

## AFTRS Whistleblower Policy and Procedure

<b>Responsible Officer</b>	Chief Finance Officer
<b>Contact Officer</b>	Head of Human Resources
<b>Authorisation</b>	Chief Executive Officer
<b>Effective Date</b>	27th April 2012 Reviewed 7th June 2012
<b>Associated Documents</b>	AFTRS Code of Conduct AFTRS Enterprise Agreement 2011 AFTRS Fraud Policy and Procedure AFTRS Workplace Bullying Policy and Procedure AFTRS Workplace Anti-Harassment Policy and Procedures AFTRS Administrative Orders AS 8004-2003 Whistleblower Protection Programs for Entities

### 1. Policy Name

The AFTRS Whistleblower Policy and Procedure.

### 2. Preamble

AFTRS has established a number of processes for investigating allegations of breaches of the Code of Conduct and other improper conduct. The requirement to adhere to the Code of Conduct has been included in successive Enterprise Agreements, as has the process for investigating claims of misconduct. Additional protections have been put in place through policies and procedures which encourage reporting, protect employees making allegations in good faith, and adhere to the principles of natural justice. This includes the approval of a Workplace Bullying Policy as early as 2002.

In 2011 the AFTRS Council, as one of its governance activities, commissioned a staff cultural survey. Positive results in relation to reporting unethical behaviour within the School included:

- the majority of staff would feel comfortable discussing their concerns with their manager;
- the majority of staff believe their concerns would be taken seriously, and
- most staff believe the person who was the subject of the concern would be treated fairly.

Areas emerging as requiring attention were that:

- many staff are not aware of established processes for raising concerns, and
- they would not be protected from negative consequences for reporting.

This Policy and Procedure have been developed to address these areas.

### 3. Policy Scope

While this Policy and Procedure applies primarily to AFTRS employees, it also allows members of the public and others to register concerns.

### 4. Definitions

**Whistleblower** is a person who makes an appropriate disclosure of public interest information (suspected breach of the Code of Conduct) to an authorised person or organisation in good faith. They maintain AFTRS' integrity by seeking to correct perceived wrongs, usually after a great deal of thought. A whistleblower is not a "leaker" (one who unlawfully releases official information and breaches the Code of Conduct).

**Decision maker** means the Chief Executive Officer or Chair of the AFTRS Council as appropriate. In cases where a complaint is made against the Chair of the AFTRS Council the relevant Minister would be the decision maker.

**Whistleblowing** is the deliberate, voluntary disclosure of individual or organisational misconduct, either actual, suspected or anticipated, and that is within the organisation's ability to control.

**Appropriate Disclosure** is where the person believes on reasonable grounds that the information disclosed is true or, if not in a position to form a belief on reasonable grounds about the truth of the information, but believes the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated and the disclosure is made to a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure.

**Public Interest Information** shows that an employee has been involved in improper conduct.

**Improper Conduct** in this Policy and Procedure is behaviour that must be serious enough that, if proven, it would constitute a criminal offence or reasonable grounds for dismissal or disciplinary action. It may include:

- an illegal activity;
- a breach of a legal obligation;
- an irregular or unauthorised use of public money;
- substantial mismanagement of public resources;
- danger to the health or safety of any individual;
- damage to the environment;
- maladministration in or in relation to the performance of their official functions;

- a breach of the AFTRS Code of Conduct, Workplace Bullying Policy, or Workplace Anti-Harassment Policy;
- any reprisal or detrimental action against someone who has made a disclosure under this policy, or
- deliberately covering up information tending to show the above.

***Detrimental Action*** is adverse action against a whistleblower, a member of the whistleblower's family, or the whistleblower's associate or friend on the basis of their disclosure. These would include:

- demotion;
- transfer;
- isolation in the workplace;
- changes of duties;
- threats;
- abuse;
- other direct or indirect harassment, and
- discrimination in any aspect of employment.

***Reasonable Grounds for Belief*** means where a reasonable person, possessed of the same information that the whistleblower holds, would believe that improper conduct had occurred. It cannot be based on mere allegation, or conclusion, which is unsupported by any facts or circumstances.

## 5. Policy Statement

AFTRS values transparency and accountability in its administrative and management practices and aims to foster an environment where people feel safe in raising genuine and legitimate concerns about actual or suspected unethical, unlawful or undesirable behaviour within the School. All reports under this policy will be treated very seriously and investigated appropriately. Such improper conduct will not be tolerated.

