

# Whistleblower and Public Interest Disclosure Procedure

LEG-PR-002

## Applicability

ARTC Network Wide

## Publication Requirement

Internal & External

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1.1	12 November 2019		Rebranded – content changed to be compliant with the amendments made to the Corporations Act by the <i>Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019</i> (Cth).

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1.0	8 September 2015	Rebranded and assigned new document number as per COR-PR-001 Document Numbering – content remains unchanged.
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## 1 Introduction

### 1.1 Purpose

The Whistleblower and Public Interest Disclosure Procedure ("the **Procedure**") sets out procedures for facilitating and dealing with Disclosures relating to ARTC, including procedures:

- a) for reporting and dealing with Disclosable Conduct under the *Public Interest Disclosure Act 2013* (Cth) ("**PID Act**") and information which qualifies for protection under the whistleblower protection provisions in the Corporations Act; and
- b) to ensure that Public Officials who make Public Interest Disclosures and Eligible Whistleblowers who make disclosures of information which qualify for protection under the whistleblower protection provisions in the Corporations Act (collectively "**Disclosures**") are supported and protected from Reprisals (including assessing risks that Reprisals may be taken); and
- c) providing for confidentiality of investigative processes.

#### **Public Interest Disclosures**

Broadly speaking, a Public Interest Disclosure under the PID Act is a disclosure of information by an ARTC Public Official (which includes a staff member, the CEO or contracted service provider of ARTC) concerning Disclosable Conduct (including suspected or probable illegal conduct or other wrongdoing) that is made:

- a) to an Authorised Internal Recipient, which includes:
  - i. the ARTC Public Official's supervisor;
  - ii. the CEO or an ARTC staff member authorised by the CEO or by a delegate of the CEO (including the PIDW Officer under this Procedure); or
  - iii. in certain circumstances, an authorised officer of the Ombudsman or another appropriate investigative agency;
- b) to any other person, if:
  - i. an internal disclosure of the information has not been adequately dealt with, and if wider disclosure satisfies public interest requirements; or
  - ii. there is substantial and imminent danger to health or safety;
- c) to an Australian legal practitioner for purposes connected with the above matters.

#### **Protection under the Corporations Act**

The protections for corporate whistleblowers under the Corporations Act also apply to ARTC. These protections operate concurrently with the PID Act.

The Corporations Act gives special protection to disclosures about certain types of Disclosable Conduct which are made in accordance with the requirements of the Corporations Act.

This Procedure is designed to comply with the requirements of the Corporations Act and to ensure that the protections available in the Corporations Act are afforded to Eligible Whistleblowers who make a disclosure which qualifies for protection under the Corporations Act.

To be protected by the Corporations Act:

- a) the individual must have reasonable grounds to suspect that the information they are reporting:
  - i. concerns misconduct or an improper state of affairs relating to ARTC;
  - ii. constitutes an offence or contravention of certain nominated Acts; and/or
  - iii. represents a danger to the public or the financial system; and
- b) the report is made to:
  - i. ASIC;
  - ii. APRA;
  - iii. the auditor for ARTC, or a member of an audit team conducting an audit of ARTC;
  - iv. a director, company secretary or a Group Executive of ARTC;
  - v. the PIDW Officer under this Policy or external reporting channels (refer to clause 2.3 of this Procedure); or
  - vi. a legal practitioner for the purpose of obtaining legal advice or representation in relation to the operation of the whistleblower protections in the Corporations Act.

**NOTE:** This Procedure contains a summary only of certain requirements of the PID Act and the Corporations Act. Accordingly, this Procedure should not be relied on as a complete or accurate statement of the requirements of the PID Act or the Corporations Act. ARTC Public Officials and Eligible Whistleblowers should consider the relevant legislative framework and should seek legal advice if required.

## 1.2 Scope

This Procedure applies to all ARTC Public Officials and Eligible Whistleblowers (collectively “**Individuals**”).

A disclosure made by a relative, spouse or dependant of an Eligible Whistleblower will also be handled in accordance with this Procedure and the protections in this Procedure will apply to such individuals.

This Procedure:

- a) sets out the procedures for facilitating and dealing with Disclosures;
- b) addresses the protection and appropriate management of Disclosures (including assessing risks that Reprisals may be taken); and
- c) provides for confidentiality of investigative processes.

## 1.3 Personal Work Related Grievances

Personal work related grievances are not generally considered Disclosable Conduct under this Procedure and should be reported through other mechanisms ARTC has established to receive these complaints.

These types of complaints should be raised with ARTC's People team and may be dealt with in accordance with the ARTC Code of Conduct in the case of bullying, discrimination and harassment complaints. Individuals who submit reports about personal work related grievances will not be able to access the whistleblower protections under the Corporations Act.

