

## PUBLIC INTEREST AND WHISTLEBLOWER DISCLOSURE POLICY

<b>APPROVED BY:</b>	Board of Directors	<b>DATE:</b>	20 December 2019
<b>APPROVING AUTHORITY</b>	Audit & Risk Committee		
<b>DELEGATION INSTRUMENT</b>	Board Resolution – 20 December 2019		
<b>CUSTODIAN:</b>	General Manager Corporate Services		
<b>COMMENTS:</b>	<ul style="list-style-type: none"><li>Reviewed by Board of Directors - 20 December 2019</li></ul>		

**PURPOSE:**

The Chief Executive Officer and Board of Ports North are committed to maintaining a high standard of integrity, business confidence and good corporate governance in delivering our activities and encourages the reporting of wrongdoing as part of fostering an ethical and transparent culture.

All public officers are offered protection from reprisal actions by Ports North or our employees, members or officers. Ports North are committed to:

- providing appropriate support to all public officers who make disclosures
- ensuring that disclosures made to Ports North are properly assessed and, when appropriate, properly investigated and dealt with, and
- taking appropriate action in relation to any wrongdoing that is the subject of a disclosure made to it.

**POLICY:**

This Policy sets out the how Ports North will manage disclosures regarding potential wrongdoing, maladministration or suspected unethical, unlawful or undesirable conduct or wrongdoing without fear of reprisal or detrimental conduct and with the support and protection of Ports North.

This Policy provides a summary of the processes Ports North will apply and the protections available to individuals who raise a concern under the regimes that apply to Ports North. The regimes are as follows:

1. the *Public Interest Disclosure Act 2013* (Qld) (“the **PID Act**”) which deals with disclosure and investigation of wrongdoing and maladministration in the public sector; and
2. the *Corporations Act 2001* (Cth) (“the **Corporations Act**”) which deals with the whistleblower protections in the corporate and financial sector.

Where relevant, this Policy should be read in conjunction with Port North's PID Act Disclosure Management Program and Corporations Act Disclosure Management Program. The documents together form our procedure and management program under Chapter 3 and section 60 of the PID Act and form our policy under section 1317AI of the Corporations Act.

This Policy will be made available by:

- publication of the Policy on our company's intranet;
- notification of the adoption of the Policy to all employees and officers of our company;
- notification of the Policy to all new employees and officers of our company, during induction process;
- periodic employee training;
- publication on our website; and
- provision to any other person upon request.

Nothing in this policy prevents a discloser from seeking their own legal advice in relation to a potential disclosure.

This policy has no application to matters arising from audits performed under the *Financial Accountability Act 2009* as staff are required to report those to the Chief Executive Officer in terms of that Act and observe confidentiality.

Personal work-related grievances (being employment grievances having implications for the employee only) are not covered under this Policy, unless they relate to reprisal action or victimisation because of a disclosure made under this Policy. Examples of personal work-related grievances include:

- an interpersonal conflict between employees or managers;
- a decision about the engagement, transfer or promotion of an employee;
- a decision to discipline, suspend or terminate an employee.

For personal work-related grievances refer to Ports North Enterprise Agreements

#### **APPLICABILITY:**

This Policy applies to disclosures made by any person, including officers, employees, members and suppliers, ("Whistleblower") under the PID Act or the Corporations Act ("Disclosures"). It does not apply to disclosures of any other kind.

Whether a disclosure falls under the scope of one or both Acts can be determined using the checklists in schedule 1 and schedule 2.

The types of wrongdoing that can be reported and/or dealt with under this Policy ("Wrongdoing") include:

#### Under the PID Act:

- A substantial and specific danger to the health or safety of a person with a 'disability' as defined in the *Disability Services Act 1992*;
- An offence which is or would be a substantial and specific danger to the environment;
- A reprisal taken against anybody as a result of a public interest disclosure.
- Maladministration that adversely affects anyone's interest in a substantial and specific way
- Negligent or improper management by a public officer, public sector entity or a government contractor resulting or likely to result in a substantial waste of public funds;
- Conduct by another person causing a substantial and specific danger to public health or safety; or
- Conduct by another person causing a substantial and specific danger to the environment.

#### Under the Corporations Act:

- Misconduct or an improper state of affairs with respect to our company or a related company.

Misconduct includes any conduct that involves:

- an offence against or contravention of the Corporations Act or any other law administered by ASIC and/or APRA; or
- an offence against any other law of the Commonwealth that is

- punishable by imprisonment for 12 months or more; or
- a danger to the public or the financial system; or
- conduct that is prescribed by regulations made for the purposes of section 1317AA(5)(f) of the Corporations Act and applying to our company, if any.

Misconduct or an improper state of affairs encompasses a wide range of conduct. Examples of such conduct include:

- dishonest behaviour;
- unethical behaviour or other serious improper conduct, including breaches of our or policies or behaviour that is oppressive, discriminatory or grossly negligent providing the conduct has significant implications for our company or a related company or the breach relates to a corporate offence or a serious public interest matter;
- any behaviour that poses a serious risk to the health and safety of any person or other consumer harm;
- work-related grievances provided:
  - it is mixed with or accompanied by other disclosable matters;
  - it relates to a breach of employment or other laws (punishable by 12 months imprisonment);
  - it relates to misconduct which represents a danger to the public;
  - it relates to misconduct beyond the Whistleblower's personal circumstances;
  - the Whistleblower suffers from or is threatened with detriment for making a disclosure; or
  - the Whistleblower is seeking legal advice about the operation of the protections under the Corporations Act; and
- any other conduct which may cause loss to our company or be otherwise detrimental to the interests of our company.