The Whistleblowing Policy and Procedure supports this by:

- encouraging the disclosure of public interest information and reporting of improper conduct;
- establishing processes for making disclosures of public interest information;
- enabling AFTRS to effectively deal with disclosures while maintaining confidentiality (as far as possible and permitted by law);
- enabling AFTRS to investigate disclosures and take appropriate action within the established principles of natural justice;
- protecting whistleblowers against detrimental action (victimisation);
- protecting the rights of the person against whom the allegation is made, and
- providing for the secure storage of related information and documents.

This policy and procedure is not designed to replace the normal communication channels between supervisors and staff. It is not appropriate for addressing general employment grievances or complaints, nor intended to replace other reporting structures such as those for dispute resolution or grievances

## **6. Procedure**

### ***a) Matters which you can raise under this Policy.***

Improper conduct which would generally be considered criminal or grounds for dismissal are appropriate to be raised under this policy provided you have reasonable grounds for believing the accusations to be true. Usually reasonable grounds is defined by what a reasonable person with the same information would believe.

The type of behaviour may include:

- fraudulent actions;
- illegal acts;
- dangerous acts;
- misuse of position;
- breaches of the AFTRS Code of Conduct;
- taking detrimental action against a whistleblower, or
- covering up improper behaviour.

As far as possible you should ensure that any report you make is factually accurate, complete, from first hand knowledge, presented in an unbiased way, and without omission. Provided you act in good faith you will be protected from victimisation based on your reporting even if the reasonable suspicion proves to be unfounded.

If, however, it is established that you have not acted in good faith in making a report or that you have made a false report (including acting maliciously, vexatiously or without basis) you will be subject to disciplinary proceedings which may result in summary dismissal. It should also be noted that whistleblowers are not protected from liability for defamation if reports aren't made in good faith or not to an appropriate person.

### ***b) Reporting to Law Enforcement Agencies***

At any point in the investigation process a decision maker (usually the Chief Executive Officer or Chair of Council) may forward a report of improper conduct to a law enforcement agency if they believe a criminal act is likely to have occurred. AFTRS will then cooperate with any investigation undertaken by a law enforcement agency.

AFTRS may choose to continue its own investigation and disciplinary process in relation to the report of improper conduct.

### ***c) Methods of Making a Report***

Reports may be made verbally or in writing, on the phone, in person or electronically. They should include as much information as possible.

Reports may be made anonymously but it should be noted that it is more difficult for the Whistleblower Investigator to look into the matter and resolve the problem.

Accordingly enough information should be supplied to justify the allegation and enable the investigation.

Generally reports should be made to one of the following: your manager; Divisional Director; the Head of Human Resources; the Head of Policy and Governance, the Director of Corporate Services; the Head of Business Affairs, or directly to the Chief Executive Officer. Upon receipt of a report the receiving manager should immediately advise a Disclosure Coordinator and maintain strict confidentiality.

In cases of making a report against a very senior AFTRS member of staff or the Chief Executive Officer and if you feel the investigation may be hampered or not be independent, you may report the improper conduct directly to the Chair of the AFTRS Council. In the case where the Chair of the AFTRS Council is suspected of improper conduct you may report the matter to the relevant Minister.

If you prefer you may make a report of suspected improper conduct through the externally managed hotline. This may be done anonymously. Contact details may be found on the intranet or on posters located in staff areas. Members of the public are able to make reports in this way.

All staff should be aware that they retain the right to go directly to a law enforcement agency if they have evidence a crime has been committed by an AFTRS employee.

#### ***d) Whistleblower Protection***

AFTRS recognises that genuine whistleblowers should be able to report their concerns freely and without fear of reprisal or intimidation for themselves, their families or friends. AFTRS will not tolerate any instances of whistleblowers suffering detrimental action as a result of their disclosure. Any employee found to have victimised a whistleblower, a member of their family or a friend due to the disclosure will be subject to discipline procedures.

On receiving a report where the whistleblower identifies themselves the Chief Executive Officer or Chair of Council (as relevant) will appoint a Whistleblower Protection Officer (generally the Director of Corporate Services, the Head of Human Resources, the Head of Business Affairs or the Head of Policy and Governance). This person will be responsible for ensuring that the whistleblower suffers no detrimental action. The desirable attributes of the Whistleblower Protection Officer include trustworthiness, the ability to relate to and reassure people, tact and objectivity. They should not be the same person as the Whistleblower Investigator.

You should be aware that if you are a whistleblower who is also involved in improper conduct AFTRS will take your disclosure into account in any internal disciplinary proceedings but has no power to provide immunity from criminal prosecution.

