



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* and incorporating changes which commenced on 1 July 2023. The amendments apply to disclosures made on or after 1 July 2023.

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## 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), incorporating changes which commenced on 1 July 2023. The amendments apply to disclosures made on or after 1 July 2023.

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* (Cth) 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.

Judi Zielke

**Chief Executive Officer**

# 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.
4. Some changes to the *Public Interest Disclosure Act 2013 (PID Act)* commenced on 1 July 2023. This policy has been amended to incorporate those changes, which apply to disclosures made on or after 1 July **2023**. This policy distinguishes between the requirements that apply to disclosures made before or after 1 July 2023.

## What changed from 1 July 2023?

5. Key changes to the PID Act are **below**, together with links to the Commonwealth Ombudsman fact sheets for more information about:
  - a. [Key changes – Overview for disclosers and public officials](#)
  - b. [Key changes – Personal work-related conduct](#)
  - c. [New responsibilities of Principal Officers](#)
  - d. [New responsibilities of Authorised Officers](#)
  - e. [New responsibilities of Investigators](#)
  - f. [New responsibilities of Supervisors](#)
6. As a result of amendments to the PID Act and the PID Standard, and the commencement of the *National Anti-Corruption Commission Act 2022 (NACC Act)* from 1 July 2023, the ARC's PID handling policy and procedures is now updated to reflect (among other things):
  - a. the need to assess the risk of reprisal to any person in relation to a disclosure (i.e., not just the discloser).
  - b. amendments to the definition of reprisal to include further examples of actions that could constitute detrimental action.
  - c. amendments to extend the protection from reprisal to where such action is taken on the belief or suspicion that a person 'could' make a disclosure (in addition to where there is a belief or suspicion that a person has made, may have made, or proposed to make a disclosure).
  - d. immunities and protections for witnesses and staff assisting with the handling of a disclosure.
  - e. carve out of personal work-related conduct from the definition of disclosable conduct (unless it could constitute reprisal or may otherwise be significant as defined in the amendments).
  - f. explicit recognition of the ability to allocate a disclosure within a portfolio.
  - g. new responsibilities of authorised officers, principal officers, and supervisors.

- h. new ability to refer a disclosure for investigation under another law or power (if more appropriate than investigation under the PID Act) at the allocation stage, or before or during investigation under the PID Act.
  - i. amended grounds for decision not to investigate or further investigate a disclosure.
  - j. impact of stop action directions issued under the NACC Act on timeframes for allocation decisions and investigation of disclosures.
  - k. new notification requirements (including submission of s 51 reports to the Ombudsman and Inspector-General of Intelligence and Security (IGIS)) and associated record keeping obligations.
7. The ARC's PID handling procedures now reflect, and are linked to, guidance on mandatory referrals and how to refer a matter to the NACC.
  8. The ARC's internal procedural guidance also now shows how to record and brief internally on referred matters.
  9. The NACC Act makes PID officers (meaning staff performing or exercising powers under the PID Act) personally responsible for referring disclosures that involve a corruption matter to the NACC.
  10. More information on the interactions between the PID Act and the NACC, can be accessed at National Anti-Corruption Commission | Attorney-General's Department (ag.gov.au).
  11. ARC staff should be aware of the reforms to PID from ARC training delivered to ARC staff in June 2023 concerning NACC, Fraud and PID which is accessible in Learn Hub, ARC In-House training. This is the ARC communicating with staff about the reforms. New staff to the ARC commencing after June 2023 should be directed to complete this training, together with being provided with this policy and procedure.
  12. From that ARC training delivered in June 2023 internally, ARC staff are aware:
    - a. Of the overview of changes to the responsibilities of authorised officers, investigation officers, principal officers, and supervisors.
    - b. That the reforms will also make changes for current and former public officials who make disclosures after the reforms commence by carving out personal work-related conduct (unless it could constitute reprisal or may otherwise be significant as defined in the amendments).
    - c. Of the expanded definition of reprisal.
    - d. Staff who assist with the investigation of disclosures are explicitly provided with the same immunities from liability as disclosers when assisting with an investigation.
  13. The June 2023 ARC training incorporated information from Commonwealth Ombudsman fact sheets (located on the Commonwealth Ombudsman website) to communicate with ARC staff about the reforms, together with briefing principal officers and supervisors in the ARC in June 2023 on their new responsibilities and alerting ARC staff to the reforms.

### Reference of changes

14. A reference guide of the changes for supervisors and principal officers from 1 July 2023 is **below**.

|                           | <b>PID responsibilities pre-1 July 2023</b>   | <b>Responsibilities under the amended PID Act from 1 July 2023</b>  |
|---------------------------|---|---|
| <b>Principal Officers</b> | <ul style="list-style-type: none"> <li>- Establishing procedures for dealing with PIDs</li> <li>- Taking reasonable steps to protect public officials from reprisal</li> <li>- Ensuring there are sufficient authorised officers and that their identity is known to staff</li> <li>- Taking appropriate action in response to a s 51 report</li> </ul> | <ul style="list-style-type: none"> <li>- Establishing procedures for dealing with PIDs.</li> <li>- Taking reasonable steps to protect public officials from reprisal</li> <li>- Ensuring there are sufficient authorised officers and that their identity is known to staff</li> <li>- Taking appropriate action, as soon as reasonably practicable, in response to a section 51 report</li> <li>- Taking reasonable steps to encourage and support disclosers and persons assisting with PIDs</li> <li>- Taking reasonable steps to provide ongoing training and education to public officials about the PID Act</li> <li>- Taking reasonable steps to ensure officials performing functions under the PID Act have appropriate training and education.</li> </ul>   |
| <b>Supervisors</b>        | <ul style="list-style-type: none"> <li>- Must refer information that could be a disclosure to an authorised officer.</li> </ul>   | <ul style="list-style-type: none"> <li>- Must refer information that could be a disclosure to an authorised officer as soon as reasonably practicable</li> <li>- Must explain the following matters to a discloser: <ul style="list-style-type: none"> <li>o that their disclosure could be treated as an internal disclosure</li> <li>o the procedures under the PID Act for the disclosure to be given to an authorised officer, allocated to an agency, and investigated by a principal officer of the agency to which the disclosure is allocated</li> <li>o the circumstances in which a disclosure must be referred to an agency, or other person or body, under another law of the Commonwealth, and</li> <li>o the civil and criminal protections the PID Act provides to protect disclosers and witnesses from reprisal action.</li> </ul> </li> </ul> |

