

PUBLIC INTEREST DISCLOSURE PROCEDURE

A304765



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1. OBJECTIVE

Corrupt behaviour, improper conduct or wrongdoing, including mismanagement of public resources, in the exercise of public functions of Pilbara Ports by its officers, employees and contractors will not be tolerated.

Pilbara Ports is committed to the aims and objectives of the *Public Interest Disclosure Act 2003* (the PID Act) and strongly supports disclosures being made by employees, vendors and members of the community about corrupt behaviour, improper conduct or wrongdoing.

Reasonable steps will be taken by Pilbara Ports to provide protection to employees that make public interest disclosures from any detrimental action in reprisal for the making a disclosure.

2. SCOPE

This procedure applies to all people involved in the public interest disclosure process, including:

- Pilbara Ports’ employees and vendors while performing a public function for Pilbara Ports; and
- any person making a public interest disclosure in connection with the performance of a public function by Pilbara Ports.

3. TERMS AND DEFINITIONS

TERMS	DEFINITIONS
Detrimental Action	As defined in the Public Interest Disclosure Act 2003 .
Discloser	Anyone who makes a public interest disclosure. A person may make a PID anonymously by following the instructions in section 4 of Pilbara Ports’ External Complaints Procedure .
Improper Conduct	Generally, improper conduct is a breach of the standards of conduct that a reasonable person would expect of a person or body, knowing their duties, powers and authority, in the circumstances of the case.
Minor Misconduct	As defined in the Corruption, Crime and Misconduct Act 2003 . Minor Misconduct tends to stem from dishonest or impartial performance of functions by a public officer.
Proper Authority	As defined in the Public Interest Disclosure Act 2003 .
Public Interest Disclosure (PID)	As defined in the Public Interest Disclosure Act 2003 .
Public Interest Information	As defined in the Public Interest Disclosure Act 2003 .
Serious Misconduct	As defined in the Corruption, Crime and Misconduct Act 2003 . <i>Serious Misconduct tends to occur when a public officer abuses their position to benefit themselves or another.</i>
Sphere of Responsibility	Sphere of responsibility means in the context of this procedure: <ul style="list-style-type: none"> • Pilbara Ports; • an employee or vendor of Pilbara Ports; or

	<ul style="list-style-type: none"> • a matter or person over which Pilbara Ports has a function or power to investigate.
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4. ROLES AND RESPONSIBILITIES

Pilbara Ports has appropriate resources, assigned roles and responsibilities to comply with its obligations under the PID Act.

ROLE/FUNCTION	RESPONSIBILITY
Principal Executive Officer	<p>The CEO is the Principal Executive Officer and has responsibility for:</p> <ul style="list-style-type: none"> • designating Pilbara Ports’ PID Officers (s. 23(1)(a)); • providing protection from detrimental action or the threat of detrimental action for any Pilbara Ports employee who discloses public interest information (s. 23(1)(b)); • ensuring Pilbara Ports complies with the PID Act and the PID Officers’ Code of Conduct and Integrity (ss. 23(1)(c) and (d)); and • reporting annually to the Public Sector Commissioner in accordance with the PID Act (s. 23(1)(f)).
Public Interest Disclosure Officer (PID Officer)	<p>The position of a Public Interest Disclosure Officer at Pilbara Ports includes the Principal PID Officer and the PID Officer. Currently, Pilbara Ports’ appointed PID Officer is:</p> <ul style="list-style-type: none"> • The Corporate Secretary (Principal PID Officer) <p>They are the proper authority to receive public interest disclosures within the sphere of responsibility in accordance with the PID Act (s. 5(3), s.7 and s. 18)).</p>
Principal PID Officer	<p>The Principal PID Officer has responsibility for:</p> <ul style="list-style-type: none"> • supporting and advising other PID Officers; and • coordinating any reporting requirements.
PID Officer	<p>The PID Officer is responsible for:</p> <ul style="list-style-type: none"> • providing information to potential disclosers about their rights and responsibilities in accordance with the PID Officers’ Code of Conduct and Integrity; established under s. 20(1) of the PID Act; • receiving and managing public interest disclosures in accordance with the PID Act (s. 5(3)); • assessing the disclosure to ensure it contains public interest information to which the PID Act applies (s. 3); • where appropriate, the investigation of information disclosed or cause that the information is to be investigated in line with the Fraud and Corruption Control Plan, the Discipline Procedure and this Procedure and in accordance with the PID Act (s.8(1)); • where appropriate, reporting to the discloser as to the progress and outcome of that investigation and the action taken consequently (s.10); • maintaining the confidentiality of the discloser, and any person who may be the subject of a public interest disclosure, in

