

	<b>PUFFING BILLY RAILWAY</b>	<b>Document Number</b> <b>ETRB PO 009</b>
	<b>Whistleblower Policy</b>	

## 1. Purpose

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The Emerald Tourist Railway Board (**ETRB**) has developed this Whistleblower Policy (**Policy**) for the following purposes:

- 1.1 To encourage and facilitate the making of disclosures regarding:
  - (a) “improper conduct” or “detrimental action”, which may be “public interest disclosures” within the meaning of the *Public Interest Disclosure Act 2012* (Vic) (**PID Act**) (see section 5 of this Policy); and
  - (b) “misconduct”, an “improper state of affairs”, or “illegal, unethical or otherwise improper conduct”, which may be “reportable matters”, within the meaning of the *Corporations Act 2001* (Cth) (**Corporations Act**) (see section 4 of this Policy), committed by an employee, volunteer, contractor or officer of ETRB (**Qualifying Disclosures**).
- 1.2 To establish a system for Qualifying Disclosures to be investigated, reported (if required) and, if possible, rectified.
- 1.3 To provide protections against victimisation for individuals who make Qualifying Disclosures (**Whistleblowers**).
- 1.4 To ensure confidentiality in relation to the identify of Whistleblowers and, where required, the contents of their disclosures.
- 1.5 To ensure that Whistleblowers are aware of their rights under the PID Act and the Corporations Act.
- 1.6 To ensure that the ETRB is compliant with its obligations under the PID Act and the Corporations Act in relation to Qualifying Disclosures.

## 2. Policy Statement

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- 2.1 ETRB is committed to the aims and objectives of the PID Act and Part 9.4AAA of the Corporations Act.
- 2.2 Further, ETRB is committed to conduct its business in a lawful and ethical manner and it expects and requires all its employees, contractors and officers to perform their duties:
  - (a) in a lawful and ethical manner; and
  - (b) consistently with any other applicable policies.
- 2.3 ETRB does not tolerate improper conduct (including corrupt conduct) by its employees, volunteers, contractors or officers, nor the taking of reprisals against Whistleblowers who disclose such conduct.
- 2.4 ETRB may take action against those who engage in improper conduct up to and including (in the case of employees) termination of employment.
- 2.5 ETRB is committed to affording Whistleblowers the benefits and protections identified in this Policy, to foster an open environment in which Whistleblowers may come forward without fear of retribution, retaliation or victimisation.

	<b>PUFFING BILLY RAILWAY</b>	<b>Document Number</b> <b>ETRB PO 009</b>
	<b>Whistleblower Policy</b>	

2.6 The ETRB will:

- (a) take all reasonable steps to:
  - (i) protect the identity of the Whistleblowers and (where necessary) the content of their disclosures;
  - (ii) prevent and respond to any victimisation of Whistleblowers;
  - (iii) afford natural justice to any person who is the subject of a Qualifying Disclosure.
  - (iv) ensure that sensitive files relevant to a Qualifying Disclosure, whether paper or electronic, are stored securely.
- (b) establish a secure, confidential and anonymised register to record the information required by the PID Act to be published in ETRB's Annual Report.

### **3. Application**

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3.1 This Policy applies to:

- (a) anyone who is engaged by or works for ETRB, including employees, directors and other officers (as defined in the Corporations Act), contractors, consultants, secondees, volunteers and suppliers of goods or services to ETRB (and their employees);
- (b) individuals who are associates of ETRB;
- (c) relatives of the individuals referred to above, and dependants of such individuals or of their spouse;
- (d) in relation to disclosures made in accordance with Part 2 of the PID Act only, members of the public.

3.2 Subject to 3.1(d) (above), the protections under the PID Act and the Corporations Act are available to any of the individuals referred to at 3.1 (above).

### **4. Reportable Matters under the Corporations Act**

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4.1 A **Reportable Matter** is information where there are reasonable grounds to suspect that the information:

- (a) concerns misconduct (including fraud, negligence, default, breach of trust and breach of duty), or an improper state of affairs or circumstances, in relation to ETRB; or
- (b) indicates that ETRB, or an officer (as defined in the Corporations Act) or employee of ETRB, has engaged in conduct that:
  - (i) constitutes an offence against, or a contravention of: the Corporations Act, the *Australian Securities and Investments Commission Act 2001* (Cth), the *Banking Act 1959* (Cth), the *Financial Sector (Collection of Data) Act 2001* (Cth), the *Insurance Act 1973* (Cth), the *Life Insurance Act 1995* (Cth), the *National Consumer Credit Protection Act 2009* (Cth),

	<b>PUFFING BILLY RAILWAY</b>	<b>Document Number ETRB PO 009</b>
	<b>Whistleblower Policy</b>	

or the *Superannuation Industry (Supervision) Act 1993* (Cth), or instruments made under these laws; or

- (ii) constitutes an offence against any other federal law that is punishable by imprisonment for a period of 12 months or more; or
- (iii) represents a danger to the public or the financial system.