Under both Acts:

- Corrupt conduct (defined in schedule 3, "Corrupt Conduct") of an employee;
- Corrupt Conduct of another person;
- fraudulent activity such as irregular use of company funds, misleading accounting or financial reporting;
- criminal conduct including theft, bribery and money laundering;

Unsubstantiated disclosures may retain protections but false disclosures will not and may be subject to serious consequences including disciplinary action.

Further, section 66 of the *Public Interest Disclosure Act 2010* states that it is an offence to make an intentionally false or misleading statement to an appropriate entity intending that it be acted upon as a public interest disclosure. Persons should only make a disclosure when they honestly believe there are reasonable grounds.

## **ROLES AND RESPONSIBILITIES:**

**Chief Executive Officer (“CEO”)** – In addition to their responsibilities as an employee, the CEO or delegate has overall responsibility for:

- Ensuring and overseeing that Ports North develops, implements and maintains this Policy, a PID Management Program and a Whistleblower Procedure;
- A communication and training strategy to raise awareness among employees about Disclosures and their treatment and the support available;
- Specialist training and awareness about Disclosures for senior management and other staff who may receive or manage Disclosures;
- Ensuring effective systems and procedures are in place so that issues and outcomes from Disclosures and investigations inform improvements to service delivery, business processes and internal controls;
- Communicating the expectation that all employees are required to conduct their duties to high professional and ethical standards;
- Ensuring that Disclosures are properly assessed, investigated and dealt with, including appropriate action being taken in relation to any proven Wrongdoing;
- Ensuring that employees making a disclosure receive support and protection from reprisal;
- Ensuring that all legislative obligations in relation to reporting and investigation are met;
- Ensuring that all Corrupt Conduct and major crime matters are referred to the Crime and Corruption Commission;
- Ensuring that a proper record of Disclosures or purported Disclosures are retained by Ports North;
- Conducting or overseeing investigations into Disclosures (where required), and where a decision is made not to investigate or deal with a Disclosure, provide written reasons for the decision to the Whistleblower; and
- Determining the appropriate action to be taken based on the outcome of any internal investigation.

**Senior Management, Management and Supervisors** – In addition to their responsibilities as an employee, managers and supervisors are responsible for:

- Complying with this policy;
- Maintaining an ethical culture and leading by example;
- Conducting duties to a high ethical and professional standard;
- Ensuring that a Whistleblower is treated fairly and protected from reprisals;
- Monitoring the workplace for signs of reprisal against a Whistleblower or an employee who is the subject of a Disclosure under the principles of natural justice; and
- Ensuring that, if allegations of a Disclosure are substantiated, investigation recommendations are implemented quickly to reduce the risk of re-occurrence.

**Employees** - Employees are responsible for:

- Reporting concerns about suspected misconduct, unethical behaviour and/or reprisals in accordance with this Policy;
- Ensuring disclosures are based on reasonable grounds;
- Conducting duties to a high ethical and professional standard;

- Participating in trading on this Policy and related matters;
- Not recording or disclosing Confidential Information gained through involvement in the lodgement or investigation of a Disclosure, except where permitted by this Policy, the relevant procedure PID Act or Corporations Act;
- Not encouraging or engaging in Corrupt Conduct;
- Seeking help from a manager/supervisor if you have an ethical dilemma;
- Referring potential PIDs to the PID Coordinator;
- Cooperating with investigations into PIDs; and
- Discouraging, not engaging in and reporting any Reprisal action.

**PID Coordinator / Whistleblower Officer (“PIDC/WBO”)** – Ports North's PID Coordinator and Whistleblower Officer will be the person nominated by and from Ports North's Governance Committee comprised of the CEO, the General Manager Corporate Services (“GMCS”) and the General Manager Finance (“GMF”), from time to time.

At the date of this Policy, the PIDC/WBO is:

Kerry Egerton  
 General Manager Corporate Services  
 Corner Grafton & Hartley Streets, Cairns Qld 4870  
 Ph: (07) 4052 3811 Mob: 0410 308 360  
[kerry.egerton@portsnorth.com.au](mailto:kerry.egerton@portsnorth.com.au)

In addition to their responsibilities as an employee, the PIDC/WBO is responsible for:

- Implementing this Policy, a PID Act Disclosure Management Program and a Corporations Act Disclosure Management Program;
- Acting as a principal point of contact with the oversight agency in relation to Disclosures under the PID Act;
- A communication and training strategy to raise awareness among employees about Disclosures and their treatment and the support available;
- Receiving Disclosures made under this Policy from Whistleblowers directly or from other officers or agencies;
- Ensuring that Disclosures are properly assessed, investigated and dealt with, including appropriate action being taken in relation to any proven Wrongdoing;
- Maintaining appropriate and accurate records relating to a PID in a safe and secure location;
- Ensuring that employees making a disclosure receive support and protection from reprisal;
- Ensuring that all legislative obligations in relation to reporting and investigation are met;
- Ensuring that a proper record of Disclosures or purported Disclosures are retained by Ports North;
- Conducting or appointing investigators to conduct investigations into Disclosures (where required), and where a decision is made not to investigate or deal with a Disclosure, provide written reasons for the decision to the Whistleblower;
- Reporting to the CEO and the Board of Ports North as to the progress of Disclosures and investigations;
- Reporting to the oversight agency as and when required; and
- Determining the appropriate action to be taken based on the outcome of any internal investigation.

