

COMMONWEALTH REGIME DISCLOSURES PROCEDURE

TASMANIAN RAILWAY PTY LTD (ABN 83 139 383 761)
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1. PURPOSE

Tasmanian Railway Pty Ltd (**TasRail**) is committed to complying with its whistleblowing obligations under the *Corporations Act 2001* (Cth) (**Act**) and the *Tax Administration Act 1953* (Cth) (**Tax Act**) and is required to have this whistleblowing procedure.

The purpose of this procedure is:

- (a) to encourage disclosures of wrongdoing;
- (b) to help deter wrongdoing, in line with TasRail's risk management and governance framework;
- (c) to ensure individuals who disclose misconduct can do so safely, securely and with confidence that they will be protected and supported;
- (d) to ensure disclosures are dealt with appropriately and on a timely basis;
- (e) to provide transparency around TasRail's framework for receiving, handling and investigating disclosures;
- (f) to support TasRail's Values, Code of Conduct and Employee Behaviour Expectations;
- (g) to support TasRail's long-term sustainability and reputation; and
- (h) to meet TasRail's legal and regulatory obligations.

TasRail has a Public Interest Disclosure Procedure as required under the *Public Interest Disclosures Act 2002* (Tas) which applies to disclosures by eligible whistleblowers of improper conduct or detrimental action by members, officers or employees of TasRail, to TasRail, the Integrity Commission or the Tasmanian Ombudsman depending on the nature of the disclosure.

A whistleblower will qualify for protection under the Act if they are an eligible whistleblower as described in this clause and the whistleblower has made a disclosure of information relating to a disclosable matter (as described in Clause 2) directly to a recipient (as described in Clause 3.1).

An **eligible whistleblower** is an individual who is, or has been, any of the following in relation to TasRail:

- (a) an officer or employee (e.g. current and former employees who are permanent, part-time, fixed-term or temporary, secondees, managers, and directors);
- (b) a supplier of goods or services to TasRail (whether paid or unpaid), including their employees (e.g. current and former contractors, consultants, service providers and business partners);
- (c) an associate of TasRail; or
- (d) a relative, dependant or spouse of an individual referred to above in (a)-(c).

Please also see Clause 9.1 for eligible whistleblowers under the Tax Act.

2. DISCLOSABLE MATTERS

A disclosure must be a disclosable matter to qualify for protection under the Act. Please also see Clause 9.3 for disclosures qualifying for protection under the Tax Act.

2.1 Disclosable matter requirements

Disclosable matters under the Act involve information:

- (a) that the eligible whistleblower has reasonable grounds to suspect that the information concerns misconduct, or an improper state of affairs or circumstances, in relation to TasRail, or a related body corporate of TasRail; and
- (b) without limiting Clause 2.1(a), the eligible whistleblower has reasonable grounds to suspect that the information indicates TasRail, a related body corporate of TasRail or one of its or their employees or officers has engaged in conduct that:
 - (i) constitutes an offence against, or a contravention of, a provision of any of the following:
 - (A) the Act;
 - (B) an instrument made under the Act;
 - (ii) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more;
 - (iii) represents a danger to the public or the financial system; or
 - (iv) is prescribed by regulation.

The term “reasonable grounds to suspect” is based on the objective reasonableness of the reasons for the discloser’s suspicion. A mere allegation without supporting information is not likely to be considered as having “reasonable grounds to suspect”, however, a discloser does not need to prove their allegations.

The term “misconduct” is defined in Section 9 of the Act and includes fraud, negligence, default, breach of trust and breach of duty.

Disclosable matters may relate to significant risk to public safety or the stability of, or confidence in, the financial system and do not have to involve breach of a law.

An eligible whistleblower can still qualify for protection where their disclosure turns out to be incorrect.

2.2 Examples of disclosable matters

Disclosable matters include:

- (a) illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property;

- (b) offering or accepting a bribe;
- (c) fraud, money laundering or misappropriation of funds;
- (d) financial irregularities;
- (e) failure to comply with, or breach of, legal or regulatory requirements.

2.3 Matters that are not disclosable matters

Disclosable matters do not include disclosures **solely** relating to personal work-related grievances.

