

WHISTLEBLOWER PROTECTION POLICY

1. Policy summary

1.1 Purpose and application of this policy

Italicised terms used in this policy are defined in the glossary.

The *Company* is committed to the highest standards of conduct and ethical behaviour and to promoting and supporting a culture of honest and ethical behaviour, corporate compliance and good corporate governance.

The *Company* encourages the disclosure of any instances of actual or suspected unethical, illegal, fraudulent or undesirable conduct involving the *Company* and provides protections and measures so that those persons who make a disclosure may do so confidentially and without fear of intimidation, disadvantage or reprisal.

This policy sets out:

- (a) who is entitled to protection as a *Whistleblower*;
- (b) the protections *Whistleblowers* are entitled to; and
- (c) how disclosures made by *Whistleblowers* will be handled by the *Company*.

This policy is made available to the *Company's Officers*, and employees and the *Company's* contractors and their employees on the *Company's* website at www.pnxmetals.com.au. All of the *Company's Officers*, employees and contractors must comply with this policy.

1.2 How does this policy interact with *Statutory Whistleblower Regimes*?

This policy complies with section 1317A of the *Corporations Act*. By making a disclosure in accordance with this policy, a person may be afforded protection under the *Statutory Whistleblower Regimes*.

2. Eligibility for protection under this policy and the *Statutory Whistleblower Regimes*

2.1 Eligibility overview

To be eligible for protection as a *Whistleblower* under this policy and the *Statutory Whistleblower Regimes* a person must:

- (a) be one of the individuals set out in section 2.2;
- (b) disclose information regarding the type of matters set out in section 2.3; and
- (c) disclose that information to one of the persons set out in section 2.4.

2.2 Who is eligible to make disclosures?

Disclosures can be made by an individual who is; or has been:

- (a) an *Officer* or employee of the *Company*;
- (b) an individual contractor, consultant or supplier of goods or services to, or business partner of, the *Company*;
- (c) an employee of a contractor, consultant or supplier of goods or services to, or a business partner of the *Company*;
- (d) an individual who is an Associate of the *Company*; or
- (e) a *Family Member* of an individual mentioned in section 2.2(a) to 2.2(d).

A person may choose to disclose information anonymously. Anonymous disclosure may have significant limitations that may inhibit a proper and appropriate inquiry or investigation. These limitations include the inability to provide feedback on the outcome and/or to gather additional particulars to assist any inquiry/investigation.

Specific protection mechanisms may be difficult to enforce if a *Whistleblower* chooses to remain Anonymous.

2.3 What types of information can be disclosed?

A disclosure for which protection is afforded by this policy and the *Statutory Whistleblower Regimes* must concern information that the discloser has reasonable grounds to suspect:

- (a) constitutes misconduct or an improper state of affairs or circumstances in relation to the *Company*; or
- (b) indicates that the *Company* or an *Officer* or employee of the *Company* has engaged in conduct that constitutes an offence against, or a contravention of, a provision of any of the following:
 - (1) the *Corporations Act*;
 - (2) the Australian Securities and Investment Commission Act 2001;
 - (3) the Banking Act 1959;
 - (4) the Financial Sector (Collection of Data) Act 2001;
 - (5) the Insurance Act 1973;
 - (6) the Life Insurance Act 1995;
 - (7) the National Consumer Credit Protection Act 2009;
 - (8) the Superannuation Industry (Supervision) Act 1993;
 - (9) an instrument made under an Act referred to in any of subparagraphs (1) to (8); or
- (c) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
- (d) represents a danger to the public or the financial system.

Examples of what constitutes misconduct include conduct which:

- (a) is dishonest, fraudulent or corrupt (including bribery);
- (b) is illegal activity (such as theft, violence, harassment or intimidation, criminal damage to property or other breaches of state or federal law);
- (c) is unethical or in breach of *Company* policies;
- (d) is potentially damaging to the *Company*, an *Officer* or employee of the *Company* or a third party, such as unsafe work practices, environmental damage, health risks or an abuse of the *Company's* property or resources;
- (e) is an abuse of authority;
- (f) has caused or may cause financial loss to the *Company* or damage the reputation of either of them or be otherwise detrimental to the interests of either of them;
- (g) involves or may disclose a culture of harassment, discrimination, victimisation or bullying within the *Company*; or
- (h) involves or may involve a detriment to a person who is or proposes to be a *Whistleblower*; or is suspected or believed to be, or could be, a *Whistleblower*,

engaged in by the *Company* or an *Officer* or employee of the *Company*.

The expression "improper state of affairs or circumstances" is not defined in the *Corporations Act* and will have its common meaning in the English language interpreted, according to ASIC, broadly.