4.2 Generally, a Reportable Matter is not one that concerns a personal work-related grievance (unless it relates to victimisation contrary to the protections under the Corporations Act and this Policy). For example, information concerning the following will generally not be considered Reportable Matters:

- (a) interpersonal conflict with an employee;
- (b) decisions relating to engagement, transfer or promotions;
- (c) decisions relating to the terms and conditions of engagement;
- (d) decisions to suspend or terminate someone's employment or other engagement, or to take any other disciplinary measures.

## 5. Public Interest Disclosures under the PID Act

5.1 A **Public Interest Disclosure** is one made in accordance with Part 2 of the PID Act.

5.2 A Public Interest Disclosure may be made about any of the following entities (**ETRB Entity**):

- (a) ETRB;
- (b) an employee of, person otherwise engaged by, acting on behalf of, or acting as a deputy or delegate of ETRB (**Associate**);
- (c) an employee of, person otherwise engaged by, acting on behalf of, or acting as a deputy or delegate of an Associate.

5.3 For a disclosure concerning an ETRB Entity to be a Public Interest Disclosure:

- (a) the content of a Public Interest Disclosure must tend to show Improper Conduct or Detrimental Action (as those terms are defined below) that is attributable to an ETRB Entity; and
- (b) the person making a Public Interest Disclosure must believe on reasonable grounds that the content of their disclosure tends to show Improper Conduct or Detrimental Action attributable to an ETRB Entity; and
- (c) the Public Interest Disclosure must be made to the Independent Broad-Based Anti-Corruption Commission (**IBAC**) unless:
  - (i) the Whistleblower mistakenly but honestly believes that another entity is the appropriate receiving entity; and
  - (ii) that other receiving entity, to whom the disclosure is made, is one that can receive *other* Public Interest Disclosures under the PID Act (for example, the Victorian Ombudsman, the Victorian Inspectorate or the Judicial Commission of Victoria).

	<b>PUFFING BILLY RAILWAY</b>	<b>Document Number</b> <b>ETRB PO 009</b>
	<b>Whistleblower Policy</b>	

5.4 **Improper Conduct** under PID Act means:

- (a) Corrupt Conduct (as defined below);
- (b) conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes—
  - (i) a criminal offence; or
  - (ii) serious professional misconduct; or
  - (iii) dishonest performance of public functions; or
  - (iv) an intentional or reckless breach of public trust; or
  - (v) an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body; or
  - (vi) a substantial mismanagement of public resources; or
  - (vii) a substantial risk to the health or safety of one or more persons; or
  - (viii) a substantial risk to the environment; or
- (c) conduct of any person that—
  - (i) adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body; or
  - (ii) is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining—
    - (A) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
    - (B) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
    - (C) a financial benefit or real or personal property; or
    - (D) any other direct or indirect monetary or proprietary gain—
      - that the person or associate would not have otherwise obtained; or
- (d) conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in paragraph (a), (b) or (c).

5.5 Conduct that is trivial does not constitute Improper Conduct.

5.6 **Corrupt Conduct** is conduct which is:

- (a) of a certain type referred to in section 5.7 (below); and

	<b>PUFFING BILLY RAILWAY</b>	<b>Document Number ETRB PO 009</b>
	<b>Whistleblower Policy</b>	

(b) would constitute a 'relevant offence' referred to in section 5.8 (below).

5.7 The types of conduct that can be Corrupt Conduct are:

- (a) conduct of any person that adversely affects the honest performance by a public officer or public body of their official functions;
- (b) conduct of a public officer or public body that:
  - (i) constitutes or involves a dishonest performance of their official functions;
  - (ii) constitutes or involves knowingly or recklessly breaching public trust; or
  - (iii) involves misuse of information or material that was obtained in their official capacity; and
- (c) conduct that could constitute a conspiracy or attempt to engage in any of the above conduct.

5.8 The following are relevant offences:

- (a) indictable offences\* created by legislation; and
- (b) the following common law offences:
  - (i) attempting to pervert the course of justice;
  - (ii) perverting the course of justice; and
  - (iii) bribery of a public official or misconduct in public office.