	<p>accordance with the requirements of the PID Act (s. 11 and s. 16);</p> <ul style="list-style-type: none"> • complying with reporting obligations and maintaining public interest disclosures records in accordance with the PID Officers' Code of Conduct and Integrity; established under s. 20(1) and in accordance with s. 23(1)(f) of the PID Act and the <i>State Records Act 2000</i>; • where appropriate, providing information to potential subjects of a disclosure about their rights, responsibilities, duties and the potential offences (s. 9(2), s. 14, s. 15 and s. 16); • where appropriate, taking such action as is necessary and reasonable and within the functions and powers in accordance with s. 9 of the PID Act; • acting in accordance with the rules of natural justice (s. 9(2) and s. 16(1)(b)); • acting in accordance with the PID Officers' Code of Conduct and Integrity established by the Public Sector Commissioner (s. 20(1)) and any applicable authority-specific code of conduct, established separately from the PID Act.
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5. DESIGNATION OF PUBLIC INTEREST DISCLOSURE OFFICER

The Principal Executive Officer must designate a PID Officer by notice in writing by signing the [Authorisation by Principal Executive Officer Form](#).

Once designated, the PID Officer must:

- complete a [PID Officer Declaration Form](#) (available online from the Public Sector Commission (PSC) website¹);
- have it signed by the Principal Executive Officer; and
- submit the signed form [online](#) to the PSC so the PID Officer's contact details can be published on the PID Officer Contact Directory.

A copy of the completed PID Officer's Declaration shall be retained on a file to be kept for that purpose.

The PID Officer is not required to undertake training but, as soon as possible after being designated, it is recommended to:

- familiarise themselves with the PID Act and relevant guidelines available on the [PSC's website](#) and the [PID Officers' Code of Conduct and Integrity](#);
- attend a PID Officer information session ('Navigating the PID Act'), presented by the Public Sector Commission. The PSC offers regular information sessions as part of its responsibility to assist public authorities to comply with the PID Act. Session dates and times can be found on [Eventbrite](#).

¹ <https://www.wa.gov.au/government/document-collections/public-interest-disclosure-resources>

6. RECEIVING PUBLIC INTEREST DISCLOSURES

Before a discloser makes a public interest disclosure to the PID Officer, the PID Officer shall advise the discloser, if the discloser has provided their name and contact details, that if they choose to make a public interest disclosure, they:

- will **not** as a result of the disclosure:
 - incur any civil or criminal liability;
 - be liable to any disciplinary action under law;
 - be liable to be dismissed or have his or her services dispensed with or otherwise terminated;
 - be liable for any breach of a duty of secrecy or confidentiality or any other applicable restriction on disclosure;
- however, if a disclosure is made under the PID Act, the discloser might still be liable for any wrongdoing they have been involved in, for which they 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 PID 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;
- are entitled to request a report on the investigation;
- 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 PID 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 PID Act if they disclose the information otherwise than under the PID 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; and
- will only be protected if they make the disclosure to the proper authority.

6.1 Written Disclosures Received by Someone other than a PID Officer

If a discloser makes a public interest disclosure to Pilbara Ports in the form of a letter, email or web-based enquiry form, not specifically addressed to the PID Officer but contains information that indicates it is a public interest disclosure, the Pilbara Ports employee who receives the document should:

- forward the disclosure document immediately to the Principal PID Officer and not disclose it to anyone else; and
- not make copies of the public interest disclosure document and delete any copies of it in emails once it has been provided to the Principal PID Officer.

7. 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 PID Act if the discloser has provided their name and contact details.

If they do, the PID Officer must make an 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.

The PID Officer will use the [PID Assessment and Case Management Form](#).

8. 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 Lodgement Form](#).

The PID Officer should also complete Part 2 of the [PID Assessment and Case Management Form](#).

On completion of the forms, 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 PID 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 using the [PID Register Template](#), for reporting to the Commissioner for Public Sector Standards.

8.1 Public Interest Disclosure Register

Pilbara 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 Pilbara Ports' Public Interest Disclosure Register at the discretion of the proper authority.

All reporting requirements to the Public Sector Commissioner required under the PID Act will be based on extracts from the fields in the Register.

9. INVESTIGATING A PUBLIC INTEREST DISCLOSURE

The initial assessment should conclude:

- whether the disclosure relates to Pilbara Ports, its employees, officers or contractors; and
- whether or not the disclosure relates to a matter or person that Pilbara 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 PID 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 PID Act.

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

Where the PID Officer determines that the disclosure is a public interest disclosure that should be investigated, the 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 PID Act, Pilbara Ports’ [Code of Ethics and Conduct](#), the [PID Officers’ Code of Conduct and Integrity](#) 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 confidentiality is maintained when investigating a disclosure.

Once a public interest disclosure has been made it cannot be withdrawn. The proper authority must investigate the disclosure once they receive it, unless the disclosure is declined for one of the reasons provided by the PID Act.

