



## **AUSTRALIAN RESPIRATORY COUNCIL WHISTLE-BLOWER POLICY**

### **1. Introduction**

The Australian Respiratory Council (ARC) is committed to a culture of ethical behaviour and of good governance to foster upward reporting in an environment free from recrimination and victimisation. This is essential if senior management and the Board of Directors are to adequately manage risk within the organisation.

ARC will not tolerate any corrupt, illegal or other unacceptable or undesirable conduct by its Directors, staff, volunteers, contractors or partners nor condone victimisation of an individual who intends to report or has reported such conduct as a Protected Disclosure in accordance with this Policy

ARC has a responsibility under the Corporations Act 2001 to identify and resolve incidents in line with such legislation.

### **2. Objectives and purpose**

ARC supports the reporting of improper conduct. This policy is designed to promote open communication, develop practices that reduce the risks of reportable conduct within ARC and safeguard the reputation, values and ethics of ARC.

The objectives of this Whistle-blower Policy are to:

- Provide any person making an allegation of reportable conduct with a clear framework within which to make that allegation as a protected disclosure
- Ensure any reports of reportable conduct are dealt with appropriately
- Provide whistle-blowers with a clear understanding of how allegations will be handled

- Protect whistle-blowers from victimisation and retaliation
- Support whistle-blowers throughout the reporting process
- Afford natural justice and procedural fairness to anyone who is the subject of an allegation of reportable conduct.

## **2. Definition**

A whistle-blower (discloser) is an officer or an employee of ARC or a contractor or employee of a contractor who has a current contract to supply goods or services to ARC and who whether anonymously or not, makes, attempts to make or wishes to make, a report in connection with reportable conduct and wishes to avail themselves of protection against reprisal for having made the report. A whistle-blower may or may not wish to remain anonymous.

## **3. General Principles**

The Whistle-blower Policy is designed to complement the normal communication channels. It is intended to encourage and enable employees to raise concerns within ARC prior to seeking resolution externally.

## **4. Strategies**

ARC is committed to taking effective action to deal with disclosures and the cause of such disclosures by:

- a) ensuring that all persons are aware of the policy and processes associated with making a disclosure
- d) ensuring that all persons are aware of corrupt practices that may arise from their day to day activities and how best to avoid these situations
- e) ensuring that all persons understand the importance of reporting corrupt or illegal practices
- f) ensuring that all persons are protected against reprisals and/or victimisation.

## **5. Scope**

This policy applies to all staff and other stakeholders. Staff refers to fulltime, part time and extends to people engaged on short term consultancy contracts with the organisation.

Others refers to Directors, committee personnel, visitors, volunteers, staff in partnerships agencies, and any other individuals or groups that have contact with the ARC.

## **6. Whistle-blower Personnel**

A Whistle-blower Protection Officer (WPO) will be appointed by the ARC Board of Directors to:

- Safeguard the interests of a whistle-blower
- Assess the immediate welfare and protection needs of a whistle-blower and, where the whistle-blower is an employee, seek to foster a supportive work environment
- Respond as appropriate and necessary to any concerns or reports of victimisation by a whistle-blower.

A Whistle-blower Investigations Officer (WIO) will be appointed by the ARC Board of Directors to:

- Advise people who approach them of this Whistle-blower Policy and, when relevant, of the provisions of State and Federal legislation
- Treat all reports in a non-judgemental and independent manner
- Provide advice to a whistle-blower who wishes to go directly to an external complaint, to ensure that the whistle-blower makes an informed decision on how best to proceed in full view of all available options.

The WPO and WIO may be contacted:

- By email
- In person
- By mail to the attention of The Whistle-blower Protection Officer or The Whistle-blower Investigation Officer at PO Box 942, Broadway NSW 2007

The Whistle-blower Protection Officer and the Whistleblower Investigations Officer should not be the same person. They have a responsibility to operate independently.

## **7. Making a report**

It is expected that persons will report known, suspected, or potential cases of reportable conduct. This includes fraud, corrupt conduct, adverse behaviour, legal or regulatory non-compliance, or questionable accounting and auditing practices.

Depending on the nature of the conduct a disclosing person can utilise standard communication channels for reporting.

Alternatively, if a person feels unable to raise their concern via standard channels they can report the matter as a protected disclosure. To qualify for protection the disclosure must be made to:

- ASIC
- ARC's Auditor
- A Director or Executive Director of ARC
- A person authorised by ARC to receive such disclosures.

If the concern is serious and has not been addressed to the reporting person's satisfaction, they should escalate the concern through an alternative method.

Where the concern is serious and could result in reprisals against the whistle-blower, but has not been made as a protected disclosure, the recipient of the concern must treat the matter confidentially and should ensure the matter is referred to the Executive Director or nominated person so it can be treated as a protected disclosure and provide the whistleblower with protection from reprisals.

