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WHISTLE-BLOWER PROTECTION POLICY

MAY 2020

**TRANSPORT
HERITAGE**

NSW



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POLICY STATEMENT

Transport Heritage NSW (THNSW) is committed to best practice in corporate governance and compliance, and demonstrating behaviours consistent with our values by those who represent THNSW.

This policy sets out THNSW's handling of reports about suspected wrongdoing (often referred to as public interest disclosures or PIDs) by whistle-blowers, and for providing protection against victimisation or discrimination to those who make a report.

THNSW must comply with the obligations relating to the protection of whistle-blowers in the Corporations Act 2001(Cth) and equivalent legislation in other jurisdictions.

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POLICY OBJECTIVES

This policy outlines:

- Overview
- Eligible whistle-blower
- Eligible Recipients
- Disclosable Matters (Reportable Conduct)
- Excluded Matters
- Protections
- Anonymous Disclosure
- Making a Report

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SCOPE

This policy applies to any person(s) who meet the criteria of an *Eligible Whistle-blower* as outlined in Section 5 of this policy.

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OVERVIEW

A whistle-blower is an eligible person who makes a disclosure of suspected wrongdoing (deemed illegal, unethical, or not correct) that may have occurred within THNSW and that qualifies for protection under the Corporations Act.

Those who become whistle-blowers can choose to bring information or allegations to surface either internally or externally to THNSW. Internally, a whistle-blower can bring his/her accusations to the attention of specific personnel (Disclosure Coordinators or Officers). Externally, a whistle-blower can bring allegations to light by contacting specific regulatory agencies outside of THNSW, the media, government or law enforcement.

The Corporations Act gives special protection to whistle-blowers who make disclosures about any misconduct or improper state of affairs relating to THNSW.

To qualify for protection under the Corporations Act the whistle-blower must:

- be an eligible whistle-blower as per criteria in Section 5 of this policy;
- make a disclosure to an eligible recipient as outlined in Section 6 of this policy; and
- make a disclosure about criteria outlined in Section 7 of this policy.

Not all matters or concerns will be covered by the Whistle-blower Policy such as personal work-related grievances. Such matters will be dealt with in accordance with the THNSW Grievance and Complaints Policy, separate to this policy.

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ELIGIBLE WHISTLE-BLOWER

Under the whistle-blower protection legislation, an eligible whistle-blower can be someone who is or was:

- A THNSW Board Member, company secretary, member, volunteer, employee or work experience student or intern (paid or unpaid);
- Contractor, or an employee of a contractor, who has supplied goods or services to THNSW. This can be either paid or unpaid, and can include volunteers;
- Associate of THNSW, usually a person with whom THNSW acts in concert; or
- Spouse, relative or dependant of one of the people referred to above.

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ELIGIBLE RECIPIENTS

6.1

Whistle-blowers are encouraged to report wrongdoing within THNSW to a Disclosure Coordinator or Officer, however internal reporting is not the only option available.

The whistle-blower can make a disclosure to any of the following:

- Any THNSW Disclosure Coordinator or Officer (as outlined in Table 1, below);
- The company's auditor or member of an audit team conducting an audit of the company;
- ASIC or APRA;
- The AFP; and
- Legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistle-blower provisions in the Corporations Act.

The Australian Charities Not-for-Profit Commission (ACNC) is not an eligible recipient. A whistle-blower who wants to access the protections or fears harm can report to both an eligible recipient and the ACNC, although they will only be covered by the protections from when they report to an eligible recipient.

Reports can be made to the media or a Parliamentarian, these reports only receive protection under the whistle-blower laws in very limited circumstances:

- to make a protected "public interest" report, the whistle-blower must have already made a protected report to an eligible regulator (such as ASIC), waited at least 90 days, and not have reasonable grounds to believe that action is or has been taken. They must also have reasonable grounds to believe that making a further report would be in the public interest; or
- to make an "emergency" report, the whistle-blower must have already made a protected report to an eligible regulator (such as ASIC) and there must have reasonable grounds to believe that the information in the report concerns a substantial and imminent danger to health or safety of one or more persons or to the natural environment.