**PROCEDURES/  
GUIDELINES:**

**PID Support Officer** - Ports North's PID Support Officer will be the person nominated by Ports North's Governance Committee or the PIDC/WBO on a case by case basis, from time to time.

In addition to their responsibilities as an employee, the PID Support Officer is responsible for providing support to a Whistleblower, subject officer or witness who is involved in the management of a Disclosure.

**1. Making a Public Interest Disclosure**

Ports North has mechanisms in place to enable the reporting of Wrongdoing included dedicated, trained personnel, a restricted email address and secure record keeping practices. Ports North's Governance Committee shall maintain all confidential files on Disclosures in a secure environment and shall maintain records of the number of public interest disclosures received and the action taken on them.

Disclosures can be made by any method provided they satisfy the criteria in schedule 1 or schedule 2.

A Disclosure can be made orally or in writing. The author may identify themselves or remain anonymous.

There are no specific requirements as to what information is included with a Disclosure. However, a Disclosure can be dealt with more quickly and effectively if it includes:

- a statement that it is made under this Policy;
- the Whistleblower's name and contact details (unless the disclosure is anonymous);
- the nature of the matter;
- who did or may have committed the conduct;
- when and where the conduct occurred;
- relevant events surrounding the issue;
- if there was any consequence for the conduct;
- if others knew of the conduct;
- if the Whistleblower or anyone else did anything about the conduct;
- if there is any concern about detrimental or reprisal action following disclosure.

**Internal Disclosure**

Where possible, Whistleblowers are encouraged to make Disclosures confidentially to the PIDC/WBO in the first instance via:

<b>Email:</b>	<a href="mailto:whistleblowerdisclosure@portsnorth.com.au">whistleblowerdisclosure@portsnorth.com.au</a>
<b>Telephone:</b>	(07) 4052 3811 / 0410 308 360 - 9:00am and 5:00pm weekdays
<b>Post:</b>	Whistleblower Officer To be opened by Addressee Only Strictly Private and Confidential PO Box 594 Cairns Qld 4870
<b>In person</b>	Corner Grafton & Hartley Streets, Cairns Qld 4870

If the Disclosure relates to conduct of the PIDC/WBO, then the Disclosure should be made to the CEO or another eligible recipient who is not implicated in the conduct. A public interest disclosure concerning the conduct of the CEO should be made directly to the Chairman of the Board of Directors. A Disclosure relating to the conduct of the Chairman should be made to the PIDC/WBO or relevant external agency.

Disclosures can also be made via Ports North's independent external whistleblower consultant:

BDO Secure

Online: [bdo.com.au/bdosecure](https://bdo.com.au/bdosecure)  
Telephone: 1300 408 955  
Email: [securebdo@bdo.com.au](mailto:securebdo@bdo.com.au)

If the Disclosure is not made to the PIDC/WBO, the Whistleblower will be asked whether they consent to their identity and details of the Disclosure being disclosed to the PIDC/WBO. This consent is sought to best manage the complaint as the PIDC/WBO has specific training and is resourced to properly manage the Disclosure (including compliance with strict confidentiality requirements), to provide appropriate support to the discloser and to facilitate an appropriate investigation of the matter. This also ensures compliance in case the Disclosure falls under the Corporations Act.

### **External Disclosure**

Disclosures under the PID Act may be made to the Crime and Corruption Commission, the Office of the Queensland Ombudsman or a member of the Legislative Assembly, where appropriate.

Disclosures under the Corporations Act may be made to a director, officer, senior manager or auditor of Ports North or the Australian Securities and Investments Commission.

Whistleblowers seeking to make a disclosure which falls under both PID Act and Corporations Act should first contact an independent legal advisor.

### **Media/Parliamentarian Disclosure**

Disclosures under the PID Act may be made to a journalist under section 20 and will still gain the protections available provided the Disclosure was already made to a proper authority which:

- decided not to investigate or deal with the matter;
- investigated the matter but did not recommend the taking of any action; or
- did not notify the Whistleblower whether the matter would be investigated or dealt with within 6 months of the Disclosure being made.

Disclosures under the Corporations Act may be made to a journalist or parliamentarian under section 1317AAD where it is in the public interest or an emergency provided certain criteria are met.

Whistleblowers seeking to make a disclosure to media or a parliamentarian should first contact an independent legal advisor.

## **Disclosure by Referral**

An external public sector entity to which a Disclosure is made, may refer a Disclosure to Ports North if it relates to the conduct of Ports North or an employee, member or officer of Ports North pursuant to section 31 of the PID Act.

Referred Disclosures should be made to the PIDC/WBO in the first instance and otherwise in accordance with the Internal Disclosures section of this Policy.