#### ***e) Whistleblower Investigator***

A Whistleblower Investigator will be appointed for each report of improper conduct which is to be investigated. They will be a senior member of staff with sound judgement, investigation skills, integrity, communication skills, diplomacy, and objectivity. They must have no personal or direct interest in the matter being investigated.

They will be responsible for investigating the substance of the disclosure to determine whether there is evidence to support the complaint, advising the whistleblower (where identified) of their rights and obligations, ensuring natural justice and procedural fairness are applied, and providing a report with their conclusions and recommendations to the decision maker. The Whistleblower Investigator will also be responsible for collecting and creating relevant documentation.

Where the Chief Executive Officer or Chair of Council deems it appropriate an experienced, external investigator may be engaged to manage the process.

#### ***f) Confidentiality***

Under the *Privacy Act 1988* a whistleblower's identity is considered 'personal information' and is therefore protected. Accordingly AFTRS will take all reasonable steps to protect the identity of the whistleblower.

If requested the identity of the whistleblower (where provided) will be kept strictly confidential unless:

- disclosure is required on a 'need to know' basis as part of the investigation process;
- the disclosure is required by law;
- the disclosure is necessary to prevent or lessen a serious threat to a person's health or safety;
- it is necessary to protect or enforce AFTRS' legal rights or interests, or
- it is necessary to defend any claims.

At the appropriate time it will also be necessary to advise the subject of the report. Although confidentiality will be maintained by AFTRS it may be possible for them to work out who made the report, particularly during any interview to seek their response.

#### ***g) Principles of Natural Justice***

The principles of natural justice will underpin all investigations under this Policy and Procedure. They will ensure procedural fairness and support a fair decision being reached by an objective decision-maker.

- i) The hearing rule:*** This means that the subject of the report has the right to present their case. They will be advised of the allegations and given the opportunity to reply.
- ii) The bias rule:*** This means that the decision maker and investigator should be impartial, ensure no conflict of interest, and make the decision based on a balanced and considered assessment of the information.
- iii) The evidence rule:*** This means that the decision should be based on logical proof or actual material. Decisions should not be based on mere speculation or suspicion, and should be able to clearly point to the evidence on which the inference or determination is based.

#### ***h) The person the complaint is made against***

AFTRS recognises that the person against whom a report is made must also be supported during the investigation process. The School will take all reasonable

steps to ensure they are treated fairly and their confidentiality maintained as far as possible.

Where the preliminary enquiries, initiated and reviewed by the Chief Executive Officer or Chair of Council, find that the report is baseless or unfounded and that investigation is not warranted the whistleblower (where known) will be informed that the decision maker has decided that the complaint is not covered by this policy. . The decision maker will then decide whether to advise the subject of the report about the complaint and advise them that the matter is closed. This decision will be based on enabling the continuance of workplace harmony and protecting the whistleblower if it was an unfounded, but still good faith, disclosure.

If a full investigation occurs AFTRS will ensure that the person who is the subject of the report:

- is informed of the substance of the allegations;
- is given the opportunity to answer the allegations before any investigation is finalised;
- is informed about the substance of any adverse comments that may be included in the report arising from the investigation prior to any final decision;
- has the opportunity to respond to any such criticisms, and
- has any comments they have made set out fairly in the report.

#### ***i) Providing feedback***

Where possible, and assuming the identity of the whistleblower is known, they will be kept informed of the outcome of the investigation of their report, subject to privacy and confidentiality considerations.

Decisions about what information should be given in feedback will be made on a case by case basis. Generally information could be provided about whether the complaint has been investigated and finalised, whether it was upheld, and whether remedial action or a sanction has been imposed. Providing general information about the process or outcome may be sufficient.

Whistleblowers will be advised that they must maintain the confidentiality of all such reports, and not disclose details to any person.

#### ***j) The Whistleblower Investigator's Report***

Following an investigation the Whistleblower Investigator should submit a final report to the Chief Executive Officer (or Chair or Council) which includes:

- the allegations;
- an account of all relevant information received and, if the Whistleblower Investigator has rejected evidence as being unreliable, the reasons for forming this opinion;
- any conclusions reached and the basis for them;
- any other matters contributing to the breach e.g. lack of policy process or procedure, and
- any recommendations.

Where the Whistleblower Investigator has found that improper conduct has occurred the recommendations should include any steps needed to prevent the

continuing of the conduct and any action that should be taken to remedy any harm or loss arising from the improper conduct. This may include bringing disciplinary proceedings against the person responsible for the improper conduct or referring the matter to an external authority.

The report should be accompanied by:

- records of any oral evidence taken, and
- all documents, statements or other relevant material received and used in reaching a conclusion or finding by the Whistleblower Investigator during the course of the investigation.