However, if a complaint involves a personal work related grievance and it:

- a) has significant implications for ARTC;
- b) concerns conduct or alleged conduct which otherwise satisfies the definition of Disclosable Conduct; or
- c) involves a complaint of a Reprisal against a person,

then it should be reported in accordance with this Procedure.

## 1.4 Procedure owner

The Company Secretary is the Procedure owner.

## 1.5 Responsibilities

This 78 of the Procedure outlines the key responsibilities of Individuals, Authorised Officers and the CEO in connection with Disclosures.

### **ARTC Individuals**

- a) ARTC Individuals are to make any Disclosure in accordance with this Procedure;
- b) ARTC Individuals must not, under any circumstance, engage in any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a Disclosure;
- c) ARTC Individuals must not, under any circumstance, engage in any activity (including by omission) that would constitute taking a Reprisal against a person; and
- d) ARTC Individuals must not disclose or use information that:
  - i. was obtained in that person's capacity as a Public Official or Eligible Whistleblower; and
  - ii. is likely to enable the identification of a person who has made a Disclosure, unless:
    - iii. the disclosure is made to the person who made the Disclosure;
    - iv. the disclosure or use is for the purposes of the PID Act or the Corporations Act or another law of the Commonwealth or a prescribed law of a State or Territory;
    - v. the disclosure or use is made with the consent of the person who made the Disclosure;
    - vi. the information has previously been lawfully published; or
    - vii. the disclosure or use is otherwise permitted under the PID Act, the Corporations Act and any other relevant law.
- e) An ARTC Individual must use his or her best endeavours to:
  - i. assist the Investigator in the conduct of an investigation under this Procedure, the PID Act or the Corporations Act; and

- ii. assist the Ombudsman or the IGIS in the performance of their functions under the PID Act.

***PID and Whistleblowing Officer:***

The PID and Whistleblowing Officer (“**PIDW Officer**”) has the following responsibilities:

- a) Accountability for the core operation of this Procedure. The PIDW Officer has direct access to the CEO and the Chairman of the Audit and Compliance Committee of the Board;
- b) Providing general advice about the operation of this Procedure for any person wishing to make a Disclosure or a disclosure about a Detriment;
- c) Acting as a point of contact for ARTC Individuals to field questions, and to provide assistance or support during the disclosure process;
- d) Receiving all phone calls, emails and letters from ARTC Individuals seeking to make a Disclosure;
- e) Making arrangements for Disclosures to be made privately and discreetly and, if necessary, outside the work environment;
- f) Impartially assessing a Disclosure and determining whether it is a disclosure made in accordance with the procedures set out in this Procedure and in accordance with the PID Act or the Corporations Act;
- g) Taking all steps appropriate to ensure that identifying information of a person who has made a Disclosure and the identity of any person subject to a Disclosure remain confidential and are only used or disclosed in accordance with this Procedure, the PID Act, the Corporations Act and other relevant law, such as redacting personal information;
- h) Allocating the handing of a Disclosure to ARTC or one or more other relevant Agencies in accordance with this Procedure, the PID Act or the Corporations Act;
- i) Liaising with the appropriate Agencies (both internal and external) carrying out an investigation resulting from a Disclosure;
- j) Establishing and maintaining a confidential filing system for Disclosures and related investigations; and
- k) Taking all reasonable steps to ensure the Disclosure and investigation process is fair, just and in accordance with the law.

***Investigator:***

- a) The Investigator will be responsible for:
  - i. carrying out an internal investigation into any Disclosure for which ARTC is the handling Agency (including a disclosure that has been referred to ARTC by another Agency);
  - ii. notifying the person who has made that Disclosure as to the progress of the investigation; and
  - iii. preparing and providing a report of the investigation to the person who made that Disclosure.
- b) Like the PIDW Officer, the Investigator has direct access to the CEO, the Company Secretary and the Chairman of the Audit and Compliance Committee of the Board.

## 1.6 Reference Documents

The following documents support this Procedure:

- a) PEO-PR-007 Discipline Procedure
- b) ARTC Code of Conduct
- c) ARTC Fraud Control Plan

This Procedure and the Reference Documents listed above constitute the Whistleblower Policy for the purposes of the Corporations Act.

