



SOUTHERN PORTS

ALBANY BUNBURY ESPERANCE

**PUBLIC INTEREST DISCLOSURE
PROCEDURE**

DOCUMENT CONTROL

Version Number	Description	Reviewed by	Approved by	Revision Date	Issue Date
01	Document Creation	CoSec, ELT	CEO	09/10/2020	09/10/2020

AUDIT

This Procedure shall be reviewed / revised

- Where a Risk Assessment / Audit identifies a need to review;
- Following a significant incident involving this Procedure; or
- At least every 2 years.

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1. OBJECTIVE

The purpose of the Public Interest Disclosure Act 2003 (the Act) is to:

- facilitate the disclosure of public interest information;
- provide protection for those who make disclosures; and
- provide protection for those who are the subject of a disclosure.

This is achieved by:

- protecting the person making the disclosure from legal or other action;
- providing for the confidentiality of the identity of the person making the disclosure and the person who is the subject of a disclosure; and
- providing protection to the Discloser against dismissal, or disciplinary action, actions that cause injury, damage, loss, intimidation or harassment as a result of making a disclosure

Corrupt or other improper conduct, including the mismanagement of public resources, while carrying out the functions of Southern Ports by its officers, employees and contractors, will not be tolerated.

Southern Ports recognises the value and importance of the contributions from staff to improve administrative and management practices and strongly supports disclosures being made by staff.

Southern Ports is committed to the aims and objectives of the Act, and as such all reasonable steps will be taken to provide protection to anyone that makes a disclosure, from any negative action as a result of making of a public interest disclosure.

2. SCOPE

The Act applies to all 'public authorities' and includes Southern Ports as a government trading enterprise inclusive of the Board and its Committees.

This procedure steps the user through the manner in which Southern Ports will comply with its obligations under the Act as the Proper Authority and is applicable to any person wishing to make a disclosure.

Further information on the Act and making a disclosure can be obtained via the Public Sector Commission website at <https://www.wa.gov.au/organisation/public-sector-commission/public-interest-disclosure-information-disclosers>.

3. REPORTABLE BEHAVIOUR/EVENT

A disclosure may relate to;

- improper conduct
- an offence under a written State law
- substantial unauthorised or irregular use of, or substantial mismanagement of public resources
- conduct involving a substantial and specific risk to injury to public health, or prejudice to public safety or harm to the environment
- administration matter(s) affecting someone personally.

A disclosure may be made anonymously, however the Discloser will not receive any information about what happens to the disclosure and may cause a partial investigation due to the inability to clarify or seek further information from the Discloser. Protection to the anonymous discloser may be difficult and the identity of the Discloser may be revealed during the investigation or when action is taken.

3.1. Minor Misconduct

Minor misconduct is behaviour that if proved, could lead to the termination of a staff member's employment. Under the Corruption, Crime and Misconduct Act 2003, this does not include matters such as discipline, grievance or performance management. These matters are managed through Southern Ports Grievance Procedures.

Misconduct includes behaviour a staff member undertakes that;

- adversely affects or could adversely affect, directly or indirectly, the honest or impartial performance of Southern Ports or the staff member, whether or not the staff member was acting in their Southern Ports role at the time of the conduct.
- is not honest or impartial
- breaches the trust associated with the staff member' Southern Ports role
- involves misuse of information or material either to the benefit or detriment of the staff member or another person.

Dependent on the intent, impact and severity of the behaviour, the above could be considered minor misconduct.

3.2. Serious Misconduct

Intentional behaviour by a staff member that is corrupt or takes advantage of the staff member' employment position to gain a benefit for themselves or another person or to harm any person is considered serious misconduct. For example, fraud, racist harassment, stealing.

Fraud is dishonest behaviour that causes actual or potential financial lost to anyone or Southern Ports. Corrupt behaviour lacks integrity and includes a staff member using or attempting to use their position at Southern Ports for personal gain. Fraudulent and corrupt behaviour is serious and can represent a criminal offence and maybe dealt with under the Criminal Code. For example, seeking a bribe, or falsifying records.

4. DESIGNATION OF PUBLIC INTEREST DISCLOSURE OFFICER

The Primary Executive Officer (PEO) for Southern Ports is the CEO and the PEO appoints Public Interest Disclosure Officers (PID Officer/s). The PEO has designated the Company Secretary as the Principal PID Officer, servicing the Board and its Committees, as well as the staff and general public.

The PID Officer is responsible for receiving disclosures of public interest information regarding activities for which Southern Ports is responsible and accountable. The PID Officer has the 'sphere of responsibility' to assess and manage disclosures, investigate or cause to investigate a disclosure and initiate the taking of action where appropriate.

