

Whistleblowing at APRA

s 22

APRA's whistleblowing function is managed by the Enforcement team within PAD Legal (**APRA Whistleblower Team**).

Advice and support in respect of APRA's whistleblowing function can be sought either by emailing whistleblower@apra.gov.au, or by contacting a member of the APRA Whistleblower Team directly (see below).

What do I do if I receive a disclosure from a potential Whistleblower?

1. Ask that the disclosure be made in writing via an email to whistleblower@apra.gov.au.

2. If the potential Whistleblower refuses to provide the information in writing:
   - take a detailed file note of the conversation;

Policy and Procedure

Whistleblower Policy

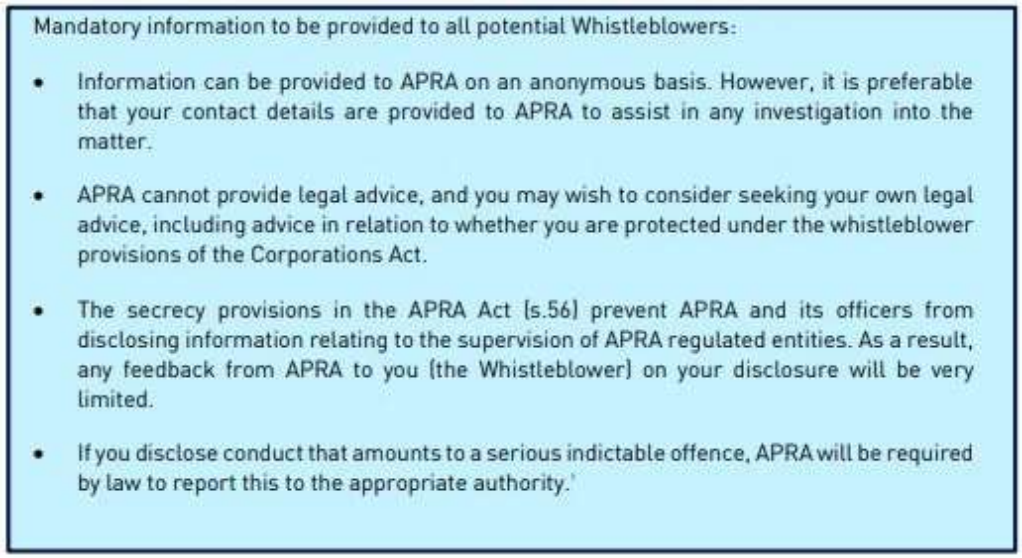
Whistleblower Procedure

What is a Whistleblower?

A Whistleblower is a person, usually an employee or ex-employee of a regulated entity, who provides information to APRA regarding what they consider to be misconduct or any

- if possible, organise for the conversation to be attended by another APRA officer (in addition to yourself); and
- share the file note with the Whistleblower Team (whistleblower@apra.gov.au).

When speaking to a potential Whistleblower you **MUST** preface the conversation with the following information and confirm they understand.


Mandatory information to be provided to all potential Whistleblowers:

- Information can be provided to APRA on an anonymous basis. However, it is preferable that your contact details are provided to APRA to assist in any investigation into the matter.
- APRA cannot provide legal advice, and you may wish to consider seeking your own legal advice, including advice in relation to whether you are protected under the whistleblower provisions of the Corporations Act.
- The secrecy provisions in the APRA Act (s.56) prevent APRA and its officers from disclosing information relating to the supervision of APRA regulated entities. As a result, any feedback from APRA to you (the Whistleblower) on your disclosure will be very limited.
- If you disclose conduct that amounts to a serious indictable offence, APRA will be required by law to report this to the appropriate authority.'

Note: it isn't always easy to identify what may constitute a whistleblower disclosure. For example, **exit interviews of entity staff have a real likelihood of qualifying for whistleblower protections**.

For APRA staff who are conducting exit interviews of entity staff, please take a detailed file note of the interview and share with the Whistleblower Team for assessment.

improper state of affairs in relation to the regulated entity.