## 1.7 Definitions

The following terms and acronyms are used within this document:

Term or acronym	Description
Agency	Has the meaning it has in the PID Act, and includes: <ol style="list-style-type: none"> <li>a) a Commonwealth department or executive agency;</li> <li>b) a statutory agency, Commonwealth authority or Commonwealth company.</li> </ol>
ARTC	Australian Rail Track Corporation Ltd.
ASIC	Australian Securities and Investments Commission.
Authorised Internal Recipient	Has the meaning it has in the PID Act, and in relation to ARTC includes: <ol style="list-style-type: none"> <li>a) the CEO or a member of ARTC staff appointed as an authorised officer by the CEO (or by a delegate of the CEO) (including the PIDW Officer);</li> <li>b) an authorised officer of the Ombudsman, if the person making the disclosure believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the Ombudsman; and</li> <li>c) an authorised officer of an investigative agency that has the power to investigate the relevant disclosure, otherwise than under the PID Act.</li> </ol> <p>The CEO has appointed the Company Secretary to be an Authorised Internal Recipient.</p>
Authorised Officer	Has the meaning it has in the PID Act and, in relation to ARTC means: <ol style="list-style-type: none"> <li>a) the CEO; or</li> <li>b) a member of ARTC staff appointed as an authorised officer by the CEO (or by a delegate of the CEO) including the PIDW Officer</li> </ol>
CEO	The Chief Executive Officer (however described) of ARTC.
Corporations Act	The <i>Corporations Act 2001</i> (Cth) as in force from time to time.



Term or acronym	Description
Detriment	<p>Covers the meanings it has in the PID Act and the Corporations Act, and includes a disadvantage, including (without limitation) any of the following:</p> <ul style="list-style-type: none"> <li>a) dismissal of an employee;</li> <li>b) injury of an employee in his or her employment;</li> <li>c) alteration of an employee’s position to his or her detriment;</li> <li>d) discrimination against an employee and other employees of the same employer;</li> <li>e) harassment, intimidation, disciplinary action, bias, threats or other unfavourable treatment.</li> <li>f) harm or injury to a person, including psychological harm;</li> <li>g) damage to a person’s property;</li> <li>h) damage to a person’s reputation;</li> <li>i) damage to a person’s business or financial position;</li> <li>j) any other damage to a person.</li> </ul>
Disclosable Conduct	<p>Has the meaning it has in the PID Act and also covers information which qualifies for protection under the whistleblower protection provisions of the Corporations Act, including any of the following conduct engaged in by ARTC, an ARTC Public Official, an Eligible Whistleblower or a contracted service provider to ARTC:</p> <ul style="list-style-type: none"> <li>a) conduct that contravenes a law of the Commonwealth, a State or a Territory;</li> <li>b) conduct in a foreign country that contravenes applicable law in force in that country that corresponds to a law in the ACT;</li> <li>c) conduct that perverts, or is engaged in for the purpose of perverting or attempting to pervert, the course of justice; or that involves, or is engaged in for the purpose of, corruption of any other kind (including but not limited to fraud, default, breach of trust and breach of duty);</li> <li>d) conduct that constitutes maladministration, including conduct that: <ul style="list-style-type: none"> <li>i. is based, in whole or in part, on improper motives; or</li> <li>ii. is unreasonable, unjust, unethical or oppressive;</li> <li>iii. is negligent; or</li> <li>iv. is misleading or deceptive (including practices or representations which amount to improper or misleading accounting or financial reporting practices);</li> </ul> </li> <li>e) conduct that is an abuse of public trust;</li> <li>f) conduct that is: <ul style="list-style-type: none"> <li>i. a fabrication, falsification, plagiarism or deception, in relation to scientific research; or</li> </ul> </li> </ul>

Term or acronym	Description
	<ul style="list-style-type: none"> <li>ii. misconduct relating to scientific analysis, scientific evaluation or the giving of scientific advice;</li> <li>g) conduct that results in the wastage of:               <ul style="list-style-type: none"> <li>i. public money or public property (each as defined in the Financial Management and Accountability Act 1997 (Cth)); or</li> <li>ii. money or property of a prescribed authority (such as ARTC);</li> </ul> </li> <li>h) conduct that unreasonably:               <ul style="list-style-type: none"> <li>i. results in danger to the public or the financial system; or</li> <li>ii. results in, or increases, a risk of danger to the health or safety of one or more persons or the environment;</li> </ul> </li> <li>i) conduct engaged in by a Public Official that:               <ul style="list-style-type: none"> <li>i. involves, or is engaged in for the purpose of, an abuse of position of the Public Official; or</li> </ul> </li> <li>j) conduct that could, if proved, give reasonable grounds for disciplinary action against the Public Official.</li> </ul>
Disclosure	Is a disclosure as defined in the PID Act or made under the whistleblower protection provisions of the Corporations Act.
Eligible Whistleblower	Is an individual who is (or has been): <ul style="list-style-type: none"> <li>a) an employee or officer of ARTC; or</li> <li>b) a supplier of services or goods (whether paid or unpaid) to ARTC including an individual who is or has been employed by such a supplier.</li> </ul>
Eligible Recipient	Is defined in the Whistleblowing Act and means: <ul style="list-style-type: none"> <li>(a) an officer or Group Executive of ARTC;</li> <li>(b) an auditor, or a member of an audit team conducting an audit, of ARTC;</li> <li>(c) an actuary of ARTC;</li> <li>(d) a person authorised by the body corporate to receive disclosures that may qualify for protection under the Corporations Act including the PIDW Officer and the external whistleblower service under clause 2.3 of this Procedure.</li> </ul>
IGIS	Inspector-General of Intelligence and Security.
Individual	Public Officials and Eligible Whistleblowers collectively.
Internal Disclosure	Is defined in the PID Act, and means a disclosure of information: <ul style="list-style-type: none"> <li>a) made by an ARTC Public Official to that person’s supervisor or an Authorised Internal Recipient; and</li> </ul>