15. For matters prior to 1 July 2023 under the PID Act, the ARC must notify the Ombudsman of:
- a. A decision to allocate a disclosure under the PID Act
  - b. A decision not to investigate, or investigate further, a disclosure under the PID Act.
16. For matters from 1 July 2023 the ARC is required to notify the Ombudsman of:
- a. A decision to allocate (or reallocate) a disclosure under the PID Act
  - b. A decision not to allocate a disclosure under the PID Act either because:
    - the disclosure is not a PID, or
    - it is a PID but would be better investigated under another law or power (known as referral))
  - c. A decision not to investigate, or investigate further, a disclosure under the PID Act
  - d. The completion of an investigation under the PID Act, along with a copy of the section 51 report
  - e. A stop action direction issued under the NACC Act that either:
    - prevents allocation of a disclosure
    - prevents investigation of a PID.

## What is disclosable conduct?

17. 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.
18. 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.
19. It does not matter whether the disclosable conduct occurred before or after 15 January 2014.
20. 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.
21. From 1 July 2023, disclosable conduct does not include most personal work-related conduct. See the two-part definition in section 29A of the PID Act concerning what is personal-work related conduct (and as set out below at paragraphs [47] to [55]).

## THE DISCLOSURE PROCESS

### Making a disclosure under the PID Act for matters pre-1 July 2023

22. All public officials and former public officials are entitled to make a disclosure under the PID Act.
23. All APS employees in the ARC and former employees who were in the ARC are entitled to make a disclosure under the PID Act.

24. 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.
25. A public interest disclosure may be made anonymously or openly.
26. A public interest disclosure may be made orally or in writing.
27. 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.
28. 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.
29. 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
30. 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.
31. The names and contact details of the ARC's Authorised Officers are set out on the ARC's website at [www.arc.gov.au](http://www.arc.gov.au).
32. 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.*
33. 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.
34. A potential discloser should not investigate a matter themselves before making a disclosure.
35. A person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.
36. 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.
37. 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 Principal Officer.
38. 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.



39. 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.
40. 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.

## Changes to the PID process from 1 July 2023 concerning disclosers and public officials

### ***Integrity Wrongdoing***

41. While the PID framework will continue to facilitate disclosures about a wide range of integrity wrongdoing, from 1 July 2023 disclosures about personal work-related conduct are not covered by the PID Act, unless:
  - a. the conduct constitutes reprisal action, or
  - b. the conduct is of such a significant nature it would undermine public confidence in, or has other significant implications for, an agency (or agencies).
42. **Personal work-related conduct** is where one official engages in conduct that relates to another official's engagement, appointment or the exercise of their functions or powers, and the conduct has personal implications for that second official. This includes, but is not limited to, bullying and harassment, conduct relating to the terms and conditions of engagement and disciplinary action (including Code of Conduct investigations). If a disclosure relates to both personal work-related conduct and other types of wrongdoing, it will still be covered by the PID Act as long as the other type of wrongdoing meets the definition of disclosable conduct.

### ***Oversight of the PID Scheme***

43. From 1 July 2023, the Commonwealth Ombudsman will receive a copy of all investigation reports and may make recommendations about investigation reports without a complaint having been made.
44. The Commonwealth Ombudsman must report to Parliament on the PID scheme every six months, instead of annually.

### ***Protections for Disclosers and Witnesses***

45. From 1 July 2023:
  - a. Public officials are protected from reprisal that is taken because a person believed or suspected that they have made, may have made, propose to make, or could make a public interest disclosure.
  - b. Reprisal clarified as including harassment or intimidation, harm or injury to a person, and any damage to a person (including their property, reputation or business or financial position), in addition to the

existing types of employment-related harm. It includes conduct that causes detriment as well as direct and indirect threats.

- c. Witnesses who assist with PID investigations have comparable protections to disclosers – protection against reprisal and immunity from civil, criminal, and administrative liability.
- d. There are stronger requirements for the ARC to protect its public officials against reprisal.

### **Administrative Processes**

46. From 1 July 2023, the ARC will be able to:
  - a. allocate a PID investigation to another agency within the ARC's portfolio (Education portfolio) that is better able to handle the disclosure.
  - b. decide not to allocate or investigate a disclosure if it would be more appropriately investigated under another Commonwealth law or power – if this occurs, the ARC must refer, or facilitate the referral of, the matter for investigation under that law or power. PID Act protections continue to apply.
  - c. more easily share information about a disclosure with another agency if it is relevant to that the ARC's functions, as the general secrecy offence has been repealed.

### **From 1 July 2023 – Key changes about work-related conduct**

#### **Personal work-related conduct - An amendment to the definition of disclosable conduct.**

47. Personal work-related conduct is not disclosable conduct unless an exception applies.

#### **Why was the exclusion introduced?**

48. To ensure the PID Act better serves its purpose – investigating allegations of significant integrity wrongdoing such as fraud, serious misconduct, and corrupt conduct. The exclusion also recognises that concerns about personal work-related conduct are more appropriately dealt with via other processes.

#### **What is personal work-related conduct?**

49. This is now set out in the two-part definition in section 29A of the PID Act.
50. Broadly speaking, personal work-related conduct is:
  - a. An action or omission taken in relation to a public official's engagement or appointment and/or employment (i.e. a work-related action)
  - b. That has, or would tend to have, personal implications for that public official (i.e. the action personally affects that person).
  - c. Personal work-related conduct includes:
    - Interpersonal conflict, including bullying or harassment.
    - Decisions about a person's employment, engagement, transfer, or promotion – including decisions to suspend, terminate, or discipline a person, or the terms and conditions of a person's employment or engagement.
    - Conduct in relation to which the public official has or had review rights under section 33 of the *Public Service Act 1999* or comparable review processes. Note that actions need not have personal implications for the discloser, for the exclusion to apply. This means that anonymous disclosures, as well as disclosures made about third parties, may still be excluded from investigation if the conduct is work-related and has personal implications. For example:
      - A discloser may raise concerns about a recruitment exercise that the discloser was not directly involved in. This would still be considered personal work-related conduct because

the actions relate to a public official's engagement or appointment and/or employment and have, or tend to have, personal implications for that public official.

