



Corporations Act and Tax Administration Act (CATA) Disclosure Procedures

1. Statement

nbn is committed to the highest standards of ethical and accountable conduct, including by creating and maintaining an open working environment in which its employees, directors and contracted service providers (and their employees and directors) are able to raise concerns regarding suspected unethical, unlawful or undesirable conduct or wrongdoing without fear of detrimental conduct.

This document sets out **nbn's** procedures in relation to disclosures made under or in accordance with the Corporations Act 2001 (Cth) (the **Corporations Act**) and/or the Taxation Administration Act 1952 (Cth) (the **Tax Administration Act**) (together, the **Whistleblower Regime**) and the relevant **nbn** policies that may apply, including the [Whistleblower Policy](https://www.nbnco.com.au/corporate-information/about-nbn-co/policies/corporate-policies) (available on **nbn's** website <https://www.nbnco.com.au/corporate-information/about-nbn-co/policies/corporate-policies>).

Disclosures that are not made under or in accordance with the Whistleblower Regime will be dealt with in accordance with the relevant **nbn** policies and procedures that may apply, including:

- the [Whistleblower Policy](#);
- the [PID Disclosure Procedures](#);
- the [Code of Conduct](#); and/or
- the [Managing Workplace Grievances Policy](#).

These procedures include, and should be read in conjunction with, the CATA [Glossary of Terms](#) and the CATA [Information Sheet for Disclosers](#) which are all available on **nbn's** website <https://www.nbnco.com.au/corporate-information/about-nbn-co/policies/corporate-policies>.

The operation of these procedures will be reviewed regularly to ensure their continued effectiveness and will be updated from time to time with changes in law or regulator guidance.

2. Roles and Responsibilities

2.1 Eligible Recipients

Disclosures can be made to any of the Eligible Recipients outlined below:

- persons authorised by **nbn** to receive disclosures (for example, one of **nbn's** Whistleblower Protection Officers (**WPOs**));



- appointed KPMG FairCall personnel (as KPMG FairCall has been engaged and authorised by **nbn** to operate the KPMG FairCall hotline and reporting service);
- an officer or senior manager of **nbn** or a related body corporate (namely, directors, a company secretary, or members of **nbn's** ExCo);
- an actuary or auditor of **nbn** or a related body corporate (internal or external); or
- a registered tax agent or officer who has functions or duties that relate to **nbn's** tax affairs.

Please note that at any time you can safely seek independent legal advice or legal representation about an issue and how the Whistleblower Regime operates. Note: the **nbn** Legal Group cannot provide independent legal advice to an Employee or Stakeholder (as the **nbn** Legal Group acts for **nbn**)

Consistent with the Whistleblower Policy, if a disclosure is made to an Eligible Recipient who is not a WPO, it is **nbn's** policy that the Eligible Recipient will refer the disclosure to a WPO. Where a discloser provides their contact details to an Eligible Recipient of **nbn**, the discloser's identity and contact details or other "Identifying Information" (as defined in the CATA Glossary of Terms available on **nbn's** website) will not be provided to the WPO without the discloser's consent.

Important note: the referral by the Eligible Recipient must always be made subject to the protections afforded to disclosers under the Whistleblower Regime including confidentiality obligations¹ and prohibitions on detrimental conduct.²

2.2 Responsibilities

Eligible Recipients (including Authorised Persons) have the following responsibilities:

- receiving disclosures from Eligible Whistleblowers about Disclosable Matter;
- ensuring the confidentiality requirements under the Whistleblower Regime are adhered to (including, where relevant, redacting "Identifying Information" when passing on a disclosure to a WPO);
- requesting the consent of the discloser to disclose the identity of the whistleblower to a WPO to assist with investigating the Disclosable Matter; and
- taking reasonable steps to protect disclosers from Detriment or threats of Detriment.