## **8. Confidentiality and Anonymity**

Known or suspected cases or reportable conduct reported as protected disclosures are treated as being submitted on a confidential basis with full details known only to the Executive Director or nominated person and can be made anonymously if required. If persons choose to disclose an issue anonymously, this may hinder the ability to fully investigate the matter. Further, it may in certain circumstances prevent the whistleblower from accessing additional protection at law.

Protected Disclosure will be kept confidential to the extent possible, subject to the need to meet legal and regulatory requirements. Disclosures that involve a threat to life or property, illegal activities or legal actions against ARC may require actions that do not allow for complete anonymity. In such cases, reasonable steps will be taken to discuss this with the whistleblower first.

Apart from the situation above, the disclosure and identity of the whistleblower can only be revealed to a third party if the whistleblower has given their consent.

Subject to any legal requirements, all employees including the whistleblower, must protect and maintain the confidentiality surrounding protected disclosures. This includes the identity of people they know or suspect may have made a protected disclosure, or who are the subject of a protected disclosure.

Failure to maintain confidentiality is a serious matter and subject to disciplinary action in some cases criminal and/or other penalties may apply.

## **9. Handling of Protected Disclosures**

Receipt of the protected disclosure will be confirmed by the Executive Director or nominated person.

All protected disclosures will be investigated in a timely manner and appropriate corrective action taken as warranted by the investigation.

Received allegations of Reportable Conduct must include, at a minimum, the following details:

- The date the whistle-blower made the report
- The identity and level of seniority of the alleged wrongdoer
- The level of risk associated with the alleged wrongdoing.

The Executive Director or nominated person will determine whether sufficient information exists to allow the report(s) to be investigated, whether an investigation is required and if so determine the appropriate investigation process, including:

- The nature and scope of the investigation
- Who will conduct the investigation and whether the person should be external
- The nature of any technical, financial or legal advice that may be required
- A timeframe for the investigation (having regard for the level of risk).

In the interest of all parties and objectivity, consideration should be given to employing outside investigators particularly where the allegation is serious.

The whistle-blower will be kept appropriately informed of the process of action taken in respect of the protected disclosure they make. The extent to which they can be informed of specifics will vary from case by case basics. If ARC is required to refer an allegation of reportable conduct to the police or external agency (e.g. ASIC) ARC may not be able to keep a whistle-blower informed on the progress of a protected disclosure.

ARC will apply principles of procedural fairness and natural justice to the conduct of any investigations and resultant findings arising under this Policy.

The person leading the investigation will report their findings to the relevant person ie the Executive Director or President of the Board and advise the recommended course of action (if any) that ARC should take in response to the findings. Such action may include a disciplinary process or another form of escalation of the report within or outside of ARC.

A summary of all protected disclosure investigation will be provided to the Board with anonymity and confidentiality requirements being observed. ARC Board or nominated person will determine the action (if any) to be taken. If appropriate and subject to any applicable confidential, privacy or legal constraints the whistle-blower may be informed of the conclusion of the investigation and the action taken.

All information of an investigation into a protected disclosure will be subject to ARC's Privacy Policy.

Protected disclosure concerns involving questionable accounting and auditing practices which may have a material impact on finance, regulatory compliance and reputation will be assessed as a matter of priority.

## **10. Whistle-blower – Protection from Reprisal**

Any person making a protected disclosure must be acting in good faith and have reasonable grounds for believing the information disclosed represents reportable conduct.

ARC will ensure that reasonable measures are taken to protect employees against reprisals as a result of making a protected disclosure, even if the disclosure is subsequently determined to be incorrect or is not substantiated.

It is not acceptable to discharge, demote, suspend, threaten, harass or in any other manner discriminate against a whistleblower who makes a protected disclosure. Any person who retaliates against anyone who makes a protected disclosure is subject to disciplinary action, including potential termination of employment.

In certain circumstances, victimisation of a whistleblower can constitute a criminal offence.

ARC will take reasonable steps to protect anyone who has been requested to assist in investigating protected disclosures from reprisals.

## **11. Consequences of making a false report**

Anyone who knowingly and maliciously makes a false report of Reportable Conduct, or otherwise fails to act honestly with reasonable belief in respect of the report will be viewed seriously and may be subject to appropriate disciplinary action.

## **12. Position of a Person Who Is a Subject of a Protected Disclosure**

A person who is the subject of an investigation has the right to be:

- Informed as to the substance of any adverse comment that may be included in a report, memorandum, letter etc arising out of any investigation
- Given a reasonable opportunity to put their case to the investigator.

## **13. Involvement in Reportable Conduct by the Whistle-blower**

Making a protected disclosure does not protect a person from civil or criminal liability for illegal acts or wrongdoing in which they have been involved and which they are disclosing. However, if an employee blows the whistle, and actively cooperates in an investigation in which they have been implicated, there may be some cases where the fact that they have made a disclosure will be taken into account as a mitigating factor when determining actions that may be taken against them.