- Similarly, in an open recruitment exercise where someone who is not a public official is aggrieved by what has occurred and seeks to be deemed a public official to make a PID, it remains likely that the exclusion would apply because the relevant actions are work-related – taken in relation to a public official's engagement or appointment – and had personal implications for that public official.

### ***What is the exception?***

51. Personal work-related conduct is disclosable conduct if it:
- a. would constitute reprisal action or an offence under section 19 (reprisals in relation to disclosures); or
  - b. is so significant it would undermine public confidence in the ARC or has other significant implications for the ARC under section 29(2A).

### ***What kind of conduct is so significant the exception may apply?***

52. While it will depend on the particular context, for conduct to be so significant it would have adverse consequences for the ARC, the conduct would have to raise or tend to show serious misconduct, corruption, or other serious integrity issues. This could include, for example, personal work-related conduct that tends to show:
- a. Systemic discriminatory employment practices, nepotism, or other conduct that seriously calls into question the impartiality and independence of the ARC.
  - b. Serious criminal conduct, particularly if it relates to management of the ARC.
  - c. Conduct that may adversely affect the core functions of the ARC.

### ***Suggested workflow for authorised officers in the ARC***

53. Before considering whether the information meets one of the specific definitions of disclosable conduct, authorised officers (AOs) should consider whether the personal work-related exclusion may apply. If it does, consider if an exception may apply and then whether the conduct subject to the exception meets one of the specific definitions of disclosable conduct. It will also be important to consider whether there are other matters in the disclosure that may meet the definition of a PID.

### ***What if the disclosure is not solely about personal work-related conduct?***

54. The exclusion does not prevent information from being a PID only because the disclosure contains information that tends to show personal work-related conduct. See section 29(2B).
55. Disclosures that contain both disclosable conduct and personal work-related conduct should be allocated as an internal disclosure under the PID Act unless the conduct disclosed would be more appropriately investigated under another law or power.

## **PROCEDURES FOR SUPERVISORS AND MANAGERS**

56. 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.
57. 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.

58. The supervisor or manager must ask the discloser to sign the record of the disclosure, where this is practicable.
59. At the time a supervisor or manager gives information to an Authorised Officer under paragraph 56, 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.
60. Where a supervisor or manager has given information to an Authorised Officer under paragraph 56, 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.
61. For matters after 1 July 2023, there are new responsibilities and powers for **supervisors**:

#### **Advice to Disclosers**

- a. A public official may make a disclosure to their supervisor.
- b. A supervisor includes any public official who supervises or manages the discloser.
- c. Supervisors must be aware of how the PID Act operates.
- d. A supervisor who receives information from a public official that the supervisor has reasonable grounds to believe contains disclosable conduct is now required, along with referring the information to an Authorised Officer (**AO**), to inform disclosers of the PID process.
- e. Supervisors must:
  - inform the discloser that their disclosure could be treated as an internal disclosure
  - explain to the discloser the next steps in the PID process
  - referring their disclosure to the AO, the potential allocation of the PID, and investigation of the PID
  - advise the individual about the circumstances in which a PID must be referred to an agency, or other person or body, under another law of the Commonwealth
  - explain the civil and criminal protections the PID Act provides to disclosers, and those assisting with the handling of a PID.

#### **Meaning of a PID**

62. Disclosures made in the course of performing one's ordinary functions as a public official are not PIDs.
63. This means that routine discussions in the ARC where everyday functions involve investigation of wrongdoing do not constitute a PID and do not require referral to an AO. The exclusion doesn't prevent such an official from making a PID, however they would need to make their intention clear when communicating to their supervisor, authorised officer, or principal officer.

#### **Meaning of Disclosable conduct**

64. From 1 July 2023, there have been two related changes made to the definition of disclosable conduct:
- a. Conduct that will require disciplinary action is now only disclosable conduct if the AO considers the conduct would, if proven, provide reasonable grounds for termination.
  - b. Personal work-related conduct is not disclosable conduct unless it could constitute reprisal or is otherwise significant (see section 29(2A)).

#### **How Supervisors can meet their responsibilities**

65. Have good general awareness of the PID Act and ARC procedures, particularly in relation to what is 'disclosable conduct' and their obligation to inform an authorised officer:
- a. Be careful to observe confidentiality requirements.
  - b. Know who the authorised officers are in the ARC (see Personnel Delegations at 9.2 at [Schedule of Personnel Delegations \(sharepoint.com\)](#) (Principal Officer, DCEO and BM(CS)).

- c. Be approachable to staff who wish to raise concerns.
- d. Hold or arrange awareness sessions or discussion forums for ARC staff.
- e. Ensure their ARC staff undergo available training.
- f. Confront any workplace prejudices about making a disclosure.
- g. Support staff members who they know have made or believe could make a disclosure.
- h. Take actions available to protect relevant people from risks of reprisal.
- i. Pay close attention to interactions in the workplace where necessary (for example, if workplace conflict occurs after a disclosure is made or while it is being investigated).
- j. Ensure identified problems in the workplace are corrected.
- k. Set an example for staff through their own conduct.

