



Whistleblower Policy (Public Interest Disclosure Act & Corporations/Taxation Administration Acts)

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Owner: Justin Forsell, Chief Legal Counsel

Background

At **nbn** we are One Team, we are Fearless, we Deliver and we Care. **nbn** is committed to creating and maintaining an open working environment in which individuals are able to disclose concerns.

Purpose

This Policy sets out the process for individuals to disclose (whether anonymously or otherwise) their concerns regarding potential wrongdoing, maladministration or suspected unethical, unlawful or undesirable conduct or wrongdoing without fear of reprisal or detrimental conduct and with the support and protection of **nbn**.

This Policy provides a summary of the protections available to individuals who raise a concern under the three regimes that apply to **nbn** as a Government Business Enterprise/Commonwealth Company. They are as follows:

1. the Public Interest Disclosure Act 2013 (Cth) (the **PID Act**) which aims to facilitate disclosure and investigation of wrongdoing and maladministration in the Commonwealth public sector;
2. the whistleblower protections in the Corporations Act 2001 (Cth) (the **Corporations Act**) (introduced by the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth)) designed to align whistleblower protections in the corporate and financial sector with those under the PID Act; and
3. the whistleblower protection regime under the Taxation Administration Act 1953 (Cth) (the **Tax Administration Act**) for disclosures of information by individuals regarding breaches of the tax laws or misconduct relating to an entity's tax affairs (again introduced by the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth))

(collectively the **Regimes**).

Where relevant, this Policy should be read in conjunction with:

- **nbn's** PID Information Sheet for Disclosers (available on **nbn's** website <https://www.nbnco.com.au/corporate-information/about-nbn-co/policies/corporate-policies>) which sets out detailed information on how disclosers can make a disclosure that qualifies for protection under the PID Act; and
- **nbn's** CATA Information Sheet for Disclosers (available on **nbn's** website <https://www.nbnco.com.au/corporate-information/about-nbn-co/policies/corporate-policies>) which sets out detailed information on how disclosers can make a disclosure that qualifies for protection under the Corporations Act and/or Tax Administration Act.



This Policy is available on the intranet (Hub) and **nbn**'s external website and is intended to be accessed by anyone.

Scope

This Policy applies to individuals who are (or have been) any of the following:

- a. officers (including a director or company secretary of **nbn**) or employees of **nbn**;
- b. a person who supplies goods or services to **nbn** whether paid or unpaid (or an employee of that person);
- c. an associate of **nbn** (including a director or company secretary of a related body corporate of **nbn**); and
- d. a relative, dependant or spouse (or the dependent of the spouse) of any of the individuals listed in (a) to (c) above

(collectively, **Employees and Stakeholders**)

in respect of disclosures made under the Regimes. Please note that the Managing Workplace Grievances Policy applies to personal workplace grievances that may not be disclosures made under the Regimes. See further guidance below.

Policy

How do I make a disclosure?

As set out below under the headings, Employees and Stakeholders can make a disclosure via a number of channels including, in person, via email, mail or KPMG FairCall.

Nothing in this Policy (or any other **nbn** document) prevents Employees or Stakeholders from making a disclosure externally to ASIC, APRA, the Commonwealth Ombudsman or the Commissioner of Taxation (depending on the particular Regime that applies to the disclosure), or from talking to an independent lawyer to get legal advice about speaking up.

To whom can Employees and Stakeholders make a disclosure?

Whilst there are some similarities between the Regimes, there are also some important differences, including to whom Employees and Stakeholders can make a disclosure to ensure that it is protected.

Whilst there are various individuals and entities to whom an Employee and Stakeholder can make a disclosure under the Regimes, **nbn** encourages (but does not require) Employees and Stakeholders who wish to speak up about misconduct or an improper state of affairs or circumstances at **nbn** to make a disclosure to one of **nbn**'s authorised Whistleblower Protection Officers (**WPOs**). This ensures that a disclosure can be appropriately and expertly dealt with. This is not mandatory, and **nbn** accepts, as noted above, that a disclosure can be made via a number of channels.