Term or acronym	Description
	<p>b) that tends to show, or the Individual believes on reasonable grounds that the information tends to show, one or more instances of a Disclosable Conduct.</p>
Investigation Plan	The plan developed by the Investigator under this Procedure.
Investigator	<p>The ARTC Public Official to whom the CEO has delegated the investigative functions described in this Procedure for which the CEO is responsible under the PID Act.</p> <p>The CEO has delegated the Company Secretary to be the Investigator.</p>
Journalist	<p>Has the meaning given to it under the Whistleblowing Act, and is a person who is working in a professional capacity as a journalist for any of the following:</p> <ul style="list-style-type: none"> <li>(a) a newspaper or magazine;</li> <li>(b) a radio or television broadcasting service;</li> <li>(c) an electronic service (including a service provided through the internet) that: <ul style="list-style-type: none"> <li>i. is operated on a commercial basis, or operated by a body that provides a national broadcasting service (within the meaning of the <i>Broadcasting Services Act 1992</i>); and</li> <li>ii. is similar to a newspaper, magazine or radio or television broadcast.</li> </ul> </li> </ul>
Personal work related grievances	<p>Employment related grievances that have implications for the Individual personally and do not raise broader concerns regarding ARTC. Examples include (but are not limited to):</p> <ul style="list-style-type: none"> <li>(a) an interpersonal conflict between the Individual and another employee;</li> <li>(b) a decision relating to the engagement, transfer or promotion of the Individual;</li> <li>(c) a decision relating to the terms and conditions of engagement of the Individual; or</li> <li>(d) a decision to suspend or terminate the engagement of the Individual, or otherwise to discipline the Individual.</li> </ul>
PID Act	The <i>Public Interest Disclosure Act 2013</i> (Cth) as in force from time to time.
Procedure	Refers to this procedure and any subsequent amendment as in force from time to time.
Principal Officer	Has the meaning it has in the PID Act and, in relation to ARTC, means the CEO.
Public Official	<p>Has the meaning it has in the PID Act, and in relation to ARTC, includes:</p> <ul style="list-style-type: none"> <li>a) the CEO;</li> <li>b) a member of staff of ARTC;</li> </ul>

Term or acronym	Description
	<p>c) an individual who is, or is an officer or employee of, a contracted service provider for a services contract with ARTC.</p> <p>This includes individuals taken to be Public Officials within the meaning of the PID Act.</p>
Reprisal	<p>“Taking a Reprisal” has the meaning it has in the PID Act. A person (the <b>first person</b>) takes a reprisal against another person (the <b>second person</b>) if:</p> <p>a) the first person causes (by act or omission) any Detriment to the second person; and</p> <p>b) when the act or omission occurs, the first person believes or suspects that the second person or any other person made, may have made or proposes to make a Public Interest Disclosure; and</p> <p>c) the belief or suspicion is the reason, or part of the reason, for the act or omission,</p> <p>however a person does not take a Reprisal against another person to the extent that the person takes administrative action that is reasonable to protect the other person from Detriment.</p>
Workplace Agreement	Refers to all relevant Enterprise, Collective and Workplace Agreements.

## 2 Reporting System

### 2.1 Persons to whom a Disclosure may be made

Pursuant to this Procedure, a Disclosure, or a report of suspected Detriment, may be made by an Individual to:

- a) the CEO or the PIDW Officer (each an Authorised Officer for the purpose of the PID Act); or
- b) a supervisor of the ARTC Public Official.

While ARTC does not expect an Individual to have absolute proof or evidence of Disclosable Conduct, a report should show the reasons for their concerns and make full disclosure of the relevant details and supporting documentation. If a report is made it will be valued and appreciated, even if it is not confirmed by subsequent investigation provided there was a reasonable basis for the report to be made.

If a Disclosure is made by an ARTC Individual to a supervisor that is not an Authorised Officer, the supervisor must, as soon as reasonably practicable, give the information to the Authorised Officer if the supervisor has reasonable grounds to believe that the information concerns, or could concern, one or more instances of Disclosable Conduct.

Subject to the PID Act, if a disclosure relates to conduct of the CEO or the ARTC Company Secretary, that disclosure should be made via External Channels or given to the Chair of ARTC's board of directors.