## PROCEDURES FOR AUTHORISED OFFICERS

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

66. 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 to allocate a disclosure

67. 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.
68. The Authorised Officer must ask the discloser to sign the written record of the disclosure, where this is practicable.
69. 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.
70. 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.*

71. 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.
72. 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 Principal Officer, and
  - b. wishes the disclosure to be investigated.
73. The Authorised Officer must make a written record of the discloser's responses (if any) to the questions referred to in paragraph 72.
74. Where a discloser does not respond within 7 days to the question referred to:
  - a. in paragraph 72.a—the discloser is taken not to have consented to the disclosure of their name and contact details to the Principal Officer, and
  - b. in paragraph 72.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 and complete **Form 1** and send the completed **Form 1** to the Commonwealth Ombudsman for **pre-1 July 2023 matters**. If applicable, the date written notice of the deeming decision is given to the individual as required by s 70(1).
75. The ARC can meet its s 44(1A) notification obligations by completing this form and sending it to the Ombudsman at [PID@ombudsman.gov.au](mailto:PID@ombudsman.gov.au) within 10 working days of an allocation decision.
76. 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.
77. 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**

78. 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.
79. Where an Authorised Officer in the ARC allocates a disclosure to an agency (including to the ARC) they must complete **Form 1 for pre-1 July 2023 matters** and send it to the principal officer of that agency.
80. The Authorised Officer must copy the completed **Form 1 for pre-1 July 2023 matters** to the relevant contact officer in the Ombudsman's office, or must provide the information required on the relevant form provided.

81. 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, **for pre-1 July 2023 matters**, as soon as reasonably practicable.<sup>1</sup>
82. Where the Authorised Officer allocates a disclosure and informs a discloser under paragraph 81, the Authorised Officer **for pre-1 July 2023 matters** 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.
83. 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 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.
84. 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.
85. The Ombudsman’s Agency Guide to Public Interest Disclosure Act 2013 provided information on how to carry out a risk assessment, but this is now replaced with the latest factsheet (1 October 2023) at [Guide-Supervisors-and-the-PID-Act.pdf \(ombudsman.gov.au\)](#)
86. For pre-1 July 2023 matters, the Commonwealth Ombudsman has two new forms:
- a. **Form 3** – Extension of time to investigate a PID, and
  - b. **Form 6** - notification of a stop action direction.
87. Concerning **Form 3**, Investigations under the PID Act must be completed within 90 days of the disclosure being allocated to an agency unless the agency has been granted an extension of time. An investigation is complete when the agency has prepared the investigation report. Both agencies and disclosers can apply for an extension of time. The Ombudsman may also provide an extension at its own initiative. Extension applications must be made at least **10 business days before the 90-day period expires**. The Ombudsman **cannot** grant an extension after the current investigation deadline has passed.
88. Concerning **Form 6**:

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<sup>1</sup> If applicable, the date written notice of the deeming decision is given to the individual as required by s 70(1).

- a. Under s 44B of the *Public Interest Disclosure Act*, if a stop action direction is issued by the National Anti-Corruption Commission (**NACC**) which prevents the ARC (or an agency) from allocating a disclosure, the ARC (or an agency) must inform the Ombudsman.
- b. Under s 50A of the *Public Interest Disclosure Act*, if a stop action direction is issued by the NACC which prevents the ARC (or an agency) from investigating, or further investigating a disclosure, the ARC (or an agency) must inform the Ombudsman of the stop action direction.
- c. The ARC should meet their s44B and s 50A notification obligations by completing and sending this form to the Ombudsman at [PID@ombudsman.gov.au](mailto:PID@ombudsman.gov.au) within 10 business days of receiving the stop action direction. Please ensure you save a copy of the completed form for the ARC's records.

89. For matters after 1 July 2023, there are new responsibilities and powers of **Principal Officers**. Note, when reading the below table, the principal officer of the ARC may conduct investigations under the PID Act. The principal officer of the ARC is also an authorised officer of the ARC, meaning they can receive disclosures. A principal officer can delegate any or all of their functions or powers to a public official who belongs to the ARC. See the ARC Personnel Delegations at section 9.2 accessible at [Delegations \(sharepoint.com\)](https://sharepoint.com)

| Former responsibilities (for matters pre-1 July 2023) – Principal Officers   | New responsibilities (for matters from 1 July 2023) – Principal Officers  |
|--|---|
| Take reasonable steps to protect public officials who belong to the ARC from detriment or threats of detriment, relating to public interest disclosures by those public officials.   | Take reasonable steps to protect public officials who belong to the ARC against reprisals in relation to PIDs that have been, may have been, are proposed to be, or could be made to the ARC.   |
|  | Take reasonable steps to encourage and support disclosers, including potential disclosers, and those who help in relation to PIDs.  |
|  | Take reasonable steps to provide ongoing training and education to public officials about the PID Act, and any training necessary to support officials to carry out their functions under the Act.  |
| Ensure there are sufficient authorised officers readily accessible to public officials who belong to the ARC and public officials are aware of their identity.   | No change   |
| Establish internal procedures for facilitating and dealing with public interest disclosures relating to the ARC. Procedures must comply with procedural aspects of the PID Standard. Procedures must deal with assessment of the risks that reprisals may be taken in relation to a discloser. | Establish internal PID procedures for facilitating and dealing with public interest disclosures relating to the ARC. Procedures must comply with the PID Standard. Procedures must deal with assessment of the risks that reprisals may be taken in relation to disclosures that relate to the ARC. |
| Ensure disclosures are thoroughly investigated   | No change   |
| Prepare an investigation report and take appropriate action in response to   | Prepare an investigation report and take appropriate action, as soon as reasonably  |



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|---|--|
| recommendations made, or any other matters raised, in the report.   | practicable, in response to recommendations made in the report.  |
| Notify the discloser of the completion of an investigation under the PID Act and provide a copy of the investigation report | Notify the discloser and the Ombudsman of the completion of an investigation under the PID Act and provide a copy of the investigation report.   |
|   | Ombudsman may review handling of a disclosure and recommend the ARC take particular action. In response, must provide notice to the recommending agency of action taken or proposed to be taken in response. If no action is proposed to be taken, the notice must provide a reason why. |

90. For matters after 1 July 2023, there are new responsibilities and powers of **Authorised Officers**.

91. New responsibilities for **Authorised Officers** are:

- a. Take reasonable steps to protect public officials who belong to the ARC from reprisal if the authorised officer (AO) suspects a relevant PID has been, may have been, is proposed to be, or could be made or given to the AO.
- b. Refer suspected systemic or serious corrupt conduct to the NACC.
- c. When explaining the requirements of the PID Act to disclosers, explain the circumstances in which a PID must be referred to another agency, person, or body, under another law (i.e. referral to the NACC if the disclosure could involve serious or systemic corrupt conduct).
- d. Notify the Ombudsman of the reallocation of a disclosure.
- e. Notify the Ombudsman when a disclosure is not allocated for investigation under the PID Act.
- f. Notify the Ombudsman when a stop action direction from the NACC prevents allocation of all or part of a disclosure.
- g. Determine whether personal work-related conduct included in a disclosure may be disclosable conduct (it will only be disclosable conduct if it concerns reprisal or has significant implications for the ARC).

