



# Public Interest Disclosure Procedure

I, Christopher Wallace, Chief Executive Officer, and Principal Officer of the Australian Reinsurance Pool Corporation (ARPC), under section 59(3) of the Public Interest Disclosure Act 2013, establish these procedures for facilitating and dealing with public interest disclosures relating to the ARPC. The procedures commence on 14 December 2023.

Dr Christopher Wallace  
Chief Executive Officer  
ARPC  
14 December 2023

## Purpose

To outline who can make public interest disclosures (PIDs), how they can be made, what is covered under the Public Interest Disclosure Act 2013 (PID Act), protection mechanisms and how ARPC will deal with received disclosures.

## Scope

Applies to all ARPC employees, Board members, contractors and consultants engaged or previously engage by ARPC.

## Document relationship

Policy	People Policy
Procedure	--
Process	-

Approval Date	Version	Owner SES	Approver CEO
14 December 2023	2.0	Samantha Lawrence (CRGO)	CEO

## 1. INTRODUCTION

The objects of the *Public Interest Disclosure Act 2013* (PID Act) (whistleblowing) include encouraging and facilitating the making of public interest disclosures by public officials, and former public officials. Making a public interest disclosure accords with the ethical culture, including integrity and accountability of the Commonwealth public sector.

The objects of the PID Act are to:

- promote the integrity and accountability of the Commonwealth sector; and
- encourage and facilitate the making of public interest disclosures by public officials and former public officials; and
- ensure that public officials, and former public officials, who make public interest disclosures are supported and are protected from adverse consequences relating to the disclosures; and
- ensure that disclosures by public officials, and former public officials, are properly investigated and dealt with.

ARPC employees and Board members must, at all times, behave in a manner that upholds the ARPC Values, and the integrity and good reputation of ARPC.

ARPC is committed to meeting the PID Act requirements and encouraging the reporting of inefficiency and wrongdoing by:

- documenting and communicating ARPC's procedure on Public Interest Disclosures (PID);
- providing training and awareness sessions on the PID Act and associated ARPC procedure;
- supporting employees who make PIDs; and
- investigating and managing PIDs appropriately.

## 2. WHAT IS A PUBLIC INTEREST DISCLOSURE?

A disclosure of information will be an internal disclosure PID and will attract protections under the PID Act if:

- the disclosure is made by a current, former, or deemed Public Official;
- the disclosure is made to an authorized internal recipient (includes an Authorised Officer (AO) of the agency to which the conduct with which the disclosure is concerned relates, or the agency to which the discloser belongs or last belonged) or the supervisor of the discloser);
- the information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct; and
- the disclosure is not made in the course of performing the discloser's ordinary functions as a public official.

There are 5 kinds of PID – internal, external, emergency, legal practitioner, and NACC disclosure. These procedures focus on internal disclosures under the PID Act. Further information on other types of disclosure is available on the Commonwealth Ombudsman's website:

<https://www.ombudsman.gov.au/>.

A person contemplating making a PID should review the contents of the PID Act and seek legal advice where appropriate to determine whether their disclosure will be a PID and attract the protections of the PID Act. Public officials belonging to ARPC can also contact an AO within ARPC for advice on the requirements for a disclosure to be an internal disclosure.

The full definition of 'public interest disclosure' is in section 26 of the PID Act.

## 2.1 Authorised Officer (AO)

ARPC's AOs for the purposes of the PID Act are the Chief Executive Officer (the Chief Executive) (known as the Principal Officer under the PID Act) and two further AOs appointed by the Chief Executive under the PID Act:

- the Chief Financial Officer (CFO); and
- the Chief Operating Officer (COO).

AOs are one of the categories of persons to whom an internal PID can be made. They also have a role in giving information to disclosers and potential disclosers about how a PID can be made. AOs undertake an initial assessment of an initial PID and determine whether it will be allocated for investigation under the PID Act. They also have responsibilities in relation to protecting public officials that belong to the ARPC from reprisals.

The following are contact details for AAOs of ARPC:

**Post:** ARPC Authorised Officer  
Australian Reinsurance Pool Corporation  
PO Box Q1432  
Queen Victoria Building, NSW 1230  
**Email:** [PID@arpc.gov.au](mailto:PID@arpc.gov.au)  
**Phone:** 02 8223 6779

## 2.2 Public official

A person must be a current, former, or deemed public official to make a PID.

Public Officials include anyone employed under s 32 of the *Terrorism and Cyclone Insurance Act 2003*, the principal officer of a Commonwealth agency, members of staff of a Commonwealth agency, Parliamentary Service employees, Defence Force members, service providers under a Commonwealth contract and their officers and employees who provide services directly or indirectly for the purposes of the Commonwealth contract,, Australian Federal Police appointees, statutory office holders, staff of Commonwealth companies and individuals deemed to be public officials (section 69 of PID Act).

Judicial officers, members of a Royal Commission, members of Parliament and persons employed or engaged under the *Members of Parliament (Staff) Act 1984* are not public officials for the purposes of the PID Act.

A person who is not a current or former public official can make a PID under the PID Act only if they are 'deemed' to be a public official by an AO. An AO who believes on reasonable grounds that the person has information that concerns disclosable conduct may, by written notice, 'deem' someone to be a public official so they can receive a disclosure from them about the agency to which the AO belongs (section 70 of PID Act). An example of this may be where a former volunteer with an agency or someone who has received funding from the Australian government has inside information about wrongdoing in an agency and the AO considers it appropriate that their discloser be treated as a PID.

## 2.3 Disclosable conduct

Disclosable Conduct (section 29 of PID Act) is conduct engaged in by:

- an agency;
- a Public Official, in connection with his or her position as a public official; or

- a contracted service provider for a Commonwealth contract, in connection with that contract.

If that conduct:

- contravenes the law (Commonwealth, a State, or a Territory);
- occurs in a foreign country and contravenes a law in force in that country that applies to the agency, public official, or contracted service provider and that corresponds to a law in force in the Australian Capital Territory;
- perverts, or attempts to pervert, the course of justice or involves corruption of any other kind;
- constitutes maladministration, including conduct that: is based, in whole or in part, on improper motives; is unreasonable, unjust, or oppressive; or is negligent;
- results in wastage of relevant public money or relevant public property;
- is an abuse of public trust;
- is fabrication, falsification, plagiarism, or deception in relation to scientific research, or misconduct in relation to scientific work;
- unreasonably endangers, or increases the risk of danger to the health and safety of one or more persons; or endangers, or increases the risk of danger to the environment;
- is prescribed by the PID Rules;
- is engaged in by a public official and involves, or is engaged in for the purpose of, the public official abusing his or her position as a public official;
- is engaged in by a public official and could, if proved, give reasonable grounds for disciplinary action resulting in the termination of the official's engagement or appointment.

If a PID involves certain corrupt conduct, that may trigger an obligation to refer the PID to the NACC.

### 2.6 What is not disclosable conduct?

The following is not disclosable conduct:

- disagreement with government policies or government action or expenditure
- certain conduct connected with courts, Commonwealth tribunals and intelligence agencies, or
- personal work-related conduct (subject to the exceptions set out below).