If a person discloses, or proposes to disclose, information to an Authorised Officer and the Authorised Officer has reasonable grounds to believe:

- a) the information concerns Disclosable Conduct, the Authorised Officer must inform the person that the disclosure could be treated as an Internal Disclosure for the purposes of the PID Act; and
- b) the person may be unaware of what the PID Act requires in order for the disclosure to be an Internal Disclosure,

the Authorised Officer must also explain what the PID Act requires in order for the disclosure to be an Internal Disclosure and advise the individual of any orders or directions of which the Authorised Officer is aware that may affect disclosure of the information.

#### **Additional Protection under the Corporations Act**

The Corporations Act also provides protection for public interest disclosures and emergency to:

- a) A member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or
- b) A journalist,

If:

- a) The Individual has previously made a disclosure of that information; and
- b) At least 90 days have passed since the previous disclosure was made; and
- c) The Individual does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the previous disclosure related; and

- d) The Individual has reasonable grounds to believe that making a further disclosure of the information in accordance with this Procedure would be in the public interest; and
- e) After the end of the 90-day period, the Individual gave the recipient to which the previous disclosure was made a written notification that;
  - i) includes sufficient information to identify the previous disclosure; and
  - ii) states that the Individual intends to make a public interest disclosure; and
- f) The extent of the information disclosed in the public interest disclosure is no greater than is necessary to inform the recipient of the misconduct or the improper state of affairs or circumstances.

An emergency disclosure is a disclosure which meets the requirements above (except for (b), (e) and (f)) where the Individual has reasonable grounds to believe that the information concerns a substantial and imminent danger to health and safety or a person or the natural environment and provided the extent of the information disclosed is no greater than is necessary to inform the recipient of the substantial and imminent danger.

## 2.2 How a Disclosure may be made

Disclosures may be made orally or in writing and it may be made anonymously.

ARTC respects an Individual's right to not identify themselves while making a Disclosure, over the course of an investigation and after the investigation is finalised. An Individual who wishes to remain anonymous should maintain ongoing two-way communication with ARTC, so ARTC can ask follow-up questions and provide feedback. An Individual can refuse to answer questions that they feel could reveal their identity at any time, including during follow-up communications.

However, electing to make a report anonymously may hinder ARTC's ability to fully investigate the matter and may prevent ARTC from taking action to safeguard the Individual against a Reprisal.

## 2.3 External and independent reporting channels

Disclosures may also be made through the following external and independent reporting channels ("External Channels")<sup>1</sup>:

- a) Telephone the Whistleblowing Hotline: 1800 931 136;
- b) Send an email to the Whistleblowing email address: [FairCall@KPMG.com.au](mailto:FairCall@KPMG.com.au);
- c) Send an instant message to the online reporting facility which can be accessed from any device including a smartphone, tablet or desktop computer: [www.kpmgfaircall.kpmg.com.au/ARTC](http://www.kpmgfaircall.kpmg.com.au/ARTC); or

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<sup>1</sup> To read the KPMG Privacy Statement, please visit [www.kpmg.com/AU/faircall/privacy](http://www.kpmg.com/AU/faircall/privacy).

d) Mail reports or additional call information to the following secure mailbox:

The Faircall Manager  
KPMG Forensic  
PO Box H67  
Australia Square  
Sydney NSW 1213

Disclosures will be taken in total confidence at all times. An Individual may wish to remain anonymous. If so, the External Channel will not ask for the Individual's personal details. If you do provide your personal details, the External Channel will communicate these to the PIDW Officer for the purpose of the PIDW Officer discharging their responsibilities under this Procedure and the Individual will be taken to consent to their personal details being handled in this way.

## 2.4 Confidentiality

It is an offence under the PID Act for any person to disclose or use information:

- a) obtained by that person in their capacity as an ARTC Public Official; and
- b) that is likely to enable the identification of a person who has made a Public Interest Disclosure, otherwise than as permitted under the PID Act.

An offence may also be committed under the Corporations Act if ARTC or any of its directors, secretaries, Group Executives, officers, or employees disclose the identity of a person who has made a Disclosure unless the disclosure is permitted under the Corporations Act.

If a Disclosure is made, ARTC will protect the identity of the person who made the Disclosure by:

- a) the matter being kept confidential and only discussed as is considered appropriate, on a "need to know" basis and as required or permitted by the PID Act and other relevant law.
- b) the identity of the person making the Disclosure being kept confidential and only disclosed with the person's consent or as required for the purpose of addressing the Disclosure in accordance with this Procedure and as required or permitted by the PID Act and other relevant law.

ARTC may disclose the information received to appropriate regulatory authorities, such as ASIC, APRA, the Australian Federal Police or other governmental agencies; or a legal practitioner for the purpose of obtaining legal advice in relation to the operation of the statutory whistleblower protections. As a discloser, you can lodge a complaint about a breach of confidentiality at any time with ASIC, APRA or the ATO.