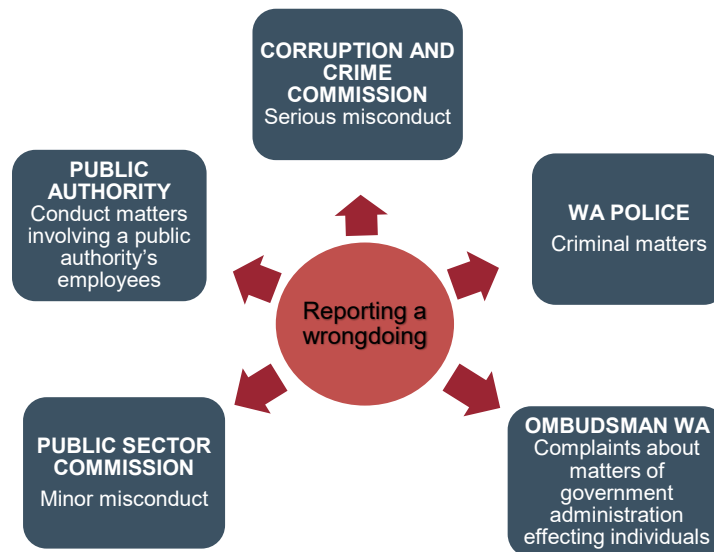
A list of PID Officers for Southern Ports is available on our website and also at <https://www.wa.gov.au/government/publications/public-interest-disclosure-officer-contact-directory>

The PID Officer is required to inform the PEO when a disclosure has been received, however the information provided to the PEO is dependent on the nature of the disclosure.

In the event a disclosure relates to the Company Secretary the disclosure should be provided directly to the PEO.

5. PROPER AUTHORITY

A public interest disclosure must be made to a 'Proper Authority' as determined by the Act. Southern Ports 'Proper Authority' is a designated Southern Ports PID Officer. The PID Officer may refer a disclosure to another 'Proper Authority' outside of Southern Ports dependent on the information in the disclosure, as depicted in the following graphic.



6. PROCEDURE

The procedure specifies the following key aspects of Southern Ports commitment to public interest disclosure.

- Disclosure of public interest information shall be made to the PID Officer.
- The PID Officer shall investigate the information disclosed or cause that information to be investigated.
- The PID Officer may take action following the completion of the investigation.
- The PID Officer shall report to the Discloser as to the progress and outcome of that investigation and the action taken as a consequence.
- The confidentiality of the Discloser, and any person who may be the subject of a public interest disclosure, shall be maintained.
- Records as to public interest disclosures shall be maintained and reporting obligations complied with.

6.1. Receiving Public Interest Disclosures

The PID Officer shall advise anyone making an enquiry, that if they choose to make a public interest disclosure, they:

- will only be protected if they make the disclosure to the Proper Authority for receiving public interest disclosures.
- will be liable for any wrongdoing that they may have been involved in and may face disciplinary action or criminal charges.
- may have the right to take civil proceedings if they are subject to detrimental action as a result of making the disclosure;
- will not have their identity disclosed except in accordance with the Act (disclosure of their identity may be required in the course of the investigation or in taking action in some circumstances);
- will have the right to be informed of the progress and outcome of the investigation and action taken as a result;
- will be protected only if they believe on reasonable grounds that the information to be disclosed is or may be true;

- will commit an offence, and lose the protection of the Act, if they know that the information is false or misleading in a material particular or are reckless about whether the information is false or misleading in a material particular;
- will forfeit the protection given by the Act if they disclose the information otherwise than under the Act (such as, providing information to the media or a person who is not a Proper Authority);
- may commit an offence if they disclose information that might identify or tend to identify anyone as a person in respect of whom a disclosure of public interest information has been made;

6.2. Assessing a Public Interest Disclosure

The PID Officer must on receiving the information confirm that the Discloser wishes to make a public disclosure under the Act. If they do, the PID Officer must make an initial assessment of whether the:

- information disclosed relates to a public authority, a public officer or a public sector contractor;
- information disclosed relates to the performance of a public function;
- information disclosed tends to show improper conduct;
- improper conduct is of a kind for which the PID Officer is the Proper Authority;
- Discloser believes on reasonable grounds that the information is or may be true; and
- information is not protected by legal professional privilege.

6.3. Form of Public Interest Disclosure

If a disclosure is a public interest disclosure, the Discloser and the PID Officer should complete the Public Interest Disclosure Lodgment Form as attached to this Procedure. The PID Officer should also complete Part 2 of the Assessment Form for Public Interest Disclosure.

