

**Subject: Protected Disclosures Policy**

**Effective: 22 February 2010  
(Supersedes all previous related policies)**

**Purpose**

- The purpose of the policy is to clarify for Directors and employees the framework for making Protected Disclosures.

**Scope**

- This policy applies to all employees at Sydney Ports Corporation.

**Principles**

- The organisation requires any employee to notify of a fraud or corruption activity through its internal reporting procedure first.
- The Protected Disclosures Act ("the Act") and the Sydney Ports Corporation Fraud and Corruption Control Policy aim to encourage and assist disclosures of fraud or corrupt conduct. This is achieved by:
  - providing for those disclosures to be properly investigated and dealt with; and
  - protecting persons from reprisals that might otherwise occur because of these disclosures;
- For the purpose of the Act, Sydney Ports is held to be a public authority, and its employees are public officials.
- Sydney Ports Corporation is committed to protecting as prescribed under the Act any employee who genuinely comes forward with information regarding fraud, corrupt conduct, maladministration or serious waste.

**Making a Protected Disclosure**

For information to be deemed a "protected disclosure" it must meet the following conditions:

- the disclosure has to be made by a public official, or the Chief Executive Officer or in accordance with established reporting procedures within Sydney Ports (see below), or direct to either the:
  - ICAC (concerning corrupt conduct);
  - Ombudsman (concerning serious and substantial waste).
  - Auditor-General (concerning serious and substantial waste).

Disclosures made to a journalist or member of Parliament will only be protected if the following conditions are met:

- the person making the disclosure to a journalist or member of Parliament must have already made, substantially, the same disclosure to an investigating authority or officer of a public authority with the Act. Such protection is only available if the information provided is substantially true and the investigating authority, public authority or officer to whom the matter was referred:

- has decided not to investigate the matter;
- has decided to investigate the matter but has not completed the investigation within 6 months of the original disclosure;
- has investigated the matter but not recommended any action in respect of the matter; or
- has failed to notify the person making the disclosure, within 6 months of the disclosure, of whether or not the matter is to be investigated.

A disclosure is not protected if:

- investigation reveals that the disclosure was made frivolously or vexatiously;
- the disclosure mainly involves questioning the merits of government policy;
- the disclosure is made solely or substantially to avoid dismissal or other disciplinary action, unless the disciplinary action is taken for having made a protected disclosure.

The Act affords protections against reprisals and actions. A person making a protected disclosure:

- is not subject to any liability, and no action, claim or demand may be taken or made of or against a person;
- is not subject to any liability, and no action, claim or demand may be taken or made of or against the person;
- has a defence of absolute privilege in respect of the publication to the relevant investigating authority, public official, member of Parliament or journalist of the disclosure in proceedings for defamation;
- who is subject to any obligation by way of oath, rule of law or practice to maintain confidentiality with respect to the disclosure is taken not to have breached the relevant oath, rule of law or practice;
- is not liable to disciplinary action because of the disclosure.

## **Offences**

- It is an offence to wilfully make a false or misleading statement when making a disclosure.
- It is an offence for anyone to take 'detrimental action' against another person substantially in reprisal for that person making a protected disclosure. 'Detrimental action' is defined broadly to encompass actions that comprise or involve:
  - injury, damage or loss;
  - intimidation or harassment;
  - discrimination, disadvantage or adverse treatment in relation to employment;
  - dismissal from, or prejudice in, employment;
  - disciplinary proceedings.
- Where action is taken substantially, in reprisal for making a protected disclosure, then this action will not only be an offence, but may also result in action under the Sydney Ports Disciplinary Policy. Staff are reminded of the commitments contained in the Sydney Ports Corporation Enterprise Agreement and Code of Conduct about a harassment free environment.
- While anonymous persons may receive protection for disclosure made under the Act, it greatly assists investigations if a protected disclosure reveals their identity.

That identity is to remain confidential and is not to be revealed unless:

- the person consents in writing; or
- it is unreasonable or impossible to maintain confidentiality; or
- procedural fairness makes it essential for the identity to be revealed to the person named in the disclosure in order for that person properly to respond; or
- disclosure is necessary for effective investigation; or
- disclosure is otherwise in the public interest.

### **Further Information**

This policy relates to:

Independent Commission Against Corruption Act 1988 (“The ICAC Act”)

The Protected Disclosures Act dated 1994 (“the Act”)

NSW Ombudsman – Protected Disclosures Guidelines April 2009

The contact details for external agencies are as follows:

The Audit Office of New South Wales

Level 15, 1 Margaret Street

Sydney NSW 2000

*Reception: 9275 7100*

Independent Commission Against Corruption

Level 21, 133 Castlereagh Street

Sydney NSW 2000

*Office: 9286 1000*

### **Policy Owner**

EGM Human Resources