## 2.5 Allocating the handling of Disclosures

If a disclosure of information is made to the PIDW Officer or given to the PIDW Officer by a supervisor or External Channel, the PIDW Officer must allocate the handling of the Disclosure to one or more Agencies (which may be, or include, ARTC), unless the PIDW Officer is satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be an Internal Disclosure for the purposes of the PID Act.

In deciding the allocation of the disclosure, the PIDW Officer:

- a) must have regard to:
  - i. the principles in the PID Act concerning allocation of disclosures, including the principle that an Agency (including ARTC) should not handle a disclosure unless some or all of the Disclosable Conduct with which the information may be concerned relates to the Agency; and
  - ii. such other matters (if any) as the PIDW Officer considers relevant; and
- b) may obtain information from such persons, and make such inquiries, as the PIDW Officer thinks fit.

The PIDW Officer must use his or her best endeavours to decide the allocation within 14 days after the disclosure is made to the PIDW Officer, and must not allocate a disclosure to an Agency (other than the ARTC) without the consent of the Authorised Officer of that Agency.

## **2.6 Giving Notice of the allocation decision**

If the PIDW Officer allocates the handling of a disclosure to an Agency, the PIDW Officer must inform the person who made the disclosure of that allocation.

The PIDW Officer must also notify:

- a) the Principal Officer of each Agency to which the handling of the disclosure is allocated; and
- b) the Ombudsman and the IGIS if required under the PID Act,

of the allocation to the Agency, the information that was disclosed, the suspected Disclosable Conduct and, if the person making the disclosure has consented, their name and contact details.

If the PIDW Officer does not allocate the disclosure, the PIDW Officer must inform the person making the disclosure of the reason why the disclosure has not been allocated to an Agency, and any other courses of action that might be available to the person under other Commonwealth laws.

## **3 Investigations**

### **3.1 Introduction**

If the handling of a Public Interest Disclosure has been allocated to ARTC, the Investigator must investigate the disclosure unless the Investigator has the discretion not to investigate the disclosure under the PID Act.

Circumstances in which the Investigator will have the discretion not to investigate a Public Interest Disclosure include:

- a) where the person making the Public Interest Disclosure is not, and has not been, a Public Official;
- b) where the information does not, to any extent, concern serious Disclosable Conduct;
- c) where the disclosure is frivolous or vexatious;
- d) where the information concerns Disclosable Conduct that is the same, or substantially the same, as Disclosable Conduct that is being investigated under a law of the Commonwealth other than the PID Act or the executive power of the Commonwealth, and



- i. it would be inappropriate to conduct another investigation at the same time; and
  - ii. the Investigator is reasonably satisfied that there are no further matters concerning the disclosure that warrants investigation;
- e) where the Individual has informed the Investigator that they do not want the investigation to be pursued and the Investigator is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation; or
- f) where it is impractical for the disclosure to be investigated:
  - i. because the Individual's name and contact details have not been disclosed; or
  - ii. because the Individual refuses, fails or is unable to give, for the purposes of the investigation, such information or assistance as the Investigator needs to conduct the investigation; or
  - iii. because of the age of the information.

### 3.2 Notifications

The Investigator must, as soon as reasonably practicable, inform the person making a Public Interest Disclosure of the following (whichever is applicable):

- a) that the Investigator is required to investigate the disclosure and the estimated length of the investigation; or
- b) that the Investigator has decided not to investigate the disclosure, the reasons for that decision, and other courses of action that might be available to the person under Commonwealth laws.

If the Investigator has decided not to investigate a Public Interest Disclosure in accordance with the PID Act, the Investigator must inform the Ombudsman of the decision.

### 3.3 Time frame for investigation

Investigations by the Investigator are to be carried out:

- a) as promptly as practicable in the circumstances, taking into account the requirements to preserve confidentiality and, as far as is reasonable, avoid disruption to ARTC's activities; and
- b) in any event within 90 days after the disclosure is allocated to ARTC, if it is a disclosure to which the PID Act applies (unless an extension to the time frame has been granted by the Ombudsman under the PID Act).

### 3.4 Terms of reference and risk assessment / management

If the Investigator proceeds to investigate a disclosure, the Investigator must:

- a) discuss the disclosure with the PIDW Officer and, if requested by the PIDW Officer, prepare a Terms of Reference for the investigation which will set out:
  - i. the scope of the investigation;
  - ii. the witnesses and resources to be involved in the investigation; and

- iii. the proposed timing of the investigation.

The PIDW Officer will review the Terms of Reference and make any changes necessary to ensure they fulfil the requirements of this Procedure.