\***Note:** Offences punishable by imprisonment for five years or more are presumed to be indictable offences.

## **6. How to make a Qualifying Disclosure**

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6.1 Any Qualifying Disclosure under this Policy may be reported to our Public Interest Disclosure Coordinator (**PIDC**). The current PIDC is the ETRB Company Secretary, who can be contacted on +61 (03) 9757 0706 or at [company.secretary@pbr.org.au](mailto:company.secretary@pbr.org.au).

6.2 Generally, the PIDC is responsible for receiving reports, managing the reporting and any investigatory process, safeguarding the interests of Whistleblowers, and ensuring the integrity of the reporting mechanism under this Policy.

6.3 Where a Qualifying Disclosure concerns as a Public Interest Disclosure, the PIDC will direct the Whistleblower to the IBAC in accordance with section 5.3 above. The protections afforded by the PID will not apply to a Qualifying Disclosure unless or until it is reported to IBAC or another permitted entity in accordance with section 5.3(c) above. The protections afforded by the Corporations Act may still apply if the Qualifying Disclosure is also a Reportable Matter.

6.4 A Whistleblower may also disclose a Reportable Matter to:

- (a) any senior manager or officer of ETRB;
- (b) any auditor (or audit team member) or actuary of ETRB;

	<b>PUFFING BILLY RAILWAY</b>	<b>Document Number</b> <b>ETRB PO 009</b>
	<b>Whistleblower Policy</b>	

- (c) ASIC, APRA, or another Commonwealth body prescribed by regulation; and
- (d) journalists and members of Commonwealth, State and Territory Parliaments in certain circumstances under the Act (referred to as 'public interest disclosures' and 'emergency disclosures'); and

6.5 If a Reportable Matter disclosed under this Policy is not initially reported to the PIDC, it will be passed on to the PIDC, or to a substitute PIDC if it is inappropriate for the existing PIDC to deal with the matter.

6.6 Qualifying Disclosures can be made verbally, but it is preferred that any disclosure made under this Policy be in writing, by email or in hard copy, marked 'Strictly Private and Confidential'. The report should:

- (a) identify what the Whistleblower believes constitutes the Qualifying Disclosure;
- (b) identify to whom the Whistleblower believes the Qualifying Disclosure relates;
- (c) identify who and/or what the Whistleblower believes the Qualifying Disclosure affects;
- (d) set out as much detail as possible as to the relevant factual details that the Whistleblower believes have occurred or are occurring; and
- (e) attach any relevant supporting documentation.

6.7 While reports can be made anonymously if preferred (and will still be subject to the protections under the PID Act and the Corporations Act), this may affect the ability to properly consider and investigate the matter reported (including an inability to further communicate with a Whistleblower about a Qualifying Disclosure).

6.8 Should a report be conveyed in person or by telephone, and where the Whistleblower is not anonymous, the PIDC will provide the Whistleblower with a written copy of his/her understanding of the report made, which the Whistleblower will then be asked to confirm as accurately reflecting what they have reported.

## **7. Assessment of Qualifying Disclosures**

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7.1 When a potential Qualifying Disclosure has been made to the PIDC, the PIDC will assess whether the matter reported qualifies as a:

- (a) Reportable Matter; and/or
- (b) Public Interest Disclosure.

7.2 Subject to 7.3, if the disclosure qualifies as a Reportable Matter, the PIDC will arrange for an independent investigation to be conducted into the allegations the subject of the disclosure, in accordance with section 8 below.

7.3 If the disclosure qualifies as a Public Interest Disclosure, the PIDC will facilitate reporting of the matter to IBAC and the matter will not be investigated by ETRB. However, relevant protections under the PID Act and/or the Corporations Act will still apply.

	<b>PUFFING BILLY RAILWAY</b>	<b>Document Number</b> <b>ETRB PO 009</b>
	<b>Whistleblower Policy</b>	

## **8. Investigation of Reportable Matters**

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- 8.1 Investigation processes will vary depending on the precise nature of the conduct being investigated. The purpose of an investigation is to determine whether or not a Reportable Matter is substantiated, with a view to the ETRB then rectifying any wrongdoing uncovered (to the extent that this is practicable in all the circumstances), and to take any disciplinary or other appropriate action.
- 8.2 The PIDC and/or the investigator will determine how the investigation is to be conducted. Unless anonymous, a Whistleblower may be asked to provide further details about what he/she has reported, to ensure that the matters raised may be thoroughly investigated and put to others who are implicated.
- 8.3 All investigations will be thorough, objective, fair and conducted by an investigator who is independent of the Whistleblower, anyone who is the subject of the Reportable Matter, and any business unit concerned.