In either case, the regulator must be notified in writing of the intent to make the further report. The further report can be made to a member of Parliament or a journalist who meets the legislative definitions of those terms. It is recommended to seek legal advice before proposing to make a report to any journalist or Parliamentarian.

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TABLE 1 – THNSW Disclosure Coordinators and Officers

THNSW Disclosure Officers	Responsibilities
<p>Disclosure Coordinator</p> <ol style="list-style-type: none"> Head of Finance & Corporate Resources Company Secretary 	<p>The Disclosure Coordinator is the primary point of contact for the whistle-blower(s). The Disclosure Coordinator will undertake:</p> <ul style="list-style-type: none"> A documented assessment of all reports to determine if the whistle-blower and disclosure qualifies for protection under the Corporations Act, and recommendation about how the report will be dealt with. Assess whether it is possible and appropriate to keep the reporter’s identity confidential. A documented risk assessment relating to the risk of reprisal and workplace conflict related to or likely to arise out of a report, and develop strategies to manage any risk identified. Where required, coordinate or support in the investigation process. Consult with the Principle Disclosure Officer in relation to any reports received. Receive reports from Disclosure Officer(s).
<p>Principal Disclosure Officer</p> <ol style="list-style-type: none"> Chief Executive Officer Chair of the THNSW Board 	<p>The Principal Disclosure Officer has ultimate responsibility for maintaining the internal reporting system and compliance with legislative and regulatory requirements for whistle-blowers.</p> <p>Principal Disclosure Officers can receive reports from whistle-blowers and have a responsibility to:</p> <ul style="list-style-type: none"> Appoint Disclosure Coordinator(s) and Officer(s). Review reports assessed by Disclosure Coordinator(s) or Disclosure Officer(s), to approve recommendations whether or not the report is eligible to the protections of a whistle-blower. Ensure there are strategies in place to support and protect whistle-blowers from reprisal. Make decisions following any investigation or appoint an appropriate decision-maker. Take appropriate remedial/disciplinary action or systemic reform where wrongdoing is substantiated or systemic problems are identified. <p>The Chair of the Board will also exercise delegation of a Principal Disclosure Officer to whistle-blowers and will be responsible for any reports in relation to the Chief Executive Officer.</p> <p>Where reports are in relation to the Chair of the Board, the Company Secretary will temporarily exercise the delegation of a Principal Disclosure Officer.</p>
<p>(Other) Disclosure Officer(s)</p>	<p>The Principal Officer may nominate a number of Disclosure Officers according to organisational requirements. Disclosure Officers are additional points of contact within the internal reporting system that can provide advice about the system and the internal reporting policy, receive reports of wrongdoing and assist whistle-blowers to make reports.</p> <p>Disclosure Officers have a responsibility to:</p> <ul style="list-style-type: none"> Document any reports received verbally, and have the document signed and dated by the reporter (if possible). Assist whistle-blowers to make reports privately and discreetly when requested. Discuss with the reporter any concerns they may have about reprisal or workplace conflict. Conduct an assessment and forward reports to the Disclosure Coordinator and/or Principal Disclosure Officer for approval and additional assessment where necessary. Assist the Disclosure Coordinator with risk assessments. Assist in raising awareness of THNSW’s Whistle-blower Policy. Maintain confidentiality.

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DISCLOSABLE MATTERS (REPORTABLE CONDUCT)

The whistle-blower must have reasonable grounds to suspect that the information being disclosed about THNSW concerns:

- Misconduct; or
- An improper state of affairs or circumstances.

This information can be about THNSW, or an officer (which includes Board Members), employees, volunteers, contractors engaged by THNSW or THNSW Members, engaging in conduct that:

- Breaches the Corporations Act;
- Breaches other financial sector laws enforced by ASIC or APRA;
- Breaches an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months; or
- Represents a danger to the public or the financial system.