## **14. External Complaints**

If a whistle-blower is not comfortable or able to report misconduct internally. They may decide to make a protected disclosure externally to an independent agency such as:

- Australian Securities and Investment Commission (ASIC)
- Australian Federal Police.

## **15. Record keeping**

The investigation process should be open to administrative, operational and judicial review. An audit trail must be maintained relating to investigation activities and documenting critical decisions made during the investigations.

Persons dealing with whistleblower investigations must keep all records in a confidential manner. All records should be kept locked in a secure place.

**16. Relevant legislation**

- Corporations Act 2001
- Australian Standard AS 8004 – 2004
- Occupational Health & Safety Act 2000

Other legislation which emphasises the principles and spirit of whistleblower policies.

- NSW Public Interest Disclosure Act 1994 No 92
- Fair Work Act 2009

Useful websites

- [www.nsw.ombo.nsw.gov.au](http://www.nsw.ombo.nsw.gov.au)
- [www.asic.gov.au](http://www.asic.gov.au)

Endorsed by the Board of Directors on: 10<sup>th</sup> May, 2019

To be reviewed annually commencing May 2020

**APPENDIX 1**  
**AUSTRALIAN RESPIRATORY COUNCIL**

**WHISTLE-BLOWER POLICY**

**GLOSSARY OF TERMS**

Adverse Behaviour	<p>May include but not limited to:            Unethical behaviour or misconduct, including breaches of ARC's policies and code of conduct            Other serious improper conduct that may be detrimental to the interests of ARC or cause financial or non financial loss(including harassment and unsafe work practices)            Other behaviour which is contrary to ARC's values and/or compliance standards.</p>
Corrupt Behaviour	<p>An employee, Director, volunteer, contractor dishonestly acting, or dishonestly failing to act, in the performance of their duties or dishonestly taking advantage of their duties to obtain any benefit for themselves, ARC or for any another person or organisation, or to cause loss to another person/party.</p>
Fraudulent Behaviour	<p>Dishonest activity that causes actual or potential financial loss, or an unjust advantage, to ARC. It includes theft of money, data or other property whether or not deception is involved.            Deliberate falsification, concealment, destruction or use of falsified documentation or intended for use, for a normal business purpose or the improper use of information or position.            Knowingly providing or publishing records or financial statements that are false or misleading in any material way.</p>
Legal or Regulatory Non-compliance	<p>Illegal behaviour (e.g. theft, drug/use, violence or threat of violence and criminal damage against property) and breaches of all applicable legislation, regulations and laws.</p>
Protected Disclosure	<p>Is a qualifying disclosure relating to reportable conduct made by a person that entitles the person who made the disclosure to support and protection from reprisal.</p>
Questionable Accounting and Auditing Practices	<p>May be technically or arguably legal but do not comply with the intent or spirit of the law.            Do not comply with accounting or auditing standards.            Involve an inappropriate or questionable interpretation of accounting or auditing standards.            Are fraudulent or deceptive in nature but are not undertaken for personal gain or to cause loss or are undertaken in the belief that it may benefit ARC.</p>
Reportable Conduct	<p>Conduct that is illegal, unacceptable or undesirable. Reportable conduct includes but is not limited to:</p> <ul style="list-style-type: none"> <li>• Dishonest, corrupt or illegal activities</li> <li>• Theft, fraud, money laundering or misappropriation</li> <li>• A serious breach of ARC's policies and processes</li> <li>• Offering or accepting a bribe</li> <li>• Use of ARC's funds or resources in a manner that falls within the scope of Reportable Conduct</li> <li>• Damage/sabotage, violence, drug &amp; alcohol related sale/use</li> <li>• Risks to the health and safety of workers</li> <li>• Unethical conduct</li> <li>• Bullying, discrimination, harassment or abuse</li> <li>• Victimising someone for reporting Reportable Conduct</li> </ul>

	<ul style="list-style-type: none"> <li>• Recrimination against someone because they participated in an investigation or review</li> <li>• Any instruction to cover up or attempt to cover up serious wrongdoing.</li> </ul>
Reprisals	<p>Adverse actions taken against a person as a result of making a protected disclosure in accordance with this Policy can include but are not limited to:</p> <ul style="list-style-type: none"> <li>• Dismissal or demotion</li> <li>• Any form of victimisation, intimidation or harassment</li> <li>• Discrimination</li> <li>• Current or future bias</li> <li>• Action causing injury, loss or damage</li> <li>• Threats (express or implied, conditional or unconditional) to cause detriment.</li> </ul>
<b>Whistleblower /Discloser</b>	An officer or employee of ARC or a contractor or their employees who has a contract to supply goods or services to ARC.