92. **Clarification of existing powers:**

- a. AOs can obtain information and make inquiries as they see fit, but only for the purposes of deciding to which agency (if any) a disclosure is to be allocated.
- b. 'Allocation' is now defined in s 8 of the PID Act and includes a reallocation made in response to a recommendation by the Ombudsman or the IGIS or for any other reason.
- c. 14-day timeframe for allocation starts again the day after the authorised officer becomes aware that a NACC stop action direction no longer applies.

93. **New powers**

- a. AOs may allocate for investigation under the PID Act to an agency within the same portfolio as the ARC, as the recipient agency, if it would be better able to handle the disclosure.
- b. Decide not to allocate a PID for investigation under the PID Act if satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another law or power.

**When is conduct more appropriately investigated under another law or power?**

94. The purpose of the discretion is to ensure matters that are better investigated under another process can be easily referred. It is not to prevent matters from being investigated under the PID Act:
- a. There must be another law or power under which the conduct could be investigated.
  - b. Another law or power is defined as a law of the Commonwealth (including procedures under such a law), or the executive power of the Commonwealth.
  - c. The alternative process must be more appropriate than investigation under the PID Act. An alternative investigation may be more appropriate because the alternative process:
    - is designed for investigating the specific kind of alleged conduct (such as Code of Conduct)
    - includes specific and required investigative powers
    - is more flexible or otherwise better suited to investigating and responding to the alleged conduct.

## ANONYMOUS DISCLOSURES

95. 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

96. 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.
97. 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.
98. 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.
99. 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 may be able to give written notice of the determination to the individual (see s 70(1)).
100. 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.
101. Where a discloser requests the Authorised Officer to decide under section 70, the Authorised Officer must decide on this request and must<sup>2</sup> inform the discloser accordingly, and if the Authorised Officer's decision is to decline the request to decide under section 70, they must also give the discloser reasons for their decision.
102. Where an Authorised Officer decides to decide 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.
103. The written notice must be given to the individual. A copy of the determination notice should also be given to the Principal Officer at the same time as **Form 2**.

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<sup>2</sup> See section 70(3) of the PID Act.

## DECIDING WHETHER OR NOT TO INVESTIGATE

104. The Principal Officer 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.
105. In broad terms, the Principal Officer 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 the same as a disclosure that has been investigated under the PID Act, or
  - e. the disclosure is 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 Principal Officer is satisfied that there are no matters that warrant further investigation, or
  - f. the discloser has informed the Principal Officer that they do not wish the disclosure to be pursued and the Principal Officer is 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.
106. Where an Authorised Officer allocates an internal disclosure to the Principal Officer, and the Principal Officer has been given the contact details of the discloser, the Principal Officer must, within 14 days after the disclosure was allocated to the ARC, inform the discloser in writing<sup>3</sup> that the Principal Officer may decide not to investigate the disclosure, or not to investigate the disclosure further, and the Principal Officer must inform the discloser of the grounds on which a decision not to investigate, or not to investigate further, may be made.
107. 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'](#).

### Decision not to investigate

108. Where the Principal Officer 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 Principal Officer 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..
109. Where the Principal Officer decides under section 48 of the PID Act not to investigate a disclosure under Division 2 of Part 3 of the PID Act, the Principal Officer must, as soon as reasonably practicable, inform the Ombudsman of that decision, and of the reasons for that decision, by completing **Form 2** and sending

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<sup>3</sup> Commonwealth Ombudsman has changed the forms for pre-1 July 2023 matters (with the new PID changes from 1 July 2023) Form 3 is no longer used. Form 2 applies and only notify discloser in writing.

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

110. Where the Principal Officer 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 Principal Officer has been given the name and contact details of the discloser, the Principal Officer must inform the discloser that they are required to investigate the disclosure and inform the discloser of the estimated length of the investigation.
111. Where the Principal Officer decides to investigate the disclosure and starts to investigate the disclosure but then decides not to investigate the disclosure further under section 48, the Principal Officer must:
- where the Principal Officer 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 2 and notifying the discloser in writing; and
  - inform the Ombudsman of that decision and the reasons for that decision by completing **Form 2**
  - 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.

## PROCEDURES FOR INVESTIGATORS

112. For matters after 1 July 2023, there are new responsibilities and powers for **Investigation Officers**:

| Former Responsibilities and Powers pre-1 July 2023  | New Responsibilities and Powers after 1 July 2023  |
|---|--|
| Ensure investigation complies with requirements of the PID Act, PID Standard and internal PID procedures.   | No change.   |
| May decide not to investigate or investigate further in accordance with section 48 of the PID Act   | Discretions in section 48 have been amended to include new discretions not to investigate or not investigate further where: - the information is the same or substantially the same as information previously disclosed under the PID Act and a decision was previously made under section 48(1) to not investigate (or further investigate) the earlier disclosure, or - the conduct disclosed would be more appropriately investigated under another law or power. |
| Prepare an investigation report. Report must include claims or evidence of reprisal against the discloser and the ARC’s response. Principal officer must take appropriate action in relation to recommendations, or any other matters raised in the report. | The report must now set out claims of reprisal taken against the discloser or any other person (together with related evidence), and the ARC’s response to those claims or evidence. Principal officers are now only required to act in response to recommendations in a section 51 report. If remedial action is required, ensure relevant recommendations are made.  |