APRA's Whistleblower Policy sets out the criteria that must be met before a disclosure can be considered eligible for Whistleblower protection, and it is the responsibility of the APRA Whistleblower Team to determine whether these criteria are met.

Guidance on whether a disclosure is eligible for Whistleblower protection can be found here.

Confidentiality

APRA and its staff members must not disclose information that identifies, or is likely to identify, a whistleblower.

This doesn't just mean disclosing the whistleblower's identity. It includes sharing any information about the whistleblower (even the fact that APRA has received a disclosure) which may enable an entity to work out the whistleblower's identity.

If you have received information from an individual at a regulated entity and are unsure as to whether it may qualify as a whistleblower disclosure, please contact the Whistleblower Team.

Disclosure of any of the above is a breach of the Corporations Act, and a criminal offence.

Training videos







APRA Whistleblower Team

s 22

Whistleblower Manager

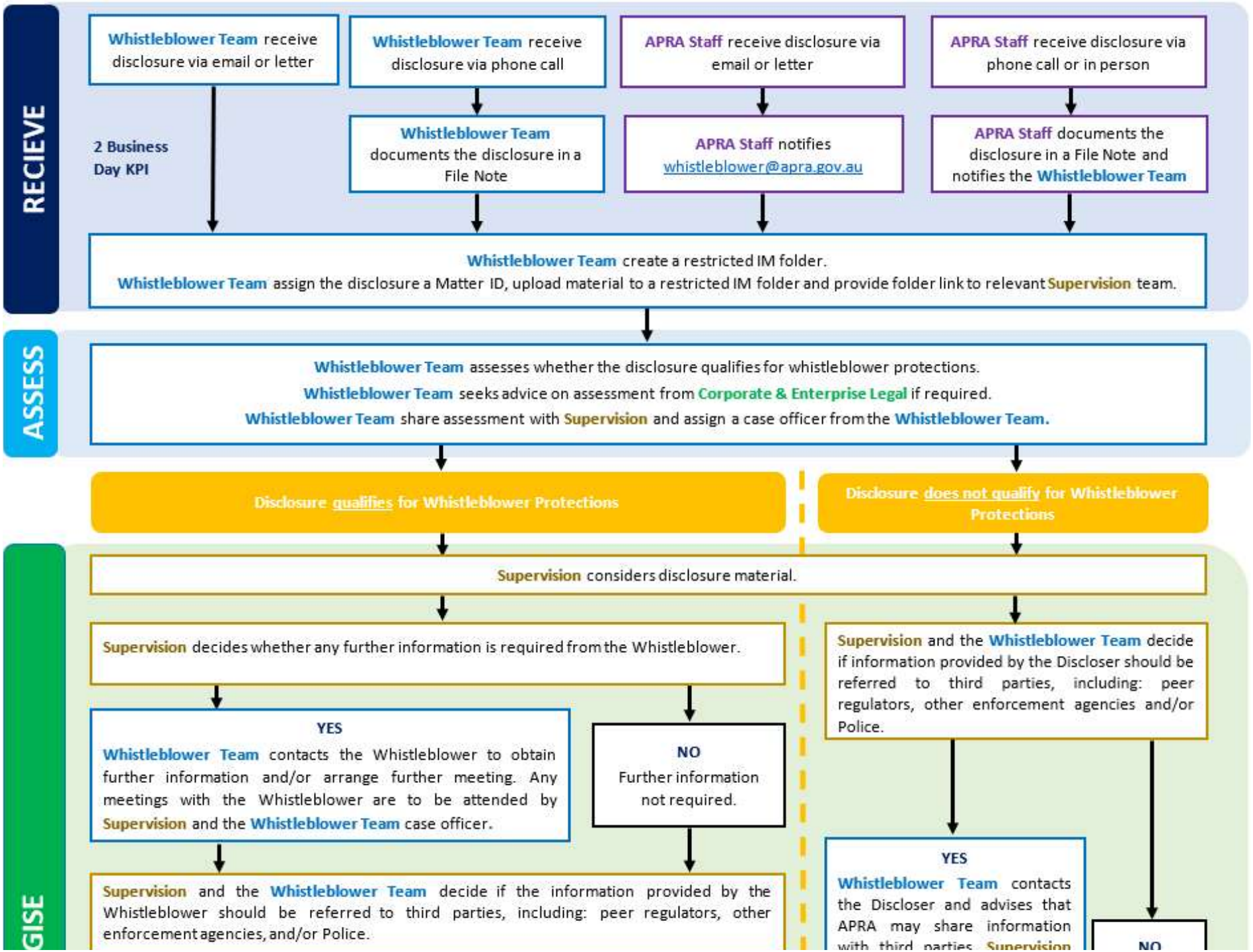
s 22

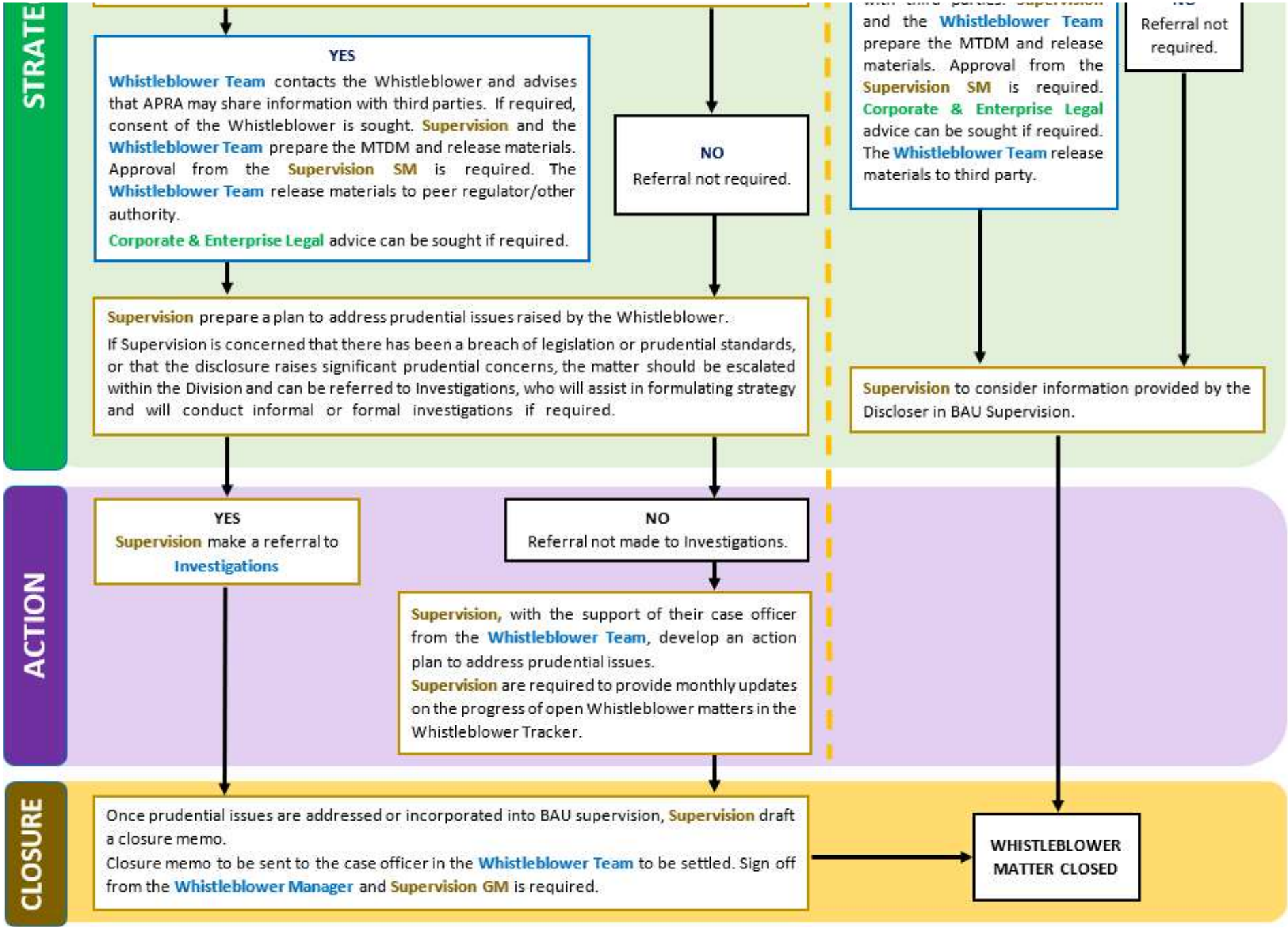
Whistleblower coordinator

s 22

Whistleblower coordinator

Roles and responsibilities

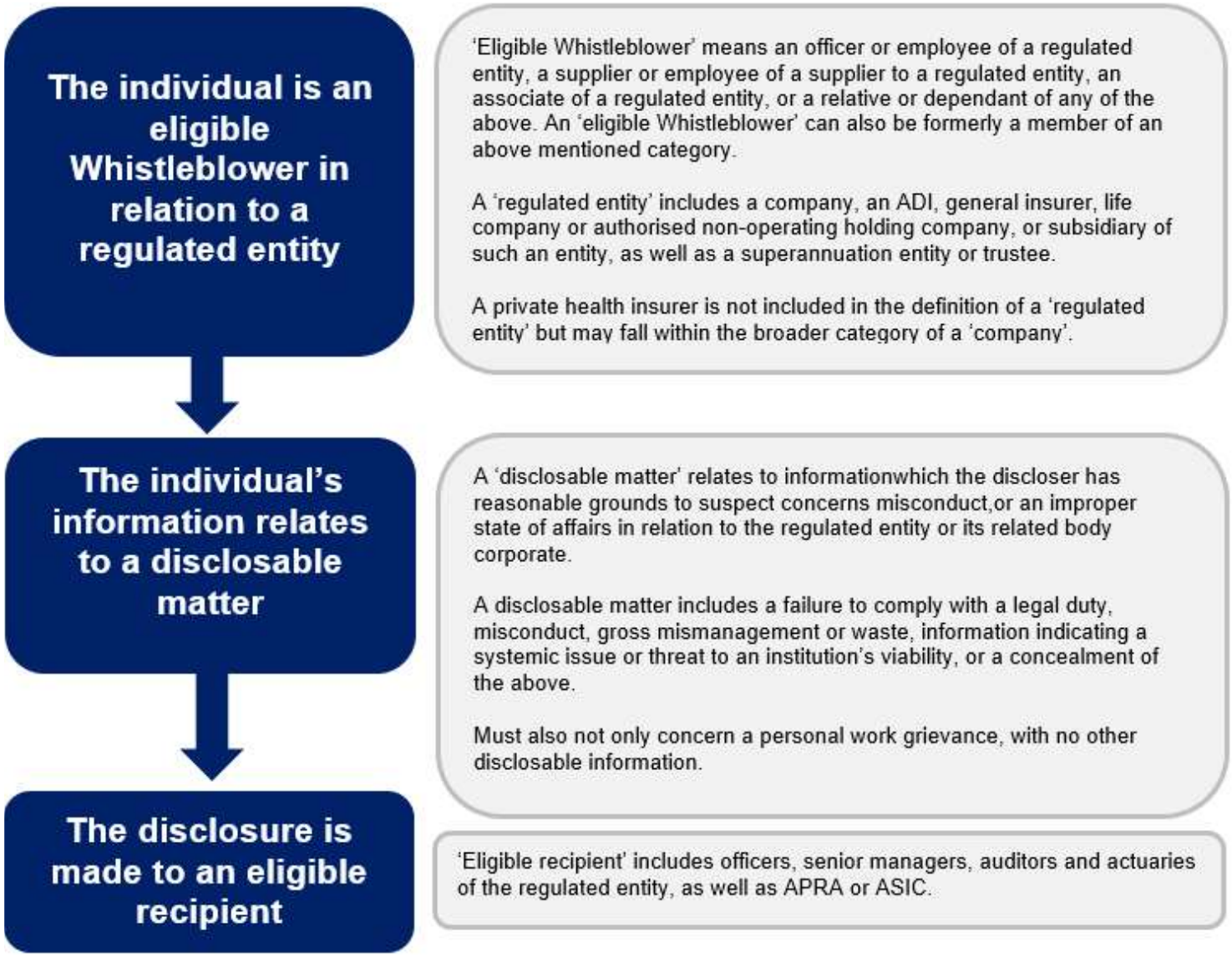

RECIEVE
Whistleblower Team receive disclosure via email or letter