A disclosure:

- (a) is not protected by this policy or the *Statutory Whistleblower Regimes* if it is solely about a *Personal Work-related Grievance*; but
- (b) may be protected by this policy or the *Statutory Whistleblower Regimes* even though it turns out to be incorrect.

2.4 Who should a disclosure be made to?

To qualify for protection under this policy and the *Statutory Whistleblower Regimes* a disclosure must be made to any one of the following:

- (a) an *Officer* or *Senior Manager* within the *Company*;
- (b) an auditor or member of an audit team conducting an audit of the *Company*;
- (c) a legal practitioner for the purposes of obtaining legal advice or legal representation in relation to the operation of this policy or the whistleblower provisions in the *Statutory Whistleblower Regimes* or
- (d) if the discloser considers it necessary that the disclosure be made externally:
 - (1) to the Australian Securities and Investment Commission, the Australian Federal Police or any other Commonwealth body prescribed by the *Regulations*; or
 - (2) if the disclosure concerns the *Company's Tax Affairs*:
 - (A) a registered tax agent or BAS agent of the *Company*, or an employee or *Officer* within the *Company* who has functions or duties relating to the *Company's Tax Affairs* and who may be assisted in their role by knowing that information; or
 - (B) the Commissioner of Taxation;
- (e) if the disclosure is a *Public Interest Disclosure* or *Emergency Disclosure*, in certain circumstances as provided in the *Statutory Whistleblower Regimes*, to a journalist or a parliamentarian.

All *Officers* and *Senior Managers* to whom a disclosure is made must notify the *Whistleblower Governance Officer* of the disclosure and provide particulars of it and maintain confidentiality about it.

3. Confidentiality

3.1 Whistleblower identity must be kept confidential

Subject to section 4.2, the identity of a *Whistleblower* (or information that is likely to lead to their identity becoming known) must be kept confidential unless disclosure is necessary for the furtherance of an investigation and the *Whistleblower* has consented to that disclosure.

When a disclosure is investigated it may be necessary to reveal its substance to people such as other *Company* personnel, external persons involved in the investigation process and, in appropriate circumstances, law enforcement agencies.

It will be necessary to disclose the facts and substance of a disclosure to a person who is the subject of the disclosure as it is essential for natural justice to prevail. Although confidentiality will be maintained unless the *Whistleblower* otherwise consents, in some circumstances, the source of the disclosed issue may be obvious to a person who is the subject of a report.

3.2 Permitted exceptions

The identity of a *Whistleblower* (or information that is likely to lead to their identity becoming known) may be disclosed without the *Whistleblower's* consent if the disclosure is made to:

- (a) a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this policy or a *Statutory Whistleblower Regime*;
- (b) the Australian Federal Police;
- (c) the Australian Securities and Investments Commission;
- (d) the Australian Prudential Regulatory Authority; or
- (e) if the disclosure concerns Tax Affairs, the Commissioner of Taxation.

3.3 Provision of *Whistleblower* information to a court or tribunal

The *Company's Officers*, employees and *Associates* must not disclose or produce to a court or tribunal any information or document which discloses the identity of a *Whistleblower* (or information likely to lead to their identity becoming known) without seeking the advice of the *Whistleblower Governance Officer*.

4. Whistleblower Protection Officer

4.1 Appointment of *Whistleblower Protection Officer*

If a *Whistleblower* so requests, a *Whistleblower Protection Officer* may be appointed who is an officer, senior manager or employee of the *Company* or an external person to support and provide protection to the *Whistleblower* according to this policy.

4.2 Role of *Whistleblower Protection Officer*

The *Whistleblower Protection Officer* will provide mentoring and other support deemed necessary by the *Whistleblower Protection Officer*.

4.3 Responsibilities of *Whistleblower Protection Officer*

The *Whistleblower Protection Officer* is responsible for keeping the *Whistleblower* informed of the progress and outcomes of the inquiry/investigation subject to considerations of privacy of those against whom a disclosure has been made.

5. Whistleblower Governance Officer

5.1 Who is the *Whistleblower Governance Officer*?

The *Whistleblower Governance Officer* is defined in section 12 of this policy as such.

5.2 Responsibility of *Whistleblower Governance Officer*

The *Whistleblower Governance Officer* is responsible for receiving whistleblower disclosures of wrongdoing and overseeing resolution and must (after reasonable preliminary inquiry):

- if the *Whistleblower* agrees appoint a *Whistleblower Protection Officer* to provide support to the *Whistleblower*;
 - enquire into or investigate, or appoint another internal or external person, with appropriate training or experience to enquire into or investigate a disclosure of wrongdoing;
 - where a disclosure of wrongdoing received is enquired into or investigated by a person other than the *Whistleblower Governance Officer* ensure that the disclosure was appropriately inquired into or investigated;
 - be satisfied that action taken in response to the inquiry/investigation is appropriate to the circumstances; and
 - provide governance oversight over any inquiry/investigation into retaliatory action taken against the *Whistleblower*.
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6. Prohibition of *Detriment*

6.1 No *Detriment* based on *Whistleblower* status

The *Company's Officers*, employees and *Associates* must not cause or threaten any *Detriment* to any person for a reason which includes that they or any other person:

- (a) is or proposes to be a *Whistleblower*; or
- (b) is suspected or believed to be, or could be, a *Whistleblower*.