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| Complete investigation within 90 days of allocation unless an extension has been granted. | Timeframe remains 90 days, but time will start counting again on reallocation, a decision to reinvestigate, or the day the principal officer becomes aware a NACC stop action direction no longer applies. |
| Provide discloser with notification of and copy of the investigation report               | Notify discloser and Ombudsman (or IGIS if relevant) of the completion of an investigation under the PID Act and provide a copy of the investigation report.   |
|   | Ensure referral of suspected serious or systemic corruption uncovered in a PID investigation to the NACC.  |

**When is conduct more appropriately investigated under another law or power?**

113. The purpose of the discretion is to ensure matters that are better investigated under another process can be easily referred. It is not to prevent matters from being investigated under the PID Act.
114. There must be another law or power under which the conduct could be investigated. Another law or power is defined as a law of the Commonwealth (including procedures under such a law), or the executive power of the Commonwealth.
115. The alternative process must be more appropriate than investigation under the PID Act. An alternative investigation may be more appropriate because the alternative process:
  - a. is designed for investigating the specific kind of alleged conduct (such as Code of Conduct)
  - b. includes specific and required investigative powers
  - c. is more flexible or otherwise better suited to investigating and responding to the alleged conduct.
116. Where the Principal Officer has decided under paragraph 110 to commence an investigation into an internal disclosure, they may conduct the investigation as they think fit.
117. The Principal Officer must be independent and unbiased in the matter. The Principal Officer must ensure that they do not have an actual or perceived conflict of interest.
118. The Principal Officer may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as the Principal Officer thinks fit.
119. When investigating the Principal Officer must ensure that a decision whether evidence is sufficient to prove a fact is made on the balance of probabilities.
120. Despite paragraphs 112 and 118, the Principal Officer, in investigating 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

121. 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 investigating, and
  - c. the authority of the investigator under the PID Act to investigate, 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.
122. 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.
123. 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.
124. 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

125. 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.
126. Procedural fairness may require that the discloser's identity be revealed to the person who is the subject of the disclosure.
127. 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.*

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

129. 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.

130. 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

131. The investigator has 90 days from the date the disclosure was allocated in which to complete the investigation.

132. It is possible to seek one or more extensions of time from the Ombudsman.

133. 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.

134. 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.

135. An investigation that is not completed within the time limit does not become invalid.

## REPORTS OF INVESTIGATIONS

136. 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.

137. 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.

138. 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:

- a. that the report has been completed, and
- b. whether the report was completed within the time limit provided for by the PID Act.

139. 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.

140. Despite paragraph 139, 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.
141. Despite paragraph 139, 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.

## CONFIDENTIALITY

142. 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 necessary for the effective investigation of the disclosure (including because of the need to afford procedural fairness).
143. Any interviews conducted by an Authorised Officer, or an investigator are to be conducted in private.
144. 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.

## RECORD-KEEPING

145. 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*).
146. Where a form is required to be sent under these procedures, a copy of the completed form must be kept.
147. 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.
148. Any email messages sent by Authorised Officers or delegates that contain identifying information must be clearly marked 'to be read by named addressee only.'
149. 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.

## MONITORING AND EVALUATION

150. Each Authorised Officer must provide a monthly, or other period determined by the Principal Officer, report to the Principal Officer 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.
151. The Principal Officer 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).



152. Each investigator must advise the monitoring delegate of every decision made by the investigator to investigate a disclosure during the financial year.
153. Each delegate of the Principal Officer who acts in response to a recommendation made in an investigation report must make a report of this action to the monitoring delegate.
154. The monitoring delegate must prepare a report for the Principal Officer's consideration within the time specified by the Principal Officer.
155. The Principal Officer will send the ARC's report to the Ombudsman within the time requested by the Ombudsman or as otherwise agreed with the Ombudsman.

## CONDUCT A RISK ASSESSMENT

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

|  | Likely seriousness of reprisal |        |          |        |         |
|--|--------------------------------|--------|----------|--------|---------|
|  |                                | Minor  | Moderate | Major  | Extreme |
| Likelihood of reprisal being taken against a discloser | 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 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 Principal Officer should consider 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 are 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 seriousness of any potential reprisal against a discloser, the Principal Officer should consider all relevant factors, including, to the extent relevant:

- a. the significance of the issue being disclosed;
- b. the outcome if the conduct disclosed is substantiated;
- c. the subject matter of the disclosure;
- d. whether the discloser is isolated;
- e. whether the discloser is employed on a full-time, part-time or casual basis;
- f. whether the alleged wrongdoing that is the subject of the disclosure was directed at the discloser; and
- g. 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 Principal Officer 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 Principal Officer 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 Principal Officer 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"><li>(a) is in force in the foreign country; and</li><li>(b) is applicable to the agency, public official, or contracted service provider; and</li><li>(c) corresponds to a law in force in the Australian Capital Territory.</li></ul>             |
| 3    | Conduct that: <ul style="list-style-type: none"><li>(a) perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice; or</li><li>(b) involves, or is engaged in for the purpose of, corruption of any other kind.</li></ul>   |
| 4    | Conduct that constitutes maladministration, including conduct that: <ul style="list-style-type: none"><li>(a) is based, in whole or in part, on improper motives; or</li><li>(b) is unreasonable, unjust, or oppressive; or</li><li>(c) is negligent.</li></ul>  |
| 5    | Conduct that is an abuse of public trust.  |
| 6    | Conduct that is: <ul style="list-style-type: none"><li>(a) fabrication, falsification, plagiarism, or deception, in relation to:<ul style="list-style-type: none"><li>(i) proposing scientific research; or</li><li>(ii) carrying out scientific research; or</li><li>(iii) reporting the results of scientific research; or</li></ul></li></ul> |

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| Item | Kinds of disclosable conduct |
|------|------------------------------|
|------|------------------------------|

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(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.   |

(2) Without limiting subsection (1), the following are also **disclosable conduct**:

- (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;
- (b) conduct engaged in by a public official that could, if proved, give reasonable grounds for disciplinary action against the public official.

