – make preliminary inquiries necessary to make an allocation decision – allocate all or part of the disclosure to the principal officer of ASIC and/or another agency – inform the principal officer of each relevant agency and the Ombudsman of allocation decisions and associated information – inform the discloser of the allocation decision – consent to the allocation of a disclosure by an authorised officer of another agency – 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
Manager/Supervisor	<ul style="list-style-type: none"> – be knowledgeable about the PID Act and agency procedures, particularly in relation to confidentiality requirements – be approachable to staff who wish to raise concerns – hold awareness sessions or discussion forums with their staff – ensure staff undergo available training – confront any workplace prejudices about making a disclosure – support a staff member who they know has made a public interest disclosure and ensure they are protected from reprisal – increase management supervision of the workplace if necessary – ensure identified problems in the workplace are corrected (or support measures by ASIC to do so) – set an example for staff

Role	Responsibilities
All ASIC staff members	<ul style="list-style-type: none">– provide assistance in the conduct of an investigation– report matters where there is evidence that shows or tends to show disclosable conduct– identify areas where there may be opportunities for wrongdoing to occur because of inadequate systems or procedures, and proactively raise those with management– support staff who they know have made public interest disclosures– keep confidential the identity of a discloser and anyone against whom an allegation has been made, if they become aware of those matters

K Related information

Legislation

Public Interest Disclosure Act 2013

Public Interest Disclosure Standard 2013

Public Service Act 1999

ASIC policies and guides

ASIC's Fraud control policy and Fraud control plan

Information Sheet 107 Guidelines for managing allegations of misconduct against ASIC staff members (INFO 107)

ASIC's Values

ASIC procedures for determining breaches of the Code of Conduct

Public Service Commission

Australian Public Service Values, Employment Principles and Code of Conduct

Guide and information sheets from the Commonwealth Ombudsman

Agency guide to the Public Interest Disclosure Act 2013 (version 1, December 2013)

The Public Interest Disclosure Act 2013 – What's it all about?

How to make a public interest disclosure