WPOs have the following additional responsibilities:

- informing a person who may be unaware of the Whistleblower Regime that information that the Eligible Recipient reasonably believes could concern Disclosable Matter could be treated as a Qualifying Disclosure and, explaining the requirements of the Whistleblower Regime;
- making any preliminary inquiries necessary to determine whether there are reasonable grounds for the discloser to suspect that the disclosure relates to Disclosable Matter and whether the disclosure should be investigated;
- advising the discloser of a decision not to investigate under the Whistleblower Regime, and where appropriate or required by law or regulator guidance, the reasons why and any other course of action that may be available;
- establishing procedures for facilitating and dealing with Qualifying Disclosures relating to **nbn**, including procedures for:
 - assessing risks that detrimental conduct may occur against persons who make disclosures and any witnesses to Disclosable Matter; and
 - providing for confidentiality of the investigative process;
- where appropriate or required by law or regulator guidance, ensuring disclosures are properly investigated, preparing any investigation report and taking appropriate action in response to the report; and
- acting as the point of contact for staff for any queries or questions regarding **nbn's** Whistleblower Regime obligations and compliance.

¹ s 1317AAE, Corporations Act; s 14ZZW, Tax Administration Act.

² s 1317AC, Corporations Act; s 14ZZY, Tax Administration Act.



3. PROCEDURES

3.1 Step 1: Disclosure is made and received

An Eligible Whistleblower of **nbn** may, in accordance with the *CATA Information Sheet for Disclosers*, make a qualifying disclosure to an Eligible Recipient (which includes our WPOs and KPMG FairCall) by telephone, email, post or fax.

3.2 Step 2: WPO considers whether a disclosure meets the requirements for a Qualifying Disclosure

Following receipt of a disclosure, the Eligible Recipient (who is not a WPO) will refer the disclosure to a WPO who will determine whether or not the disclosure meets the requirements of a Qualifying Disclosure. **nbn** Legal Group will assist the WPO in this determination.

If a disclosure is made to KPMG FairCall: KPMG FairCall will not consider whether a disclosure meets the requirements for a Qualifying Disclosure.

All disclosures received by KPMG FairCall will be referred to the WPO that is highest on the WPO Priority List. Where:

- the discloser has not consented to KPMG FairCall providing their contact details to **nbn**'s WPO; or
- **nbn** has made a written request to KPMG FairCall, (a **Point of Contact Request**), KPMG FairCall must act as the point of contact between a discloser and a WPO in its capacity as an Authorised Person. Where appropriate or required by law or regulator guidance, this may include, without limitation:
 - forwarding questions and other information from **nbn** to the discloser (including the Information Sheet for Disclosers);
 - facilitating direct communication between **nbn** and the discloser (but only where the discloser consents);
 - informing the discloser of the reasons for a decision by the WPO not to commence an investigation (if applicable);
 - informing the discloser of a decision by the WPO to commence an investigation;
 - updating the discloser on the progress of investigations into the disclosure, as appropriate; and/or
 - providing the discloser with a copy of any investigation report where appropriate or required by law or regulator guidance.

If a disclosure is made to or referred to a WPO: The WPO will consider whether to investigate the disclosure, including by determining whether the information provided by the discloser consists of a Qualifying Disclosure under the Whistleblower Regime.

The WPO may ask questions of the Eligible Whistleblower to determine whether the information is about Disclosable Matter, including in accordance with the procedures above where a Point of Contact request has been made or exists.³

If the WPO is satisfied of a Qualifying Disclosure: where appropriate, the matter will generally be handled and investigated in accordance with the process set out at Step 3 and following below.

³ s 1317AA, Corporations Act; s14ZZT, Tax Administration Act.



If the WPO is not satisfied that there is a Qualifying Disclosure of Disclosable Matter:

- the disclosure will not be investigated; and
- if contacting the discloser is reasonably practicable, the WPO will inform the discloser in writing of:
 - the reasons why the disclosure does not concern Disclosable Matter and will not be investigated under the Whistleblower Regime;
 - if applicable in the circumstances, whether the disclosure may be investigated under another regime or **nbn** policy; and
 - if appropriate or required by law or regulator guidance, any other course of action that might be available to the discloser under other laws of the Commonwealth or any other policy of **nbn**.