## **9. Collating and Publishing Statistics**

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- 9.1 The PIDC will establish a secure register to record the information required under the PID Act to be published in ETRB's annual report, and to generally keep account of the status of Whistleblower disclosures. The register will be confidential and will not record any information that may identify a Whistleblower.

## **10. Protections under the Corporations Act**

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### *Confidentiality*

- 10.1 The person to whom a Reportable Matter is reported may only disclose the Whistleblower's name, or any information that is likely to lead to their identification, if they agree to this or if otherwise authorised under the Corporations Act.
- 10.2 Anyone involved in handling the report of a Reportable Matter (such as the PIDC and an investigator) will also ensure that all files relating to the report are kept secure, that the information received is held in confidence, and that it is only disclosed to any persons not connected with the investigation if:
- (a) following consultation, the Whistleblower has consented to such disclosure; or
  - (b) required or permissible by law.
- 10.3 It is possible that someone might deduce the identity of a Whistleblower without there having been a breach of confidentiality – for example, if the nature of a report or an investigation points to a particular individual having made it. This would not constitute a breach of the Corporations Act, so long as all reasonable steps have been taken to reduce the risk of a Whistleblower being identified.

### *Victimisation*

- 10.4 Whistleblowers will not be:
- (a) subjected to any Detrimental Conduct (as defined below) because, or partly because, it is believed or suspected that they or any other person reported, may have reported, propose to report, or could report, a Reportable Matter; or

	<b>PUFFING BILLY RAILWAY</b>	<b>Document Number ETRB PO 009</b>
	<b>Whistleblower Policy</b>	

- (b) threatened to be subjected to any Detrimental Conduct because they or any other person has reported or may report a Reportable Matter.

10.5 Conduct which is **Detrimental Conduct** includes (without limitation):

- (a) dismissal of an employee;
- (b) injury to an employee in their employment;
- (c) alteration of an employee's position or duties to their disadvantage;
- (d) discrimination between an employee and other employees;
- (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;
- (j) any other damage to a person.

10.6 However, certain Detrimental Conduct may still occur for other legitimate reasons, unrelated to disclosure of a Reportable Matter, such as managing a Whistleblower's unsatisfactory work performance or misconduct.

*Other support*

10.7 ETRB will ensure fairness to all involved as a result of a Reportable Matter being reported under this Policy, including any staff mentioned in a Reportable Matter or to whom it relates. This will be achieved by maintaining confidentiality so far as is reasonably practicable, and by requiring procedural fairness throughout any investigation process.

10.8 The Company recognises that "blowing the whistle" is likely to be a very stressful and difficult experience, as may be any involvement in an investigation into a Reportable Matter. Accordingly, if any additional support is required, you are encouraged to contact:

- (a) the Human Services Manager or Human Resources Manager on +61 (03) 9757 0715 or at [speakup@pbr.org.au](mailto:speakup@pbr.org.au); or
- (b) Our Employee Assistance Program, *Relationship Matters*, on 1300 543 396.

*Other protections under the Act*

10.9 In addition to protections for Whistleblowers who report a Reportable Matter, the Corporations Act also provides the same protections to individuals who make disclosures to legal practitioners for the purpose of obtaining legal advice or representation in relation to the operation of the whistleblower provisions in the Corporations Act.

10.10 The Act also provides that Whistleblowers:



	<b>PUFFING BILLY RAILWAY</b>	<b>Document Number ETRB PO 009</b>
	<b>Whistleblower Policy</b>	

- (a) may obtain remedies via the courts with respect to Detrimental Conduct taken against them contrary to the above protections, including compensation for loss, damage or injury suffered as a result of Detrimental Conduct;
- (b) are protected from civil liability, criminal liability and administrative action (including disciplinary action) for making a protected disclosure (although they will not be immune in relation to any misconduct, they have engaged in that is revealed from their disclosure).

## 11. Protections under the PID Act

11.1 Part 6 of the PID Act sets out the protections provided to those who make a Public Interest Disclosure. These protections apply to a disclosure made in accordance with Part 2 of the PID Act from the time that the disclosure is made (see sections 5.3 and 6.3 for further guidance).