6.2 *Whistleblower* immunity

The *Company* must not:

- (a) subject a *Whistleblower* to any liability or disciplinary action for making a disclosure; or
- (b) enforce a remedy or exercise a right against a *Whistleblower*, for making a disclosure; or

- (c) terminate a contract with the *Whistleblower* on the basis that the disclosure constitutes a breach of the contract.

However, a *Whistleblower* may be held liable for any personal misconduct revealed by their disclosure or an investigation following a disclosure.

A person making a disclosure which is found to be false and who knew it to be false or made it maliciously may face disciplinary action. A disclosure made which is trivial or vexatious may be treated as if it were found and known to be false.

In certain circumstances the *Statutory Whistleblower Regimes* afford additional legal protections to a *Whistleblower*, such as

- (a) indemnity against civil, criminal or administrative liability (other than civil, criminal or administrative liability for conduct of the *Whistleblower* that is revealed by the disclosure);
- (b) inadmissibility of information disclosed in evidence against the *Whistleblower* in criminal proceedings or in proceedings for the imposition of a penalty (other than proceedings in respect of the falsity of the information disclosed);
- (c) qualified privilege in respect of the information in defamation proceedings; and
- (d) in the absence of malice on the *Whistleblower's* part, not being liable to an action for defamation at the suit of a person in respect of the information disclosed.

7. Investigations of information disclosed

When a disclosure is made which may fall under this policy or a *Statutory Whistleblower Regime*, the following steps must be followed except where, in the opinion of the *Whistleblower Governance Officer*, it would be inappropriate or unreasonable in the circumstances to do so:

- (a) the person who received the information must provide the information to the *Whistleblower Governance Officer* as soon as practicable, removing any information which identifies or may identify the discloser of the information (the potential *Whistleblower*) prior to doing so (unless the potential *Whistleblower* has provided their consent to that disclosure);
- (b) as soon as practicable, the *Whistleblower Governance Officer* must determine whether the disclosure falls within the scope of this policy and, if so, must enquire into or investigate or, if the *Whistleblower Governance Officer* thinks fit appoint an internal or external investigator with no personal interest in the matter to enquire into or investigate, the matter disclosed, if the *Whistleblower Governance Officer* determines it to be necessary or appropriate;
- (c) the person conducting an enquiry or investigation must conduct the enquiry or investigation in an objective and fair manner, ensuring to provide any person who has been adversely mentioned in information provided by a *Whistleblower* an opportunity to respond to the allegations made in respect of them prior to any adverse findings being made;
- (d) the outcome of the enquiry or investigation must be reported to the Board, and may be reported to the *Whistleblower* and any persons affected as the *Whistleblower Governance Officer* considers appropriate;
- (e) the *Whistleblower Governance Officer* may call on internal or external experts (such as legal or accounting experts) to assist the *Whistleblower Governance Officer* with the enquiry or investigation.

Subject to the exceptions allowed under section 3.2 of this policy or otherwise by law, the identity of a *Whistleblower* (or information that is likely to lead to their identity becoming known) must be kept confidential at all times during and after an enquiry or investigation (including in any reporting to the Board or to any persons

affected). All persons responsible for or involved in an investigation must take all reasonable steps to reduce the risk that a *Whistleblower* will be identified.

A *Whistleblower* may raise any concerns or complaints regarding this policy or their treatment with the *Whistleblower Governance Officer* or the Chairman of the Board or of the Audit and Risk Committee of the Board.

8. Board reporting

Subject to the confidentiality obligations in section 3, the *Whistleblower Governance Officer* must provide the Board at least quarterly reports on all active *Whistleblower* matters, including information on:

- (a) the number and nature of disclosures made in the last quarter;
 - (b) the status of any investigations underway; and
 - (c) the outcomes of any investigations completed and actions taken as a result of those investigations.
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9. Training

All *Company Officers* and employees must attend compulsory training organised by the *Company* regarding the *Company's* Whistleblower program.

All the persons listed in section 2.4(a) of this policy must attend compulsory training organised by the *Company* on responding appropriately to disclosures made by *Whistleblowers* or potential *Whistleblowers*.

10. Policy review

This policy must be reviewed by the *Whistleblower Governance Officer* at least every two years to ensure it is operating effectively. Any recommended changes must be approved by the Board before being implemented.

