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Australian Reinsurance Pool Corporation

GOVERNANCE, RISK AND COMPLIANCE POLICY FOR PUBLIC INTEREST DISCLOSURES

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RELATED DOCUMENTS

Document Name	Document Directory (not a hyperlink) on Sharepoint
ARPC Values and Code of Conduct	Sharepoint\keydocuments
<i>Public Interest Disclosure Act 2013</i> and Standards	http://www.comlaw.gov.au/Details/C2013A00133
Speaking up about wrongdoing—A guide to making a disclosure under the <i>Public Interest Disclosure Act 2013</i>	www.ombudsman.gov.au
Agency Guide to the <i>Public Interest Disclosure Act 2013</i>	www.ombudsman.gov.au
Procedures for Public Interest Disclosures	Sharepoint Document ID ARPC-37-2
Rules on Fraud, contained in the Public Governance, Performance and Accountability Act 2013 (PGPA Act)	http://www.comlaw.gov.au
Fraud Control Plan	Sharepoint\Plans ARPC-39-5
Resource Management Guide No.201— Preventing, detecting and dealing with fraud	http://www.ag.gov.au/CrimeAndCorruption/FraudControl/Documents



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Executive Summary

The *Public Interest Disclosure Act 2013* (PID Act), effective 15 January 2014, has been introduced to promote the integrity and accountability of the Commonwealth public sector, by encouraging and facilitating the disclosure of information by Public Officials about suspected wrongdoing, providing support and protection to those making disclosures, and ensuring disclosures are properly investigated and dealt with.

This policy sets out for ARPC management and staff:

- who can make disclosures, and how they can be made
- what types of disclosures are covered by the PID Act, and afford disclosers protection under that Act
- what protection is available to disclosers
- how ARPC will deal with disclosures received, and the governance structures and responsibilities of ARPC management.



1 Purpose

The purpose of this Policy is to meet the legislative requirements of the *Public Interest Disclosure Act 2013* (PID Act) and to promote the integrity and accountability of ARPC by:

- encouraging and facilitating disclosure of information by ARPC employees about suspected wrongdoing in ARPC
- ensuring that ARPC employees who make Public Interest Disclosures (PID) are supported and protected from adverse consequences
- ensuring that disclosures by ARPC employees are properly investigated and dealt with
- documenting and communicating ARPC's policies and procedures to properly investigate a PID received by ARPC.

2 Context

2.1 Application of Legislative Requirements

The *Public Interest Disclosure Act 2013* (PID Act) was implemented on 15 January 2014, repealing all policies and procedures that previously existed under the whistle blower provisions within the *Public Service Act 1999*. Consequently, the Australian Reinsurance Pool Corporation (ARPC) has revoked its Whistle Blower Policy, replacing it with the Policy for Public Interest Disclosures (the Policy).

Under section 59(1) of the PID Act, ARPC's CEO must establish procedures for facilitating and dealing with public interest disclosures relating to ARPC; these procedures must include:

- assessing the risk that reprisals may be taken against the persons who make those disclosures
- providing for confidentiality of investigative processes.

The Policy is designed to build on practices established to protect ARPC employees who 'blow the whistle' on suspected breaches of the Code of Conduct, including Fraud, and as required by legislation covers disclosures made from 15 January 2014.

Where rules relating to fraud exist under the PGPA Act, the PGPA Act requirements take precedence to the PID Act (PID Standard S.8).

This Policy is supported by ARPC's Procedures for Public Interest Disclosures.