The report should not include details likely to identify the whistleblower unless permission has been given.

The Chief Executive Officer (or Chair of Council) will make a decision as to whether there was improper conduct and what action needs to be taken. The person against who the complaint was made will be advised and given 7 days to provide a written response as to why the decision shouldn't be confirmed. The Chief Executive Officer (or Chair of Council) will consider any response, make a final decision, and advise the person.

#### ***k) Reporting***

Information concerning all investigations will be reported to the Finance, Audit and Risk Management Committee. Details will include the number of reports, the nature of the complaints, and investigation outcomes, while preserving the confidentiality of the whistleblower.

#### ***l) Record Keeping***

AFTRS will ensure all documents and files created in relation to a whistleblower report, whether paper or electronic, are kept secure. All printed material will be kept in files that are clearly marked and all electronic files will be password protected.

After an investigation is finalised all documents will be maintained in secure storage in Human Resources.

#### ***m) Information for Staff***

Human Resources will ensure that information on Whistleblowing is available to staff on the intranet and that details of reporting methods are provided on staff noticeboards and made available to the general public.

Further information on Whistleblowing will be provided as part of the staff induction process.

## **7. Roles and Responsibilities**

### ***Chair of Council***

Responsible for receiving, reviewing, directing and determining disclosures under this Policy and Procedure.

### ***Chief Executive Officer***

Responsible for receiving, reviewing, directing and determining disclosures under this Policy and Procedure. Also responsible for supporting a culture that encourages ethical conduct and the reporting of suspected unethical and improper behaviour. The Chief Executive Officer is also responsible for ensuring sufficient resources are allocated to disseminating information about and determining investigations under this Policy and Procedure.

### ***Whistleblower Investigator***

Responsible for investigating the report within the principles of natural justice and providing a report of their findings and recommendations to the decision maker.

### ***Disclosure Coordinator***

Head of Human Resources or Head of Policy and Governance. Responsible for receiving and directing disclosures under this Policy and Procedure.

### ***Whistleblower Protection Officer***

A senior member of staff appointed by the Chief Executive Officer (or Chair of Council) responsible for ensuring that the whistleblower suffers no detrimental action as a result of their disclosure.

### ***Chief Finance Officer***

Responsible for reporting to the Finance, Audit and Risk Management Committee on the implementation, use and effectiveness of the Policy and Procedure.

### ***Head of Human Resources***

Responsible for disseminating information on the Policy and Procedure to employees, providing administrative assistance in the investigation process where appropriate, and maintaining associated records.

### ***Finance, Audit and Risk Management Committee***

Responsible for reviewing the effectiveness of the Policy and Procedure and approving amendments when required.

### ***Managers***

Responsible for supporting this Policy and Procedure by demonstrating and encouraging adherence to the Code of Conduct, and supporting employees (where known) who make disclosures under this Policy.

Immediately advise the Disclosure Coordinator of any disclosures and maintain strict confidentiality.