11. Consequences for non-compliance with policy

Any breach of sections 3 or 4 by an *Officer*, employee or contractor will be taken seriously by the *Company*, and may be the subject of a separate investigation and/or disciplinary action.

A breach of this policy may also amount to a civil or criminal contravention under the *Statutory Whistleblower Regimes*, giving rise to significant penalties.

12. Glossary

Unless the context otherwise requires, an italicised term in this policy has the applicable following meaning:

Associate means any individual who is:

- (a) an associate of the *Company* within the meaning of the *Corporations Act 2001* (Cth) (i.e. generally persons with whom the *Company* is acting in concert); or
- (b) if the disclosure relates to the *Company's Tax Affairs*, an associate of the *Company* within the meaning of section 318 of the *Income Tax Assessment Act 1936* (Cth) (a complex definition too detailed to be set out here).

Company means PNX Metals Limited (ACN 127 446 271) and its related bodies corporate.

Corporations Act means the *Corporations Act 2001* (Cth).

Detriment includes (without limitation) dismissal, injury of an employee in their employment, alteration of an employee's position or duties to their disadvantage, discrimination, harassment or intimidation, harm or injury including psychological harm, damage to property, and reputational, financial or any other damage to a person.

Emergency Disclosure means a disclosure, made to a Federal, State or Territorial Parliamentarian or journalist:

- (a) of information that has previously been disclosed in circumstances that qualifies for protection under the *Statutory Whistleblower Regime* in the *Corporations Act*.
- (b) where the discloser
 - (1) 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; and
 - (2) has notified the body to which the previous disclosure was made of the discloser's intention to make an emergency disclosure such notification to include sufficient information to identify the previous disclosure; and
- (c) the extent of the information disclosed to the parliamentarian or journalist concerned is no greater than is necessary to inform the parliamentarian or journalist of the substantial and imminent danger.

[Note: Further detail regarding *Emergency Disclosure* is to be found in section 1317AAD of the *Corporations Act*]

Family Member means a:

- (a) *Spouse*, parent, child, sibling or other *Relative* of an individual; or
- (b) dependent of the individual or their *Spouse*.

Officer has the same meaning as in the *Corporations Act 2001* (Cth) (which includes but is not limited to directors and company secretaries).

Personal Work-Related Grievance means a grievance about any matter in relation to an individual's employment or former employment which has, or tends to have, implications only for the individual personally, and where the information does not:

- (a) have significant implications to the entity to which it relates, or any other entity, that does not relate to the individual;
- (b) concern the examples set out in items (a)-(d) of the definition of *Misconduct or An Improper State of Affairs or Circumstances*; or
- (c) concern Whistleblower victimisation (see section 4 of this policy).

Public Interest Disclosure means a disclosure, made to a Federal, State or Territorial Parliamentarian or journalist:

- (d) of information that has, at least 90 days previously, been disclosed in circumstances that qualifies for protection under the *Statutory Whistleblower Regime* in the *Corporations Act*.
- (e) where the discloser
 - (1) does not have reasonable grounds to believe that action to address the matter previously disclosed has been or is being taken; but
 - (2) but has reasonable grounds to believe that making a further disclosure would be in the public interest; and
 - (3) has (after that 90-day period) notified the body to which the previous disclosure was made of the discloser's intention to make a public interest disclosure such notification to include sufficient information to identify the previous disclosure; and
- (f) the extent of the information disclosed to the parliamentarian or journalist concerned is no greater than is necessary to inform the parliamentarian or journalist of the misconduct or the improper state of affairs or circumstances or the conduct referred to in section 2.3(b) of this policy involved.

Note: Further detail regarding *Public Interest Disclosure* is to be found in section 1317AAD of the *Corporations Act*

Relative in relation to a person means the spouse, parent or remoter lineal ancestor, child or remoter issue, or brother or sister of the person.

Senior Manager means a person (other than a director or secretary of the Company) who:

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

Spouse means the married, de facto or registered partner of the individual.

Statutory Whistleblower Regimes means either or both of the regimes contained in Part 9.4AAA of the *Corporations Act 2001* (Cth) and Part IVD of the *Taxation Administration Act 1953* (Cth).

Tax Affairs means affairs relating to any tax imposed by or under, or assessed or collected under, a law administered by the Commissioner of Taxation.

Whistleblower means a person who is eligible for protection as a whistleblower under this policy or under the *Statutory Whistleblower Regimes*.

Whistleblower Governance Officer means the Company Secretary, unless a disclosure concerns or involves the Company Secretary when, in relation to that disclosure it means the Chairman of the Board of the *Company*.

Whistleblower Protection Officer means the person appointed as such by the *Whistleblower Governance Officer* at the request of any particular *Whistleblower*.

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