## **2. Receipt and Assessment of a Disclosure**

Upon receipt of a Disclosure, the PIDC/WBO will assess the matter to determine whether it is a "public interest disclosure" under the PID Act or a "protected disclosure" under the Corporations Act or some other type of complaint. The assessment is based on certain criteria processes in the following order:

1. schedule 1 and schedule 2;
2. the Corporations Act Disclosure Management Program;
3. the PID Act Disclosure Management Program;
4. Ports North's Governance Committee (if a Disclosure under the PID Act only);
5. independent legal advice (if considered necessary and subject to consent or redaction to prevent a breach of confidentiality under the Corporations Act).

Where a Disclosure contains multiple allegations, each of them must be assessed separately.

For a Disclosure under the PID Act, following assessment, the PIDC/WBO will:

- comply with our obligations in section 32 to provide the Whistleblower (or referring entity of a Disclosure under the PID Act if applicable) with reasonable information in writing about the Disclosure;
- advise the Whistleblower that the CEO of Ports North is required to keep a proper record of the Disclosure in accordance with section 29;
- advise the Whistleblower that Ports North may decide not to investigate or deal with the Disclosure as set out in section 30 including:
  - (a) the substance of the disclosure has already been investigated or dealt with by another appropriate process; or
  - (b) the PIDC/WBO reasonably considers that the disclosure should be dealt with by another appropriate process; or
  - (c) the age of the information the subject of the disclosure makes it impracticable to investigate; or
  - (d) the PIDC/WBO reasonably considers that the disclosure is too trivial to warrant investigation and that dealing with the disclosure would substantially and unreasonably divert the resources of the entity from their use by the entity in the performance of its functions; or
  - (e) another entity that has jurisdiction to investigate the disclosure has notified the entity that investigation of the disclosure is not warranted; and

- Advise the Whistleblower that Ports North may refer the Disclosure to another proper entity in accordance with section 31 if it concerns the conduct of the referral entity or a public officer of the referral entity, or the conduct of an entity that the referral entity has the power to investigate or remedy (provided the referral will not cause an unacceptable risk of reprisal based on the PIDC/WBO's assessment);

For a Disclosure under the Corporations Act, following assessment, the PIDC/WBO will:

- Acknowledge receipt of the Disclosure and take steps to comply with the confidentiality requirements; and
- Obtain the Whistleblowers consent to the keeping of records in relation to the Disclosure and any investigation and action taken.

If there is doubt as to the classification of the Disclosure, the matter will be treated as a Disclosure under both the PID Act and the Corporations Act. For such Disclosures, and for Disclosures which fall under both the PID Act and the Corporations Act, the PIDC/WBO may under section 30(1)(b) of the PID Act decide not to investigate or deal with the Disclosure in accordance with the PID Act if they reasonably consider that the disclosure should be dealt with in accordance with the Corporations Act as a more appropriate process. The decision must be recorded including reasons such as:

- The process is less onerous;
- The process involves fewer parties;
- There is a heavier focus on confidentiality which benefits the Whistleblower and reduces the risk of detrimental/reprisal actions;
- The process is set out in Federal legislation (as opposed to State based legislation).

If a Disclosure under the PID Act is managed in this manner, the PIDC/WBO must still comply with the general obligations, reporting obligations and review obligations which apply to a Disclosure under the PID Act (subject to consent or redaction to prevent a breach of confidentiality under the Corporations Act).

### **3. Investigation of Matter Disclosed**

The PIDC/WBO may decide to investigate the Disclosure, or not to investigate the Disclosure. If the PIDC/WBO decides not to investigate the Disclosure, they will give written reasons for the decision to the Whistleblower (or referring entity if applicable).

If the PIDC/WBO decides to proceed with an investigation, it will be conducted in accordance with the PIA Act Disclosures Management Program or Corporations Act Disclosure Program and otherwise in the manner best suited to the circumstances and to protect the identity of the Whistleblower. All investigations will be conducted in a timely, thorough, objective and fair manner and will be appropriately resourced. We are committed to applying the principles of natural justice and to ensuring that fair treatment is afforded to all parties involved in a Disclosure.

The person who has received the disclosure will be authorised to take any necessary legal advice and may engage external advisers to undertake the investigation, where considered appropriate.

To the extent appropriate, the Whistleblower will be kept informed as to the investigation and outcome.

The findings from the investigation will be documented and stored in a secure place and reported to those responsible for oversight of the policy (subject to confidentiality obligations). In the case of a Disclosure under the PID Act, reporting will also be made to the oversight agency, the Queensland Office of the Ombudsman via the online facility known as RaPID, whether the Disclosure is managed under the PID Act or the Corporations Act. If the Disclosure involves or may involve corruption, you must notify the Crime and Corruption Commission.

#### **4. Review Rights**

If the Whistleblower (or referral entity if applicable) of a Disclosure under the PID Act is dissatisfied with the reasons the Disclosure was not investigated, they may apply to the CEO under section 30(3) for a review of the decision within 28 days after receiving the written reasons.

A Whistleblower or person who is affected by a decision made by Ports North regarding a Disclosure may apply to Ports North for an internal review of the relevant decision. Depending on the circumstances, external review under the *Judicial Review Act 1991 (Qld)* may also be available.

