



# Whistleblower Policy



At the Port of Newcastle, we are committed to promoting the highest standards of ethical behaviour.

We are committed to identifying and calling out misconduct and breaches of the law.

Our Whistleblower Policy is available to support you to safely raise concerns, and to ensure the fair treatment of both whistleblowers and any employee covered by a disclosure.

We believe that our approach is a clear reflection of our Core Value of Integrity.

## SCOPE

The policy applies to everyone who performs work for or with PON, including:

- Current and former PON staff, trainees, apprentices & contractors;
- PON directors & officers;
- Customers, suppliers, agents & organisations with a relationship or association with PON; and
- Relatives, dependents & spouses of the individuals outlined above.

To achieve our commitments, Port of Newcastle will;

- Act with integrity and live up to our core values;
- Ensure everyone is treated fairly and in respect of the law;
- Create an environment that
  - is positive and open
  - is safe for whistleblowers to come forward & report
- Provide clear guidance and support so that whistleblowers;
  - can express their concerns,
  - know who to contact, and
  - know how to make a report (including anonymously).
- Ensure information is accurate & readily available;
- Foster a culture of compliance, transparency and accountability with our legal and ethical obligations, and with our Core Values;
- Raise awareness about whistleblowing to empower our people;

You can report suspected wrongdoing directly to our CEO or an Executive Manager, or anonymously:

By calling: 1800263215

By visiting: [www.integritycounts.ca/org/pon](http://www.integritycounts.ca/org/pon)

By email: [pon@integritycounts.ca](mailto:pon@integritycounts.ca)



**CRAIG CARMODY**  
CHIEF EXECUTIVE OFFICER

30 June 2022

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### DOCUMENT PROPERTIES

<b>Document Title</b>	<b>Whistleblower Policy</b>
<b>Owner</b>	Leonard Gavin
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<b>Approval Signature</b>	
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# WHISTLEBLOWER POLICY

## 1. PURPOSE

To set out Port of Newcastle's approach to managing disclosures by whistleblowers and to provide clear information on the steps PON will take to support anyone to raise concerns safely.

## 2. SCOPE

The policy applies to everyone who performs work for or with PON, including:

- Current and former PON staff, trainees, apprentices & contractors
- PON directors & officers
- Customers, suppliers, agents & organisations with a relationship or association with PON, and
- Relatives, dependents & spouses of the individuals outlined above.

The Policy applies to suspected or actual unethical, illegal, corrupt, fraudulent or undesirable conduct, or any breach of the *Code of Conduct*.

This policy also applies to disclosures made to the Integrity Counts hotline in accordance with the *Australian Corporations Act 2001*.

## 3. POLICY DETAILS

In this section, information is provided to make it easier to understand Whistleblower:

- language,
- scope
- protections, and
- processes

### 3.1. POLICY AIM

This policy has been developed with the aim of making it easy to read and understand Whistleblower legislation language, including by explaining

- what is covered, and what is not.
- who can make a disclosure
- how to make a disclosure.
- how to make a disclosure safely and securely.
- what to expect, and the processes we apply.
- the associated PON roles and responsibilities

### 3.2. WHAT IS COVERED AND WHAT IS NOT

To be covered under the whistleblowing Protection Scheme, it is important to know that to be covered under the law, the person needs to make a Qualifying Disclosure.

#### What is a qualifying disclosure?

ASIC defines the criteria for being a Qualifying Disclosure as

*“is a disclosure of information from an eligible whistleblower who has reasonable grounds to suspect that the information concerns:*

- *misconduct*

- an improper state of affairs or circumstances
- a breach of the law, or
- danger to the public or the financial system.”

Examples include:

- corruption or fraud (such as bribes or creating false documents)
- breaking any law or regulation
- endangering health & safety or damaging the environment
- inappropriate workplace behaviour (e.g., bullying, harassment and discrimination)
- non-compliance with a PON Policy
- maladministration (e.g., unreasonable decisions or negligence)
- actions that may cause loss or harm to PON
- concealing any *Disclosable Matter*.

