

# CORPORATIONS ACT AND TAX ADMINISTRATION ACT (CATA) INFORMATION SHEET FOR DISCLOSERS

Please read this Information Sheet carefully if you have made, or are considering making, a disclosure under the Corporations Act 2001 (Cth) (the **Corporations Act**) or the Taxation Administration Act 1953 (Cth) (the **Tax Administration Act**) (together, the **Whistleblower Regime**) in relation to nbn.

Capitalised terms are defined in the [CATA Glossary of Terms](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>.

nbn is also subject to the *Public Interest Disclosure Act 2013* (**PID Act**). **If you are unsure of whether your disclosure is a PID Act disclosure, a Qualifying Disclosure under the Whistleblower Regime or a complaint under our Workplace Relations Policy, please just speak up: please see the last paragraph of Q3 below.**

Please note that if you make a Qualifying Disclosure to an Eligible Recipient:

- nbn will handle your disclosure in accordance with the Whistleblower Policy.
- You will be afforded certain protections under the Whistleblower Regime, which are outlined below. You will still be afforded protections if your disclosure turns out to be incorrect.
- You may make a disclosure anonymously, though this may make it more difficult for nbn to investigate your disclosure and to protect you against detrimental conduct.
- You should not discuss the details of your disclosure with anyone who does not need to know, other than an independent legal adviser. Discussions with other people who are not Eligible Recipients of your disclosure will not be covered by the protections in the Whistleblower Regime.
- **DO NOT** investigate any matter yourself. Doing so may hinder or compromise a potential investigation.

# 1 WHAT IS A QUALIFYING DISCLOSURE?

A Qualifying Disclosure is a disclosure made:

- by an **Eligible Whistleblower** (as defined in the CATA Glossary of Terms and Q2 below);<sup>1</sup>
- of information that concerns Disclosable Matter (see Q3 below);<sup>2</sup>
- to an **Eligible Recipient** (as defined in the CATA Glossary of Terms and Q5 below) or externally to ASIC, APRA, the Commissioner of Taxation, the Tax Practitioners Board, the Inspector-General of Taxation, any other Commonwealth authority or entity of which the discloser is a member (which is prescribed for the purposes of the Whistleblower Regime), or to an independent legal practitioner for the purpose of obtaining legal advice in relation to the operation of the Whistleblower Regime. Note: the **nbn** Legal Group cannot provide independent legal advice to a discloser (as the nbn Legal Group acts for nbn). External disclosures to medical practitioners or psychologists to obtain medical or psychiatric care, treatment or counselling may also qualify for protection under Tax Administration Act Whistleblower Regime.

# 2 WHO CAN MAKE A QUALIFYING DISCLOSURE ABOUT NBN?

You must be an Eligible Whistleblower to make a Qualifying Disclosure under the Whistleblower Regime.

**Eligible Whistleblowers**<sup>3</sup> of nbn include individuals who are (or have been) any of the following:

- officers (including a director or company secretary of nbn) or employees of nbn (including current or former employees who are permanent, part-time, maximum-term or temporary, interns, secondees, and managers);
- a person who supplies goods or services to nbn whether paid or unpaid (or an employee of that person, whether paid or unpaid);
- an associate of nbn (including a director or company secretary of a related body corporate of nbn); and
- a relative, dependent or spouse (or the dependent of the spouse) of any of the individuals listed above.

# 3 WHAT CAN BE DISCLOSED?

Eligible Whistleblowers of nbn can disclose information if they have reasonable grounds to suspect that the information concerns 'Disclosable Matter'.<sup>4</sup> **Disclosable Matter**<sup>5</sup> is information that:

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<sup>1</sup> s1317AAA, Corporations Act; s14ZZU, Tax Administration Act.

<sup>2</sup> s1317AA, Corporations Act; s14ZZT, Tax Administration Act.

<sup>3</sup> s1317AAA, Corporations Act; s14ZZU, Tax Administration Act.

<sup>4</sup> s1317AA, Corporations Act; s14ZZT Tax Administration Act.

<sup>5</sup> s1317AA, Corporations Act; s14ZZT Tax Administration Act.

- concerns misconduct, or an improper state of affairs or circumstances in relation to nbn or a related body corporate (see examples set out in the Policy);
- indicates that nbn or a related body corporate or one of its or their officers or employees has engaged in conduct that:
  - constitutes an offence against, or contravention of, a provision of any of the following:
    - the Corporations Act;
    - the Australian Security and Investments Commission Act 2001;
    - the Banking Act 1959;
    - the Financial Sector (Collection of Data) Act 2001;
    - the Insurance Act 1973;
    - the Life Insurance Act 1995;
    - the National Consumer Credit Protection Act 2009;
    - the Superannuation Industry (Supervision) Act 1993;
    - an instrument made under any of the above Acts;
  - constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more (e.g. foreign interference offences);
  - represents a danger to the public or financial system; or
  - is prescribed by the regulations for the purposes of constituting a disclosable matter under the Whistleblower Regime;
- concerns misconduct or an improper state of affairs or circumstances in relation to the tax affairs of nbn or an associate and that information may assist the Eligible Recipient to perform functions or duties in relation to the tax affairs of nbn or an associate; or
- if made to the Commissioner of Taxation or Tax Practitioners Board only, information that may assist the Commissioner or Tax Practitioners Board to perform functions or duties under a taxation law in relation to the tax affairs of nbn or an associate.