## **PROTECTION OF WHISTLEBLOWERS:**

### **1. Protections**

#### **In relation to Disclosures under the PID Act:**

The following statutory protections are provided to Whistleblowers under the PID Act:

#### *(a) Confidentiality*

If a person (such as the PIDC/WBO or CEO) gains confidential information because of their involvement or an opportunity of involvement, in this Act's administration, the person must not make a record of the information, or intentionally or recklessly disclose the information to anyone, other than:

- (i) for the PID Act; or
- (ii) to discharge a function under another Act including, for example, to investigate something disclosed by a public interest disclosure; or
- (iii) for a proceeding in a court or tribunal; or
- (iv) if the person to whom the confidential information relates consents in writing to the making of the record or disclosure of the information; or
- (v) if—
  - A. the person cannot reasonably obtain the consent of the person to whom the confidential information relates; and

- B. making the record or disclosing the information is unlikely to harm the interests of the person to whom the confidential information relates and is reasonable in all the circumstances; or
- (vi) if the person reasonably believes that making the record or disclosing the information is necessary to provide for the safety or welfare of a person; or
- (vii) if authorised under a regulation or another Act.

A breach of these confidentiality obligations is an offence.

This protection does not affect an obligation a person may have under the principles of natural justice to disclose information to a person whose rights would otherwise be detrimentally affected provided the disclosure is essential to do so under the principles of natural justice; and unlikely a reprisal will be taken against the person because of the disclosure.

*(b) Immunity from liability*

A Whistleblower is not subject to any civil or criminal liability or any liability arising by way of administrative process, including disciplinary action, for making the disclosure. Further, in a proceeding for defamation, a Whistleblower has a defence of absolute privilege for publishing the information disclosed.

A [relevant person](#) is not civilly liable to someone for an act done, or omission made, honestly and without negligence under the PID Act.

*(c) Immunity from breach of confidentiality*

A Whistleblower does not, by making the Disclosure, commit an offence under any Act that imposes a duty to maintain confidentiality in relation to a matter or any other restriction on the disclosure of information or breach an obligation by way of oath or rule of law or practice or under an agreement requiring the person to maintain confidentiality or otherwise restricting the disclosure of information in relation to a matter.

*(d) Protection from detriment/reprisal*

A person must not cause, or attempt or conspire to cause, detriment to another person (including the Whistleblower or public officer of Ports North being an employee, member or officer) because, or in the belief that the Whistleblower or someone else has made, or intends to make, a Disclosure or the Whistleblower or someone else is, has been, or intends to be, involved in a proceeding under the Act against any person. Such action is a reprisal which is an indictable offence. Reasonable management action is not prevented.

*(e) Damages for Reprisal*

A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result. Any appropriate remedy that may be granted by a court for a tort, including exemplary damages, may be granted by a court for the taking of a reprisal. A complaint may also be made under the *Anti-Discrimination Act 1991 (Qld)*.

#### **In relation to Disclosures under the Corporations Act:**

The following statutory protections are provided to Whistleblowers under the Corporations Act:

##### *(f) Confidentiality*

The Whistleblower's identity and any information that is likely to lead to their identification must be kept strictly confidential, save for the following exceptions:

- (i) disclosure with the consent of the Whistleblower;
- (ii) disclosure to ASIC;
- (iii) disclosure to APRA;
- (iv) disclosure to the Australian Federal Police;
- (v) disclosure to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the disclosure and the operation of the Corporations Act;
- (vi) as prescribed by regulations, made under section 1317AAE(2)(e) of the Corporations Act and applying to our Company, if any; or
- (vii) for information other than the identity of the Whistleblower, if disclosure is reasonably necessary for the purposes of the investigation AND all reasonable steps are taken to reduce the risk of any identification of the whistle-blower.

It is illegal for a person to identify a Whistleblower, or disclose information that is likely to lead to the identification of the Whistleblower, outside the exceptions set out above.

##### *(g) Protections from use of information*

###### Civil and disciplinary action

The Whistleblower is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure.

No contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the Whistleblower on the basis of the making of the disclosure.

Please note that these protections do not prevent a Whistleblower being subject to civil or administrative liability (including disciplinary action for employees) with respect to conduct that is revealed by the disclosure. The Whistleblower is protected from action because of the disclosure itself but remains liable if they have been involved in the misconduct.

#### Criminal/penalty proceedings

Whistleblowers can also obtain limited protection from self-incrimination if protected disclosures are made:

- (i) to any of the following eligible recipients:
  - A. ASIC;
  - B. APRA; or
  - C. another Commonwealth authority as prescribed by regulations; or
- (ii) by way of a public interest disclosure or emergency disclosure in accordance with the requirements of section 1317AAD of the Corporations Act.

If the protected disclosure is made in this manner, then the information disclosed is not admissible in evidence against the Whistleblower in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

Please note that this protection does not give a Whistleblower immunity from any criminal or penalty prosecution if they have been involved in misconduct. The protection only limits the use of the information disclosed and has the effect that such information cannot be used against the Whistleblower to prove any offence. Criminal or penalty proceedings could still be taken against the Whistleblower if the offence was able to be proved from other evidence.

#### *(h) Protection from detriment/reprisal*

The Whistleblower is protected from unfair treatment or reprisal action as a result of making the disclosure.

A person cannot engage in conduct that causes detriment to a Whistleblower (or another person) in relation to a disclosure if:

- (i) The person believes or suspects that the Whistleblower (or another person) made, may have made, proposes to make or could make a disclosure that qualifies for protection; and
- (ii) The belief or suspicion is the reason, or part of the reason, for the conduct.