3 Definitions and Acronyms

ARPC Public Official (Public Official)	All current and former ARPC Board members, managers, employees, including contractors and consultants.
ARPC's Enterprise Agreement	The collective agreement between ARPC and ARPC none—SES staff covering terms and conditions of employment as required under the <i>Fair Work Act 2009</i> —applicable at the time of a disclosure and/or the time of a disclosable conduct.
Authorised Officer (AO)	The Principal Officer of ARPC and any ARPC Public Official currently employed by ARPC who is nominated in writing by the Principal Officer to act as an Authorised Officer under the PID Act.
Chief Executive Officer (CEO)	ARPC's Chief Executive Officer, and Principal Officer
Designated publication restrictions	Defined under the PID Act Section 8, covering areas of law which restrict the publication of certain information.
Disclosable conduct	See Appendix A. Disclosable conduct is the conduct that is covered by the PID Act.
Discloser	The ARPC Public Official, or external Public Official, that makes a PID.
IGIS	Inspector General of Intelligence and Security
GMGRC	ARPC's General Manager—Governance, Risk and Compliance
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i> and any amendments
PGPA Rules	<i>Public Governance, Performance and Accountability Rule 2014</i> and any amendments
PID Act	<i>Public Interest Disclosure Act 2013</i> and any amendments
Principal Officer	Under the PID Act this is the 'Chief Executive Officer' of a prescribed authority. In ARPC this is the CEO.
Public Interest Disclosure (PID, disclosure)	A disclosure of information where: <ul style="list-style-type: none">• it is made by a Public Official or a person who has been made a Public Official• 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' as defined by the PID Act• the disclosure is made to an appropriate person. Under this policy managing ARPC's response to disclosures received by ARPC that is to an Authorised Officer, or a Supervisor of the discloser.
Relevant external Principal Officer	If the disclosable conduct relates to another agency, the Ombudsman, the IGIS or another investigative agency, the Authorising Officer should allocate a PID to the Principal Officer of the other Agency, or another suitable agency for investigation.
Supervisor	A team leader or manager that is the direct Supervisor of the discloser/potential discloser.



4 Application and Scope

4.1 Application and Scope

This Policy is mandatory and applies to all management, staff, contractors and consultants engaged or previously engaged by ARPC.

The provisions of this policy cover the requirements of the PID Act only.

ARPC staff should apply ARPC's Procedures for Public Interest Disclosures (the Procedures) in conjunction with this policy.

4.2 Limitations

This policy covers disclosures made from 15 January 2014. Disclosures made before 15 January 2014 are not covered by this Policy or the PID Act.

ARPC notes that the PID Act is not intended to replace existing processes for dealing with workplace grievances and misconduct, such as bullying and harassment, but rather to supplement them.

4.3 Disclaimer

In the event of any discrepancy between the Policy and 1) any relevant legislation, or 2) with any entitlements under ARPC's Enterprise Agreement or other employee agreements covered by the Fair Work Act 2009, then the legislation and agreements take precedence.

Where rules relating to fraud exist under the PGPA Act, the PGPA Act requirements take precedence to the PID Act (PID Standard S.8) and this policy.

5 Accountability and Roles

5.1 Chief Executive Officer—Principal Officer

The role of the Chief Executive Officer (CEO), as the 'Principal Officer' under the PID Act, is to:

- take all reasonable steps to protect ARPC Public Officials from detriment, or threats of detriment relating to PIDs by other ARPC Public Officials.
- appoint appropriate Authorised Officer(s) under S 59(1) PID Act, ensuring the number of ARPC Authorised Officers (AO) is sufficient to ensure that they are readily available and accessible by all ARPC Public Officials (refer Appendix B).
- ensure all ARPC Public Officials are aware of the identity of each ARPC AO. The current AOs will be documented in the ARPC's Procedures for Public Interest Disclosures and published on the ARPC Intranet.
- ensure disclosures are properly investigated including deciding whether or not a PID will be investigated under the PID Act
- facilitate and manage any investigation



- notify the discloser and the Ombudsman, on the decision and reasoning for any (non)investigation of a PID
- maintain confidentiality of discloser identities, PID processes and documentation.

5.2 General Manager—Governance, Risk and Compliance

The GMGRC is responsible for ensuring that all ARPC staff are and remain aware of the protections offered under the PID Act by:

- ensuring the development, review, and maintenance of this Policy
- delivering staff awareness sessions to staff, and to Authorised Officers on their rights and responsibilities under the PID Act.