Personal work-related grievances are those that relate to the eligible whistleblower's current or former employment and have, or tend to have, implications for the eligible whistleblower personally, but do not:

- (a) have any other significant implications for the entity (or another entity); or
- (b) relate to any conduct, or alleged conduct, about a disclosable matter as set out in Clause 2.1.

For example:

- (a) an interpersonal conflict between the eligible whistleblower and another employee;
- (b) a decision that does not involve a breach of workplace laws;
- (c) a decision about the engagement, transfer or promotion of the eligible whistleblower;
- (d) a decision about the terms and conditions of engagement of the eligible whistleblower; or
- (e) a decision to suspend or terminate the engagement of the eligible whistleblower, or otherwise to discipline the eligible whistleblower.

A personal work-related grievance may still qualify for protection if:

- (a) it relates to a disclosable matter and a personal work-related grievance (mixed report);
- (b) TasRail has breached employment or other laws punishable by imprisonment for a period of 12 months or more, engaged in conduct that represents a danger to the public, or the disclosure relates to information that suggests misconduct beyond the eligible whistleblower's personal circumstances;
- (c) the eligible whistleblower suffers from or is threatened with detriment for making a disclosure; or
- (d) the eligible whistleblower seeks legal advice or legal representation about the operation of the eligible whistleblower protections under the Act.

If a matter is not a disclosable matter, it matter may still be covered under other legislation, such as the *Fair Work Act 2009* (Cth).

3. WHO CAN RECEIVE A DISCLOSURE?

3.1 Recipients

To qualify for protection under the Act, an eligible whistleblower needs to make a disclosure directly to:

- (a) an eligible recipient (as described in Clause 3.2);
- (b) a legal practitioner (for the purposes of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the Act, even if the advice concludes the disclosure is not a disclosable matter);
- (c) Australian Securities and Investments Commission (**ASIC**), Australian Prudential Regulation Authority (**APRA**) or another Commonwealth body prescribed by regulation;
- (d) a journalist or parliamentarian provided the disclosure is a public interest disclosure or emergency disclosure (as further described in Clause 3.3).

A disclosure may be made internally within TasRail or externally. TasRail encourages whistleblowers to disclose to TasRail in the first instance via the confidential email address for disclosures detailed in Clause 4.1(c).

Whistleblowers should contact an independent legal adviser before making a public interest disclosure or an emergency disclosure under the Act. It is important to understand the criteria for making a public interest or emergency disclosure as described in Clause 3.3. A disclosure must have previously been made to ASIC, APRA or a prescribed body and written notice provided to the body to which the disclosure was made. In the case of a public interest disclosure, at least 90 days must have passed since the previous disclosure.

For additional information from ASIC, refer to: How ASIC handles whistleblower reports Information Sheet 239 –

<https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/how-asic-handles-whistleblower-reports/>

Please also see Clause 9.2 for eligible recipients under the Tax Act.

3.2 Eligible Recipients

An eligible recipient includes within TasRail:

- (a) an officer (i.e. a director or company secretary) or senior manager of TasRail or a related body corporate of TasRail (including the recipients in Clause 4.1(a) and 4.1(b));
- (b) the internal or external auditor (including a member of an audit team conducting an audit) or actuary of TasRail;
- (c) the external person authorised by TasRail to receive disclosures as described in Clause 4.2.

A senior manager is a senior executive within an entity, other than a director or company secretary, who:

- (a) makes or participates in making decisions that affect the whole, or a substantial part, of the business of the entity; or
- (b) has the capacity to significantly affect the entity's financial standing.