On completion of this form, the PID Officer should complete a separate file for the public interest disclosure, with the following text marked clearly on the front of the file.

“CONFIDENTIAL

The material in the file relates to a public interest disclosure made under the Public Interest Disclosure Act 2003.

Disclosure of information that might identify or tend to identify either the Discloser or a person in respect of whom the disclosure has been made is an offence, unless the disclosure occurs in accordance with the Act.

Penalty: \$24,000 or imprisonment for two years”

The making of the public interest disclosure should also be recorded in the Public Interest Disclosure Register for reporting to the Commissioner for Public Sector Standards.

6.4. Public Interest Disclosure Register

Southern Ports shall maintain a Public Interest Disclosure Register recording a unique register number including a summary of information as follows:

- The informant.
- Public authorities about which a disclosure is made.
- People named in the disclosure.
- The nature of the disclosure.
- The investigation process and the action, if any, taken.

- Communication with the informant.
- Disclosure of the informant's identity, if applicable.
- Disclosure if identity of persons named in the disclosure.
- Claims of unlawful disclosure of informant's identity or identity of persons named in the disclosure.
- Claims of victimisation.
- Key dates.

Additional information may also be recorded in the Public Interest Disclosure Register at the discretion of Southern Ports.

6.5. Investigating a Public Interest Disclosure

The PID Officer must consider whether the disclosure relates to Southern Ports, its officers or contractors and whether or not it relates to a matter or person that Southern Ports has a function or power to investigate. If it does not relate to any of these matters, then the PID Officer is not required by the Act to investigate the matter.

Where the PID Officer considers that he or she lacks sufficient power to effectively investigate the matter, but the information received causes him or her to form the opinion that a public authority, public officer or public sector may have engaged in improper conduct, the PID Officer should refer the matter to another appropriate investigative body.

The PID Officer must also consider whether:

- the matter is trivial;
- the disclosure is vexatious or frivolous;
- there is no reasonable prospect of obtaining sufficient evidence due to the time that has elapsed since the occurrence of the matter; or
- the matter is being, or has been, adequately or properly investigated by another Proper Authority to which an appropriate disclosure of public interest information has been made under the Act.

If the answer to any of these questions is "yes", the PID Officer is not required by the Act to investigate the matter.

Where the PID Officer determines that the disclosure is a public interest disclosure that should be investigated, the PID Officer must investigate the disclosed matter or engage another person to carry out the investigation.

In conducting an investigation, typical matters could include:

- drawing up terms of reference, which should clarify the key issues identified by the disclosure;
- specifying dates for feedback and when the investigation should be completed;
- ensuring the objectives of the investigation include collecting and collating information relating to the disclosure, considering the information collected and drawing conclusions objectively and impartially;
- maintaining procedural fairness for the person who is the subject of the disclosure;
- giving information to the person who is the subject of a disclosure about their rights and obligations under the Act, Southern Ports Code of Conduct and Public Sector Code of Ethics and the law;

- the investigator making contemporaneous notes of discussions and interviews and, where practicable and appropriate, recording discussions and interviews on audio or videotape;
- ensuring strict security with all investigations, so as to maintain the confidentiality requirements of the Act.

If a disclosure is withdrawn, a Proper Authority may still continue to investigate the issues raised.

6.6. Maintaining Confidentiality in an Investigation

The Act imposes strict confidentiality requirements in relation to the identity of the Discloser and persons in respect of whom a public interest disclosure has been made. The disclosure of information which might identify or tend to identify these persons, except in accordance with the Act, is a serious offence, punishable with a maximum penalty of \$24,000 or two-years imprisonment.

The confidentiality provisions of the Act do not apply to all information disclosed in a public interest disclosure, but only to information that might identify or tend to identify the Discloser and persons in respect of whom a public interest disclosure has been made.

One of the circumstances in which identifying information may be disclosed is with the consent of the person concerned and the consent should be recorded.

Identifying information relating to a Discloser may be disclosed without the Discloser's consent where:

- it is necessary to do so, having regard to the rules of natural justice; or
- it is necessary to do so to enable the matter to be investigated effectively.

However, before information is disclosed for these reasons the person making the disclosure must take all reasonable steps to inform the person whose identity is to be disclosed:

- that the disclosure is being made; and
- the reasons for the disclosure being made.

The Notification of Disclosure of Identifying Information should be completed.

Where identifying information in relation to a Discloser is conveyed to another person for these reasons, the other person should be warned that disclosure of the information to a third person may involve a serious offence.