Further, a person cannot make a threat (express or implied,

conditional or unconditional) to cause detriment to a Whistleblower (or another person) in relation to a disclosure.

*(i) Compensation for reprisal*

If a Whistleblower suffers detriment (or the threat of detriment), due to the making of the disclosure or the suspicion that they have made the disclosure, the Whistleblower may seek a court order for compensation from the perpetrator. Our company may also be liable in certain circumstances.

*(j) Judicial remedies for reprisal*

A Whistleblower who is the victim of reprisal action or detrimental conduct may also seek from the courts an injunction to prevent, stop or remedy the effects of the detrimental conduct, an apology for engaging in the detrimental conduct, reinstatement of their employment in cases of purported termination, payment of exemplary damages and any other order the court considers appropriate.

*(k) Legal costs*

If legal proceedings are instituted with respect to reprisal action, the Whistleblower must not be ordered to pay costs incurred by another party unless the Court is satisfied that the Whistleblower instituted proceeding vexatiously or without reasonable cause or the court is satisfied that the Whistleblower's unreasonable act or omission caused the other party to incur the costs.

## 1.2 Application of protections

The statutory protections apply not only to internal disclosures, but also to disclosures to legal practitioners, regulatory and other external bodies, and public interest disclosure and emergency disclosures made in accordance with the Corporations Act.

### **In relation to Disclosures under both the PID Act and Corporations Act:**

Whistleblowers of Disclosures which fall under both the PID Act and the Corporations Act will have the benefit of all protections. Where the PIDC/WBO wishes or is obliged to disclose information about the Disclosure or the Whistleblower, consent should be obtained beforehand. If consent is withheld, seek independent legal advice.

## **2. Measures Ports North Takes to Deliver Protections**

### **In relation to Confidentiality**

Whistleblowers are reminded that protections apply under the PID Act or Corporations Act or both and that these include protection of their information by keeping the same confidential except for limited circumstances. The identity of a Whistleblower will be kept confidential, subject to the statutory exceptions. All files relating to the disclosure will be kept secure.

A Whistleblower's identity will not be revealed as part of any investigation and all reasonable steps will be taken to conduct investigations to protect a

Whistleblower's identity from discovery. Information that is likely to lead to the identity of the Whistleblower will only be disclosed if it is reasonably necessary for the purposes of the investigation and in this event, all reasonable steps will be taken to reduce the risk of any identification of the Whistleblower.

To preserve confidentiality, a Whistleblower is also requested to keep confidential the fact that they have made a report, excepting any disclosure to regulatory authorities or for the purposes of seeking legal advice or support.

Any breach of confidentiality will be treated seriously and investigated. Any employee who is found to have disclosed confidential information relating to a disclosure will be subject to disciplinary action. Persons should be aware that any breach of the confidentiality requirements prescribed in the Corporations Act with respect to Whistleblowers gives rise to personal exposure for heavy fines for the individuals involved as well as our company.

If a Whistleblower considers their confidentiality has been breached or compromised, they should immediately report their concerns to the PIDC/WBO who can investigate and take steps with respect to any substantiated conduct. Whistleblowers may seek independent legal advice or contact a regulatory body such as ASIC.

### **In relation to Protection from detriment/reprisal**

#### Generally

We are committed to protecting all Whistleblowers from detriment, reprisal, retaliation, victimisation or other adverse action as a result of making a disclosure.

We will not aid, abet, induce, conspire with or facilitate any detrimental conduct by any of our employees or others and will continually monitor for such conduct. Detriment includes dismissal or injury to employment, alteration of position or duties to the person's disadvantage, discrimination compared with the treatment of other employees, harassment, bullying or intimidation, physical injury (including psychological harm), damage to property, reputation or business or financial position. Detriment does not include administrative action that is reasonable for the purpose of protecting a Whistleblower from detriment and managing a Whistleblower's unsatisfactory work performance.

A Whistleblower will not be discriminated against or disadvantaged in their employment or engagement with our company, even if the report is subsequently determined to be incorrect or not substantiated, providing the Whistleblower had reasonable grounds for making the report and it was not a false report.

Appropriate training will be provided to ensure that employees are made aware of and understand this Policy. Employees will be expressly advised that any reprisal action against a Whistleblower is unlawful and won't be tolerated by our company. Disciplinary action will be taken against any employees found to have engaged in reprisal action against a Whistleblower. Persons should be aware that individuals involved in reprisal actions can be subject to monetary penalties and be personally liable for compensation orders.

## Risk Assessment

The PIDC/WBO will confidentially arrange (in consultation with the Whistleblower and with a member of the Governance Committee or Corporate Services Coordinator or other third party if the Whistleblower consents to disclosure to them) for a risk assessment to determine the risk of a reprisal, victimisation or other adverse outcome to the Whistleblower, witnesses or others associated with the Whistleblower. This risk management assessment will also take into account the nature of the risks, consequences of a reprisal, victimisation or other adverse outcome and the Whistleblower's need for support.

If the assessment shows a risk of reprisal, victimisation or other adverse consequences, as soon as practicable, Ports North will confidentially develop and record a risk management plan for the Whistleblower, witness or others associated in consultation with the Whistleblower and ensure that protective measures are put in place which are proportionate to the risks and potential consequences on a case by case basis.

If the Disclosure was made anonymously, the risk assessment will be undertaken on the basis of the information in the Disclosure and any other information reasonably available.