9.1 Maintaining Confidentiality in an Investigation

The PID 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 PID Act, is a serious offence, punishable with a maximum penalty of \$24,000 or two-years imprisonment.

The confidentiality provisions of the PID Act do not apply to all information disclosed in a public interest disclosure, 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. It is important that this consent is recorded. The [Consent to Disclosure of Identifying Information Form](#) should be used for this purpose.

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.

This information should be given, where practicable, using the [Notification of Disclosure of Identifying Information Form](#).

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.

Particularly where a discloser works for Pilbara Ports, protecting the identity of the discloser is an important part of protecting the discloser from reprisals and victimisation. 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. In some cases, it may not be necessary to provide the investigator with 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, the discloser should be notified in the manner described above.

9.2 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.

9.3 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 include:

- preventing the matter to which the disclosure relates from continuing or occurring;
- referring the matter to the Police or another 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 PID Officer operates. The PID 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.

9.4 Recording Action Taken

In addition to keeping other records, the PID Officer shall complete Part 4 of the Public Interest Disclosure Assessment and Case Management Form and record a summary of the action taken in the Public Interest Disclosure Register.

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

Where the PID Officer decides not to investigate information disclosed under the PID Act, or discontinues an investigation, the PID 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 (if any) 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
- the necessary confidentiality as to the existence or identity of another person who has made a disclosure of public interest information under the PID Act.

9.6 Reporting to Principal Executive Officer

A Principal Executive Officer is not necessarily entitled to know about a disclosure that has been received by Pilbara Ports.

However, the PID Officer may need to notify the Principal Executive Officer that a disclosure has been made to initiate an investigation and/or take other appropriate action to meet the requirements of s. 9 of the PID Act.

In such circumstances, the confidentiality provisions of this Procedures must otherwise be complied with, in particular the confidentiality of the identity of the discloser.

The PID Officer may also need to provide the Principal Executive Officer with general information about the existence of a disclosure to enable the Principal Executive Officer to provide reasonable protection from detrimental action in the workplace or for reporting purposes.

The PID Officer would usually ask the discloser to consent to their identity being revealed to the Principal Executive Officer in this type of circumstance.

10. VICTIMISATION AND REPRISALS

Pilbara 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, to the Principal PID Officer, or 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 Pilbara Ports.

11. 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 PID 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 unauthorised 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.

12. REPORTING REQUIREMENTS

Under section 23(1)(f) of the PID Act, Pilbara Ports (through the Principal Executive Officer) is required to report annually to the Public Sector Commissioner on:

- the number of public interest disclosures received over the reporting 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.

The report 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.

As part of the Public Sector Commissioner's annual survey program, the Principal Executive Officer will be asked to provide a report each year on Pilbara Ports' compliance with, and administration of, the PID Act.

13. MAKING INFORMATION AVAILABLE

These internal procedures shall be made available for access by all employees, contractors and members of the public. Copies of these internal procedures are available from the PID Officer and are to be kept on Pilbara Ports' intranet and website.

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

14. DOCUMENT OWNER

The Corporate Secretary has overall responsibility for this procedure.

APPENDIX A - PROPER AUTHORITY AND EXTERNAL REPORTING OPTIONS

The table below outlines the proper authorities depending on the information disclosed.

When the disclosure relates to...	the proper authority is...
The sphere of responsibility of a Public Authority (for example, matters about the Public Authority or its Officers, or which the Public Authority has the function of investigating).	The Public Interest Disclosure Officer (PID Officer) of the Public Authority.
Offences under State law.	A Police Officer or the Corruption and Crime Commission.
Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources.	The PID Officer of the Public Authority concerned, or the Auditor General.
Matters of administration affecting someone in their personal capacity falling within the jurisdiction of the Ombudsman.	The PID Officer of the Public Authority concerned or the Ombudsman.
A Police Officer.	The Commissioner of Police or the Corruption and Crime Commission.
A Member of the Legislative Council.	The President of the Legislative Council.
A Member of the Legislative Assembly.	The Speaker of the Legislative Assembly.
A Judicial Officer.	The Chief Justice.
A Public Officer who is not a Member of Parliament, a Minister, a Judicial Officer or a Commissioned or other Officer specified in Schedule 1 of the Parliamentary Commissioner Act 1971.	The PID Officer of the Public Authority concerned, the Ombudsman or the Commissioner for Public Sector Standards.
A Person or a matter of a prescribed class.	A Person declared by the Regulations to be a Proper Authority.

Other avenues for reporting information include:

When the information relates to ...	the proper authority is ...
Serious misconduct	Corruption and Crime Commission
Minor misconduct	Public Sector Commission
Criminal matters	Western Australia Police
Matters governing administration affecting individuals	Ombudsman Western Australia
Matter regarding discrimination	Equal Opportunity Commission Western Australia

APPENDIX B – PID DECISION TREE