3.3 Public interest disclosure and emergency disclosures

- (a) A public interest disclosure is the disclosure of information to a journalist or a parliamentarian, where:
 - (i) at least 90 days have passed since the eligible whistleblower made the disclosure to ASIC, APRA or another Commonwealth body prescribed by regulation;
 - (ii) the eligible whistleblower does not have reasonable grounds to believe that action is being, or has been taken, in relation to their disclosure;
 - (iii) the eligible whistleblower has reasonable grounds to believe that making a further disclosure of the information is in the public interest; and
 - (iv) before making the public interest disclosure, the eligible whistleblower has given written notice to the body to which the previous disclosure was made that:
 - (A) includes sufficient information to identify the previous disclosure; and
 - (B) states that the eligible whistleblower intends to make a public interest disclosure.
- (b) An emergency disclosure is the disclosure of information to a journalist or parliamentarian, where:
 - (i) the eligible whistleblower has previously made a disclosure of the information to ASIC, APRA or another Commonwealth body prescribed by regulation;
 - (ii) the eligible whistleblower has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment;
 - (iii) before making the emergency disclosure, the eligible whistleblower has given written notice to the body to which the previous disclosure was made that:
 - (A) includes sufficient information to identify the previous disclosure; and
 - (B) states that the eligible whistleblower intends to make an emergency disclosure; and
 - (iv) the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the journalist or parliamentarian of the substantial and imminent danger.

4. HOW TO MAKE A DISCLOSURE

A disclosure may be made internally or externally.

4.1 Internal disclosure

A disclosure (including anonymous disclosures) can be made confidentially in person, through post or via email to:

- (a) Steven Dietrich - Chief Executive Officer
Location: 11 Techno Park Drive, Kings Meadows, Tasmania 7249 (during business hours)
Phone: 03 6335 2550 (during business hours)
Email: Steven.Dietrich@tasrail.com.au (at any time)
Postal address: PO Box 335, Kings Meadows Tasmania 7249
- (b) Karen van der Aa – Chief Financial Officer/Company Secretary
Location: 11 Techno Park Drive, Kings Meadows, Tasmania 7249 (during business hours)
Phone: 03 6335 2567 (during business hours)
Email: karen.vanderaa@tasrail.com.au (at any time)
Postal address: PO Box 335, Kings Meadows, Tasmania 7249
- (c) whistleblower@tasrail.com.au (at any time). This email is received by the Board Secretary/Executive Officer, Tanya Olson, and the Risk & Compliance Manager, Derek Van der Heide, who are authorised by TasRail to receive disclosures.
- (d) Chair@tasrail.com.au. This email is received by the Chairman of the Board.

Disclosures made internally to an eligible recipient will be reported to the TasRail Board for information purposes. This reporting will not compromise the identity of the person making the disclosure.

A disclosure that relates to the Chief Executive Officer or a director/secretary of TasRail should be disclosed to the recipients identified at Clauses 3.1(b), 3.1(c) and 3.1(d) (and not to an eligible recipient within TasRail).

Where an eligible whistleblower is concerned about approaching the above officers in the workplace, the eligible whistleblower can call the relevant officer and request a meeting in a discreet location away from the workplace.

4.2 External disclosure

Disclosures may be made externally to WLF Accounting, TasRail's Internal Auditor, at:

Alicia Leis
Partner
WLF Accounting
First Floor, 160 Collins Street, Hobart, Tasmania 7000
Phone: 03 6223 6155
Email: alicia.leis@wlf.com.au

4.3 Anonymous disclosures

A disclosure may be made anonymously and be protected by the Act. An eligible whistleblower can choose to remain anonymous while making a disclosure, over the course of the investigation and after the investigation is finalised. An eligible whistleblower can refuse to answer questions that could reveal an eligible whistleblower's identity at any time, including during follow-up conversations.

Reporting anonymously may hinder TasRail's ability to fully investigate a reported matter. For this reason, if an eligible whistleblower wishes to remain anonymous an eligible whistleblower should maintain ongoing two-way communication with TasRail, so TasRail can ask follow-up questions or provide feedback.

TasRail takes the measures and mechanisms for protecting anonymity as set out in Clause 6.1.

If an eligible whistleblower wishes to obtain additional information, an eligible whistleblower can contact one of the people outlined in Clause 5.1 or an independent legal adviser.

5. LEGAL PROTECTIONS FOR ELIGIBLE WHISTLEBLOWERS

The following protections apply to eligible whistleblowers who make a disclosure regarding a disclosable matter covered by the Act and apply not only to internal disclosures, but to disclosures to legal practitioners, regulatory and other external bodies, and public interest and emergency disclosures that are made in accordance with the Act.

Please also see Clause 9.3 for further information about protection of eligible whistleblowers under the Tax Act.