### *Transfer of employment*

11.2 An employee of ETRB who has made a Public Interest Disclosure and believes on reasonable grounds that Detrimental Action (as defined below) will be, is being, or has been taken against them, may request a transfer of employment.

### *Immunity from certain legal action*

11.3 A Whistleblower who makes a Public Interest Disclosure:

- (a) is not subject to any civil or criminal liability or administrative action (including disciplinary action) for making the disclosure;
- (b) is not committing an offence against the *Constitution Act 1975* (Vic) or any other Act that imposes obligations of confidentiality or any other restriction on the disclosure of information;
- (c) is not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality or otherwise restrict confidentiality;
- (d) cannot be held liable for defamation in relation to information included in a Public Interest Disclosure.

### *Detrimental Action*

11.4 **Detrimental Action** includes:

- (a) action causing injury, loss or damage;
- (b) intimidation or harassment; or
- (c) discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

11.5 A person will also be taken to have engaged in Detrimental Action if they:

- (a) threaten to do any of the things referred to at 11.4 (above); or
- (b) incite or permit someone else to do so.

	<b>PUFFING BILLY RAILWAY</b>	<b>Document Number</b> <b>ETRB PO 009</b>
	<b>Whistleblower Policy</b>	

11.6 Detrimental Action may be taken against a Whistleblower or against any other person in reprisal for a Public Interest Disclosure made by a Whistleblower.

11.7 The PID Act creates an offence for a person to take Detrimental Action against another person in reprisal for a Public Interest Disclosure.

11.8 The prohibitions against Detrimental Action apply to any person. However, a Protected Interest Disclosure under the PID Act can only be made about Detrimental Action committed by a public officer or public body.

*Legitimate disciplinary action*

11.9 Under the PID Act, a person who makes a disclosure is not protected against legitimate management action being taken in relation to them. Legitimate management action may still be taken against an employee of ETRB in cases where:

- (a) the fact that the employee has made a Public Interest Disclosure is not a reason for taking action against the employee;
- (b) there are good and sufficient grounds that would fully justify action against any other person in the same circumstances;
- (c) there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

*Limits on protections*

11.10 A number of the protections in Part 6 of the PID Act do not apply if a discloser:

- (a) provides information intending that it be acted on as a Public Interest Disclosure, or further information that relates to a Public Interest Disclosure, knowing it to be false or misleading;
- (b) claims that a matter is the subject of a Public Interest Disclosure knowing the claim to be false;
- (c) falsely claims that a matter is the subject of a disclosure that IBAC has determined to be a Public Interest Disclosure complaint.

**12. Impact of this Policy on your engagement**

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12.1 It is a condition of any employment or other engagement by ETRB that you will comply at all times with this Policy. However, this Policy does not form part of any agreement with ETRB.

12.2 All matters reported under this Policy will be taken extremely seriously. If a deliberately false or malicious report is made (whether under this Policy or otherwise), this will likely result in disciplinary or other response action being taken against the person making such a report.

12.3 Any breach of this Policy will be taken very seriously and may result in disciplinary action, up to and including termination of employment or cessation of any other engagement or contract with ETRB.

**13. Review**

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13.1 It is intended that this Policy will be reviewed from time to time to ensure that it remains consistent with all relevant legislative requirements, as well as changes within the

	<b>PUFFING BILLY RAILWAY</b>	<b>Document Number</b> <b>ETRB PO 009</b>
	<b>Whistleblower Policy</b>	

organisation. The Policy may be amended or replaced at any other time at the sole discretion of ETRB.

#### 14. Policy accessibility and further information

- 14.1 This Policy is accessible via our website, [www.puffingbilly.com.au](http://www.puffingbilly.com.au). Any questions about this Policy should be directed to the PIDC whose contact details are provided at 6.1 (above).
- 14.2 Further details about whistleblower rights and protections may be found at:
- (a) Part 9.4AAA of the Corporations Act; and
  - (b) Part 6 of the PID Act.

#### 15. Document Information, Control and Review

##### **Information**

<b>Document ID</b>	ETRB PO 009
<b>Document title</b>	Whistleblower Policy

##### **Responsibility**

<b>Policy owner</b>	Chief Executive Officer
<b>Policy author</b>	Company Secretary
<b>Approving body</b>	Emerald Tourist Railway Board

##### **Version control and change history**

Version number	Approval date	Approved by	Amendment
1	28/05/2015	ETRB	Nil
2	28/02/2020	ETRB	Updated post amendments in Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019
<b>Post implementation review</b>			
<b>Due date</b>		28/02/2021	