- b) in conjunction with the PIDW Officer, perform an assessment of the risk that reprisals may be taken against the ARTC Public Officials who made the Public Interest Disclosure

### **3.5 Investigation plan**

The Investigator must consult with the PIDW Officer in the Investigator's preparation for an investigation and, if requested by the PIDW Officer, must prepare an Investigation Plan in relation to the disclosure, which is consistent with the approved Terms of Reference and sets out:

- a) the investigation processes to be followed;
- b) resources to be involved;
- c) records to be obtained and retained; and
- d) steps to be taken to:
  - i. manage the risk that Reprisals may be taken against the person who made the disclosure; and
  - ii. preserve confidentiality in accordance with this Procedure, the PID Act and other relevant law.

The PIDW Officer will review the Investigation Plan and liaise with the Investigator to make any changes necessary to the plan to ensure compliance with this Procedure and any applicable law (including the PID Act or the Corporations Act).

### **3.6 Conduct of the investigation**

Subject to this Procedure and the PID Act, an investigation may be conducted as the Investigator thinks fit, and should be conducted in a manner that is consistent with any:

- a) approved Investigation Plan for the investigation; and
- b) processes to preserve confidentiality or to manage the risk that Reprisals may be taken against the person who made the disclosure.

The Investigator will make notes, as appropriate, during all discussions, phone calls and interviews. With the permission of the interviewee, interviews may be taped. Interviews will be conducted in private. All information gathered in an investigation will be stored securely and confidentially as appropriate. The Investigator will protect the identity of the person making the Disclosure in accordance with legislative requirements. The investigation will ensure a fair process for those involved in the matter.

The Investigator must conduct an investigation relating to a Public Interest Disclosure in accordance with the requirements of the PID Act (including any applicable standards in force under this PID Act).

The Investigator may, for the purposes of the investigation, adopt a finding set out in the report of:

- a) an investigation or inquiry under a law of the Commonwealth or the executive power of the Commonwealth; or
- b) another investigation under the PID Act.

## 4 Commitment to persons making a Disclosure

ARTC is committed to a workplace culture that:

- a) is supportive of Disclosures being made; and
- b) refrains from, and prevents, Reprisals being taken against persons for the making of Disclosures.

All reasonable steps will be taken by ARTC to ensure that a Public Official or an Eligible Whistleblower who makes a Disclosure does not suffer Detriment and is not subject to any form of victimisation because they have made a report in accordance with this Procedure.

The nature of the support that may be offered by ARTC will depend on the nature of the Disclosable Conduct and the personal circumstances of the Public Official or Eligible Whistleblower. It will include access to ARTC's Employee Assistance Program and to the ARTC Integrity Officer, and it may include support from the People team where reasonably required.

A person who subjects an Individual to Detriment because they have made a Disclosure will be in breach of this Procedure and will be dealt with under ARTC's disciplinary procedures. This is a serious matter which may expose the person to civil and criminal sanctions under the Corporations Act.

The Corporations Act provides special protections for Eligible Whistleblowers in respect of disclosures which qualify for protection under the Act regardless of whether or not the Disclosure turns out to be correct. These protections are:

1. The right to have their identity protected in accordance with the provisions of that legislation;
2. The right to have information provided as part of the disclosure handled in accordance with the provisions of that legislation;
3. The right to be protected from civil, criminal or administrative liability (including disciplinary action) for making the disclosure; from contractual or other remedies on the basis of the disclosure; and from the admissibility of the information provided in evidence against the person, in each case in accordance with the provisions of that legislation;
4. The right to be protected from detrimental treatment or any form of victimisation in accordance with the provisions of that legislation;
5. The right to compensation and other remedies in accordance with the provisions of that legislation (including a right not to be required to pay costs incurred by another person when litigation is commenced); and
6. The right not to be required to disclose their identity before any court or tribunal in accordance with the provisions of that legislation.

ARTC is committed to ensuring these legislative protections are complied with.

## 5 Conclusion of Investigation

### 5.1 Draft report

The Investigator must prepare a draft report of the investigation in writing for review by the PIDW Officer.

The draft report must include:

- a) the information required to be included in the Investigator's final report (see clause 5.2 below); and
- b) sufficient information for the PIDW Officer to assess compliance with the requirements for the conduct of the investigation in this Procedure, the PID Act, the Corporations Act and any other relevant law (including principles of confidentiality and fairness described above).

The Investigator will then, in consultation with the PIDW Officer as appropriate, prepare a final report on the Investigator's findings.

### 5.2 Investigator's final report

At the conclusion of the investigation, the Investigator will prepare and submit a written report of the findings to the PIDW Officer.

The report must contain:

- a) the allegation/s;
- b) an account of all relevant information received and, if the Investigator has rejected the evidence as being unreliable, the reasons for this opinion being formed;
- c) the matters considered in the course of the investigation;
- d) the duration of the investigation;
- e) the Investigator's findings (if any) and the basis for them;
- f) any action that has been, or is being, or is recommended to be taken; and
- g) any claims made about, and any evidence of, Detrimental action taken against the person making the Public Interest Disclosure and ARTC's response to those claims and that evidence.