5.3 Authorised Officers

AOs have a range of decision-making, notification and other responsibilities, which are detailed in the Procedures. These include:

- receiving disclosures from Public Officials on disclosable conduct, and providing advice to them
- assessing the risk of reprisals against the person making the disclosure
- examining the PID, and determining whether it should be investigated under the PID Act
- document the PID information
- monthly reporting of PID status(es)

5.4 ARPC Public Officials

Under the PID Act, ARPC Public Officials must:

- use their best endeavours to assist an AO in the conduct of a PID investigation
- use their best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act.

ARPC Public Officials must not knowingly make a statement that is false or misleading.

5.5 Commonwealth Ombudsman

The responsibilities of the Commonwealth Ombudsman include:

- assisting the CEO, the AOs, the Principal Officer of an investigating agency and Public Officials in relation to the operation of the legislative obligations under the PID Act
- conducting educational and awareness programs relating to the PID Act to the extent to which it relates to ARPC and its Public Officials.



6 Policy Statements

6.1 Policy Review and Maintenance

The following policy statements should be reviewed and updated whenever there are changes in 1) legislation, other ministerial or departmental guidelines, 2) operations, 3) key stakeholders, 4) systems, 5) legislation or 6) at least every two years.

6.2 Staff Awareness

Staff awareness sessions will be provided annually on the PID Act and the ARPC policies and procedures to follow should staff wish to make a PID.

ARPC's AOs will be provided specific awareness sessions on their responsibilities under the PID Act.

6.3 Protections of the PID Act

ARPC is committed to ensuring protections provided under Part 2 of the PID Act, where they are within the control of ARPC, are upheld.

6.3.1 Protection

It is an offence to take a reprisal, or to threaten to take a reprisal, against a person because of a PID, including a proposed or a suspected PID.

It is also an offence to disclose the identity of an individual who makes a PID.

An individual making a PID will not be subject to any civil, criminal or administrative liability, including any disciplinary action.

A person will not be subject to any criminal or civil liability because the person (voluntarily or otherwise) produces a document or answers questions if:

- the person does so following a request from a person conducting a disclosure investigation, and
- the information, document or answer is relevant to the investigation.

6.3.2 No protection

There may be circumstances where an individual is not protected, for example where the discloser knowingly makes a statement that is false or misleading.

If the information, document or answer related to the discloser's own misconduct, section 6.3.1 does not protect the discloser from liability for their misconduct.



6.4 What is a Public Interest Disclosure

A disclosure of information will only be a PID, and subject to the range of protections under the PID Act, if it meets the following requirements:

- it is made by a Public Official or a person who has been made a Public Official
- 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' as defined by the PID Act
- the disclosure is made to an appropriate person.

The range of disclosable conduct is listed at Appendix A.

Accordingly, people contemplating making a disclosure should carefully review the PID Act and seek legal advice, where appropriate, in order to determine whether the disclosure can be made in a way that attracts the protections of the PID Act.

An appropriate person, for reporting a PID, includes:

- an Authorised Officer or Supervisor within ARPC, concerning suspected or probable illegal conduct or other wrongdoing ('disclosable conduct')
- anybody, if an internal disclosure of the information has not been adequately dealt with, and if wider disclosure satisfies public interest requirements
- anybody if there is substantial and imminent danger to health or safety
- an Australian legal practitioner for purposes connected with the above matters.

6.5 Who can make a public disclosure

A PID must be made by a 'Public Official'. If a disclosure is not made by a Public Official it is not covered by the PID Act.

A Public Official refers to all current and former ARPC current and former ARPC Board members, managers, employees, including contractors and consultants. For a full list of those considered to be 'Public Officials' for the purpose of the PID Act, please refer to the Procedures.

6.6 Making a public disclosure

6.6.1 Making a disclosure to an ARPC Authorised Officer or Supervisor

ARPC Public Officials should refer to the Procedures as published on the ARPC Intranet.