5.1 Identity protection (confidentiality)

It is illegal for a person to identify an eligible whistleblower, or disclose information that is likely to lead to an eligible whistleblower's identification (which they have obtained directly or indirectly because the eligible whistleblower made a disclosure that qualifies for protection) unless a person discloses the identity of the discloser to:

- (a) ASIC, APRA, or a member of the Australian Federal Police;
- (b) a legal practitioner (for the purposes of obtaining legal advice or legal representation about the whistleblower provisions in the Act);
- (c) a person or body prescribed by regulations; or
- (d) with an eligible whistleblower's consent.

A person can disclose the information contained in a disclosure with or without the eligible whistleblower's consent if:

- (a) the information does not include the eligible whistleblower's identity;
- (b) TasRail has taken all reasonable steps to reduce the risk that the eligible whistleblower will be identified from the information; and
- (c) it is reasonably necessary for investigating the issues raised in the disclosure.

You can lodge a complaint to TasRail by notifying the officers detailed in Section 4.1 of this procedure, or a regulator, such as ASIC, APRA or the Australian Taxation Office (**ATO**) about a breach of confidentiality.

5.2 Protection from detrimental acts or omissions

A person cannot:

- (a) engage in conduct that causes detriment to a whistleblower (or another person), in relation to a disclosure, if:
 - (i) the person believes or suspects that a whistleblower (or another person) made, may have made, proposes to make or could make a disclosure that qualifies for protection; and
 - (ii) the belief or suspicion is the reason, or part of the reason, for the conduct; and
- (b) make a threat to cause detriment to a whistleblower (or another person) in relation to a disclosure.

A threat may be express or implied, or conditional or unconditional. A whistleblower (or another person) who has been threatened in relation to a disclosure does not have to actually fear that the threat will be carried out.

Detriment includes (without limitation) any of the following:

- (a) dismissal of an employee;
- (b) injury of an employee in his or her employment;
- (c) alteration of an employee's position or duties to his or her disadvantage;
- (d) discrimination between an employee and other employees of the same employer;
- (e) harassment or intimidation of a person;
- (f) harm or injury to a person, including psychological harm;
- (g) damage to a person's property;
- (h) damage to a person's reputation;
- (i) damage to a person's business or financial position; or
- (j) any other damage to a person.

but does not include:

- (k) administrative action that is reasonable for the purpose of protecting a whistleblower from detriment (e.g. moving a whistleblower who has made a disclosure about their immediate work area to another office to prevent them from detriment); and
- (l) managing a whistleblower's unsatisfactory work performance, if the action is in line with the entity's performance management framework.

5.3 Compensation and other remedies

A whistleblower or any other employee or person can seek compensation and other remedies through the courts if:

- (a) they suffer loss, damage or injury because of a disclosure; and
- (b) the entity failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

Disclosers are encouraged to seek independent legal advice.

5.4 Civil, criminal and administrative liability protection

An eligible whistleblower is protected from the following in relation to a whistleblower's disclosure:

- (a) civil liability (e.g. any legal action against an eligible whistleblower for breach of an employment contract, duty of confidentiality or another contractual obligation);
- (b) criminal liability (e.g. attempted prosecution of an eligible whistleblower for unlawfully releasing information, or other use of the disclosure against an eligible whistleblower in a prosecution (other than for making a false disclosure)); and
- (c) administrative liability (e.g. disciplinary action for making the disclosure).

The protections do not grant immunity for any misconduct an eligible whistleblower has engaged in that is revealed in a whistleblower's disclosure.

6. SUPPORT AND PRACTICAL PROTECTION FOR ELIGIBLE WHISTLEBLOWERS

6.1 Measures to protect an eligible whistleblowers identity

TasRail has the following measures to protect the confidentiality of an eligible whistleblower's identity:

- (a) all personal information or reference to the eligible whistleblower witnessing an event will be redacted;
- (b) the eligible whistleblower will be referred to in a gender-neutral context;
- (c) where possible, the eligible whistleblower will be contacted to help identify certain aspects of their disclosure that could inadvertently identify them;
- (d) disclosures will be handled and investigated by qualified staff;
- (e) all paper and electronic documents and other materials relating to disclosures will be stored securely;
- (f) access to all information relating to a disclosure will be limited to those directly involved in managing and investigating the disclosure; and
- (g) only a restricted number of people who are directly involved in handling and investigating a disclosure will be made aware of an eligible whistleblower's identity (subject to the eligible whistleblower's consent) or information that is likely to lead to the identification of the eligible whistleblower.