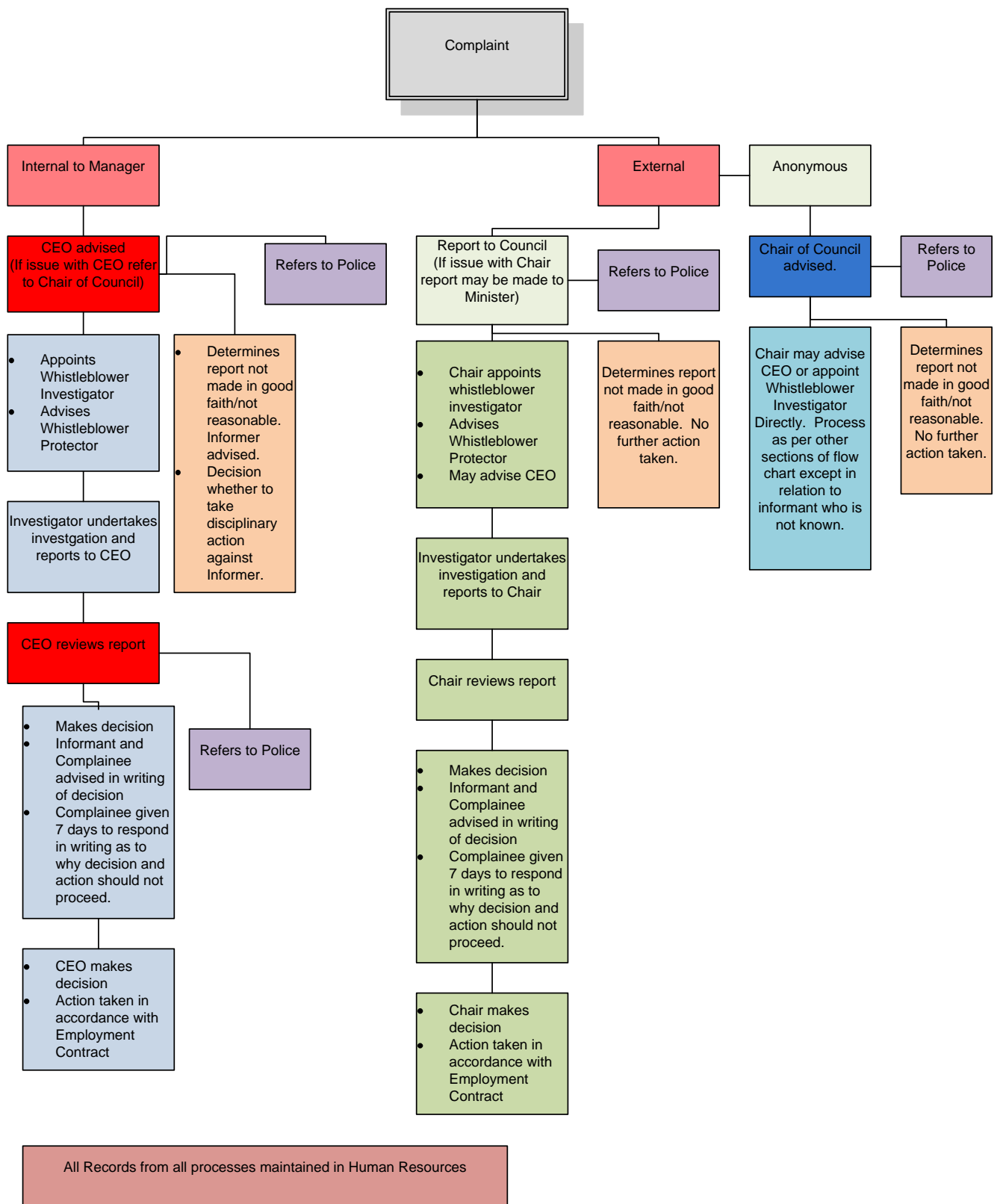
### ***Employees***

Responsible for adhering to the Code of Conduct and reporting any improper behaviour.

## **8. Forms**

- Complaint Flowchart
- Staff Poster
- Example Report Form

## Complaint Process Flowchart





## HOW TO REPORT IMPROPER & UNETHICAL CONDUCT

**AFTRS takes its reputation and accountability to the industry, public and government seriously.**

To safeguard that reputation we want you to report any behaviour you see here which you think is improper, unethical or illegal.

*This includes, but is not limited to, -*

- theft
- fraud
- misusing AFTRS property
- making a personal gain from their AFTRS position e.g. bribes
- breaking the law

*You can report it to –*

- your manager or Divisional Director
- the Head of Human Resources, Head of Policy & Governance, or the Chief Finance Officer
- the Chief Executive Officer or
- the Chair of Council (if a very senior staff member is involved)
- or our anonymous hotline **STOPline**

**Contact STOPline at:**

Phone number: **1300 304 550**  
Email: [aftrs@stopline.com.au](mailto:aftrs@stopline.com.au)  
Website: [www.aftrs.stoplinereport.com](http://www.aftrs.stoplinereport.com)  
Fax: 03 9882 4480



## Whistleblower Report Form

Person Completing the Form \_\_\_\_\_

Whistleblower's Name \_\_\_\_\_

*Note: This form can be anonymously completed and the Whistleblower can choose not to reveal their identity.*

Confidential Contact Details:

Date of Report: \_\_\_\_/\_\_\_\_/\_\_\_\_

Has the behaviour been reported in any other form by you or, to your knowledge, any other person: Yes / No / Uncertain (please circle)

Identify of the person(s) engaged in the improper behaviour.

Location of Improper Behaviour

Describe in as much detail as possible the facts, circumstances and events of the Improper Behaviour.

Signature: \_\_\_\_\_ Date received: \_\_\_\_/\_\_\_\_/\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_

## **9. Review**

This policy and procedure will be reviewed at least every 3 years by the AFTRS Finance, Audit and Risk Management Committee. The review will address the efficacy of the program. In particular, within the constraints of confidentiality and any other legal restrictions, it will consider the fairness of the investigations undertaken, the actual consequences of making disclosures for people who have made reports, and compliance with this policy generally.