Where possible, ARPC Public Officials should make disclosures to an AO. When this is not possible or cause significant concern to the public officer, a disclosure may be made to a Supervisor.



A potential discloser should not undertake an investigation on their own initiative, before making a disclosure.

6.6.2 Disclosure of information

A disclosure may be made verbally, or in writing. The disclosure does not need specifically state that it is being made under the PID Act.

Information contained in a disclosure should be clear and factual. Speculation, personal attacks and emotive language should be avoided. Where possible, supporting evidence to the disclosure should be provided.

ARPC Public Officials must not knowingly make a statement that is false or misleading (refer 6.3.2).

The discloser has the right to request no investigation be undertaken, and to withhold permission to use contact name and detail in making the disclosure.

A disclosure may be made anonymously.

Further guidance is contained in the Procedures.

6.6.3 Supervisor must report

A Supervisor must report to an AO any information receives that a Supervisor reasonably believes concerns, or could concern, disclosable conduct. A Supervisor should maintain confidentiality of the discloser, and any request for anonymity made by the discloser.

Further guidance for Supervisors is contained in the Procedures.

6.6.4 Authorised Officer to advise

If a person discloses, or proposes to disclose, information that an AO reasonably believes concerns, or could concern, disclosable conduct, the AO must if the person is not anonymous:

- inform the person that the disclosure could be treated as an internal disclosure for the purposes of this Policy
- explain the requirements of the PID Act in order for the disclosure to be an internal disclosure
- advise of any orders or directions that are designated publication restrictions that may affect disclosure.

Further guidance on receiving a PID is contained in the Procedures.

6.6.5 Non-withdrawal

Once a disclosure has been made it cannot be withdrawn. The assessment, examination and potential investigation must follow due process until the matter is concluded, according to this policy and relevant legislation.



6.6.6 Anonymous disclosures

Disclosers may wish to remain anonymous; an anonymous disclosure can still be considered a disclosure under the PID Act. A disclosure is anonymous if the identity of the discloser is not revealed and if no contact details of the discloser are provided. Where a Supervisor receives an anonymous disclosure they must refer it to an AO as soon as reasonably practicable.

If an ARPC Public Officer requests anonymity and provides no contact details for a disclosure made, they should be made aware that while ARPC will assess, examine and potentially investigate the disclosure, there may be implications caused by anonymity, including but not limited to:

- potential difficulty in examining the disclosure and determining whether it requires investigation
- potential difficulty in investigating if the discloser is unable to be contacted
- potential difficulty in protecting from reprisal if ARPC does not register their identity
- potential difficulty in keeping them informed of the process and any outcome.

6.7 Risk Assessment

The AO will assess the risk of reprisals being taken against a person making a disclosure, except if the disclosure is made first to a Supervisor and the discloser wishes their identity to remain anonymous—then the Supervisor should undertake the risk assessment.

A risk assessment should involve assessing the specific behaviours and circumstances that may result in reprisals, subsequently putting in place appropriate strategies to prevent or contain the risk.

The risk assessment can include the risk of direct reprisals against the discloser and the risk of related workplace conflict or difficulties.

6.8 Examination of the disclosure

The AO will examine the information supplied by the discloser and subsequently decide, within 14 days, whether it is an internal disclosure under the PID Act.

Unless the AO is reasonably satisfied that there are no reasonable grounds for considering the matter as an internal disclosure, the AO must:

- determine the Principal Officer (or Relevant External Principal Officer) to whom the disclosure should be allocated
- allocate the disclosure for investigation.

The risk assessment should be provided to the Principal Officer on allocating the matter for investigation.



Further guidance on the allocation of disclosure, and notification requirements is contained in the Procedures.

6.8.1 Allocation of disclosure—Principal Officer potentially involved

Where the disclosure potentially involves the Principal Officer, advice should be sought from the Commonwealth Ombudsman prior to allocating any investigation.