Under the Whistleblower Protection Scheme these are often referred to as Disclosable Matters.

### What is not a qualifying disclosure?

A disclosure solely about a personal work-related grievance is not considered a qualifying disclosure, and so is not covered by the whistleblower provisions.

Examples of a personal work-related grievance include:

- Conflicts at work with your manager or another employee
- Disagreeing with decisions about recruitment, transfer or promotion
- Disciplinary decisions
- Disagreeing with decisions about conditions of engagement or employment
- Decisions to terminate the persons employment

Disclosures that are not Qualifying Disclosures do not qualify for protection, but may be protected under other legislation, such as the *Fair Work Act 2009 (Cth)*.

If you are a PON employee or contractor, and you have a concern that does not qualify for whistleblower protection, refer to the following for further information:

- Code of Conduct
- Managing Workplace Grievances Policy
- Managing Poor Performance and Misconduct Policy.

### 3.3. WHO CAN MAKE A DISCLOSURE

A person who qualifies in section 5 above is referred to as a Disclosing Person which includes any current or former:

- PON staff, trainee, apprentice or contractor
- officer (including a director) of any PON entity;
- Customer, supplier, agent or organisation with a relationship or association with PON (whether paid or unpaid)
- employee of a person that supplies goods or services to any PON entity whether paid or unpaid;
- Relative, spouse or dependant of any of the above persons.

### 3.4. HOW TO MAKE A DISCLOSURE

A Disclosure can be made to the people or entities and through the channels listed in the table below during or outside business hours. Although PON is best placed to investigate a disclosure and protect the whistleblower when they are known, it is important to note that disclosures may still be made anonymously.

Direct	
Any officer of PON, but in particular, the individuals listed in the right-hand column.	Email, phone or directly speak to: <ul style="list-style-type: none"> <li>• PON's CEO; and</li> <li>• an Executive Manager of PON.</li> </ul>
Anonymous	
Integrity Counts Hotline	Email: <a href="mailto:pon@integritycounts.ca">pon@integritycounts.ca</a> Phone: 1800263215 Web: <a href="http://www.integritycounts.ca/org/pon">www.integritycounts.ca/org/pon</a> Fax: 1-604-926-5668 Address: PO Box 91880 West Vancouver, BC V7V 4S4 Canada
To a Regulator	
Australian Securities & Investments Commission	<a href="http://www.asic.gov.au/complain">http://www.asic.gov.au/complain</a>
Australian Prudential Regulation Authority	<a href="https://www.apra.gov.au/contact-us">https://www.apra.gov.au/contact-us</a>
Australian Taxation Office	Reports can be made by: <ul style="list-style-type: none"> <li>• Using the <a href="#">ATO app</a></li> <li>• Using the <a href="#">tip-off form</a> to make a disclosure to the ATO,</li> <li>• Calling 1800 060 062.</li> <li>• Sending a letter marked 'in confidence' to                Australian Taxation Office                Tax Integrity Centre                Locked Bag 6050                Dandenong VIC 3175</li> </ul>

### 3.5. WHAT TO EXPECT

It is important that everyone knows and understands their role, rights and responsibilities in relation to whistleblowing, including.

- whistleblower protections and support
- rights to fair treatment
- privacy and confidentiality obligations
- being kept informed.

### 3.6. WHISTLEBLOWER PROTECTION

Disclosing persons covered by this policy have the following protection rights:

Protection of confidentiality
It is illegal to disclose a disclosing person's identity or any information likely to lead to their identification, except when: <ul style="list-style-type: none"> <li>• the disclosing person consents first;</li> <li>• it is reported to ASIC, APRA or a member of the Australian Federal Police, or if the report relates to a tax matter, the Commissioner of Taxation;</li> </ul>

- disclosure is to a lawyer in order to obtain legal advice or representation in relation to the operation of this policy and its protections; or
- information likely to lead to the identification of the disclosing person (but not their identity) is disclosed because it is reasonably necessary to investigate the matter, and all reasonable steps are taken to reduce the risk that the disclosing person will be identified.

