AUSTRALIAN RIVER CO. LIMITED

PROCEDURES FOR DEALING WITH PUBLIC INTEREST DISCLOSURES

I, Philip Smith, Chair of the Australian River Co. Limited (ARCO), establish these Procedures under section 59 of the Public Interest Disclosure Act 2013 (the PID Act).

5 May 2014
Principal Officer of ARCO for the purposes of the PID Act

1. Application of these Procedures

1.1. These Procedures apply to disclosures made to the ARCO Principal Officer, or those disclosures which are subsequently allocated to ARCO as internal disclosures.

1.2. These Procedures do not apply to external disclosures, emergency disclosures or legal practitioner disclosures.

1.3. The Procedures will be applied and interpreted in a manner that is not inconsistent with the PID Act. All terms that are used in these Procedures are taken to have the same meaning as in the PID Act.

1.4. A failure to apply these Procedures to their full extent will not result in an allocation, investigation or decision being invalid.

1.5. For more information on public interest disclosures please refer to the Agency Guide to the PID Act 2013 published by the Commonwealth Ombudsman.

2. Who can make a public interest disclosure?

2.1. A person (a discloser) who is a current or former ‘public official’ may make a public interest disclosure (a disclosure). The term ‘public official’ is defined in section 69 of the PID Act.

2.2. If a person who intends to make a disclosure was not a public official at the time they obtained the information they intend to disclose, they may be deemed to be a public official by the Principal Officer.

2.3. The Principal Officer can determine a person to be a public official on the person’s request or on his or her own initiative. If it is in response to a person’s request, the Principal Officer must either make the determination, or refuse the determination and advise the person of the reasons. To make the determination, the Principal Officer must issue a written notice to the person stating that the PID Act has effect, and is taken to always have had effect, in relation to the disclosure of the information as if the individual had been a public official.

3. Who can receive a public interest disclosure?

3.1. A public interest disclosure can be made to the Principal Officer (ordinarily known as the Chair of ARCO). In certain circumstances, a disclosure may be made to an external body such as the Ombudsman.
3.2. To gain the protections the PID Act provides to disclosers, a public official must make a disclosure to an appropriate person.

4. How can a disclosure be made?

4.1. You can contact the Principal Officer of ARCO by mail at:
   Chair of ARCO
   c/o 473 St. Kilda Road
   PO Box 7663
   Melbourne, Vic. 3004

4.2. A disclosure may be made anonymously and does not have to state that the disclosure is being made under the PID Act.

4.3. Anonymous disclosures will be acted upon wherever possible. However, one of the requirements for making a public interest disclosure is that the person is or was a public official. This may be difficult to ascertain if the discloser is anonymous. A person who has made an anonymous public interest disclosure may come forward at a later stage to disclose their identity.

5. Confidentiality and protection from reprisal

5.1. Generally the identity of disclosers is protected and remains confidential. Identification of disclosers will only occur in accordance with the PID Act or with the consent of the discloser.

5.2. A discloser is subject to protection from reprisal under the PID Act where they make a disclosure, unless such a disclosure does not fall within the PID Act. Those protections include confidentiality and immunity from criminal and civil liability or disciplinary action.

5.3. When the disclosure is received the Principal Officer will conduct a risk assessment that considers:
   • if the identity of the discloser is readily ascertainable or is likely to become ascertainable during the conduct of an investigation; and
   • the risk of reprisal action being taken against the discloser.

6. What conduct can be disclosed?

6.1. A public official can disclose information that they believe on reasonable grounds to be disclosable conduct. Not all conduct is disclosable. Disclosable conduct is defined in section 29 of the PID Act.

7. Principal Officer to deal with a disclosure

7.1. At the time a disclosure is made to the Principal Officer, the discloser will be advised by the Principal Officer of the following matters:
   • that the disclosure could be treated as an internal disclosure for the purposes of the PID Act, including outlining requirements in order to be considered an internal disclosure under the PID Act; and
   • explain the protections provided by the PID Act to persons who make disclosures under the PID Act; and
• advise the discloser of any orders or directions that may affect disclosure (designated publication restrictions, section 8 of the PID Act).