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:

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

Section 29A notes the following examples of personal work-related conduct:

- conduct relating to an interpersonal conflict between the first official and the second official (including, but not limited to, bullying or harassment);
- conduct relating to the transfer or promotion of the second official;
- conduct relating to the terms and conditions of engagement or appointment of the second official;
- disciplinary action taken in relation to the second official;
- the suspension or termination of the second official's employment or appointment as a public official;

- 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* (PS Act) or under any comparable review process that forms, or formed, part of the second official's terms or conditions of engagement or appointment.
  - Note –ARPC staff are not entitled to review under s 33 of the PS Act as they are engaged under section 32 of the *Terrorism and Cyclone Insurance Act 2003* (TCI Act).

'Personal work-related conduct' is not disclosable conduct unless one of the following exceptions apply:

- the conduct would constitute taking a reprisal against another person, or an offence under section 19 of the PID Act; or
- the conduct:
  - is of such a significant nature that it would undermine public confidence in an agency (or agencies); or
  - has other significant implications for an agency (or agencies).

If a disclosure includes information that tends to show (or may tend to show) disclosable conduct, the disclosure is not prevented from being a PID only because:

- the disclosure includes other information; and
- the other information tends to show (or may tend to show) personal work-related conducted.

### 2.4 Contracted service provider for a Commonwealth contract

A 'contracted service provider for a Commonwealth contract' is:

- a person who is a party to a Commonwealth contract, and is responsible for the provision of goods or services under that contract, or
- a subcontractor who is responsible under a subcontract for the provision of goods or services for the purposes (whether direct or indirect) of the Commonwealth contract.

A 'Commonwealth contract' does not include a grant covered by an instrument made under section 105C of the *Public Governance, Performance and Accountability Act 2013* (instruments relating to grants).

The full definition of 'contracted service provider for a Commonwealth contract' is set out in section 30 of the PID Act.

### 2.5 Corrupt conduct

Section 8(1) of the *National Anti-Corruption Commission Act 2022* (NACC Act) states that each of the following is 'corrupt conduct'.

- any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly:
  - the honest or impartial exercise of any public official's powers as a public official
  - the honest or impartial performance of any public official's functions or duties as a public official
- any conduct of a public official that constitutes or involves a breach of public trust,
- any conduct of a public official that constitutes, involves, or is engaged in for the purpose of abuse of the person's office as a public official, or
- any conduct of a public official, or former public official, that constitutes or involves the misuse of information or documents acquired in the person's capacity as a public official.

Conduct involving a public official may be corrupt conduct even if the conduct is not for the person's personal benefit.

The full definition of ‘disclosable conduct’ is in section 29 of the PID Act. The full definition of ‘personal work-related conduct’ is in section 29A of the PID Act. Sections 31, 32 and 33 of the PID Act provide more detail about conduct that is not disclosable conduct.

### 3. HOW TO MAKE AN INTERNAL DISCLOSURE UNDER THE PID ACT

A public official can make a PID to their supervisor (or manager) or to an ‘authorised internal recipient’ (an AO at the agency to which the conduct relates, and AO at the agency to which the discloser belongs, or the Commonwealth Ombudsman (there are different requirements in relation to intelligence agencies and functions)). ARPC’s AOs are listed at 2.1 above.

If the discloser believes, on reasonable grounds, that it would be appropriate for the PID to be investigated by the Ombudsman – or if the PID is about the Ombudsman – then the PID should be made to the Ombudsman.

For PIDs relating to intelligence agencies or agency’s intelligence functions – the PID must be made to the agency in question, the Inspector-General of Intelligence and Security (‘IGIS’) or to an investigative agency.

Where a public official is considering making a disclosure, they may wish to, in the first instance, contact an AO (CE, CFO, COO) or their current supervisor to get information about making a public interest disclosure under the PID Act. Generally, disclosures made internally (within ARPC) allow the opportunity for ARPC to investigate the matter and remove any danger or correct any wrong practices as quickly as possible.

If a public official discloses information to a supervisor and the supervisor has reasonable grounds to believe that the information concerns, or could concern disclosable conduct, the supervisor must give the information to an AO as soon as reasonably practicable. If an official has information about suspected wrongdoing in another agency, they may choose to make a disclosure directly to an AO in that agency.

Where possible, ARPC officials are encouraged to make a PID to an AO rather than to their supervisor (or manager) because of the additional training given to AOs in the ARPC. This paragraph does not prevent an ARPC official from making a PID to their supervisor or manager.

A PID (section 28) may be made in writing, orally, anonymously, or openly. The discloser does not need to state or intend that they are doing so under the PID Act for the requirements of the PID Act to apply.

Officials should note that making a PID does not entitle them to protection from the consequences of their own wrongdoing. Additionally, a person who knowingly makes a false or misleading disclosure will not have any protections under the PID Act.

#### 3.1 Information to be provided

The discloser should provide actual and fact-based information. They should avoid providing opinions, speculation, false or misleading statement, or vexatious or malicious assertions<sup>1</sup>. The disclosure should contain supporting evidence where that is available to the discloser and should, where possible, identify any witnesses to the disclosable conduct.

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<sup>1</sup> Protection from liability will not be available if a false and misleading statement is knowingly made (under section 11 of the PID Act).

The discloser should think about covering the following matters in their disclosure to help ARPC to determine how to proceed with the disclosure:

- their name and contact details (but they do not have to do this, and they can use a pseudonym instead);
- the details of the suspected wrongdoing;
- who they believe committed the suspected wrongdoing;
- when and where the suspected wrongdoing occurred;
- whether there were any witnesses to the wrongdoing, and if so, who the witnesses are;
- how they became aware of the suspected wrongdoing;
- whether the suspected wrongdoing has been reported to anyone else;
- if so, what that person has done to fix, stop or prevent it;
- whether they are concerned about possible reprisal because of making a disclosure.

### 3.2 Anonymous disclosures

Disclosers may wish to make anonymous disclosures. A disclosure is anonymous if the identity of the discloser is not revealed and if no contact details for the discloser are provided. It is also anonymous if the discloser does not disclose their name but provides anonymous contact details. Providing a de-identified email address for correspondence will allow the AO or Chief Executive Officer (or delegate) to contact the discloser anonymously where required.

Receiving an anonymous disclosure does not mean that it cannot be treated as a disclosure for the purposes of the PID Act. Where a supervisor or manager receives an anonymous disclosure, they must refer it to an AO as soon as is reasonably practicable.

Where an AO receives an anonymous disclosure and it is not clear whether or not the discloser is a current or former public official, they may need to consider whether to exercise the power in section 70 of the PID Act to determine that the PID Act has effect as if the individual had been a public official when the person obtained the information.

### 3.3 Confidentiality

The Principal Officer and AOs will take all reasonable steps to protect the identity of a public official who has made a PID from the time the disclosure is made.

Only individuals directly involved in dealing with the PID (such as the Principal Officer and AOs) may be advised of the details of the PID. These individuals must not disclose the identity of the discloser or any information which is likely to reveal the identity of the discloser without the consent of the discloser or where permitted under the PID Act.