### Protection from detriment conduct

It is illegal to cause detriment to a disclosing person (or any other person), including:

- harming, threatening or victimising them because they reported or raised (or could raise) a concern
- taking administrative action against them, including sacking, demotion or changing their position or duties to their disadvantage
- discriminating between them and other employees
- damaging their reputation, business or financial position

If a disclosing person is subject to detrimental conduct, they may be entitled to compensation or another remedy.

### Immunity from liabilities

A disclosing person may also be entitled to other legal protections, including:

- protection from civil, criminal or administrative legal action for making a report;
- protection from contractual penalties being sought against them on the basis that they made a report;
- the information they provide may not be admissible in evidence against them in legal proceedings; and (unless they have provided false information).

These protections apply whether the Disclosure is proven or not and PON must take all reasonable steps to reduce the risk of the Whistleblower being identified.

Generally, a person will have committed an offence if they breach the protections above and they may be liable for damages. Staff who breach confidentiality or engages in detrimental conduct will be subjected to disciplinary proceedings, up to and including dismissal.

## 3.7. FAIR TREATMENT

PON will ensure the fair treatment of both Whistleblowers and any employees mentioned in a Disclosure by:

- Raising awareness on the requirements of this policy
- facilitating anonymous disclosures
- maintaining confidentiality over disclosures and the identity of whistleblowers and others identified in reports
- taking steps to ensure investigations into disclosable conduct are confidential, fair and objective
- protecting whistleblowers from detriment (refer **section 3.6**)
- monitoring the wellbeing of whistleblowers and employees mentioned in disclosures
- regularly updating the whistleblower on the progress of any investigation, and
- not taking disciplinary action against an employee mentioned in a disclosure unless the disclosure is proven.

## 3.8. ADDITIONAL SUPPORT

Where a Disclosure is made, PON will assess and take necessary steps to manage the risk to the Whistleblower. This can include:

- implementing flexible or temporary alternative working arrangements to support and protect the Whistleblower,
- providing access to the Employee Assistance Program (EAP);
- providing paid
  - personal leave beyond what is currently available (as approved by PON);
  - access to legal services as reasonably required; and
  - access to psychological services as needed (beyond what is provided via the EAP).

### 3.9. HOW DISCLOSURES ARE MANAGED

When a disclosure is received that may qualify for protection under this policy, the following process will be applied:

Initial Review	
<ol style="list-style-type: none"> <li>1. A prompt initial review will be conducted by the PON CEO or CFO (only) to determine;               <ol style="list-style-type: none"> <li>a. whether the disclosure is in relation to a disclosable matter, and</li> <li>b. whether or not the disclosure should be investigated</li> </ol> </li> </ol>	<p>In the event a disclosure concerns the CEO or CFO, it is to be conducted by the Chief Commercial Officer.</p>
<ol style="list-style-type: none"> <li>2. Where it is determined to be a qualifying disclosure, immediate action is to be taken to prevent alteration or destruction of any relevant records, including:               <ol style="list-style-type: none"> <li>a. removing relevant records and placing them in a secure location,</li> <li>b. limiting access to the location where the records are stored,</li> <li>c. preventing access to the records by the individual subject of the disclosure,</li> <li>d. Initiating an investigation to be undertaken by;                   <ol style="list-style-type: none"> <li>i. an appropriate internal person independent of the matter, or</li> <li>ii. an independent external party (e.g. an external lawyer, accountant or investigator).</li> </ol> </li> </ol> </li> </ol>	
Investigation	
<ol style="list-style-type: none"> <li>1. If it is determined that an investigation take place, it is to be undertaken by;               <ol style="list-style-type: none"> <li>a. an appropriate internal person independent of the matter, or</li> <li>b. by an independent external party (e.g. an external lawyer, accountant or investigator).</li> </ol> </li> <li>2. The investigation will be completed;               <ol style="list-style-type: none"> <li>a. in a timely, confidential and objective manner and</li> <li>b. in a way in which ensures the fair treatment of the Whistleblower and all other individuals associated with the Disclosure, including witnesses.</li> </ol> </li> <li>3. While the investigation is underway, the recipient of the disclosure or another appropriate person is to:               <ol style="list-style-type: none"> <li>a. keep the whistleblower informed of the progress of the investigation and outcome, and</li> <li>b. provide information which appropriately reflects the nature of the allegations and the rights of others involved.</li> </ol> </li> <li>4. The investigation will result in a report to the appropriate decision maker</li> </ol>	