Examples of disclosable matters can involve:

- Illegal conduct such as fraud, corruption, bribery, theft, violence, harassment or intimidation, criminal damage to property or other breaches of applicable laws;
- Substantial mismanagement of resources, corporate governance and/or accounting or audit matters;
- Conduct involving substantial risk to public health, safety, or the environment;
- Unethical activities that would breach THNSW Code of Conduct and policies;
- Behaviour that is oppressive, discriminatory or grossly negligent; and
- An unsafe work-practice.

To qualify for protection, the whistle-blower must have reasonable grounds to suspect that the information they will disclose indicates misconduct. It is not necessary for the person reporting the wrongdoing to prove that wrongdoing occurred, but that there must be some information to support their allegation.

Information that would show, or tend to show wrongdoing may include:

- Direct observation of wrongdoing;
- Corroborative observation by others; or
- Evidence such as unbalanced accounts or contradictory records.

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EXCLUDED MATTERS

While everyone is encouraged to speak up and report any concerns to THNSW, not everyone nor all types of concerns are covered by the Whistle-blower Policy.

Disclosures cannot be made under this policy about solely personal work-related grievances. Such matters will be dealt with in accordance with the THNSW Grievance and Complaints Policy.

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PROTECTION

THNSW will take all reasonable steps to protect the whistle-blower and will not tolerate any detrimental acts or omissions against any person who has made or who is believed to have made a report of improper conduct. Detrimental acts include, but are not limited to, dismissal, demotion, harassment, discrimination, disciplinary action, bias, threats or other unfavourable treatment connected with making a report.

Any such retaliatory action or victimisation by any person in reprisal for a report being made under this policy will be treated as serious misconduct. If the whistle-blower is subject to detrimental treatment as a result of making a report under this policy, the whistle-blower should inform a THNSW Disclosure Coordinator or Officer immediately.

THNSW will take all reasonable steps to protect and respect the rights of a person who reports alleged improper conduct in good faith.

Where it is established that a whistle-blower is not acting in good faith, or he/she has knowingly made a false disclosure of improper conduct, then he/she may be subjected to disciplinary proceedings.

A whistle-blower is not automatically protected from the consequences of being a party to any improper conduct they report under this policy.

The Corporations Act contains certain protections for eligible whistle-blowers when the conditions of Sections (5), (6) and (7) of this policy are met. These include:

- The whistle-blower is immune from civil, criminal or administrative legal action (including disciplinary action) for making the disclosure;
- No contractual or other remedies may be enforced, and no contractual or other right may be exercised, against the whistle-blower for making the report;
- In some circumstances, the reported information is not admissible against the whistle-blower in criminal proceedings or in proceedings for the imposition of a penalty;
- Anyone who causes or threatens to cause detriment to a whistle-blower or another person in the belief or suspicion that a report has been made, or may have been made, proposes to or could be made, may be guilty of an offence and may be liable for damages;
- A whistle-blower's identity cannot be disclosed to a Court or tribunal except where considered necessary; and
- The person receiving the report commits an offence if they disclose the substance of the report or the whistle-blower's identity, without the whistle-blower's consent, to anyone except ASIC, the Australian Federal Police (AFP) or a lawyer for the purpose of obtaining legal advice or representation in relation to the report.

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ANONYMOUS DISCLOSURES

A whistle-blower may elect to make an anonymous disclosure to THNSW. As far as possible, THNSW will respect the whistle-blower's request to not identify themselves and will take reasonable steps to reduce this risk.

At the time of making a disclosure, the whistle-blower can request a meeting with a Disclosure Coordinator or Officer in a discreet location away from the workplace.

Others who know of or suspect that another person has made a disclosure under this protocol should protect and maintain the confidentiality of that person. Those who breach confidentiality in relation to a known or suspected disclosure may be subjected to disciplinary proceedings.