Any interviews conducted for the purpose of an investigation under the PID Act should be conducted in private and avoid the identification of the discloser by other staff of ARPC.

It is an offence for a public official to disclose or use information that is likely to enable the identification of a person as a person who has made a PID other than in accordance with the PID Act. Identifying information about a discloser will not be disclosed to a court or tribunal except where necessary to give effect to the PID Act.

### 3.4 Records

The AOs and the Principal Officer or his or her delegates must keep records of materials relating to the allocation and investigation processes. The records must be kept in hard copy or electronic form or both, and in a secure form that cannot be accessed by unauthorized staff (e.g., restricted electronic files or locked cabinets). This relates to any actual or potential disclosure that they believe concerns, or could concern, disclosable conduct.

Access to these records must be restricted to only those officers 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*).

Further details as to the requirements to keep written records of the allocation decision and the investigation are set out further below.

### 3.5 Freedom of Information

Records may be subject to requests under the Freedom of Information Act 1982 (FOI Act).

Documents associated with PIDs are not automatically exempt from the FOI Act. Requests to access documents under the FOI Act must be referred to the Principal Officer who makes decision relating to FOI requests and will be considered on a case-by-case basis.

A range of exemptions may apply to individual documents or parts of documents, particularly in relation to material received in confidence, personal information, operations of agencies and law enforcement.

## 4. WHAT PROTECTIONS AND SUPPORT ARE AVAILABLE UNDER THE PID ACT?

APRC is committed to minimising reprisal or negative consequences on the discloser, witnesses, and any other affected persons in relation to a PID or potential PID. The PID Act provides protections from reprisals, including protection against conduct by a person that results in detriment, or consists of, results in, a threat to cause detriment to the discloser or any other person (for example, a witness). It is an offence to engage in conduct of this nature. Prosecution can take place under the PID Act and can carry a penalty of a fine and/or up to two years imprisonment. Detriment includes (without limitation) any of the following:

- dismissal of an employee;
- injury of an employee in his or her employment;
- alteration of an employee's position to his or her disadvantage;
- discrimination between an employee and other employees of the same employer;
- harassment or intimidation of a person;
- harm or injury to a person, including psychological harm;
- damage to a person's property;
- damage to a person's reputation;
- damage to a person's business or financial position;
- any other damage to a person.

As outlined below, the AO is responsible for conducting assessments of the risk of reprisal.

A discloser who is an employee or contractor may also be able to access the general protections of



the *Fair Work Act 2009*.

Where any person believes that they have been subject to reprisal or negative consequence because of a PID being processed by ARPC, or suspected PID, the following options are available:

- if the party alleged to have committed a reprisal *is employed by ARPC* – the affected person may report their concerns/evidence to the investigating Principal Officer for review, contact the Ombudsman, and/or take independent legal advice. The Principal Officer will determine whether further action is required to be taken (e.g., managing a breach of the *ARPC Values and ARPC Code of Conduct*); and
- if the party alleged to have committed a reprisal *is not employed by ARPC* – the affected person should consider reporting their concerns/evidence to the investigating Principal Officer to obtain support, contacting the Ombudsman for advice, and/or taking independent legal advice as to other legal avenues for protection.

Protections under the PID Act remain in place even after any investigation has been completed and the matter concluded.

### **4.1 Disclosers' immunity from liability**

If an individual makes a PID they are not subject to any civil, criminal or administrative liability (including disciplinary action) for making the PID and no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the individual on the basis of the PID. (it should be noted that this immunity applies where an individual makes any of the 5 types of PID – see section 2 above).

The discloser has absolute privilege in proceedings for defamation in respect of the PID, and a contract to which the discloser is a party must not be terminated on the basis that the PID constitutes a breach of the contract.

However, these immunities do not apply if the discloser:

- makes a statement which they know is false or misleading,
- commits an offence under specific sections of the Criminal Code by:
  - providing false or misleading information
  - giving false or misleading documents
  - making a false document
  - using a forged document, or
- contravenes a designated publication restriction if they know the PID contravenes that restriction and do not have a reasonable excuse for that contravention.

If a discloser provides information that relates to their own conduct, their liability for that conduct is not affected.

The details of the immunity from liability for disclosers are set out in sections 10, 11, 11A and 12 of the PID Act (see also the definition of 'designated publication restriction' in section 8).

For more information about disclosers' rights and responsibilities, see [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

### **4.2 Witnesses' immunity from liability**

An individual is a 'witness' if they give information or produce a document or other thing, or answer a question, that they consider on reasonable grounds to be relevant to:

- the making of a decision in relation to the allocation of a PID
- a PID investigation or a proposed PID investigation, or

- a review or proposed review by the Ombudsman or the IGIS.

A witness is not subject to any civil, criminal, or administrative liability (including disciplinary action) because of the assistance provided. No contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the witness on the basis of the assistance provided.

A witness has absolute privilege in proceedings for defamation in respect of the assistance provided, and a contract to which the witness is a party must not be terminated on the basis that the assistance provided constitutes a breach of the contract.

However, these immunities do not apply if the witness:

- makes a statement which they know is false or misleading,
- commits an offence under specific sections of the Criminal Code by:
  - providing false or misleading information
  - giving false or misleading documents
  - making a false document
  - using a forged document, or
- contravenes a designated publication restriction.

If a witness provides information that relates to their own conduct, their liability for that conduct is not affected.

The details of the immunity from liability for witnesses are set out in sections 12A and 12B of the PID Act (see also the definition of ‘designated publication restriction’ in section 8).

### 4.3 Good faith exemption for officers involved in PID processes

The Chief Executive Officer (or delegate), an AO, a supervisor (or manager) of a person who makes a PID, or a person assisting the Chief Executive Officer (or delegate) is not liable to any criminal or civil proceedings, or any disciplinary action (including any action that involves imposing any detriment), for or in relation to an act or matter done, or omitted to be done, in good faith:

- in the performance, or purported performance, of any function conferred on the person by the PID Act
- in the exercise, or purported exercise, of any power conferred on the person by the PID Act, or
- in the case of a person assisting the Chief Executive Officer (or delegate) — in assisting the Chief Executive Officer (or delegate) in performing any function or exercising any power under the PID Act.

This exemption does not apply to a breach of a designated publication restriction.

The details of this good faith exemption are in section 78 of the PID Act (see also the definition of ‘designated publication restriction’ in section 8).

### 4.4 Practical support for disclosers, witnesses, and potential disclosers

The Principal Officer and AOs will take all reasonable steps to support the discloser, potential discloser and witnesses and minimise the opportunity for reprisal or negative consequence against the discloser, potential discloser, and witness because of a PID.<sup>2</sup> This may entail:

- keeping the discloser informed on the investigation process;
- with the discloser’s, potential disclosers, or witness’s consent, appointing a support person who is responsible for checking on their wellbeing regularly;

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<sup>2</sup> The Principal Officer and AOs will also take all reasonable steps to support and protect ARPC employees who are the subject of a PID. This also includes advising the employee of their rights and obligations under the PID Act, the investigation procedures and their rights to procedural fairness.