### Action following investigation

- I. Once the investigation report is received, and in compliance with applicable law, the decision maker is to:
  - a. Brief the Board outlining the investigation findings and required action.
  - b. Where appropriate, refer relevant matters to the appropriate authority.
  - c. take all reasonable steps, including commencing legal proceedings, against any wrongdoer.

## 4. ROLES AND RESPONSIBILITIES

Role	Responsibility
<b>CEO</b>	Is responsible for: <ul style="list-style-type: none"> <li>• actively promoting and creating an environment where employees feel they can come forward to make a disclosure</li> <li>• ensuring the Whistleblower Policy is implemented and regularly reviewed</li> <li>• Being aware of reports of wrongdoing</li> <li>• fulfilling their role as an Eligible Recipient</li> </ul>
<b>CFO</b>	Is responsible for: <ul style="list-style-type: none"> <li>• the development and implementation of this Policy</li> <li>• fulfilling their role as an Eligible Recipient</li> </ul>
<b>Executive Manager – Corporate Services</b>	Is responsible for: <ul style="list-style-type: none"> <li>• providing training and coaching to recipients of Disclosures and employees on this policy; and</li> <li>• report instances of Disclosable Matters to the CEO as appropriate</li> </ul>
<b>Executive Leadership Team / Executive Managers</b>	Are responsible for: <ul style="list-style-type: none"> <li>• fulfilling their role as an Eligible Recipient</li> <li>• ensuring:               <ul style="list-style-type: none"> <li>• disclosures are taken seriously and acted on immediately</li> <li>• wrongdoing is addressed promptly;</li> <li>• disclosers are provided with adequate protections and support; and</li> <li>• taking early intervention to protect disclosers from detriment</li> </ul> </li> </ul>
<b>Employees</b>	Are to: <ul style="list-style-type: none"> <li>• ensure their behaviour complies with PON’s policies and procedures</li> <li>• raise Disclosable Matters in accordance with this policy;</li> <li>• not raise vexatious, malicious or frivolous concerns;</li> <li>• maintain confidentiality in all aspects related to whistleblowing and disclosures’</li> <li>• ensure not to cause, or threaten to cause, detriment to whistleblowers; and</li> <li>• be honest in all whistleblowing matters</li> </ul>