6.9 Investigation of the disclosure

On receiving a PID allocation and risk assessment, the Principal Officer (or an AO as allocated under section 6.8.1) will determine whether or not the disclosure will be investigated under the PID Act. The decision will be made considering risk assessments on any reprisal, and may consider—but is not bound by—any discloser's requests in making this decision.

Where it is decided that an investigation will not be undertaken, the Principal Officer (or an AO as allocated under section 6.8.1):

- inform the Ombudsman of that decision and the reasons for that decision.
- inform the discloser of this decision and the reasons (provided the discloser has consented to providing their name and contact details), and provide other courses of action that may be available to the discloser under other legislation or ARPC policies.

Further guidance is on the decision to investigate, and notification requirements are contained in the Procedures.

6.9.1 Investigations under other legislation

Investigations into an internal disclosure can be conducted either under the PID Act or under other legislation applying to the Ombudsman, the IGIS and prescribed investigative agencies.

Where an investigation under a separate investigative power occurs, Ombudsman, the IGIS or investigative agency must inform the Principal Officer and the discloser (if name and contact details are provided) that investigation is complete.

6.9.2 Suspected Fraud

Any disclosure involving fraud or potential fraud must be managed in accordance with ARPC's Fraud Control Plan.

Under Resource Management Guide No. 201—Preventing, detecting and dealing with fraud, suspected fraud will be referred to the AFP for investigation.

6.9.3 Investigator engagement

Where a decision is made to investigate a PID, a suitably qualified investigator external to ARPC will be engaged to conduct and report on the investigation.



Any external investigator must have appropriate security clearance to conduct the investigation, according to the nature of the disclosure made.

Further guidance on engagement of an investigator is contained in the Procedures.

6.9.4 Investigation timeline for completion

Investigations under the PID Act must be completed within 90 days of the date the matter was allocated for investigation. The Ombudsman may grant one or more extensions.

Further guidance on the PID investigation timeline and any necessary extensions is contained in the Procedures.

Where an investigation under a separate investigative power occurs, the timeline for completion will be determined by the separate relevant legislation under which the investigative agency is acting.

6.9.5 Confidentiality

Any examination or investigation of a PID by ARPC will be conducted in as confidential a manner as is possible.

In particular, the identity of both the discloser and the person alleged to have engaged in disclosable conduct should not be revealed except where this is reasonable necessary for the effective investigation of the disclosure.

Any interviews conducted by an AO, Principal Officer, investigators or other delegates must be conducted in private; any interviews with the discloser should be arranged so as to avoid the identification of the discloser by other ARPC staff.

Any ARPC public officer who has made a PID should also endeavour to protect their own confidentiality and should not discuss details of the PID with non-necessary contacts.

Further guidance on confidentiality is contained in the Procedures.

6.9.6 Criminal offence

It is a criminal offence to inappropriately use or disclose any information obtained during any processes in connection with this Policy and the PID Act.

6.10 Record keeping

Details of how and when a PID was made be recorded and kept in a secure place, with access restricted to Authorised Officers. Documents with restrictions relating to sensitivity should be marked appropriately with protective marking eg For Official Use Only—to be read by named addressee only.

If the disclosure was made verbally, consideration should be given to asking the discloser to sign a record of the disclosure. Subsequent conversations should also be documented.



Further guidance on record keeping is contained in the Procedures.

6.10.1 Freedom of Information requests

Documents associated with PIDs are not exempt from the *Freedom of Information Act 1982* (FOI Act). Requests to access documents under the FOI Act must be referred to the GMGRC 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.

Further information and/or advice in relation to FOI Act request can be obtained from the GMGRC.

6.11 Monitoring and evaluation

A monthly report must be provided by the AO to ARPC's Principal Officer detailing the number of PIDs received and the nature of the disclosable conduct for each disclosure. This includes all PIDs, including those currently not allocated for investigation.

The Principal Officer will prepare an annual report for the Ombudsman on disclosures made during each financial year. The Principal Officer may delegate the preparation of this report to other ARPC AOs.