- advising the discloser, potential discloser, or witness of the EAP program available to ARPC employees;
- transferring the discloser, potential discloser, or witness to a different area within the workplace, with their consent; and
- liaising with Human Resources where there are concerns about the discloser's, potential disclosers, and witness's health and wellbeing.

#### **4.5 Practical support for a person against whom a disclosure has been made.**

ARPC will take steps to support any employee who is the subject of a PID. This may include taking one or more of the following actions:

- advising the employee of their rights or obligations under the PID Act and about ARPC's investigation procedures, including the employee's rights to procedural fairness.
- advising the employee of the availability of the EAP program available to ARPC employees.
- ensuring that the identity of the employee is kept confidential as far as reasonably practicable.
- liaising with Human Resources where there are concerns about the employee's health and wellbeing.
- Transferring the employee to a different area within the workplace, with their consent.

## **5. PROCEDURES FOR SUPERVISORS RECEIVING A DISCLOSURE**

A 'supervisor' is a public official who supervises or manages the public official making the disclosure. This can be the discloser's direct supervisor or another person up the line of reporting.

If a supervisor (or manager) receives information from a discloser, and reasonably believes that the information received concerns or could concern disclosable conduct, they must:

- inform the discloser that the disclosure could be treated as a PID,
- explain to the discloser that the procedures under the PID Act require:
  - the supervisor (or manager) to give the disclosure to an AO
  - the AO to decide whether to allocate the disclosure to the Chief Executive Officer or to another agency, and
  - if the PID is allocated, the principal officer (or delegate) must investigate it
- advise the discloser about the circumstances (if any are applicable) in which a disclosure must be referred to another agency or person under another law of the Commonwealth,
- explain to the discloser the protections under the PID Act (see section 4 above), and
- inform the discloser about the limitations that may ordinarily result from requesting an anonymous disclosure (e.g., difficulty in investigating and notifying the discloser of progress)
- maintain the discloser's confidentiality, and any request for anonymity made by the discloser,
- determine the appropriate AO to whom the information should be forwarded, giving due regard to who is / may be involved

as soon as reasonably practicable after the disclosure is made, give the information to an AO of ARPC.

The supervisor (or manager) should seek the discloser's consent to provide the AO with the discloser's identity. If the discloser declines, the supervisor (or manager) will need provide the AO with as much information as possible, without revealing the discloser's identity and will need to conduct the reprisal risk assessment.

If the disclosure is not in writing, the supervisor or manager must make a written record of the substance of the disclosure and of the time and date of the disclosure and ask the discloser to sign the written record of the disclosure (where this is practicable).

The obligations of supervisors are set out in section 60A of the PID Act.

## 6. PROCEDURES FOR AOs RECEIVING A DISCLOSURE

### 6.1 Receiving a disclosure

Where:

- an individual discloses, or proposes to disclose, information to an AO, which the AO has reasonable grounds to believe may be disclosable conduct, and
- the AO has reasonable grounds to believe that the person may be unaware of the consequences of making the disclosure, the AO must:
  - inform the individual that the disclosure could be treated as an internal disclosure for the purposes of the PID Act
  - explain what the PID Act requires in order for the disclosure to be an internal disclosure (see section 2 above)
  - advise the individual about the circumstances (if any) in which a PID must be referred to an agency, or other person or body, under another law of the Commonwealth, and
  - advise the individual of any orders or directions of which the AO is aware that are designated publication restrictions that may affect disclosure of the information.

If the disclosure is not in writing, the AO must make a written record of the substance of the disclosure and of the time and date of the disclosure and ask the discloser to sign the written record of the disclosure (where this is practicable).

### 6.2 Conducting a reprisal risk assessment

An AO must conduct a risk assessment of the risk of reprisals being taken against the discloser (and other public officials who belong to ARPC, if applicable) as a result of the PID. This should be conducted as soon as possible after a potential PID is received by an AO.

In most cases, the AO will conduct the risk assessment for a PID. However, if the disclosure is first made to a supervisor and the person wishes their identity to remain anonymous or the authorized officer asks the supervisor for further assistance in carrying out the risk assessment, the supervisor should conduct a risk assessment.

Reprisal risk must be assessed in all cases however the way in which a risk assessment is conducted may vary depending on the circumstances. The risk assessment can include the risk of direct reprisal against the discloser and the risk of related workplace conflict or difficulties.

A risk assessment should involve assessing the specific behaviour and circumstances that may result in reprisals, and then putting in place appropriate strategies to prevent or contain them. Inappropriate workplace behaviour, including harassment, intimidation, undermining of authority, ostracism, humiliation, questioning of motives and heavier scrutiny of work, or any other conduct that is detrimental or threatens detriment can greatly increase stress and can result in serious injury to someone who has made a disclosure, a potential discloser or someone who has provided supporting information (i.e., a witness).

Early and open communication with the discloser is critical. Sensitivity needs to be applied in talking about the risks with the discloser. The AO conducting the risk assessment should be alert to the possibility that the discloser may feel that the discussion of reprisal risk is intended to discourage them from proceeding with their disclosure.

Appropriate strategies should be put in place to prevent or reduce such risks where this is under ARPC's control. These strategies should be agreed with the discloser, potential discloser and/or witnesses

beforehand. They may include, but be not limited to:

- methods of communication with the discloser etc., – e.g., restricting direct incoming calls – if they have provided name and contact details;
- the discloser etc., taking leave;
- the discloser etc., being moved to a different team; and
- changing work responsibilities.

The discloser, potential discloser and/or witnesses will be informed of the protections and the proper channels for reporting victimisation or discrimination. As part of the risk assessment, any concerns of the discloser about the risks of reprisal will be discussed with them and addressed, considering all the circumstances.

The following framework may be used for assessing the risk of reprisals being taken:

- Identifying the risks: the AO should identify the risk factors relating to the particular disclosure, taking into account the individual and organisational circumstances. Some risk factors may include (but are not limited to) threats or past experience, confidentiality unlikely to be maintained, significant reported wrongdoing, vulnerable discloser etc.
- Assessing the risks: what is the likelihood and consequences of reprisals or related workplace conflict? For example, the likelihood of a risk may be high where threats have been made, there is already conflict in the workplace or the discloser's identity would be obvious because of the nature of the disclosure.
- Controlling the risks: what strategies should be put in place to prevent or contain reprisals or related workplace conflict? Any decision affecting the discloser should be made in consultation with them and should be reasonable and appropriate in all of the circumstances.
- Monitoring and reviewing the risk management process: have the strategies been implemented and were they effective, do they need to be updated?

For further information on carrying out reprisal risk assessments, see the Ombudsman's Agency Guide to the Public Interest Disclosure Act 2013: [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

### 6.3 Allocation of the disclosure

An AO who receives a disclosure (either directly from the discloser or from the discloser's supervisor) must either:

- allocate the disclosure to one or more agencies, or
- decide not to allocate the disclosure to any agency if they are satisfied, on reasonable grounds, that:
  - there is no reasonable basis on which the disclosure could be considered an internal disclosure, or
  - the conduct disclosed would be more appropriately investigated under another Commonwealth law or power.