The Investigator must, within a reasonable time after preparing the report, give a copy of the report to the person who made the disclosure. However, the Investigator may delete from that copy of the report any material that:

- a) is likely to enable the identification of the person making the disclosure or another person; or
- b) would, by its inclusion in that copy, result in the copy being required to have a security classification, containing intelligence information, contravening a designated publication restriction, or being exempt for Part IV of the Freedom of Information Act 1982 (Cth).

If the Investigator determines that Disclosable Conduct has been substantiated, recommendations made by the Investigator may include:

- a) the steps that need to be taken by ARTC to prevent the conduct from continuing or occurring in the future; and
- b) any action that should be taken by ARTC to remedy any harm or loss arising from the conduct (see clause 5.3 below).

The report must be accompanied by copies of all documents, statements, tape recordings or other exhibits received by the Investigator and accepted as evidence during the course of the investigation.

Subject to applicable requirements of secrecy and confidentiality under the PID Act and the Corporations Act, where the Principal Officer's report is to include an adverse comment against any person, that person will be given the opportunity to respond and his or her evidence will be fairly included in the report.

Subject to the legislative provisions relating to protection of the identity of Individuals who make a Disclosure, the final report will be given to the PIDW Officer and, if the allegations are substantiated, the PIDW Officer will refer the report to:

- a) the CEO; or
- b) if the disclosure relates to conduct of the CEO, the Chair of ARTC's board of directors, and the CEO or the Chair (as the case may be) will then determine any appropriate action to be taken according to clause 5.3 of this Procedure.

### 5.3 Action to be taken

The CEO (or the Chair of ARTC's board of directors, if the report has been referred to the Chair according to clause 5.2), must ensure that appropriate action is taken in response to recommendations in a report produced by the Investigator under clause 5.2 including, if required by law, that the matter be referred to another Agency, external authority or law enforcement office.

Under the PID Act, a Public Interest Disclosure must be notified to a member of the Australian police force if, in the course of an investigation relating to that disclosure, the Investigator suspects on reasonable grounds that some or all of the information disclosed or obtained in the course of the investigation is evidence of the commission of an offence against a Commonwealth, State or Territory law and the offence is punishable by imprisonment for life or for a period of at least 2 years.

Without limiting the action that the CEO (or the Chair) may take in response to a recommendation in such a report, a number of outcomes and actions are possible. These include:

- a) No action taken. For example, this may be appropriate where any allegations made in a Public Interest Disclosure were found not to be substantiated.
- b) Disciplinary proceedings against various persons involved. Refer ARTC's Discipline Policy for more information.
- c) External reporting. For example, this may be necessary under the PID Act (see above) or otherwise appropriate if an investigation substantiates allegations of criminal conduct. Any external reporting will be at the discretion of and must be approved by the CEO (or the Chair), or their delegate, and may be subject to requirements under the PID Act.
- d) Preventative action. For example, a range of actions may be appropriate in an attempt to prevent further conduct of a type found to be substantiated by an investigation. Any preventative action will be at the discretion of and must be approved by the CEO (or the Chair), or their delegate.

## 6 Management of accused persons

ARTC recognises that persons against whom Disclosures are made must also be supported during any subsequent investigation. ARTC will take all reasonable steps to ensure that the confidentiality of such persons is maintained during any investigation and will not use or disclose any information obtained in the course of an investigation or in connection with the performance of a function or power under the PID Act or the Corporations Act except to the extent permitted under the PID Act or the Corporations Act.

In the event that an investigation does not result in particular allegations arising from a Disclosure being substantiated, the fact that the investigation has been conducted, the results of the investigation and the identity of the person who is the subject of the Disclosure will remain confidential to the extent reasonable under the circumstances and as required by law.

Subject to the PID Act, the Corporations Act and any other applicable law, any person who is the subject of a Disclosure that is investigated by or on behalf of ARTC is to:

- a) be informed as to the substance of the allegation/s;
- b) be given the opportunity to answer the allegation/s before a final decision is made; and
- c) have their defence set out fairly in any final report prepared in connection with the investigation.

## 7 Review

This Procedure must be periodically reviewed to ensure it:

- a) Satisfies the requirements of the PID Act, the Corporations Act and any other relevant legislation from time to time;
- b) Complies with any standards made for the purposes of the PID Act and the Corporations Act; and
- c) Remains effective for ARTC.

This Procedure may be changed at any time at the discretion of the Chief Executive Officer and in accordance with the PID Act and the Corporations Act.

## 8 Availability of this Procedure

This Procedure is available to all officers and employees of ARTC on the homepage of CONNECT and can be accessed by selecting the “Whistleblowing” icon in the bottom right hand corner.