Please note, in practice, people may be able to guess the eligible whistleblower's identity if:

- (a) the eligible whistleblower has previously mentioned to other people that they are considering making a disclosure;
- (b) the eligible whistleblower is one of a very small number of people with access to the information; or
- (c) the disclosure relates to information that an eligible whistleblower has previously been told privately and in confidence.

6.2 Measures to protect the eligible whistleblower from detrimental acts or omissions

TasRail has the following measures to protect an eligible whistleblower from detriment:

- (a) processes for assessing the risk of detriment against an eligible whistleblower and other persons (e.g. other staff who might be suspected to have made a disclosure), which will commence as soon as possible after receiving a disclosure;
- (b) support services (including counselling or other professional or legal services) are available to eligible whistleblowers; strategies to help an eligible whistleblower minimise and manage stress, time or performance impacts, or other challenges resulting from the disclosure or its investigation;
- (c) actions for protecting an eligible whistleblower from risk of detriment (such as, where practicable allowing the eligible whistleblower to perform their duties from another location, reassigning the eligible whistleblower to another role at the same level, make other modifications to the eligible whistleblower's workplace or the way they perform their work duties, or reassign or relocate other staff involved in the disclosable matter); and
- (d) processes for ensuring that management are aware of their responsibilities to maintain the confidentiality of a disclosure, address the risks of isolation or harassment, manage conflicts, and ensure fairness when managing the performance of, or taking other management action relating to, an eligible whistleblower.

Eligible whistleblowers should seek independent legal advice or contact regulatory bodies, such as ASIC, APRA or the ATO, if they believe they have suffered detriment.

7. HANDLING AND INVESTIGATING A DISCLOSURE

7.1 Handling a disclosure

Upon receipt of a disclosure, TasRail will need to assess each disclosure to determine whether:

- (a) it qualifies for protection; and
- (b) a formal, in-depth investigation is required.

TasRail will endeavour to assess a disclosure within 7 business days noting that the assessment period may vary depending on the nature of the disclosure.

7.2 Welfare manager

A welfare manager will be appointed who is responsible for looking after the general welfare of an eligible whistleblower. The welfare manager will generally be the General Manager People and Culture.



The welfare manager will:

- (a) examine the immediate welfare and protection needs of the eligible whistleblower, and seek to foster a supportive work environment;
- (b) advise the eligible whistleblower of the legislative and administrative protections available to him or her;
- (c) listen and respond to any concerns of harassment, intimidation, victimisation or other detrimental action; and
- (d) so far as is practicable, protect the identity of the eligible whistleblower in the course of carrying out these responsibilities

7.3 Investigation

If TasRail determines that an investigation is required, TasRail will determine:

- (a) the nature and scope of the investigation;
- (b) the person(s) within and/or outside TasRail that should lead the investigation;
- (c) the nature of any technical, financial or legal advice that may be required to support the investigation; and
- (d) the anticipated timeframe for the investigation.

The Chief Executive Officer or Chief Financial Officer/Company Secretary will appoint an investigator to investigate the matter. An investigator may be a person from within TasRail or a consultant engaged for that purpose.

TasRail may not be able to undertake an investigation if it is not able to contact the eligible whistleblower (e.g. if a disclosure is made anonymously and the eligible whistleblower has refused to provide, or has not provided, a means of contacting them).

7.4 Keeping an eligible whistleblower informed

The eligible whistleblower will be provided with regular updates, if the eligible whistleblower can be contacted (including through anonymous channels). The frequency and timeframe may vary depending on the nature of the disclosure.

7.5 Documentation, reporting and communication

The method for documenting and reporting the findings will depend on the nature of the disclosure. The findings from an investigation will be documented and reported the Board. Any reporting of findings will have regard to applicable confidentiality requirements.