The AO may obtain information from such persons, and make such inquiries, as the AO thinks fit, in order to make a decision about the allocation of the disclosure. The AO must use best endeavours to determine the allocation within 14 days (unless a stop action direction has been issued under the NACC Act), maintain confidentiality and keep adequate records.

In making a decision about allocation, the AO will have regard to:

- the principle that an agency should not handle the disclosure unless one or more of the following circumstances apply:
  - in any case – some or all of the conduct disclosed relates to the agency;
- any other matters the AO considers relevant, including:

- whether the AO considers that another agency in the same portfolio as ARPC (for example, the Treasury) would be better able to handle the disclosure.; and
- any recommendation of the Ombudsman or the IGIS under section 55 about the allocation of the disclosure.

The AO must not allocate a disclosure to any other agency unless an AO of that agency has consented to the allocation.

If the information disclosed concerns conduct alleged to be related to an intelligence agency, Australian Criminal Intelligence Commission (ACIC) or the Australian Federal Police (AFP) (in respect of their intelligence functions) then the IGIS must be notified and the process in section 45A of the PID Act must be followed.

The requirements for making a decision about allocating a disclosure are set out in section 43 of the PID Act.

### 6.4 Notification of allocation and record keeping

When the AO allocates the handling of a disclosure to an agency, the AO must, as soon as reasonably practicable, give written notice of the following to Principal Officer of the recipient agency and the Ombudsman (or to the IGIS if the PID is allocated to an intelligence agency or ACIC or the AFP, in relation to their intelligence functions):

- the allocation to the agency;
- the information that was disclosed to the AO;
- the conduct disclosed; and
- if the discloser's name and contact details are known to the AO, and the discloser consents to the Principal Officer being informed – the discloser's name and contact details.

If contacting the discloser is reasonably practicable, as soon as reasonably practicable after the allocation has occurred, the AO will also inform the discloser in writing of the allocation and of the information that has been provided to the Principal Officer of that agency.

An AO allocating the handling of a disclosure to one or more agencies must keep an appropriate written record (kept confidential) of:

- the decision (including the name of each agency to which the disclosure is to be allocated);
- the reasons for the decision;
- if the PID has been allocated to another agency — the consent provided by the AO of the recipient; and
- whether the notice (or a copy of the notice) of the decision to allocate was given to the discloser, and if not, why not and
- if the notice (or a copy of the notice) of the decision to allocate was given to the discloser - of the following matters:
  - the day and time the notice (or copy) was given to the discloser;
  - the means by which the notice (or copy) was given to the discloser; and
  - the matters included in the notice.

The requirements for the notice of a decision to allocate a PID are set out in section 44 of the PID Act. The requirements for written records are set out in section 6 of the PID Standard.

### 6.5 Reallocation of PIDs

The AO may, after making a decision to allocate a PID, decide to reallocate the PID to one or more agencies (which may include an agency to which the PID had formerly been allocated). The processes

set out above must be followed if a decision is made to reallocate the PID.

### 6.6 Mandatory referral to the NACC

In addition to considering whether or not to allocate the disclosure, the AO must consider whether the PID involves a corruption issue which:

- concerns the conduct of a person who is, or was, a staff member of ARPC while that person is, or was a staff member, and
- the AO suspects it could involve corrupt conduct that is serious or systematic.

A staff member includes an agency head, employees, contracted service providers for Commonwealth contracts and their employees and officers, secondees, statutory officeholders, and others performing functions under a Commonwealth law (see section 12 of the NACC Act).

If the AO suspects that the PID involves a corruption issue of this kind, they must refer the PID to the National Anti-Corruption Commissioner (the Commissioner) as soon as reasonably practicable. The AO must inform the discloser of the referral as soon as reasonably practicable after the referral.

An AO is not required to provide information to the Commissioner if:

- the AO has reasonable grounds to believe that the Commissioner is already aware of the information, or
- the Commissioner has advised the AO that the provision of information about the corruption issue is not required.

The Commissioner may direct an agency head (including the CE) to stop the agency taking specified action, including allocating the PID.

If the AO does not allocate the PID because of a stop action direction made by the Commissioner under the NACC Act, the AO must, as soon as reasonably practicable:

- give written notice to the Ombudsman (or the IGIS regarding intelligence agencies and functions) of:
  - the information that was disclosed
  - the conduct disclosed
  - if the discloser's name and contact details are known to the AO, and the discloser consents to the Ombudsman (or IGIS) being informed—the discloser's name and contact details, and
  - the stop action direction under the NACC Act that prevents allocation of some or all of the PID, and
- inform the discloser and give the discloser a copy of the notice if the CE (or delegate) considers that it is reasonably practicable or appropriate to do so.

The AO must keep an appropriate written record of the following:

- details of the direction, including when the direction was made and when the stop action direction no longer applies, and
- whether the CE (or delegate) considers that it is reasonably practicable or appropriate for the discloser to be given a copy of the notice (and whether the discloser was given a copy of the notice).

The above requirements for written records are set out in section 6 of the PID Standard.

## 7. INVESTIGATING THE DISCLOSURE

The Principal Officer (or their delegate) must, as soon as reasonably practicable after being allocated a PID, decide whether to:

- investigate the disclosure;



- not to investigate the disclosure further; or
- investigate the disclosure under another Commonwealth law or power.

If the Commissioner issues a stop action direction under the NACC Act, which prevents the investigation of some or all of the PID, the Principal Officer must inform the Ombudsman of the stop action direction (or the IGIS, if the PID concerns conduct relating to an intelligence agency, the IGIS, or ACIC or the AFP in relation to those agencies' intelligence functions).

The Principal Officer must, as soon as reasonably practicable, give written notice to the discloser providing information about the Principal Officer's powers to:

- decide not to investigate the PID,
- decide not to investigate the PID further, or
- decide to investigate the PID under another Commonwealth law or power.

The Principal Officer must ensure that, where it is reasonably practicable to do so, the discloser is given the above information within 14 days after the PID is allocated to ARPC.

### 7.1 Deciding whether or not to investigate

The Principal Officer may decide not to investigate the PID, or (if the investigation has started) not to investigate further if one of the following considerations apply:

- the discloser is not a current or former public official (see section 2.2 above);
- the information does not to any extent concern serious disclosable conduct;
- the disclosure is frivolous or vexatious;
- the information is the same or substantially the same, as information previously disclosed under the PID Act and
  - a decision was previously made under subsection 48(1) of the PID Act not to investigate the earlier disclosure, or not to investigate the earlier disclosure further; or
  - the earlier disclosure has been, or is being, investigated as a disclosure investigation;
- the conduct disclosed, or substantially the same conduct, is being investigated under another Commonwealth law or power, and the Principal Officer is satisfied, on reasonable grounds, that it would be inappropriate to conduct an investigation under the PID Act;
- the conduct disclosed, or substantially the same conduct, has been investigated under another Commonwealth law or power, and the Principal Officer is satisfied, on reasonable grounds, that there are no further matters concerning the conduct that warrant investigation;
- the Principal Officer is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another Commonwealth law or power (but not just because the conduct disclosed raises a corruption issue);
- both:
  - the Principal Officer has been informed by the discloser, an AO of ARPC or a principal officer or AO of another agency that the discloser does not wish the investigation of the disclosure to be pursued; and
  - the Principal Officer is satisfied, on reasonable grounds, that there are no matters concerning the disclosure that warrant investigation; or
- it is impracticable to investigate the disclosure because:
  - the discloser's name and contact details have not been disclosed,
  - the discloser refuses or fails or is unable to give the investigator such information or assistance as the person who is or will be conducting the investigation asks the discloser to give;
  - of the age of the information.

