

Public Interest Disclosure Policy

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 engaged by ARPC.

Document relationship

Policy	-
Procedure	-
Process	Public Interest Disclosure Process

Approval Date	Version	Owner (Chief Officer)	Approver	Next Review Date
25/9/2018	3.3	Michaela Flanagan (COO)	Board	25/9/2021

1. Introduction

The *Public Interest Disclosure Act 2013* (PID Act) repeals all policies and procedures that previously existed under the whistle blower provisions within the *Public Service Act 1999*. It promotes 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. ARPC is committed to meeting the PID Act requirements and encouraging the reporting of inefficiency and wrongdoing by:

- documenting and communicating ARPC's policies and process on PID disclosures;
- providing training and awareness sessions on the PID Act and associated ARPC processes;
- supporting employees who make PIDs; and
- investigating and managing PIDs appropriately.

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. In accordance with s 59(1) of the PID Act, ARPC have developed an ARPC PID Process that supports this policy that contains details on:

- the allocation and investigation process;
- concluding an investigation;
- protections available to both the discloser and subjects of a PID; and
- record keeping.

2. Public Interest Disclosures (PIDs)

2.1 Overview: Disclosing and investigating a PID

Generally speaking, a disclosure of information will be a PID and will attract protection under the PID Act if:

- the disclosure is made by a current or former Public Official, or a person who is deemed to be a Public Official;
- the disclosure is made to the appropriate recipient; and
- the information on which the disclosure is based satisfies certain requirements, for example, that it tends to show one or more instances of disclosable conduct or concerns a substantial and imminent danger to health or safety.

The appropriate recipient for the disclosure will depend upon which whether the disclosure is:

- an internal disclosure;
- an external disclosure;
- an emergency disclosure; or
- a legal practitioner disclosure.

Depending on the category of disclosure, appropriate recipients include:

- an Authorised Officer (AO), which includes the Principal Officer (that is, the CEO of ARPC) or a person who supervises or manages the discloser (the discloser's Manager);
- the Commonwealth Ombudsman or the Inspector-General of Intelligence and Security (IGIS);
- in cases in which the requirements for an emergency disclosure are met, any person except a foreign public official; or
- in cases in which the requirements for a legal practitioner disclosure are met, an Australian Legal Practitioner.

Direction requirements need to be satisfied for each category of disclosure. Generally speaking, for a disclosure of information to be a PID, it is necessary that 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 meaning of Disclosable Conduct is explained at requirements for each category of disclosure are outlined at [2.4]-[2.7] below.

A Public Official contemplating making a disclosure to someone other than an AO, their Manager, the Ombudsman or IGIS should consider seeking legal advice about the application of the PID Act to their circumstances. The Ombudsman's office can provide general guidance.

On receiving a PID allocation and risk assessment, the Principal Officer (or a person to whom the Principal Officer has delegated his or her powers) will determine whether or not the disclosure will be investigated under the PID Act.

2.2 Public Officials

Public Officials include Commonwealth public servants, Parliamentary Service employees, directors or staff of Commonwealth companies, statutory office holders or most individuals who exercise powers under most Commonwealth laws. Individuals and organisations that provide goods or services under a Commonwealth contract (defined in s 30(3)) and their officers or employees are also Public Officials for the purposes of the PID Act.

Public Officials may make the PID verbally or in writing. Information contained in a disclosure should be clear and factual. The discloser may ask to remain anonymous, or that no investigation be undertaken.

The Principal Officer or another AO may deem an individual to be a Public Official if they reasonably believe the individual has information about wrongdoing and proposes to make a disclosure (s 70). Examples of a 'deemed' Public Official might include:

- a current or former volunteer with an agency;
- a member of an advisory body to a Commonwealth agency (where the members terms of engagement do not meet the definition of a public official);
- an employee of an organisation that receives grant funding from the Australian Government; or
- state and territory department officials who work alongside Commonwealth officials.

2.3 Disclosable Conduct

Generally speaking, Disclosable Conduct 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, in connection with the contract.

that:

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

This 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, without limiting the above. Certain kinds of conduct do not amount to Disclosable Conduct, including:

- disagreement with government policy, action or expenditure;
- certain conduct by a judge or court staff or a tribunal member or tribunal staff; or
- proper activities of intelligence agencies.

2.4 Internal Disclosure

If a Public Official believes on reasonable grounds that there has been Disclosable Conduct, the Public Official may make an internal disclosure to an Authorised Officer or the person's Manager.

2.5 External Disclosure

If a Public Official believes on reasonable grounds that there has been Disclosable Conduct, and the person has previously made an internal disclosure of the information and:

- the person believes on reasonable grounds that the disclosure investigation or the response to the investigation was inadequate; or
- the disclosure investigation was required to be undertaken but has not been completed in the required time; and

the Public Official may make an external disclosure to any person other than a **foreign public official** provided that certain other requirements are met, including that:

- the disclosure is not contrary to the public interest;
- no more information is publicly disclosed than is reasonably necessary to identify the Disclosable Conduct; and
- the information is not **intelligence information** (defined in s41 of the PID Act).