Identifying information relating to a person in respect of whom a public interest disclosure has been made can be disclosed at the investigation stage where the disclosure:

- is necessary to enable the matter to be investigated effectively;
- there are reasonable grounds to believe that the disclosure of identifying information is necessary to prevent or minimise the risk of injury to any person or damage to any property.

In addition, disclosures made in accordance with sections 152 or 153 of the *Corruption and Crime Commission Act 2003* are exempt from these confidentiality requirements.

Careful consideration must be given as to whether the disclosure of information that might identify or tend to identify a Discloser is necessary for the effective investigation of the matter or having regard to the rules of natural justice.

Where a PID Officer appoints a third person to conduct an investigation in relation to the public interest disclosure, he or she must consider whether it is necessary to inform the investigator of the identity of the Discloser. Where it is necessary to enable an effective investigation or having regard to the rules of natural justice to provide identifying information to the investigating officer, then the Discloser should be notified in the manner described above.

6.7. Recording the Outcome of an Investigation

The outcome of an investigation should be clearly and comprehensively recorded. In addition to any investigation report, the person conducting the investigation should complete part 4 of the Assessment Form for Public Interest Disclosure.

The result of the investigation should also be recorded in the Public Interest Disclosure Register by the PID Officer. All reporting requirements to the Commissioner for Public Sector Standards required under the Act will be based on extracts from this Register.

6.8. Taking Action Following an Investigation

The PID Officer must take action where he or she forms the opinion that a person may be, or has been or may in the future be, involved in improper conduct. Action that may be taken includes:

- preventing the matter to which the disclosure relates from continuing or occurring;
- referring the matter to the Police or other appropriate body; or
- taking disciplinary action against a person responsible for the matter.

Before taking any action, the person against whom the action is to be taken is to be given the opportunity to make written or oral submissions.

In taking that action the PID Officer remains limited by the powers and functions that are conferred by the legislation under which the Officer operates. The Act does not give the PID Officer additional powers to take action.

As well as being limited to matters within the functions and powers of the PID Officer, the action to be taken is guided by what is necessary and reasonable.

6.9. Recording Action Taken

The PID Officer shall complete Part 5 of the Assessment Form for Public Interest Disclosures and record a summary of the action taken in the Public Interest Disclosure Register. All reporting requirements to the Commissioner for Public Sector Standards required under the Act will be based on extracts from this Register.

6.10. Reporting to a Discloser on the Progress and Outcome of an Investigation

Where the PID Officer decides not to investigate information disclosed under the Act, or discontinues an investigation, the Officer must give the person who made the disclosure reasons for doing so.

Within three months of the disclosure being made the PID Officer must notify the Discloser of the action taken, or proposed to be taken, in relation to the disclosure.

A Discloser may also request a progress report.

If an investigation is not complete, the PID Officer may provide to the Discloser a progress report on the current status of the investigation.

If an investigation is complete, the PID Officer must provide a final report to the Discloser, stating the outcome of the investigation and the reason for taking action following the investigation.

In providing information and reports to Disclosers, the PID Officer must not give information that, in the PID Officer's opinion, would be likely to adversely affect:

- any person's safety;
- the investigation of an offence or possible offence; or
- necessary confidentiality as to the existence or identity of another person who has made a disclosure of public interest information under the Act.

7. VICTIMISATION AND REPRISALS

Southern Ports will not tolerate any acts of victimisation or reprisal as a result of a person making, or proposing to make, a public interest disclosure.

Any victimisation or reprisals must be reported immediately to the Chief Executive Officer, the Manager of the impacted person, or the PID Officer, who must take immediate action to prevent the continuance of this unlawful conduct.

Where victimisation or reprisals are reported, a record of the report and the action taken must be placed on the file relating to the public interest disclosure.

Steps taken to prevent acts of victimisation or reprisal should be recorded in a manner that they will be accessible for reference, should legal action be taken against Southern Ports.

8. CONFIDENTIALITY

The confidentiality requirements in relation to information which might identify or tend to identify a Discloser or a person in respect of whom a public interest disclosure has been made must be complied with at all times. The disclosure of this identifying information, except in accordance with the Act, is an offence.

All files relating to a public interest disclosure, whether paper or electronic, must be secure and accessible only by authorised persons. Files should carry clear warnings that there are penalties for un-authorised divulgence of information concerning a disclosure.

It is strongly recommended that sensitive information is not emailed or faxed to machines with general or shared access.