(3) For the purposes of this section, it is immaterial:

- (a) whether conduct occurred before or after the commencement of this section; or
- (b) if an agency has engaged in conduct—whether the agency has ceased to exist after the conduct occurred; or
- (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
- (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.

- (2B) To avoid doubt, if a disclosure includes information that tends to show (or that may tend to show) disclosable conduct, the disclosure is not prevented from being a public interest disclosure only because:
- (a) the disclosure includes other information; and
  - (b) the other information tends to show (or may tend to show) personal work-related conduct.
- (3) For the purposes of this section, it is immaterial:
- (a) whether conduct occurred before or after the commencement of this section; or
  - (b) if an agency has engaged in conduct—whether the agency has ceased to exist after the conduct occurred; or
  - (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
  - (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.

### **29A Meaning of *personal work-related conduct***

***Personal work-related conduct*** is conduct (by act or omission) engaged in by a public official (the ***first official***) in relation to another public official (the ***second official***) that:

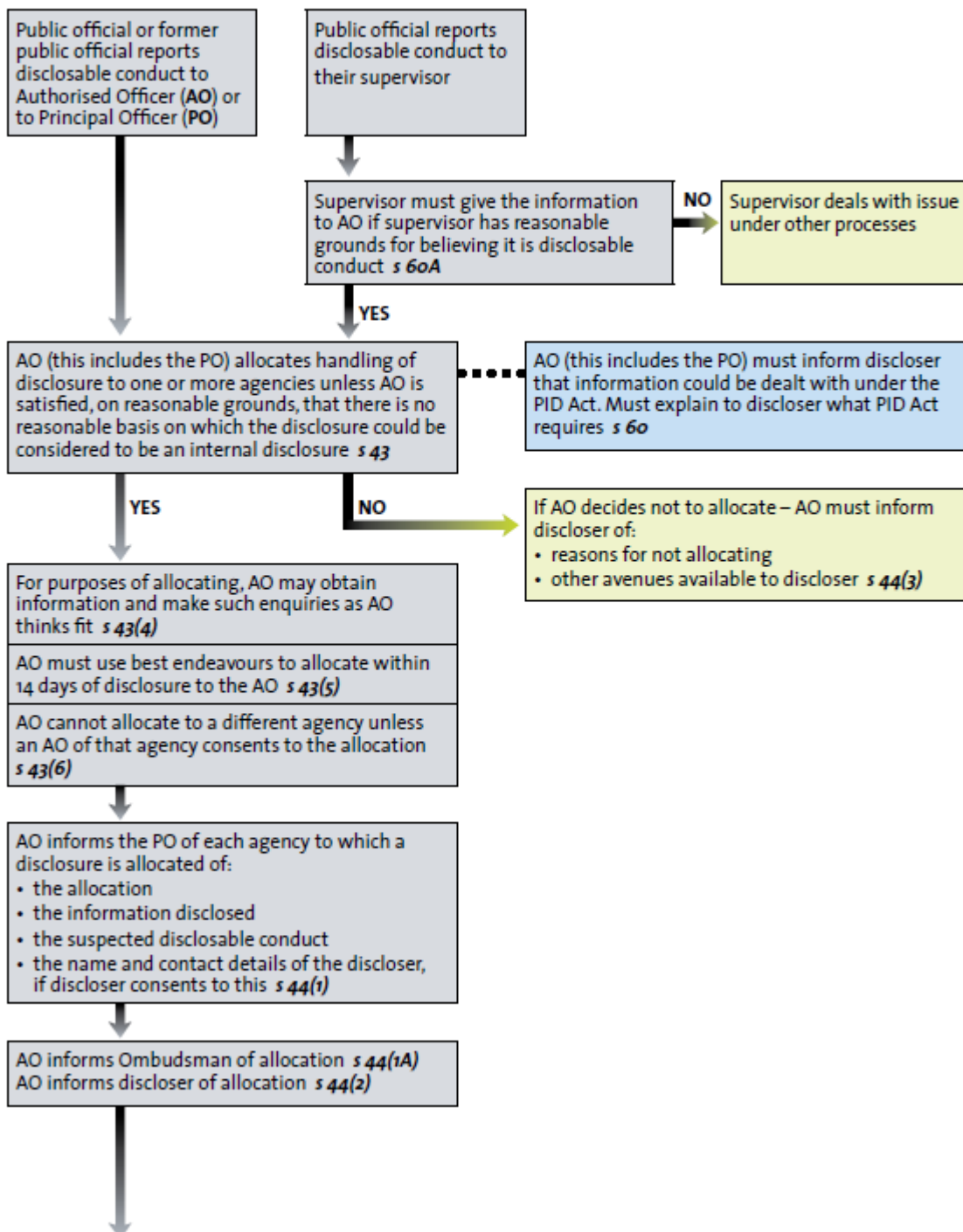
- (a) occurs in relation to, or in the course of, either or both of the following:
  - (i) the second official's engagement or appointment as a public official;
  - (ii) the second official's employment, or exercise of functions and powers, as a public official; and
- (b) has, or would tend to have, personal implications for the second official.