A disclosure may be made to certain individuals and entities including the following:

- an officer or senior manager of **nbn** or a related body corporate (namely, directors, a company secretary or members of **nbn**'s ExCo) - please note that those whose primary role is in a legal capacity for **nbn** can only act for **nbn**/the company;



- persons authorised by **nbn** to receive disclosures (for example, one of **nbn**'s Whistleblower Protection Officers (**WPOs**) see reporting mechanism below, as one of our WPOs are our preferred recipients of a disclosure);
- an actuary or auditor of **nbn** or a related body corporate (internal or external);
- a registered tax agent or officer who has functions or duties that relate to **nbn**'s tax affairs; or
- KPMG FairCall, an independently monitored external hotline and reporting service for Employees and Stakeholders, operated by KPMG (see reporting mechanism below)

(collectively **Recipients**).

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

As a guide, minor or personal workplace related grievances (including, for example, an interpersonal conflict between the discloser and another employee or a decision relating to the transfer or promotion of the discloser) which relate to an employee/discloser (or former employee/discloser) personally, and which do not relate to systemic issues, do not have significant implications for **nbn**, or do not concern detriment to the discloser in respect of a disclosure, should be reported or escalated in accordance with the Managing Workplace Grievances Policy.

If you have any doubt as to whether a matter constitutes a disclosure under this Policy or would be considered a personal workplace related grievance, you are encouraged to follow the procedure for reporting outlined in this Policy. The Recipient who is assigned to manage your disclosure will then assess whether it should be dealt with under this Policy and the relevant Regime, or if it should be referred elsewhere.

Other channels for reporting disclosures

There may be channels available for Employees and Stakeholders to make an external disclosure (including emergency or public interest disclosures). The Information Sheets referred to above contain more information about when these channels may be available under each Regime.

Reporting to WPOs

Employees and Stakeholders may make disclosures by following the process set out below. Disclosures can be anonymous.

Disclosures can be made to any of the Recipients outlined above and there is no required format. If disclosure is made to a Recipient at **nbn** who is not a WPO (**first eligible recipient**), the Recipient will refer the disclosure to a WPO. Where a discloser provides their contact details to the first eligible recipient, the discloser's identity and contact details will not be provided to the WPO without the discloser's consent. To notify a disclosure to the WPOs directly, their details are set out below:



The Company Secretary	Phone:	(03) 8662 8000
	Email:	debraconnor@nbnco.com.au
	Post:	727 Collins Street Melbourne Victoria 3000
The Chief Customer Officer Residential	Phone:	(02) 9926 1900
	Email:	bradwhitcomb@nbnco.com.au
	Post:	Level 11, 100 Arthur Street North Sydney NSW 2060
The Executive General Manager Supply	Phone:	(03) 8662 8000
	Email:	craigmarshall@nbnco.com.au
	Post:	360 Elizabeth Street Melbourne Victoria 3000
The Executive General Manager Commercial Finance	Phone:	(03) 8662 8000
	Email:	johnbraddon@nbnco.com.au
	Post:	360 Elizabeth Street Melbourne Victoria 3000

Reporting to KPMG FairCall

KPMG Australia, an independent third party, has been engaged and authorised by **nbn** to operate the KPMG FairCall hotline and reporting service. As noted above, Employees and Stakeholders may make disclosures to KPMG FairCall by following the process set out below.

Calls will be received by KPMG FairCall on its toll-free phone number on business days between 8am and 7pm (AEST). Outside these times, a voicemail service is provided to allow the caller to leave details. Calls are not recorded. The operators taking the call on this hotline are not associated with **nbn**. They are trained and experienced specialists dedicated to dealing with whistleblowers and their concerns. Callers will be provided with a confidential reference number by the KPMG FairCall operator.

Employees and Stakeholders may also make disclosures via KPMG FairCall's email service, online 'drop-box' facility, secure postal mailbox, or secure fax number.

The contact details for KPMG FairCall are:

Telephone: 1 800 179 054

Email: faircall@kpmg.com.au

Web-based access: <https://www.kpmgfaircall.kpmg.com.au/nbn>



Postal Service: The KPMG FairCall Manager, KPMG Forensic, PO Box H67, Australia Square, 1213, Sydney

Fax: (02) 9335 7466

Where KPMG Australia collects, uses and discloses personal information as part of the KPMG FairCall service, it does so in accordance with KPMG Australia's privacy statement, available at:

<http://www.kpmg.com/AU/en/Pages/privacy-faircall.aspx>

After receiving a disclosure, the KPMG FairCall operator will provide the details of the disclosure to a WPO, who will not be a person named in the disclosure. Where a discloser provides their contact details to KPMG FairCall, the discloser's identity and contact details will not be provided to the WPO without the discloser's consent.