If a report is made that qualifies for protection under the Corporations Act, the identity of a whistle-blower (or information that is likely to lead to their identity becoming known) must be kept confidential unless one of the following exceptions applies:

- The discloser consents to the disclosure of their identity;
- The concern is reported to ASIC, APRA or the AFP;
- The concern is raised with a lawyer for the purpose of obtaining legal advice or representation; or
- The disclosure of the whistle-blower identity is reasonable necessary for the effective investigation of the matter.

An eligible whistle-blower can remain anonymous and still qualify for protection.

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MAKE A REPORT

THNSW encourages whistle-blowers to speak with a THNSW's Disclosure Coordinator or Officer should they have any enquires in relation to the nature of a concern about wrongdoing within THNSW and/or to find out about the reporting process.

Whistle-blowers can make a report verbally or in writing by submitting a *Report of Serious Wrongdoing Form* to a THNSW Disclosure Coordinator or Officer.

If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and sign this record. The person making the disclosure should keep a copy of this record.

Whistle-blowers concerned about being seen making a report should request to meet a THNSW Disclosure Coordinator or Officer in a discrete location away from the immediate workplace.

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BREACH OF POLICY

A breach of this Policy is considered a breach of the THNSW Code of Conduct, and may have serious consequences including termination of employment, volunteering, membership, engagement or services, where appropriate.

If a person breaches a whistle-blower's confidentiality or causes detriment to a whistle-blower because of their disclosure, the person faces criminal or civil penalties.

It is a criminal offence to willfully make a false or misleading statement when reporting wrongdoing. THNSW will not support any person that willfully makes false, defaming, vexatious or misleading reports.

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ACCOUNTABILITIES

It is important that all THNSW personnel and THNSW members and those eligible as a whistle-blower to THNSW contribute to a workplace where known or suspected wrongdoing is reported and dealt with appropriately.

THNSW personnel and THNSW members are required to:

- Report serious wrongdoing to THNSW; and
- If requested, assist those dealing with the report, including cooperating with any investigation through the provision of honest information and maintaining confidentiality

THNSW personnel and THNSW members must not:

- Victimise or harass anyone in connection with a report; or
- Knowingly make false or misleading reports of wrongdoing.

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DEFINITIONS

Reasonable grounds: an objective test and relates to whether a reasonable person in possession of the information would form the belief that the improper conduct occurred. It is important that there is evidence to support a person's beliefs, other than their concerns. This may include documentation, witnesses or other direct evidence.

Reportable conduct: any conduct in relation to THNSW that is dishonest, fraudulent, corrupt, illegal, unethical, in breach of internal policy (including the Code of Conduct), misconduct or an improper state of affairs or a danger, or represents a danger, to the public or financial system.

THNSW personnel: includes board members, volunteers, employees (permanent, temporary and casual), contractors, consultants, work experience students and interns.

Whistle-blower: an eligible person who makes a disclosure of reportable conduct that qualifies for protection under the Corporations Act.

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REFERENCES

- Corporations Act 2001(Cth)
- Public Interest Disclosures Act 1994 (NSW) (PID Act)
- Taxation Administration Act 1953 (Cth)
- THNSW Code of Conduct
- Work, Health and Safety Act 2011 (NSW).

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RELATED FORMS

- Report of Serious Wrongdoing (Form)
- Internal Assessment – Report of Serious Wrongdoing (Disclosure Coordinator).

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VARIATION AND REVIEW

THNSW reserves the right to review, vary or revoke this policy.

This policy will be reviewed every three (3) years or in accordance with changes to relevant legislation, policy and guidelines.

Review History

Finance, Audit & Risk Committee (FA&RC)	March 2020
Date Policy first adopted - version 1	May 2020

Policy Authorised by:

Name: Andy McNeill
Position: Head of Finance & Corporate Resources
Date: May 2020