7.2. The Principal Officer will make an appropriate record of the disclosure.

8. Allocation of a disclosure

8.1. The Principal Officer will consider the disclosure and determine if they require further information prior to deciding if the disclosure is a public interest disclosure that should be allocated for investigation.

8.2. The Principal Officer will decide if they are satisfied, on reasonable grounds, that there is no reasonable basis on which the disclosure could be considered to be a public interest disclosure within the meaning of the PID Act. If the Principal Officer decides the disclosure is a public interest disclosure within the meaning of the PID Act, the disclosure must be allocated for investigation.

8.3. The Principal Officer may allocate the disclosure to one or more agencies for handling (including ARCO, the Ombudsman or another agency). The Principal Officer can only allocate a public interest disclosure to another agency if an authorised officer in that agency consents to the allocation. If the disclosure is allocated to the Ombudsman or another agency, the Principal Officer will, where practicable, ask the discloser if they consent to the Principal Officer giving the discloser’s name and contact details to the relevant agency for investigation. If the discloser does not respond within 7 calendar days, the discloser is deemed not to consent.

8.4. Once a decision is made to allocate, the Principal Officer is required to send information regarding the disclosure, and the allocation decision, to the Ombudsman’s office. This information will only include the name and contacts of the discloser if he or she consents.

8.5. The Principal Officer will notify the discloser of their allocation decision, and reasons for their decision, in accordance with paragraph 12 of these Procedures.

9. Investigation of a disclosure

9.1. Once a decision has been made about allocation, the Principal Officer must investigate a disclosure allocated to ARCO unless the discretion in section 48(1) of the PID Act is exercised.

9.2. The Principal Officer may investigate the disclosure in the manner that he or she deems fit in the circumstances, provided it is not inconsistent with these Procedures or the PID Act.

10. Decision not to investigate or discontinue investigation

10.1. The Principal Officer may decide not to conduct an investigation, or decide not to investigate further, if one or more of the reasons in section 48(1) of the PID Act exists.

10.2. If the Principal Officer decides not to investigate or discontinue the investigation, the discloser will be notified in accordance with paragraph 12 of these Procedures.
10.3. The Principal Officer will inform the Ombudsman of any decision not to conduct an investigation or to discontinue an investigation, including the reasons.

11. Procedural fairness

11.1. The rules of procedural fairness apply to the conduct of an investigation and in particular to protect the interests of a person against whom an allegation has been made. However, if a disclosure is not investigated or discontinued, the Principal Officer does not have to provide procedural fairness to the person against whom allegations have been made.

12. Notification to persons making disclosures

12.1. The Principal Officer must notify a discloser, if applicable and reasonably practicable in the circumstances, of their decision in relation to the allocation of the disclosure. If contact details are not provided by the discloser notification will be deemed not practicable in the circumstances.

12.2. If allocated for investigation, the Principal Officer will notify the discloser, if applicable and reasonably practicable in the circumstances, of their decision:
   • to investigate the disclosure, either in accordance with these Procedures or under a separate investigative power;
   • not to investigate the disclosure; or
   • not to investigate the disclosure further.

12.3. If investigated, the Principal Officer will notify the discloser of the outcome of the investigation, including a copy of the report, if release of the report would not contravene designated publication restrictions (section 8 of the PID Act).

12.4. When providing notification, in accordance with paragraphs 12.1 and 12.2 of the Procedures, the discloser will be provided with reasons for the decision and review or appeal rights which flow from that decision.

13. Timeframes for dealing with a disclosure

13.1. The Principal Officer is generally required, within 14 days of receiving the disclosure, to decide on the allocation of the disclosure.

13.2. Any investigation must be completed, and the report of the investigation finalised, within 90 days after the relevant disclosure was allocated.

13.3. The timeframe for investigation may be extended in accordance with the PID Act.

14. Investigation complete

14.1. This Procedure is considered complete once the discloser is provided either with:
   • notification that the matter has not been allocated as an internal disclosure with reasons; or
   • notification that no investigation or further investigation will occur with reasons; or
   • a copy of the report into the investigation.