Protected and Qualifying Disclosures

A disclosure may be made when it relates to **nbn**, an officer or employee of **nbn**, or any related body corporate of **nbn**, including:

- misconduct or an improper state of affairs;
- conduct or practices which are illegal or in breach of any law, regulation or code of conduct applying to **nbn** (including the Corporations Act) or any breach of a contract by an employee or director of **nbn** (e.g. deliberately passing sensitive or confidential **nbn** information to a third party without authorisation);
- conduct that represents a danger to the public or the financial system;
- fraudulent or corrupt practices, or conduct engaged in for a fraudulent or corrupt purpose (e.g. misappropriation of funds, bribery, undue influence, false information, perversion of justice);
- breaches of **nbn**'s policies or other rules of conduct (other than minor or personal workplace related grievances, as set out above);
- conduct that constitutes maladministration (including conduct that involves acting on improper motives, is unreasonable, unjust, oppressive or is negligent) or amounts to an abuse of authority;
- misleading or deceptive conduct of any kind (e.g. not correcting public statements that are factually incorrect);
- conduct that is an abuse of public trust;
- conduct that results in a wastage of **nbn**'s money;
- situations within **nbn**'s control that unreasonably present a significant (or increased) risk or danger to the health or safety of one or more persons, or the environment;
- misconduct in relation to the tax affairs of **nbn** and the discloser considers that the information would assist with the performance of duties in relation to the tax affairs of **nbn**; or
- any of the above conduct by a contracted service provider in connection with a contract to provide goods and services to, or on behalf of, **nbn** (such as a genuine concern that a supplier may be in breach of modern slavery or ethical procurement legal requirements).

There may be additional matters that a disclosure could be made about under each Regime, as set out in the Information Sheet for each Regime.



Investigation of complaints

Where a disclosure is made, it will be dealt with by the Recipient and in accordance with the relevant Regime. Where a disclosure is not a disclosure for the purposes of one of the Regimes, it may (where applicable) be handled in accordance with the **nbn** Managing Workplace Grievances Policy (as decided by the Recipient) or via another appropriate process.

When any investigation is conducted, regard will be given to the protections available under the particular Regime.

All documents, reports and records relating to the investigation of a disclosure will be securely stored to retain confidentiality.

The Regimes set out requirements for anonymity of disclosures and their investigation. In some instances, criminal penalties are imposed under the Regimes for inappropriate disclosure of information that may identify a person who has made a disclosure, and for the disclosure or misuse of information obtained from an investigation.

Under the Regimes it may be a criminal and/or civil offence to carry out or threaten a reprisal or detrimental conduct in connection with a disclosure. A director, officer or employee of **nbn** who carries out or threatens reprisals or detrimental conduct will be subject to disciplinary action, which may include termination of employment.

If a director, officer or employee of **nbn** believes on reasonable grounds that it would be appropriate for a disclosure under the PID Act to be investigated by the Commonwealth Ombudsman, they may contact the Commonwealth Ombudsman directly and request an investigation into the relevant conduct.

The WPO will be tasked with the responsibility of protecting and safeguarding the interest of disclosers in accordance with the Regimes. The WPO has access to independent financial, legal and operational advisers as required.

The WPO will also decide whether to investigate the disclosure. Where a WPO decides to investigate, he or she may choose to appoint an internal **nbn** employee (for example a Whistleblower Investigation Officer (**WIO**)) and/or an external investigator contracted by **nbn**, to conduct or to assist in the conduct of the investigation. While the WIO will be appointed on a case by case basis, the WIO will not be a person associated with the area under investigation.

Where permissible under the applicable Regime, the discloser will receive notifications, where possible, regarding the handling of their disclosure.

If the discloser believes that the investigations undertaken by **nbn** into a disclosure are inadequate, there are options available to that discloser under the Regimes to take further action outside of the **nbn** reporting mechanisms.

For more information regarding **nbn**'s processes relating to the allocation/referral, investigation and notification of disclosures please see the Information Sheets.



Protection of Disclosers

The Regimes provide a number of protections for Employees and Stakeholders who raise concerns including immunity from civil, criminal or administrative liability. The level of protection, and who is protected, varies under each Regime. For more information please see the Information Sheets.