Examples: The following are examples of personal work-related conduct:

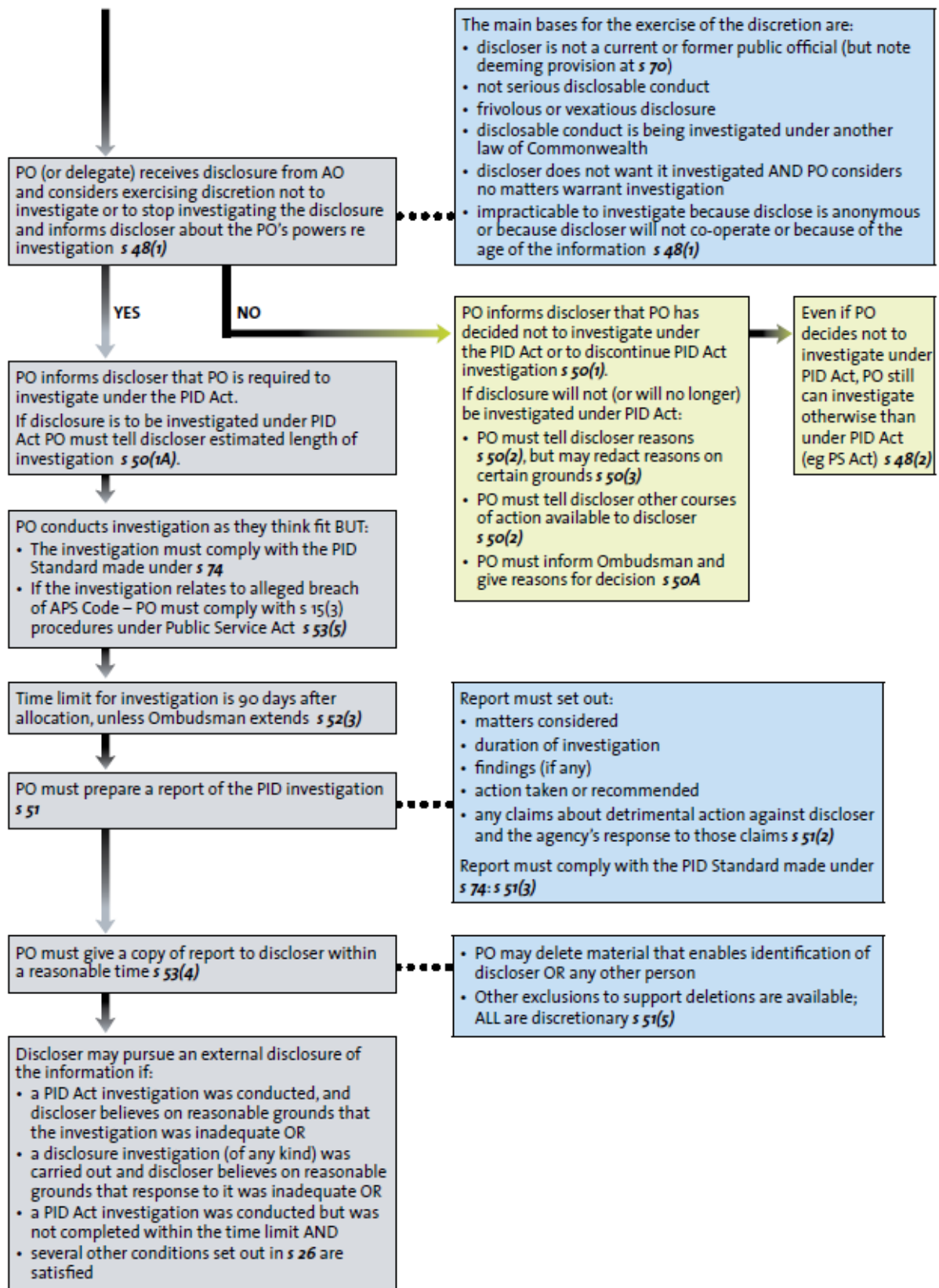
  - (a) conduct relating to an interpersonal conflict between the first official and the second official (including, but not limited to, bullying or harassment);
  - (b) conduct relating to the transfer or promotion of the second official;
  - (c) conduct relating to the terms and conditions of engagement or appointment of the second official;
  - (d) disciplinary action taken in relation to the second official;
  - (e) the suspension or termination of the second official's employment or appointment as a public official;
  - (f) conduct in relation to which the second official is, or would have been, entitled to review under section 33 of the *Public Service Act 1999* or under any comparable review process that forms, or formed, part of the second official's terms or conditions of engagement or appointment.

ATTACHMENT B – PID ACT APPLICATION (PRE-1 JULY 2023)

## PID ACT – Disclosure to an agency



**PID ACT – Disclosure to an agency (cont.)**



## ATTACHMENT C – FORMS

The *Public Interest Disclosure Act 2013 (PID Act)* requires the ARC to notify the Ombudsman of the following:

- an allocation or reallocation of a disclosure
- a decision not to allocate a disclosure
- a decision not to investigate a disclosure or not further investigate
- an extension of time to investigate a public interest disclosure (PID)
- a finalised investigation
- a stop action direction issued by the National Anti-Corruption Commission.

Forms are provided to facilitate these notifications and requests:

### ***For disclosures made before 1 July 2023***

- Form 1 - Notification of an allocation decision
- Form 2 – s 48 Decision not to investigate OR not further investigate under the PID Act
- Form 3 – Extension of time to investigate a PID
- Form 6 – Notification of a stop action direction

### ***For disclosures made on or after 1 July 2023***

- Form 1 – Notification of allocation or reallocation
- Form 2 – Notification of decision not to investigate or not to investigate further
- Form 3 – Extension of time to investigate a PID
- Form 4 – Notification of decision not to allocate
- Form 5 – Notification of a finalised PID investigation
- Form 6 – Notification of a stop action direction

Completed notification forms are to be emailed to [pid@ombudsman.gov.au](mailto:pid@ombudsman.gov.au)

The **above** forms 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).

The ARC's Personnel Delegations accessible at [Delegations \(sharepoint.com\)](#) has the following at [9.2] concerning PID authorised officers, see **below**:

|     | <i>Public Interest Disclosure</i>   |  |                       |
|-----|---|--|-----------------------|
| 9.2 | <ul style="list-style-type: none"> <li>• <b>receive a report</b> of a breach or alleged breach of the APS Code of Conduct</li> <li>• <b>investigate</b> a report of a breach or alleged breach of the APS Code of Conduct</li> <li>• deem a report of a breach or alleged breach of the APS Code of Conduct to be vexatious or frivolous</li> <li>• <b>make a determination</b> as to the findings of the report of a breach or alleged breach of the APS Code of Conduct and impose sanctions</li> </ul> | ARC Public Information Disclosure Policy<br>PS Regulations<br>PS Act | CEO<br>DCEO<br>BM(CS) |