Whistleblower Team receive disclosure via phone call
APRA Staff receive disclosure via email or letter
APRA Staff receive disclosure via phone call or in person
2 Business Day KPI
Whistleblower Team documents the disclosure in a File Note
APRA Staff notifies whistleblower@apra.gov.au
APRA Staff documents the disclosure in a File Note and notifies the Whistleblower Team
Whistleblower Team create a restricted IM folder.
Whistleblower Team assign the disclosure a Matter ID, upload material to a restricted IM folder and provide folder link to relevant Supervision team.
ASSESS
Whistleblower Team assesses whether the disclosure qualifies for whistleblower protections.
Whistleblower Team seeks advice on assessment from Corporate & Enterprise Legal if required.
Whistleblower Team share assessment with Supervision and assign a case officer from the Whistleblower Team.
Disclosure qualifies for Whistleblower Protections
Disclosure does not qualify for Whistleblower Protections
GISE
Supervision considers disclosure material.
Supervision decides whether any further information is required from the Whistleblower.
YES
Whistleblower Team contacts the Whistleblower to obtain further information and/or arrange further meeting. Any meetings with the Whistleblower are to be attended by Supervision and the Whistleblower Team case officer.
NO
Further information not required.
Supervision and the Whistleblower Team decide if the information provided by the Whistleblower should be referred to third parties, including: peer regulators, other enforcement agencies, and/or Police.
Supervision and the Whistleblower Team decide if information provided by the Discloser should be referred to third parties, including: peer regulators, other enforcement agencies and/or Police.
YES
Whistleblower Team contacts the Discloser and advises that APRA may share information
NO


STRATE
YES
Whistleblower Team contacts the Whistleblower and advises that APRA may share information with third parties. If required, consent of the Whistleblower is sought. Supervision and the Whistleblower Team prepare the MTDM and release materials. Approval from the Supervision SM is required. The Whistleblower Team release materials to peer regulator/other authority.
Corporate & Enterprise Legal advice can be sought if required.
NO
Referral not required.
and the Whistleblower Team prepare the MTDM and release materials. Approval from the Supervision SM is required. Corporate & Enterprise Legal advice can be sought if required. The Whistleblower Team release materials to third party.
Referral not required.
Supervision prepare a plan to address prudential issues raised by the Whistleblower.
If Supervision is concerned that there has been a breach of legislation or prudential standards, or that the disclosure raises significant prudential concerns, the matter should be escalated within the Division and can be referred to Investigations, who will assist in formulating strategy and will conduct informal or formal investigations if required.
Supervision to consider information provided by the Discloser in BAU Supervision.
ACTION
YES
Supervision make a referral to Investigations
NO
Referral not made to Investigations.
Supervision, with the support of their case officer from the Whistleblower Team, develop an action plan to address prudential issues.
Supervision are required to provide monthly updates on the progress of open Whistleblower matters in the Whistleblower Tracker.
CLOSURE
Once prudential issues are addressed or incorporated into BAU supervision, Supervision draft a closure memo.
Closure memo to be sent to the case officer in the Whistleblower Team to be settled. Sign off from the Whistleblower Manager and Supervision GM is required.
WHISTLEBLOWER MATTER CLOSED

Eligibility for Whistleblower status

Disclosures received by APRA fall into two categories: those which qualify for Whistleblower protection pursuant to legislation (Whistleblower Disclosures) and those which do not (Non-qualifying Disclosures).