Confidentiality

As set out above, if an Employee or Stakeholder raises a concern (**Disclosing Employees and Stakeholders**), the information they provide will be dealt with confidentially subject to the need to conduct an appropriate investigation (see below). This means that their identity will only be shared with their consent.

Where it is reasonably necessary for **nbn** to investigate a disclosure, **nbn** may disclose information which could lead to the identification of the relevant Disclosing Employee and Stakeholder. However, **nbn** will take all reasonable steps to reduce the risk that a Disclosing Employee or Stakeholder will be identified as a result of the investigation.

It is lawful for **nbn** to also disclose your identity to ASIC, APRA, the Australian Federal Police or the Commissioner of Taxation. **nbn** may also disclose your identity to a legal practitioner for the purposes of obtaining advice about the disclosure.

Disclosing Employees and Stakeholders who wish to remain anonymous, will be entitled to the protections outlined below.

Anonymous disclosures are still capable of being protected (though it may be difficult to investigate these disclosures effectively).

Protection from retaliation or detriment

It is important that Employees and Stakeholders feel empowered and protected to speak up about their concerns. **nbn** does not allow any form of detriment, punishment, disciplinary or retaliatory action or detrimental conduct to be taken against or engaged in, in respect of anyone for speaking up, or cooperating with an investigation.

Retaliatory action or detrimental conduct can take many different forms, including:

- threats;
- any form of disciplinary action (e.g. termination of employment or reductions in pay or hours);
- any action that prevents or restricts you from speaking out;
- alteration of an employee's position or duties to his or her disadvantage;
- discrimination between an employee and other employees of **nbn**;
- harm or injury to a person, including psychological harm;
- damage to a person's property, reputation or business or financial position;
- demotion or denial of promotion; and
- intimidation, harassment, threats, exclusion or humiliation.

It can also include subtle behaviours, such as:



- withholding information that would assist an employee in their role;
- excluding an individual from social functions;
- not providing meaningful work; and
- the use of different voice or body language, or communicating differently compared with recent communications or communications with others.

nbn considers all forms of retaliation or detrimental conduct to be misconduct.

If you feel that you have been retaliated against or subject to detrimental conduct for speaking up about a concern, or if you become aware of retaliation against (or detrimental conduct in respect of) someone else, you should report it immediately to one of the WPOs or Recipients noted above.

nbn will treat any reports regarding retaliation or detrimental conduct as a significant matter. An independent (who could be an internal or external person) investigator will be appointed and you will be contacted to discuss the relevant reported conduct. The matter will be treated confidentially and only shared with others on a need to know basis. If an allegation of retaliation or detrimental conduct is substantiated, action may be taken against those responsible, which may involve disciplinary action, including termination of employment.

Other protections

In addition to the above, Disclosing Employees and Stakeholders may be entitled to additional legal protections in certain circumstances under the Regimes, including:

- protection from civil, criminal or administrative legal action for making a disclosure;
- protection from contractual or other remedies being sought, and contractual rights being exercised on the basis of the disclosure. In addition, a contract to which you are a party cannot be terminated because of your disclosure;
- the information provided as part of raising a concern may not be admissible in evidence against Disclosing Employees and Stakeholders in legal proceedings (unless they have provided false information); and
- if a Disclosing Employee or Stakeholder is subject to retaliatory or detrimental conduct for speaking up, in some circumstances, they may be entitled to compensation or another remedy.

For further information about the protection available to you under the Regimes, please refer to the Information Sheets.

Crimes against persons or property

Crimes against person or property, such as assault, burglary etc, should immediately be reported by Employees and Stakeholders to local law enforcement personnel.

Fair treatment of employees

Under all of the Regimes, where the name of an employee is raised by someone who is making a disclosure, **nbn** will take all reasonable steps to ensure that the named employee is treated fairly, as appropriate in the particular



circumstances of each disclosure. The WPO may make a risk assessment in relation to the position of the named employee and take relevant advice from the **nbn** Legal Group to ensure, so far as practicable, fair treatment.

More information

For further information regarding this Policy please contact the **nbn** Legal Group.

Related policies and documents

- Fraud & Corruption Control Policy
- Managing Workplace Grievances Policy
- PID Information Sheet for Disclosers
- CATA Information Sheet for Disclosers

Justin Forsell
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Effective as of 1 July 2019