6.12 Conclusion and action

The Principal Officer and Authorised Officers will ensure that:

- any investigation resulting from a PID is appropriately concluded in accordance with the requirements of the PID Act
- any required action resulting from an investigation is addressed and implemented
- any reporting or communication of outcomes relating to the conclusion of a PID, whether investigated or not, which is required to be made to the Ombudsman or discloser(s) is delivered.

Further guidance on investigative procedures, reporting and completing the investigation is contained in the Procedures.

6.13 Organisational Support

6.13.1 For disclosers

The Principal Officer and Authorised Officers will take all reasonable steps to support ARPC Public Officials who have made a PID, and protect them from any detrimental effects or threats of detrimental effects as a result of making a PID.

This may include but is not limited to:

- appointing a support person to check on the wellbeing of the discloser



- keeping the discloser informed of the progress of the investigation
- advising the discloser of the EAP program available to ARPC employees
- maintaining confidentiality of discloser identity and of PID details, as far as practicably possible
- liaising with Human Resources where there are concerns about the health and wellbeing of the discloser.

ARPC staff and Board members should be aware that limitations apply if evidence suggests no protection is available under the PID Act, refer to section 6.3.2.

6.13.2 For ARPC employees against whom an allegation is made

The Principal Officer and Authorised Officers will take all reasonable steps to support ARPC employees who is the subject of a PID, and to protect them from any detrimental effects or threats of detrimental effects during a PID assessment and investigation.

This may include but is not limited to:

- advising the employee of their rights and obligations under the PID Act, ARPCs investigation procedures, and their rights to procedural fairness
- keeping the employee informed of the progress of the investigation
- advising the employee of the EAP program available to ARPC employees
- maintaining confidentiality of identity and of PID details, as far as practicably possible
- liaising with Human Resources where there are concerns about the health and wellbeing of the employee.

ARPC staff and Board members should be aware that limitations to protection apply if evidence suggests no protection is available under the PID Act, refer to section 6.3.2.

Further guidance on dealing with reprisals is contained in the Procedures.



Appendix A—Disclosable Conduct

Disclosable Conduct

The following is a list of the types of information that a person may, on reasonable grounds, believe to show 'disclosable conduct' by an 1) agency, 2) a Public Official, or 3) a contracted ARPC or Commonwealth service provider (in connection with the contract).

Disclosable conduct is any conduct that:

- a) contravenes the law
- b) is corrupt
- c) perverts the course of justice
- d) results in wastage of relevant money or relevant property
- e) is an abuse of public trust
- f) unreasonably endangers health and safety or endangers the environment
- g) is misconduct relating to scientific research, analysis or advice
- h) is maladministration, including conduct that is unjust, oppressive or negligent.

Without limiting any of the grounds above, disclosable conduct also includes conduct by a Public Official that involves or is engaged in for the purpose of abusing their position as a Public Official, and conduct that could give reasonable grounds for disciplinary action against the Public Official.

The PID Act is not intended to replace existing processes for dealing with workplace grievances and misconduct, such as bullying and harassment, but to supplement them. Individual grievances or workplace conflicts would generally be appropriately dealt with by other existing agency and public sector mechanisms, such as investigations under the ARPC Code of Conduct. However, if the nature of a disclosure suggests that an individual grievance of workplace conflict could be reasonably construed as a matter more broadly representative of a larger or systemic issue, then further investigation under the PID Act may be appropriate.

Exclusions to Disclosable Conduct

Exclusions to Disclosable Conduct include:

- disagreement with government policy, action or expenditure
- judicial conduct
- proper activities of intelligence agencies.



Appendix B—ARPC Authorised Officers

Authorised Officers under the PID Act

The following ARPC positions are appointed as Authorised Officers under the *Public Interest Disclosure Act 2013*:

- Chief Executive Officer
- Chief Operating Officer
- General Manager, Insurance Audit and Claims.