## 5. DEFINITIONS

Term	Definition
<b>Detriment</b>	<p>Any damage arising from reprisal against a Whistleblower, including (but not limited to):</p> <ol style="list-style-type: none"> <li>1. if the Whistleblower is a PON employee:               <ol style="list-style-type: none"> <li>a. dismissal;</li> <li>b. injury in his or her employment with PON;</li> <li>c. alteration of duties to his or her disadvantage; or</li> <li>d. discrimination between the Whistleblower and other PON employees;</li> </ol> </li> <li>2. harassment or intimidation;</li> <li>3. harm or injury (including psychological harm);</li> <li>4. damage to property, reputation or business or financial position; or</li> <li>5. any other damage.</li> </ol>
<b>Disclosure</b>	A disclosure of information by a Whistleblower to a person or entity listed in the table at <b>section 3.4</b> about a Disclosable Matter in accordance with this policy.
<b>Disclosable matter</b>	Any Disclosure concerning misconduct, an improper state of affairs or circumstances in relation to PON or the tax affairs of PON. Further detail is provided at <b>section 3.2</b> .
<b>Eligible Recipient</b>	<p>Under the Whistleblower Protection Scheme and in relation to this Whistleblower Policy is any one of the following:</p> <ol style="list-style-type: none"> <li>1. an officer or senior manager of PON</li> <li>2. an auditor (internal or external) of PON; or</li> <li>3. a person authorised by PON to receive Qualifying Disclosures (see <b>section 3.4</b>).</li> </ol> <p>For the purposes of this Policy, an ‘auditor’ is an external person or entity acting in that capacity for PON to conduct independent reviews or audits, including of PON’s financial statements.</p>
<b>Executive Manager</b>	Any person from time to time holding office in PON with a title description or equivalent expression containing the words “Chief Financial Officer”, “Chief Commercial Officer”, “Executive Manager” or “Company Secretary”.
<b>Port of Newcastle Entities</b>	<p>Includes each of the following:</p> <ol style="list-style-type: none"> <li>1. Port of Newcastle Investments (Property Holdings) Pty Limited in its own capacity and as trustee of the Port of Newcastle Investments (Property Holdings) Trust;</li> <li>2. Port of Newcastle Investments (Property) Pty Limited in its own capacity and as trustee of the Port of Newcastle Investments (Property) Trust;</li> <li>3. Port of Newcastle Investments (Financing) Pty Limited;</li> <li>4. Port of Newcastle Investments (Holdings) Pty Limited in its own capacity and as trustee of the Port of Newcastle Investments (Holdings) Trust;</li> <li>5. Port of Newcastle Investments Pty Limited; and</li> <li>6. Port of Newcastle Investments Operations Pty Limited in its own capacity and as trustee of the Port of Newcastle Unit Trust.</li> </ol>
<b>Qualifying disclosure</b>	Is when a Disclosing Person makes a disclosure to an Eligible Recipient, and the Disclosing Person has reasonable grounds to suspect that the disclosure concerns a “Disclosable Matter”.
<b>Reasonable grounds</b>	Means that a reasonable person in your position would also suspect the information indicates misconduct or a breach of the law.

<b>Whistleblower</b>	Generally, an insider within, or close to, an organisation that reports misconduct or dishonest or illegal activity within the organisation. A Whistleblower can be any one of the following individuals that are covered at <b>section 3.3</b> .
<b>Whistleblowing</b>	The act of raising concerns about potential, suspected, or actual misconduct within PON and is a key element of ensuring the good governance of the Port by creating a culture of transparency and accountability.
<b>Wrongdoer</b>	An individual who is deemed to have engaged in a Disclosable Matter following an investigation undertaken in accordance with this policy.

## 6. REFERENCES

### ASIC whistleblower resources

ASIC has information regarding whistleblowing available from its website at: <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/>

In relation to rights and protections for whistleblowers, see Information Sheet 238 Whistleblower rights and protections: <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/whistleblower-rights-and-protections/>

For information for recipients of disclosures, see Obligations on company officers:

<https://asic.gov.au/for-business/running-a-company/company-officeholder-duties/company-officer-obligations-under-the-whistleblower-protection-provisions/>

### ATO whistleblower resources

The Australian Taxation Office (ATO) introduced new arrangements to protect whistleblowers in July 2019, information is available from: <https://www.ato.gov.au/general/gen/whistleblowers/>

## 7. REVISION HISTORY

This document is to be reviewed every 3 years or sooner in the event of a change in legislation or otherwise approved.

Version	Release date	Modified by	Comment
1	16/02/2021	Chief Financial Officer	Approved by ELT
2	30/06/2022	Risk & Compliance Manager	Updated to reflect changes in legislation. New format
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<b>Next Review Date:</b>		30/06/2025	