Where the WPO does not have contact details for the discloser but the initial Eligible Recipient does have such details, the WPO may request that the Eligible Recipient sends the information and notification on to the discloser.

In providing any of the reasons to not investigate under the Whistleblower Regime to the discloser, the WPO may delete/redact any reasons that would cause the document to be exempt for the purposes of Part IV of the Freedom of Information Act 1982.

Where the disclosure has been referred from KPMG FairCall and the discloser did not consent to KPMG FairCall providing their contact details to **nbn**, the WPO will require that KPMG FairCall notifies the discloser of the above reasons and other courses of action as appropriate and required by law/regulator guidance. KPMG FairCall will, if requested by **nbn**, delete/redact any reasons that would cause the document to be exempt for the purposes of Part IV of the *Freedom of Information Act* 1982 (Cth).

A decision not to investigate does not preclude the matter being investigated under another regime, for example, as a PID under the PID Act or as an HR matter.

3.3 Step 3: WPO informs relevant persons of investigation

3.3.1 Informing the discloser

If contacting the discloser is available, the WPO will (in accordance with any timeframe specified by law/regulator guidance or otherwise within 14 days of the receipt of the initial disclosure), inform the discloser in writing of the decision by that WPO to commence an investigation and record this in accordance with Step 4. The WPO will at the same time provide to the discloser the CATA Information Sheet for Disclosers.

3.3.2 Notification from KPMG FairCall

Where the disclosure has been referred from KPMG FairCall and a Point of Contact Request is made or exists, KPMG FairCall will operate as the point of contact between the WPO and the discloser for the purposes of providing the above decision and information to the discloser.

3.4 Step 4: WPO makes a record of the decision to commence an investigation

As appropriate, or otherwise as required by law/regulator guidance, when a WPO decides to commence an investigation of a Qualifying Disclosure the WPO will keep an appropriate record of:

- the decision to investigate, including:
 - the Disclosable Matter; and
 - the reasons for the decision to investigate; and



- the communication with the discloser or KPMG FairCall (if any), including:
 - the date and time the discloser was notified;
 - the means by which the discloser was notified; and
 - the content of the notification.

These records must be kept confidential.

nbn will ensure that KPMG FairCall keeps any of the above information confidential.

3.5 Step 5: WPO conducts risk assessment

Protection of disclosers from victimisation is a key requirement of the Whistleblower Regime. When a WPO receives a referral of a Qualifying Disclosure (regardless of whether or not the WPO decides to investigate), that WPO will conduct an assessment of the risk of detrimental conduct. See section 4 below.

3.6 Step 6: WPO considers whether to appoint an investigator and who should investigate

Once the WPO has determined that the Qualifying Disclosure should be investigated, they will make an assessment as to who should investigate the disclosure.

In some circumstances, it will be most appropriate for a WPO to undertake the investigation. However, a WPO may use **nbn** internal resources, appoint a third party service provider or a combination of these in order to effectively conduct an investigation. If a WPO makes such an appointment, that individual or firm may be:

- an internal Whistleblower Investigation Officer (**WIO**); or
 - an external investigator contracted by **nbn** (**External Investigator**),
- (each an **Appointed Investigator** and together, the **Appointed Investigators**).

These procedures apply only to investigations of internal disclosures conducted by the WPOs and/or Appointed Investigators. References in these procedures to the "investigator" are to the WPOs as investigators and to the Appointed Investigators (separately, and as applicable) as investigator.

3.7 Step 7: WPO conducts investigation

Unless otherwise required by law or regulator guidance, investigations will generally be conducted and completed within an appropriate timeframe (e.g. within 90 days of the disclosure).

3.7.1 Referral of information to police and others

An investigator who suspects that information disclosed as part of a disclosure, or information that is obtained during the course of an investigation, constitutes evidence of an offence against a Commonwealth, state or territory law, may disclose that information to a member of the relevant police force.