Risk assessments and risk management plans will be reviewed regularly until management of the Disclosure is finalised.

## Support

We will assess the needs and provide support to Whistleblowers who are our directors, officers and employees. In order to provide such support we will seek consent from the Whistleblower to disclose their identity and any relevant details to the PIDC/WBO, who will then be responsible for providing necessary support to the Whistleblower. Such support will include regular touch points to ensure wellbeing and will otherwise be tailored to meet any identified support needs for individual employees. Depending on the situation, the following action may be appropriate:

- Acknowledging that making the Disclosure was the right thing to do and is valued by Ports North;
- Making a clear statement that Ports North will support the Whistleblower;
- Appointing an appropriate independent person (a PID Support Officer under the PID Act) with sufficient authority as case manager with operational responsibility for ensuring that the Whistleblower has appropriate support and protection from reprisals, victimisation or other adverse outcomes and advising the Whistleblower of the appointment and the name of the PID Support Officer;
- Conducting regular checks on the Whistleblower's well-being;
- Providing regular updates on the progress of the investigation or action taken by Ports North
- Advising the Whistleblower of the Employee Assistance Program and other relevant policies;
- Supporting the Whistleblower by arranging specific support services to meet their needs (such as information, counselling, legal advice or skills

training); and

- Where the health of the Whistleblower becomes a concern, liaising with occupational workplace health and safety officers.

If a Whistleblower considers they have been the subject of any detriment or reprisal action, a report should be immediately made to the PIDC/WBO who can investigate and take steps with respect to any substantiated conduct in accordance with this Policy and any other relevant policies or laws. Employees who are the subject of a detrimental or reprisal action allegation may also seek assistance from their legal representative or industrial union. An employee may also utilise the services of the Employee Assistance Program. Whistleblowers may seek independent legal advice or contact a regulatory body such as ASIC.

In the event that detriment/reprisal is alleged or suspected, Ports North will take action to:

- address the safety and welfare of the discloser, witnesses, and/or others associated with the discloser (including those who may wrongly be suspected of being a discloser) as a priority
- assess the alleged or suspected reprisal to determine if it comprises conduct that must or may be referred to another entity with jurisdiction to deal with the conduct (for example, the Crime and Corruption Commission, Queensland Police Service, Public Service Commission or Office of the Independent Assessor).
- review the risk assessment and amend it as required, in consultation with the discloser if appropriate
- review the risk management plan and amend it as required, in consultation with the discloser if appropriate
- inform the person reporting the alleged or suspected reprisal of the process for making a PID of reprisal in accordance with section 12(1)(d) of the PID Act
- provide any necessary support to the person reporting the alleged or suspected reprisal to make a PID of reprisal.
- Ports North will also take reasonable steps to protect Whistleblowers who are not employees from detriment/reprisal actions including:
- assign a PID Support Officer who is independent of the investigation to the non-employee Whistleblower
- provide appropriate support information to the non-employee Whistleblower and maintain contact until management of the PID is finalised
- conduct and record an assessment of the risk reprisal to the non-employee Whistleblower
- seek consent from the non-employee Whistleblower to consult with their employer, other entities or third parties about the risk assessment, if required
- if necessary, develop, record and implement a risk management plan for the non-employee Whistleblower
- liaise with the non-employee Whistleblower employer about the development and implementation of the risk management plan, if required.

Take reasonable steps to prevent reprisal of disclosers who are members of the public by officers of the entity, including:

- assign a PID Support Officer to the discloser who is independent of the investigation
- provide appropriate support information to the discloser and maintain contact with the discloser until management of the PID is finalised
- conduct and record an assessment of the risk reprisal to the discloser
- if necessary, develop, record and implement a risk management plan for the discloser.

**FURTHER  
INFORMATION:**

Questions about this Policy and the matters referred in it should be directed to the PIDC/WBO in the first instance.

This Policy should also be considered along with the following related documents:-

- a) Ports North PID Act Disclosure Management Program
- b) Ports North Corporations Act Disclosure Management Program
- c) Ports North Code of Employee Conduct
- d) Ports North Directors and Senior Executives Code of Conduct
- e) Ports North Fraud Control and Corruption Policy
- f) Ports North Employee Assistance Program (accessed via telephone 1300 361 008)
- g) *Public Interest Disclosure Act 2010 (Qld)*;
- h) *Corporations Act 2001 (Cth)*;
- i) *Crime and Corruption Act 2001 (Qld)*; and
- j) *Government Owned Corporations Act 1993 (Qld)*.

## Schedule 1 – PID Act Disclosure Requirements

To be a public interest disclosure under the PID Act, the disclosure needs to have 1 tick in each of Section A, B, C and D. Refer to sections 12, 13, 15, 16, 17, 19 and 31 of the PID Act.