The Principal Officer may wish to consider obtaining legal advice if it is unclear as to whether the PID



Act provisions apply.

## 7.2 Decision not to investigate

If the Principal Officer has decided not to investigate the PID (or not to investigate the PID further) they must, as soon as reasonably practicable, give written notice to the discloser (if contacting the discloser is reasonably practicable) and to the Ombudsman stating that:

- the Principal Officer has decided not to investigate the PID (or not to investigate the PID further);
- the reasons for that decision; and
- if the Principal Officer has taken action, or proposes to take action, in relation to the referral of the conduct disclosed for investigation under another Commonwealth law or power, details of:
  - the other Commonwealth law or power
  - the agency or other person or body to which the conduct has been, or is to be, referred, and
  - the steps taken, or proposed to be taken, for the conduct to be referred or to facilitate its referral.

The Principal Officer may delete from the copy of the reasons given to the discloser anything that would cause the document:

- to be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*
- to have, or be required to have, a national security or other protective security classification, or
- to contain intelligence information.

The notification requirements are set out in sections 50 and 50A of the PID Act.

The Principal Officer must, as soon as reasonably practicable, take reasonable steps to refer the conduct disclosed, or to facilitate its referral, for investigation under another Commonwealth law or power, if the Principal Officer:

- decides not to investigate the PID, or not to investigate the PID further,
- does not decide to investigate the PID under a separate investigative power, and
- is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another Commonwealth law or power (other than a separate investigative power).

The requirements for referral of a PID for investigation under another Commonwealth law or power are set out in section 50AA of the PID Act.

## 7.3 Decision to investigate

If the Principal Officer decides to investigate the disclosure, they must, if reasonably practicable and as soon as reasonably practicable, notify the discloser that they are required to investigate and give written notice of the estimated length of the investigation.

## 7.4 Conducting the investigation

When conducting an investigation, the Principal Officer (or delegate) must:

- ensure that a PID is investigated on the basis that a decision whether evidence is sufficient to prove a fact will be determined on the balance of probabilities,
- ensure that the evidence relied on in an investigation is relevant,
- ensure that a finding of fact is based on logically probative evidence,
- act in accordance with any rules relating to fraud that are made for the purposes of the *Public Governance, Performance and Accountability Act 2013*, to the extent that the investigation relates to one or more instances of fraud, and those rules are not inconsistent with the PID Act, and
- comply with the PID Standard.

The Principal Officer may delegate to a suitably qualified investigator the conduct of and report on the investigation. The Principal Officer should check and validate that the external investigator has appropriate security clearance, proven and independently verifiable knowledge of the PID Act's requirements and application. Appropriate qualifications and credentials, and independently verified referees are also required. The Ombudsman can provide advice on providers where an external investigator cannot be identified or engaged.

The following general principles will apply to the conduct of investigations:

- maintaining the confidentiality of the identity of the discloser will be paramount and observed.
- the principles of natural justice will be observed, including that any person who is a subject of the investigation will be provided with an opportunity to comment before any finding adverse to the person is made.

The Principal Officer may conduct the PID investigation as they see fit and they may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as they think fit.

Subject to restrictions imposed by any other law of the Commonwealth, the Principal Officer must ensure that, if a person is interviewed as part of the investigation of a PID, the interviewee is informed of the following:

- the identity and function of each individual conducting the interview t
- the process of conducting an investigation t
- the authority of the Principal Officer under the PID Act to conduct the investigation, and t
- the protections provided by Part 2 of the PID Act (see section 4 above). t

must ensure that:

- an audio or visual recording of the interview is not made without the interviewee's knowledge,
- when an interview ends, the interviewee is given an opportunity to make a final statement or comment, or express a position, and
- any final statement, comment or position by the interviewee is included in the record of the interview.

If, in the course of a PID investigation, the person conducting the investigation (the investigator) suspects on reasonable grounds that information that has been disclosed or obtained in the course of the investigation is evidence of an offence against the law, the investigator may give that information to the police. The investigator must give the information to the police if they suspect on reasonable grounds that the offence is punishable by imprisonment for at least 2 years.

At any time during the course of the investigation, if the Principal Officer becomes aware of a corruption issue that:

- concerns the conduct of a person who is, or was, a staff member of the agency while that person is, or was, a staff member (see section 5.4 above for the meaning of staff member), and
  - the officer suspects could involve corrupt conduct that is serious and systemic,
- they must refer the corruption issue to the Commissioner, or in the case of an intelligence agency, to the IGIS.

The Principal Officer must notify the discloser that the PID has been referred to the Commissioner, as soon as reasonably practicable, after the referral.

The Principal Officer conducting an investigation may adopt a finding set out in the report of an investigation or inquiry under another Commonwealth law or power or under another investigation under the PID Act.

The requirements for conducting investigations are in sections 53, 54, and 56 of the PID Act and in Part 3 of the PID Standard.

### 7.5 Report of Investigation

On completing an investigation, the Principal Officer (or delegate) must prepare a report that sets out:

- the matters considered in the course of the investigation;
- the duration of the investigation;
- the Principal Officer's findings (if any);
- any claims or evidence of reprisal action taken against the discloser, or any other person, that relates to the matters considered in the course of the investigation and ARPC's response to those claims and that evidence; and
- any action(s) or recommended action(s)

The report must, where relevant:

- identify whether there have been one or more instances of disclosable conduct;
- identify any regulations, rules, administrative requirements, or similar matters to which the disclosable conduct relates;
- explain the steps used to gather evidence;
- set out a summary of the evidence, and any findings and recommendations made; and
- state whether the report was completed within the PID Act time limit including any granted extensions.

#### Providing the investigation report to the discloser

The Principal Officer will provide a written notice of the completion of the investigation with a copy of the report to the discloser within a reasonable time after preparing the report. The Principal Officer may delete from the copy of the report provided to the discloser, any material that:

- is likely to enable identification of the discloser or another person,
- would result in the copy being an exempt document under Part IV of the *Freedom of Information Act 1982* (FOI Act),
- would result in the copy having, or being required to have, a national security or other protective security classification,
- would result in the copy containing intelligence information,
- would contravene a designated publication restriction as defined in the PID Act.

#### Providing the investigation report to the Ombudsman

The Principal Officer will provide the Ombudsman with written notice of the completion of the investigation, together with a copy of the report, within a reasonable time after preparing the report. The principal officer may delete from a copy of the report given to the Ombudsman or the IGIS any material:

- that is likely to enable the identification of the discloser or another person; or
- the inclusion of which would contravene a designated publication restriction.

### 7.6 Timeframe for completing an investigation

The investigation is completed when the Principal Officer has prepared the report of the investigation. Under section 52 of the PID Act this must be within 90 days of the day the matter:

- was initially allocated for investigation; or
- was reallocated for investigation; or
- was reinvestigated; or

- when the Principal Officer became aware that a stop action direction under the NACC Act, prevented the investigation.