Where appropriate, the whistleblower will receive a detailed summary of the outcome at the end of the investigation. However, there may be circumstances where it may not be appropriate to provide details of the outcome to the whistleblower.

A whistleblower may lodge a complaint with a regulator, such as ASIC, APRA or the ATO, if they are not satisfied with the outcome of TasRail's investigation.

8. ENSURING FAIR TREATMENT OF INDIVIDUALS MENTIONED IN A DISCLOSURE

TasRail has the following measures in place to ensure fair treatment.

- (a) disclosures will be handled confidentially, when it is practical and appropriate in the circumstances;
- (b) each disclosure will be assessed and may be the subject of an investigation;
- (c) the objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters reported;
- (d) when an investigation needs to be undertaken, the process will be objective, fair and independent;
- (e) an employee who is the subject of a disclosure will be advised about the subject matter of the disclosure as and when required by principles of natural justice and procedural fairness and prior to any actions being taken - for example, if the disclosure will be the subject of an investigation; and
- (f) an employee who is the subject of a disclosure may contact TasRail's support services which are available, including TasRail's Employee Assistance Program through Drake Workwise.

TasRail may determine the most appropriate time to inform the individual who is the subject of a disclosure about the investigation, provided that TasRail informs the individual before making any adverse finding against them.

9. TAX ACT - WHISTLEBLOWER PROTECTIONS

TasRail is required to notify you that there are protections provided in the tax whistleblower regime under Part IVD of the Tax Act.

9.1 Eligible Whistleblowers – who can make a disclosure?

An individual is an eligible whistleblower under the Tax Act if the individual is or has been:

- (a) an officer (within the meaning of the Act) of TasRail;
- (b) an employee of TasRail;
- (c) an individual who supplies services or goods to TasRail (whether paid or unpaid);
- (d) an employee of a person that supplies services or goods to TasRail (whether paid or unpaid);
- (e) an individual who is an associate (within the meaning of Section 318 of the *Income Tax Assessment Act 1936*) of TasRail;
- (f) a spouse, dependant or child of an individual of Clauses 9.1(a) to 9.1(e).

9.2 Eligible Recipients - who can receive a disclosure?

An eligible recipient under the Tax Act is:

- (a) an auditor, or a member of an audit team conducting an audit, of TasRail;
- (b) a registered tax agent or BAS agent (within the meaning of the *Tax Agent Services Act 2009*) who provides tax agent services (within the meaning of that Act) or BAS services (within the

meaning of that Act) to TasRail;

- (c) a person authorised by TasRail to receive disclosures that may qualify for protection as described in Clauses 3.2(a) and 3.2(b);
- (d) a person or body prescribed;
- (e) a director, secretary or senior manager (within the meaning of the Act) of TasRail;
- (f) any other employee or officer (within the meaning of the Act) of TasRail who has functions or duties that relate to the tax affairs of TasRail.

A disclosure made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistleblowing part of the Tax Act qualifies for protection under the Tax Act.

A whistleblower can also make a disclosure to the ATO and qualify for protection.

9.3 Disclosures qualifying for protection

To qualify for protection under the tax whistleblower regime, in respect of a disclosure to an eligible recipient, the eligible whistleblower must:

- (a) have reasonable grounds to suspect that the information indicates misconduct, or an improper state of affairs or circumstances, in relation to tax affairs of TasRail; and
- (b) consider that the information may assist the eligible recipient to perform its functions or duties in relation to those tax affairs.

For further information, see this link: <https://www.ato.gov.au/general/gen/whistleblowers/>

This link contains information about legal protections including identity protection, civil, criminal and administrative liability protection, detrimental conduct protection and compensation and other remedies available under the Tax Act.

10. ENSURING THE POLICY AND PROCEDURE ARE EASILY ACCESSIBLE

TasRail's Public Interest Disclosure ("Whistleblowers") Policy and this procedure are easy to access and are available on TasRail's internal intranet and external website.

TasRail will also make the Policy and this procedure available through staff induction, training and compliance sessions.

TasRail will review the Policy and this procedure from time to time. TasRail encourages you to check our website regularly as any updated documents will be available on TasRail's website.