Section	Criteria	Tick
<b>A:</b> The complainant is:	A person (via a referral of the disclosure pursuant to section 31 of the PID Act);	
	An employee of Ports North;	
	A public officer being a current or former director, officer, employee or member of Ports North (including permanent, part-time, fixed term, temporary or casual) (via a referral of the disclosure pursuant to section 31 of the PID Act);	
<b>B:</b> The disclosure was made to a proper authority:	The public sector entity in which the disclosure matter has occurred	
	A public sector entity that has the power to investigate under the PID Act	
	The Crime and Corruption Commission (if the disclosure involves corruption)	
	The Office of the Queensland Ombudsman (if the disclosure involves maladministration)	
	A member of the legislative assembly.	
<b>C:</b> The disclosure is about:	<p>If the answer to A is "a person" then:</p> <ul style="list-style-type: none"> <li>- A substantial and specific danger to the health or safety of a person with a 'disability' as defined in the Disability Services Act 1992</li> <li>- An offence which is or would be a substantial and specific danger to the environment; or</li> <li>- A reprisal taken against anybody as a result of a public interest disclosure.</li> </ul>	
	<p>If the answer to A is "an employee of Ports North" then:</p> <ul style="list-style-type: none"> <li>- The conduct of another employee that could be corrupt conduct as defined in section 15 of the <i>Crime and Corruption Act 2001</i>; or</li> <li>- The conduct of another person that could be a reprisal that relates to a previous disclosure made by the employee to Ports North or the Crime and Corruption Commission.</li> </ul>	
	<p>If the answer to A is "a public officer" then:</p> <ul style="list-style-type: none"> <li>- Corrupt conduct as defined in section 15 of the <i>Crime and Corruption Act 2001</i>;</li> <li>- Maladministration that adversely affects anyone's interest in a substantial and specific way</li> <li>- Negligent or improper management by a public officer, public sector</li> </ul>	

Section	Criteria	Tick
	<p>entity or a government contractor resulting or likely to result in a substantial waste of public funds;</p> <ul style="list-style-type: none"> <li>- Conduct by another person causing a substantial and specific danger to public health or safety; or</li> <li>- Conduct by another person causing a substantial and specific danger to the environment.</li> </ul>	
<p><b>D:</b> The Whistleblower:</p>	<p>Honestly believes on reasonable grounds that the information tends to show the relevant conduct (or it tends to show the relevant conduct whether or not the Whistleblower believes it).</p>	

## Schedule 2 – Corporations Act Whistleblower Requirements

To be a protected disclosure under the Corporations Act, the disclosure needs to have 1 tick in each of Section A, B, C, D and E. Refer to sections 1317AA, 1317AAA, 1317AAB and 1317AAC of the Corporations Act.

Section	Criteria	Tick
<b>A:</b>  The complainant is:	A current or former director or officer of Ports North;	
	A current or former employee of Ports North (including permanent, part-time, fixed term, temporary or casual);	
	An individual who supplies goods or services to Ports North. Suppliers include paid or unpaid, current or former suppliers.	
	An employee of a person that supplies goods or services to Ports North. Suppliers include paid or unpaid, current or former suppliers.	
	An individual who is an associate (as that term is defined by the Corporations Act) (relevantly an officer of a related body corporate);	
	A relative or dependent of any of the above-mentioned persons or a dependent of their spouse.	
<b>B:</b>  The disclosure was made to:	The Whistleblowing Officer, being the person specifically authorised by Ports North to receive disclosures from time to time;	
	A Director or Officer of Ports North or a related company to Ports North;	
	A Senior Manager of Ports North or a related company. Our Senior Managers are Chief Executive Officer, General Manager Corporate Services, General Manager Finance, General Manager Operations, General Manager Planning and Infrastructure, General Manager Commercial.	
	An auditor or member of the audit team conducting an audit of Ports North or a related company to Ports North	
	The Australian Securities and Investments Commission	
<b>C:</b>  The disclosure is about:	Misconduct, or an improper state of affairs or circumstances with respect to Ports North or a related company to Ports North (or an officer or employee of either);	
	A contravention of the Corporations Act or any other law administered by ASIC and/or APRA;	
	Conduct that represents a danger to the public or the financial system; or	
	An offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more.	

Section	Criteria	Tick
<b>D:</b> The disclosure is not:	A personal work-related grievance. Personal work-related grievances are employment grievances that have implications for the employee only (and not wider ramifications to our company or the public) excepting grievances that relate to reprisal action or victimisation because of a disclosure made.	
<b>E:</b> The Whistleblower has:	Reasonable grounds to suspect that the misconduct has occurred or an improper state of affairs exists in relation to Ports North or a related company to Ports North.	

### Schedule 3 – Corrupt Conduct under Crime and Corruption Act 2001

Corrupt Conduct takes the meaning from the Crime and Corruption Act 2001. As at the date of this Policy, section 15 provides as follows:

#### **15 Meaning of corrupt conduct**

(1) "**Corrupt conduct**" means conduct of a person, regardless of whether the person holds or held an appointment, that—

(a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—

(i) a unit of public administration; or

(ii) a person holding an appointment; and

(b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in *paragraph (a)* in a way that—

(i) is not honest or is not impartial; or

(ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or

(iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and

(c) would, if proved, be—

(i) a criminal offence; or

(ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

(2) "**Corrupt conduct**" also means conduct of a person, regardless of whether the person holds or held an appointment, that—

(a) impairs, or could impair, public confidence in public administration; and

(b) involves, or could involve, any of the following—

(i) collusive tendering;

(ii) fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described)—

(A) protecting health or safety of persons;

(B) protecting the environment;

(C) protecting or managing the use of the State's natural, cultural, mining or energy resources;

(iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;

(iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;

(v) fraudulently obtaining or retaining an appointment; and

(c) would, if proved, be—

(i) a criminal offence; or

(ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.