The Ombudsman may grant one or more extensions of time. If an extension is granted, the Ombudsman will inform the discloser and give reasons for the extension. In cases where the Ombudsman doesn't have the discloser's identity or contact details, the agency handling the disclosure will be asked to notify the discloser. If an extension is granted, the Principal Officer must, as soon as reasonably practicable and if reasonably practicable, let the discloser know about the progress of the investigation.

Failure to complete the investigation within the 90 day time limit does not affect the validity of the investigation.

ARPC is committed to communicate with the discloser in a timely manner. Disclosers are encouraged to approach the Principal Officer or AOs at any time – to discuss any concerns they have around the process, their treatment, or the outcome. If a discloser is unhappy with any of this, they may contact the Ombudsman by visiting the Commonwealth Ombudsman's Public Interest Disclosure complaints webpage <https://www.ombudsman.gov.au/complaints/public-interest-disclosure-whistleblowing>

Time limit requirements for investigations are in section 52 of the PID Act.

## 8. EDUCATION AND AWARENESS

Staff education and awareness sessions will be provided on the PID Act, including the ARPC PID Procedure should staff wish to make a PID. An information sheet about PIDs will also be provided to contractors that ARPC engage with.

ARPC's AOs and Managers are provided specific awareness sessions on their responsibilities under the PID Act.

## 9. COMMONWEALTH OMBUDSMAN MONITORING

ARPC must provide information requested by the Ombudsman for the purposes of preparing the Ombudsman's annual report under the PID Act (s 76). Information is requested via survey by the Ombudsman after each financial year.

## 10. PROCEDURE REVIEW

The PID Procedure should be reviewed and updated whenever there are material changes in legislation, other ministerial or departmental guidelines, operations, key stakeholders, systems or at least every three years.

## 11. FURTHER RESPONSIBILITIES OF PRINCIPAL OFFICER

The Principal Officer must:

- take reasonable steps to protect public officials who belong to ARPC against reprisals in relation to PIDs that have been, may have been, are proposed to be, or could be made to an authorized officer or supervisor belonging to ARPC;
- take reasonable steps to encourage and support public officials who make or are considering making, PIDs relating to the agency, and those who provide or are considering providing assistance 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;
- take reasonable steps to ensure that the number of AOs is sufficient to ensure that they are readily accessible to public officials who belong to ARPC, and that public officials are aware of

- their identity;
- ensure, as soon as reasonably practicable, that appropriate action in relation to ARPC is taken in response to any recommendation made in a s 51 report.

The additional obligations of public officials are in section 59 of the PID Act.

## 12. OBLIGATIONS OF ALL ARPC OFFICIALS

All officials who belong to the ARPC must use their best endeavours to:

- assist the Principal Officer in the conduct of an investigation under the PID Act
- assist the Ombudsman and the IGIS (where relevant) in the performance of their functions under the PID Act; and
- assist any other public official to exercise a right, or perform a function or duty under the PID Act.

All public officials who belong to ARPC share the responsibility of ensuring the PID Act works effectively, this includes:

- reporting matters where there is evidence that show or tends to show disclosable conduct.
- identifying areas where there may be opportunities for wrongdoing to occur because of inadequate systems or procedures, and proactively raising those with management.
- supporting officials who they know have made a PID.
- keeping confidential the identity of disclosers, witnesses, and anyone against whom an allegation has been made, if they become aware of those matters.

The additional obligations of public officials are in section 61 of the PID Act.

## 13. WHAT IF THE DISCLOSER IS NOT SATISFIED WITH ARPC'S ACTIONS?

A discloser may make a complaint to the Ombudsman about ARPC's handling of a PID. The Ombudsman may review the handling of the PID by any or all of the supervisor, AO, Chief Executive Officer, or any other public official involved. As a result of the review, the Ombudsman may make written recommendations, including recommendations about allocation, reallocation, investigation, reinvestigation, or any other action. The Chief Executive Officer (or delegate) must consider and respond to any recommendation made by the Commonwealth Ombudsman in accordance with section 55 of the PID Act.

If a person who has made a PID believes, on reasonable grounds, that the investigation conducted by ARPC was inadequate, the response to the investigation was inadequate, or the investigation was not completed within the time limit, it may be open to the person to make an external disclosure under the PID Act.

For more information, please refer to the Commonwealth Ombudsman's website: <https://www.ombudsman.gov.au/>.

## 14. KEY RELATED DOCUMENTS

Key internal documents related to this Procedure are:

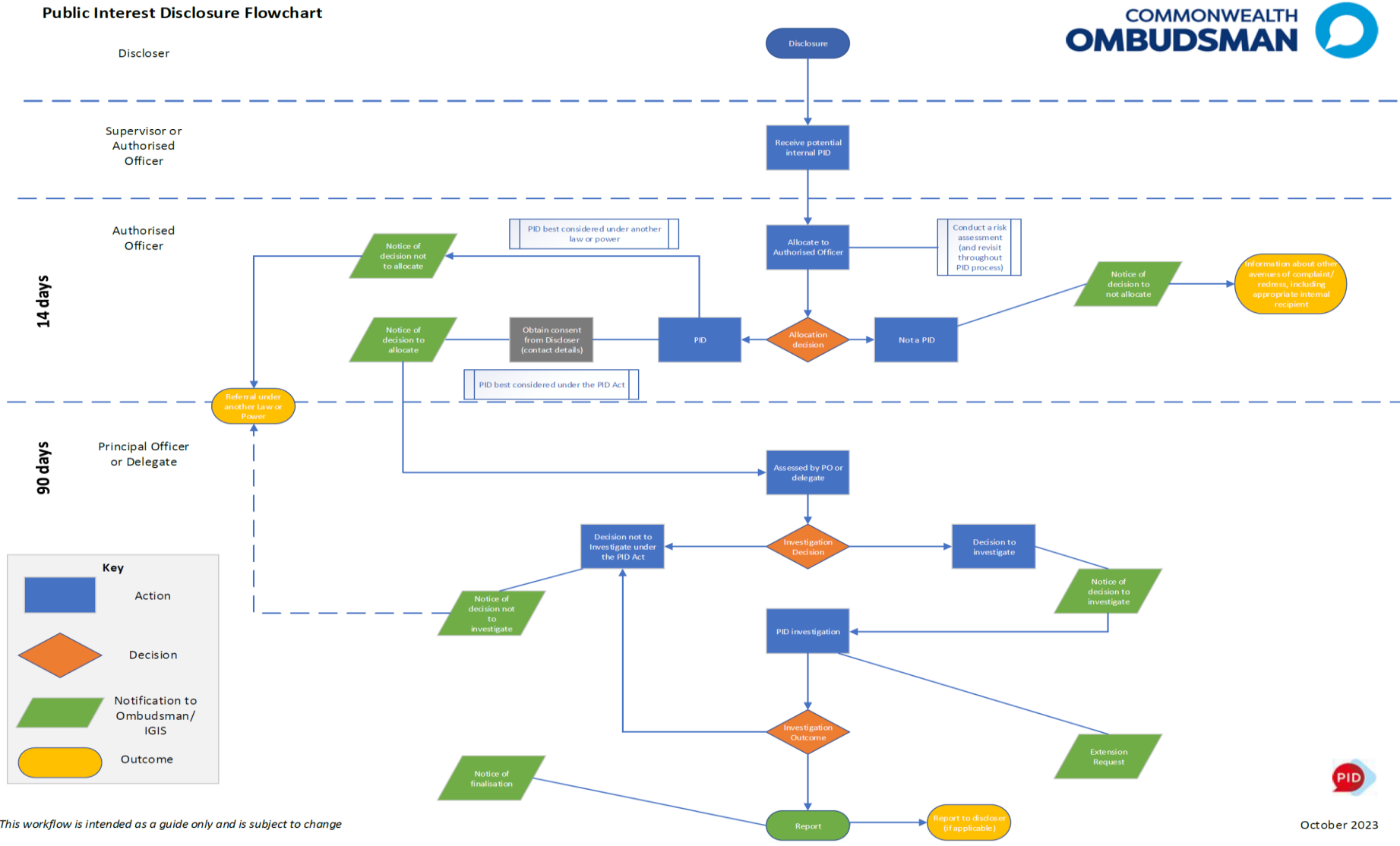
- ARPC Values and ARPC Code of Conduct;
- People Policy;
- Fraud Control Policy;
- Delegations Policy;
- Procurement Procedure; and
- Code of Conduct Breach Procedure.