In order to qualify as a Whistleblower, a disclosure must satisfy the following criteria:



APRA staff obligations

APRA's role is to encourage Whistleblowers to come forward with their concerns and protect them when they do so. The *Corporations Act 2001* gives qualifying Whistleblowers legal rights and protections. It is important that APRA upholds these protections.

These protections include:

- Protection from legal action brought against the Whistleblower for making a disclosure (section 1317AB *Corporations Act 2001*);
- Protection against victimisation (section 1317AC *Corporations Act 2001*); and
- Protection against detriment, including but not limited to dismissal from employment, injury to employment, employment discrimination and harassment (sections 1317AD and 1317ADA *Corporations Act 2001*).

Obligations to Whistleblower

APRA is required under section 1317AAE of the *Corporations Act 2001* to keep the identity, and any information that may lead to the identification of the discloser confidential, unless the disclosure is made:

- With the consent of the Whistleblower;
- To ASIC;
- To a member of the Australian Federal Police;
- To a legal practitioner for the purpose of obtaining legal advice or legal representation; or
- To a Commonwealth authority, or a State or Territory authority, for the purpose of assisting that authority in the performance of its functions and duties.

NOTE: Unauthorised disclosure of a Whistleblower's identity, or of information that could lead to their identification, is an offence under sections 1317AAE and 1311(1) of the Corporations Act 2001.

Secrecy Obligations

The secrecy provisions contained in section 56 of the *Australian Prudential Regulation Authority Act 1998* prevent APRA and its officers from disclosing information relating to a particular regulated institution. Accordingly, the feedback that APRA is able to provide disclosers regarding the information they have disclosed is restricted.

Legal Advice

APRA does not provide legal advice to disclosers, and APRA suggests to disclosers that they obtain independent legal advice to satisfy themselves as to whether or not they are protected as a Whistleblower under the *Corporations Act 2001* regime.

APRA also informs disclosers that APRA treats disclosures as confidential, irrespective of whether the discloser qualifies as a Whistleblower.

Handling Whistleblower material

Restricted Access

All disclosures and documents created in relation to both qualifying Whistleblower Disclosures, and Non-qualifying Disclosures must be stored in restricted IM folders in the Whistleblower IM site ONLY and never stored in a public IM Workspace.

When notified that a disclosure has been received, the Whistleblower Team will create a folder in the Whistleblower IM site and restrict access to the relevant members of the Supervision Team, the APRA Whistleblower Team and, in some circumstances, the Legal Team.

It is the responsibility of the Supervision Team to notify the APRA Whistleblower Team of changes in their team that may affect access to restricted Whistleblower IM folders.

If you require assistance creating a restricted folder or changing access, please contact the APRA Whistleblower Team at whistleblower@apra.gov.au.

REMEMBER: All material relating to Whistleblower Disclosures and Non-qualifying Disclosures are to be kept in restricted folders in the Whistleblower IM site.

Email restrictions

Documents or other files containing Whistleblower information must not be attached to emails sent within APRA. To maintain the confidentiality of Whistleblowers' identities and information, all whistleblower information must be saved to restricted folders and link to the documents shared instead.

Whistleblower Tracker Spreadsheet

The receipt and progress of Whistleblower matters is recorded in a Whistleblower Tracker (**Tracker**) overseen by the APRA Whistleblower Team. Matters are entered in to the Tracker before they are assessed for eligibility for Whistleblower protections, so the Tracker also logs Non-Qualifying Disclosures. It is the responsibility of each team managing a Whistleblower Disclosure to update the Tracker with the progress of the matter each month until it is finalised.

No identifying or protected information is to be included in the Tracker, as it is available for all APRA staff to access. If you have any questions on information to be included, please contact whistleblower@apra.gov.au.

Each whistleblower matter recorded in the Tracker is allocated a unique matter ID number. The matter ID number should be referenced in all correspondence and internal documents to ensure the correct matter is identified.

REMEMBER: Whistleblower material is sensitive, and it is an offence under the *Corporations Act 2001* to disclose a Whistleblower's identity, or information that could lead to their identification.