2.6 Emergency Disclosure

If a Public Official believes on reasonable grounds that the information they have concerns a substantial and imminent danger to the health or safety of one or more people or to the environment, they may make an emergency disclosure to any person except a foreign public official, provided they meet certain requirements, including that:

- the extent of the information they disclose must be only what is necessary to alert the recipient of the substantial and imminent danger; and
- if they have not previously made an internal disclosure about the matter, or if they have done so and the investigation is not yet completed, there must be exceptional circumstances justifying their decision to make an external disclosure (This might include, for example, if investigation was taking too long to complete having regard to the risk to a person's health and safety).

An emergency disclosure must not include intelligence information.

2.7 Legal Practitioner Disclosure

A Public Official may make a legal practitioner disclosure to an Australian legal practitioner for the purpose of obtaining legal advice or professional assistance from the legal practitioner in relation to a PID that the Public Official has made or proposes to make.

If the discloser knows or ought reasonably to know that the information has a national security or other protective security classification, the legal practitioner must have the appropriate level of clearance.

A legal practitioner disclosure must not include intelligence information.

2.8 Making a PID

The following are contact details for Public Officials to make an internal PID to ARPC:

Post: Public Interest Disclosure Contact Officer
Australian Reinsurance Pool Corporation
PO Box Q1432
Queen Victoria Building, NSW 1230
Email: enquiries@arpc.gov.au
Phone: 1300 363 992

Your identity and contact details, as well as the content of your disclosure, will be protected in accordance with the PID Act. You may choose to make a PID openly and in your own name, anonymously or using a pseudonym.

If you wish to remain anonymous and do not wish to have your identity or contact details provided, or if you would like to adopt a pseudonym for these purposes, this should be clearly stated in your correspondence.

3. Freedom of Information Requests

Documents associated with PIDs are not automatically exempt from the *Freedom of Information Act 1982* (FOI Act). Requests to access documents under the FOI Act must be referred to the Principle Officer who makes decisions 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. ARPC Authorised Officers (AOs)

ARPC's Authorised Officers (AO) are as follows:

- The Chief Executive (CEO) (Principal Officer) is an AO; and
- the Chief Financial Officer (CFO) and Chief Operating Officer (COO) are appointed as AOs by the Principal Officer under the PID Act.

5. Education and Awareness

Staff education and awareness sessions will be provided on the PID Act, including the ARPC PID Policy and Process 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.

6. Responsibilities

The following roles and responsibilities are also further detailed in the ARPC PID Process.

6.1 Chief Executive (Principal Officer)

The role of the 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 36 of the PID Act, with the number of ARPC AO(s) sufficient such that they are readily available and accessible by all ARPC Public Officials;
- make all ARPC Public Officials aware of the identity of each ARPC AO (the current AOs will also be documented in the ARPC's PID Process);
- properly investigate disclosure 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; and
- maintain confidentiality of discloser identities in accordance with the discloser's requirements, PID processes and documentation.

6.2 Chief Operating Officer (COO)

The COO 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; and
- delivering staff awareness sessions to staff, and to AOs on their rights and responsibilities under the PID Act.

6.3 Authorised Officers

The CEO, CFO and COO as ARPCs AOs are responsible for:

- 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
- documenting the PID information.

6.4 Managers

ARPC Managers may receive disclosures from Public Officials who they supervise or manage and are responsible for providing to an AO as soon as practicable, any information given to them that they believe concerns, or could concern, disclosable conduct (s 60A).

6.5 ARPC Public Officials

Under the PID Act, ARPC Public Officials must:

- use their best endeavours to assist the Principal Officer or his or her delegate in the conduct of a PID investigation; and
- 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.

6.6 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; and
- conducting educational and awareness programs relating to the PID Act to the extent to which it relates to ARPC and its Public Officials.

7. Monitoring, review and limitations of the policy

7.1 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.

7.2 Review

The following policy is reviewed every 3 years and updated when there are changes in legislation, other ministerial or departmental guidelines, operations, key stakeholders, systems.

7.3 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. Where the Commonwealth Fraud Control Guidelines apply under the Public Governance, Performance and Accountability Act 2013 (PGPA Act), the Public Interest Disclosure Standard 2013 (PID Standard) applies only to the extent that it is not inconsistent with those Guidelines (PID Standard s 8). If there is a discrepancy between other relevant legislation / the ARPC's Enterprise Agreement and the notification forms, the former takes precedence.

8. Key related documents

Key internal documents related to this Policy are:

- Freedom of Information Procedure;
- Public Interest Disclosures Process;
- ARPC Values and Code of Conduct;
- Code of Conduct Breach Procedure;
- Fraud Control Policy;
- Anti-Corruption Procedure;
- Procurement Procedure; and
- Contract Management Process.

Key external documents related to this Policy are:

- Public Interest Disclosure Act 2013 and PID Standard;
- Commonwealth Ombudsman's Agency Guide to the *Public Interest Disclosure Act 2013*;
- Commonwealth Ombudsman Website – Information for Disclosers;
- Commonwealth Ombudsman Website – Speaking up about wrongdoing: A guide to making a disclosure under the *Public Interest Disclosure Act 2013*;
- Resource Management Guide No. 201 – Preventing, detecting and dealing with fraud; and
- Commonwealth Ombudsman PID Forms:
 - Form 1 – Notification of Allocation
 - Form 2 – Notification of decision not to investigate or not to investigate further
 - Form 3 – Request for extension to investigate;
- Australian Government Investigation Standards.

9. Glossary