Key external documents related to this Procedure are:

- PID Act and PID Standard;
- Commonwealth Ombudsman Website – Tools and Resources  
<https://www.ombudsman.gov.au/industry-and-agency-oversight/public-interest-disclosure-whistleblowing/tools-and-resources>
- Commonwealth Ombudsman Website – Information Sheets and FAQs;
- Commonwealth Ombudsman Website – Notification forms.
- Commonwealth Ombudsman Agency Guide to the *Public Interest Disclosure Act 2013*;

# Public Interest Disclosure Procedure

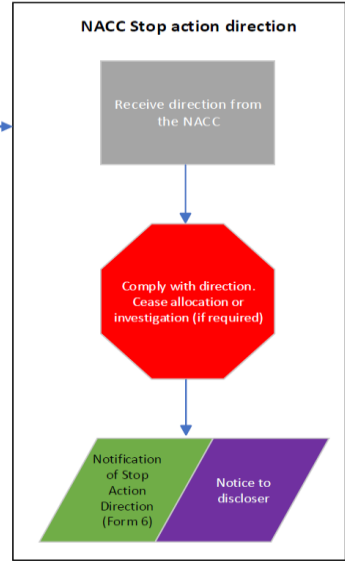
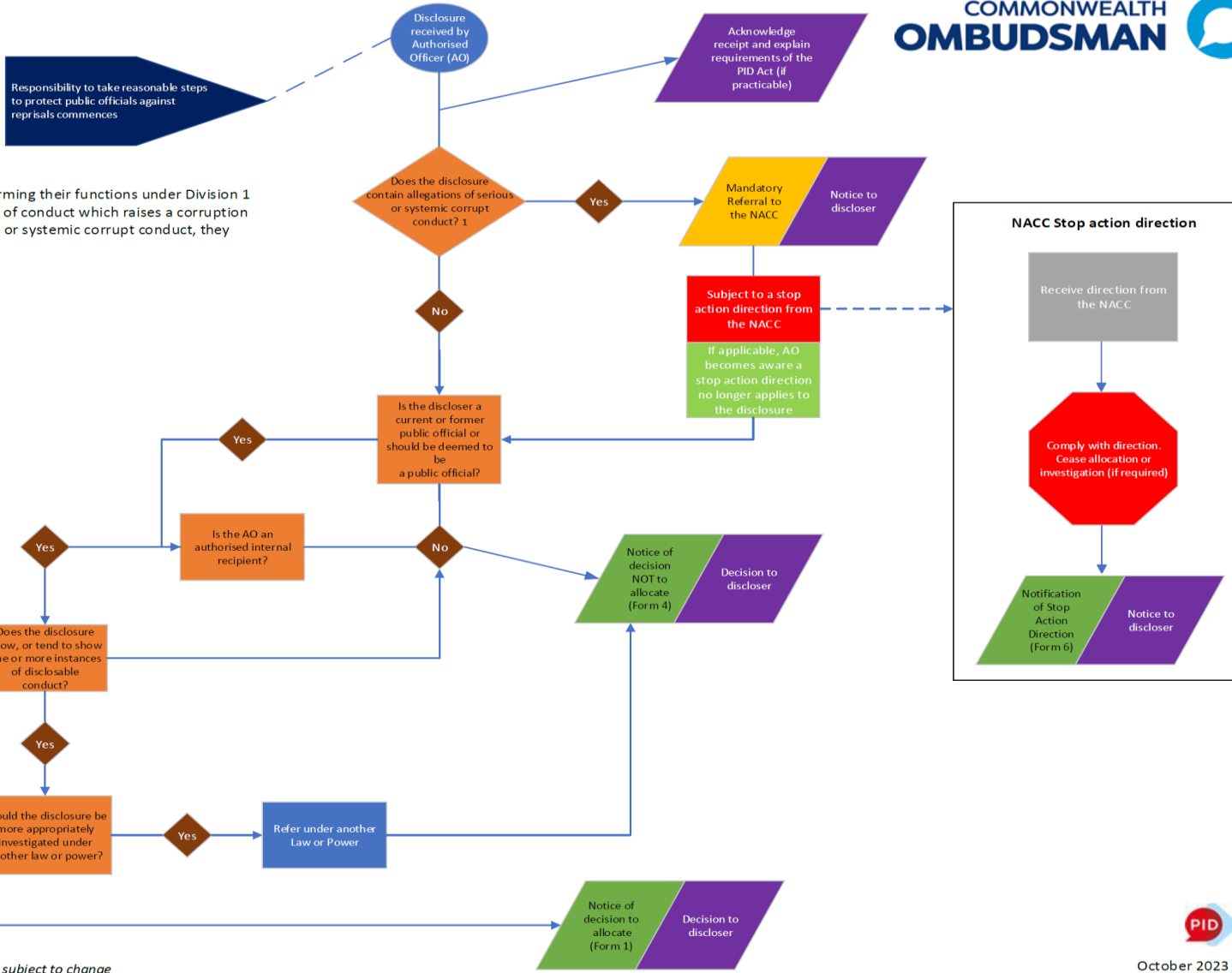
## Appendix 1: Handling a Public Interest Disclosure Flowchart



## Public Interest Disclosure Procedure

### Appendix 2: Authorised Officer Flowchart

#### Authorised Officer Flowchart



Responsibility to take reasonable steps to protect public officials against reprisals commences

1 - Where an AO in the course of performing their functions under Division 1 of Part 3 of the PID Act becomes aware of conduct which raises a corruption issue that they suspect involves serious or systemic corrupt conduct, they must refer to the NACC.

*This workflow is intended as a guide only and is subject to change*