9. REPORTING REQUIREMENTS

Under section 23 (f) of the Act, Southern Ports is required to report annually to the Commissioner for Public Sector Standards on:

- the number of public interest disclosures received over the report period;
- the results of any investigations conducted as a result of the disclosures; and
- the action, if any, taken as a result of each investigation.

To enable the Commissioner and the Minister to meet these obligations Southern Ports will provide a report each year on compliance with, and administration of, the Act as requested by the Commissioner.

The Principal Executive Officer Report and the information for the Commissioner's Compliance Report will be provided each year. The reports will cover the period 1 July in any year to 30 June in the subsequent year.

Where there has been no action on a disclosure in the reporting period the format of the report will provide for a simple nil return. Where action relating to one or more disclosures has occurred, all data required will be obtainable as a simple extract from the Public Interest Disclosure Register.

10. MAKING INFORMATION AVAILABLE

These internal procedures shall be made available for access by all staff and members of the public. Copies of these internal procedures are available from the PID Officer and are to be kept on Southern Ports Intranet and website.

Where a person makes an allegation about improper conduct, but the person has not referred to the Act, the person should be advised that they might want to make a public interest disclosure under the Act. If they may wish to do so, they should be referred to the PID Officer for guidance on how to make a disclosure under the Act and on the implications of having done so.

OFFICE USE ONLY

Register No: #

Date: / /

Public Interest Disclosure Lodgement Form

Public Interest Disclosure Act 2003

Southern Ports Authority strongly encourages anyone thinking about making a public interest disclosure to seek out a nominated Proper Authority to discuss their issues first. Our Proper Authority (Public Interest Disclosure (PID) Officer(s)) are:

Position	
Name of PID Officer	
Contact details	9729 6441 / Email: pid@southernports.com.au

Ensure you understand your rights and responsibilities under the *Public Interest Disclosure Act 2003* (PID Act) before you sign this lodgement form. You may wish to seek external legal advice about those rights and responsibilities. Lodge your public interest disclosure form with Southern Ports Authority's Proper Authority (PID Officer), not the Public Sector Commission.

Personal details

Family name					
Given name					
Title	<input type="checkbox"/> Mr	<input type="checkbox"/> Ms	<input type="checkbox"/> Mrs	<input type="checkbox"/> Dr	<input type="checkbox"/> Other
Address					
Work phone					
Mobile					
Email					

I wish to make an anonymous public interest disclosure. I understand that:

- I will not receive any information about what happens to this disclosure
- it may be more difficult for the Proper Authority to look into the matter(s) as they cannot come back to me for further information
- it may be more difficult for the Proper Authority/public authority to protect me
- this anonymous disclosure may not prevent me from being identified during any investigation or when action is being taken.

Categories of public interest information

Tick relevant box(es)

Improper conduct	<input type="checkbox"/>
An offence under written State law	<input type="checkbox"/>
Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources	<input type="checkbox"/>
Conduct involving a substantial and specific risk of injury to public health, or prejudice to public safety or harm to the environment	<input type="checkbox"/>
Administration matter(s) affecting you personally	<input type="checkbox"/>

Disclosure details	
Name of the public authority(ies) the disclosure relates to	
Do you work for a public authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, which public authority and what is your position title?
Does the disclosure relate to one or more individuals?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide name(s) and position(s) held by person(s) in the public authority
When did the alleged events occur?	
Summary of the matters to disclose	
Additional information	
Description of any documents provided or names of witnesses	
Have you reported this information to any other person or agency?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, did you report this information as a Public Interest Disclosure matter?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide details

You should read the following information and sign this form prior to lodgement.

Acknowledgement

I believe on reasonable grounds that the information contained in this disclosure is or may be true.

I have been informed and I am aware that:

- I will commit an offence under section 24 of the PID Act, if I know that the information contained in this disclosure is false or misleading in a material particular, or I am reckless as to whether it is false or misleading in a material particular.
Penalty: \$12 000 or imprisonment for one (1) year.
- I will forfeit the protection provided by section 13 of the PID Act, if I fail, without reasonable excuse, to assist a person investigating the matter by supplying requested information (s17).
- I will forfeit the protection provided by section 13 of the PID Act, if I subsequently disclose this information to any person other than a Proper Authority under the PID Act (s17).
- I will commit an offence, if I subsequently make a disclosure of information that might identify or tend to identify anyone as a person in respect of whom this disclosure has been made under the PID Act, except in accordance with section 16(3) of the PID Act.
Penalty: \$24 000 or imprisonment for two (2) years.
- I cannot withdraw my disclosure after I have made it.

Authorisation	
Discloser's signature	
Date	