However, in cases where the potential offence is serious (that is, punishable by imprisonment for two years or more), it is **nbn** policy that notification of the relevant police force is mandatory.

3.8 Step 8: WPO may prepare a report of the investigation

If appropriate or required by law/regulator guidance, the WPO may prepare a report of the investigation.



3.9 Step 9: WPO may provide copy of report to discloser

If a report has been prepared, the WPO may provide a copy of the report, if appropriate or required by law/regulator guidance to the discloser (if contacting the discloser is reasonably practicable) within a reasonable time after the preparation of the report.

3.10 Step 10: Further action taken after the investigation

Once an investigation has been completed, any report prepared and the discloser notified (if contacting the discloser is reasonably practicable) and provision of a report is appropriate or required by law/regulator guidance, the WPO will consider what actions should be taken in response to any recommendations that may be contained in an investigation report, or to any information which arises during the course of an investigation. The actions that may be available and appropriate will depend on the specific circumstances of the investigation, but may include:

- no action;
- referral of the matter to the police or another body that can take further action;
- mediation or conciliation of a workplace conflict;
- an internal audit or other review of an issue or the operations of a particular unit;
- recommending to the Board and/ or to ExCo the implementation or changing policies, procedures or practices at **nbn**;
- subject to confidentiality requirements of the Whistleblower Regime, preparing a report on the matter for ExCo and/or the Board as appropriate; and/or
- conducting training and awareness sessions for staff.

Where a disclosure concerns an individual, and that individual is aware of the allegations or that there has been investigation, the WPO may formally advise the individual of the outcome of the investigation as it relates to them.

4. Risk Assessment and Confidentiality

4.1 Detrimental Conduct

There are serious penalties (i.e. imprisonment, fines or both)⁴ that apply under the Whistleblower Regime if someone engages or threatens to engage in conduct that causes any Detriment to another person because they believe or suspect that that person has made or intends to make a Qualifying Disclosure.

In addition, under the Whistleblower Regime, a personal work-place grievance may be protected as a Qualifying Disclosure if it concerns Detriment to the discloser in connection with a potential disclosure.

Detriment includes any of the following:⁵

- dismissal of an employee;
- injury of an employee in his or her employment;
- alteration of an employee's position or duties to his or her disadvantage;
- harassment or intimidation of a person;
- damage to a person's property etc.

For a more detailed list, see the definition of "Detriment" in the CATA Glossary of Terms (available on **nbn's** website). **nbn** takes detrimental conduct seriously. You must let a WPO know if you believe that anyone is

⁴ s 1317AC, Corporations Act; s 14ZZY, Tax Administration Act.

⁵ s 1317ADA, Corporations Act; s 14ZZZAA, Tax Administration Act.



being or may be subject to detrimental conduct. You must also take active steps to support and protect the discloser.

4.2 Risk Assessment

Risk assessments should be conducted as early as possible in the process of handling a Qualifying Disclosure. Risk assessments should be conducted as follows:

- If a Qualifying Disclosure has been received by an Eligible Recipient, which is then referred to a WPO for assessment and possible investigation, the risk assessment should be conducted by the WPO;
- If a qualifying disclosure has been received by a WPO and is not referred on further, the risk assessment should be conducted by the WPO.

In conducting a risk assessment, the relevant WPO will:

- seek information about the potential risks which the discloser or a witness to Disclosable Matter may face. The best person to provide this information may be the discloser or witness themselves, or (where appropriate) their supervisor or manager. Care will be taken to comply with the confidentiality obligations under the Whistleblower Regime in obtaining such information;
- consider the likelihood of any detrimental conduct occurring against the potential seriousness of any Detriment; and
- consider and tailor protocols and strategies to apply in each given situation as appropriate, including for example, those regarding protecting the discloser's identity and any Identifying Information concerning that discloser, taking action against people who engage in detrimental conduct, and providing support to the discloser and any witnesses to disclosable conduct.