Disclosable Matter does not need to involve a contravention of a particular law. For example, information that indicates a significant risk to public safety or the stability of, or confidence in, the financial system is also a Disclosable Matter even if it does not involve a breach of a particular law.

Please note that if your disclosure does not concern a Disclosable Matter, it does not qualify for protection under the Whistleblower Regime and nbn may decide not to investigate it (see Step 2 of Q12). For other matters such as:

- 'disclosable conduct' under the PID Act including corrupt conduct, please contact a Whistleblower Protection Officer (**WPO**) in accordance with the PID Information Sheet;
- workplace disputes or other "personal work-related grievances" (see Q4 below), please contact a member of the nbn HR Team;
- health and safety concerns, please contact a member of the nbn HSE Team; and
- legal matters, please contact a member of nbn's Legal Team.

**Note:** If you are unsure whether your complaint or issue should be disclosed under the Whistleblower Regime or the PID Act, please contact Rachel McIntyre (Executive General Manager – Stakeholder Relations) or one of the other WPOs listed in the List of WPOs. Also, a disclosure made to an independent legal practitioner for the purposes of obtaining legal advice

in relation to the operation of the Whistleblower Regime will be protected under the Whistleblower Regime (even if the disclosure does not relate to a Disclosable Matter).<sup>6</sup> Please note that nbn Legal Team lawyers act for nbn so they are not legally able to provide independent legal advice or representation to individuals/nbn staff. However, they may be able to point you in the right direction.

## 4 WHAT IS NOT DISCLOSABLE MATTER?

### Personal work-related grievances

Under the Whistleblower Regime, Qualifying Disclosures may not concern only what are called "personal work-related grievances", being information about your personal employment circumstances and the information:

- does not have significant implications for nbn (or another regulated entity) (for example, systemic issues affecting nbn); and
- does not concern conduct or alleged conduct set out above at 3(b) above.<sup>7</sup>

Disclosures relating to personal work-related grievances do not qualify for protection under the Whistleblower Regime. The Whistleblower Regime provides examples of grievances that might be personal work-related grievances (subject to the circumstances not involving significant implications for nbn and not involving any matters as set out at 3(b) above) and are therefore not a Disclosable Matter:

- an interpersonal conflict between the discloser and another employee;
- a decision relating to the engagement, transfer or promotion of the discloser;
- a decision relating to the terms and conditions of engagement of the discloser;
- a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.

You should, if possible, seek independent legal advice as to whether your particular employment circumstances are protected under the Whistleblower Regime. Note that a disclosure of a personal work-related grievance will be protected (that is, subject to confidentiality and immunity provisions, for example) if it is made to a legal practitioner for the purposes of obtaining independent legal advice or legal representation in relation to the operation of the Whistleblower Regime. Please note that nbn Legal Team lawyers act for nbn so they are not legally able to provide independent legal advice or representation to individuals/nbn staff.

In addition, we note that a disclosure concerning a personal work-related grievance may still be protected if:

- it includes information about a Disclosable Matter, or mixed information about a Disclosable Matter and a personal work-related grievance; or
- your disclosure concerns a personal work-related grievance and detriment to you in contravention of the prohibitions on victimisation of whistleblowers.<sup>8</sup>

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<sup>6</sup> s1317AA(3), Corporations Act; s14ZZT(3), Tax Administration Act.

<sup>7</sup> s1317AADA(2), Corporations Act

<sup>8</sup> s1317AADA(1), Corporations Act.

## 5 WHO CAN A QUALIFYING DISCLOSURE BE MADE TO?

You must use one of the avenues identified below to gain the protections available under the Whistleblower Regime.<sup>9</sup> You will not receive these protections if you give the information to someone other than an Eligible Recipient, unless the conditions for an emergency<sup>10</sup> or public interest disclosure<sup>11</sup> are met or you give the information externally to ASIC, APRA, the Commissioner of Taxation, the Tax Practitioners Board, Inspector-General of Taxation, and any other Commonwealth authority or entity of which the discloser is a member (which is prescribed for the purposes of the Whistleblower Regime), or to an independent legal practitioner for the purpose of obtaining legal advice in relation to the operation of the Whistleblower Regime. Note: the nbn Legal Group cannot provide independent legal advice to a discloser (as the nbn Legal Group acts for nbn). External disclosures to medical practitioners or psychologists to obtain medical or psychiatric care, treatment or counselling may also qualify for protection under the Tax Administration Act Whistleblower Regime.

We encourage our people to speak up about misconduct or an improper state of affairs at nbn. Whilst there is a list of Eligible Recipients below, we encourage (but we do not require) you to make your disclosure to one of nbn's authorised Whistleblower Protection Officers. This ensures that a disclosure can be appropriately and expertly dealt with. This is not mandatory, and nbn accepts, that disclosure can be made via a number of channels as set out below.

Please note that if you make a disclosure to someone other than an Eligible Recipient or one of the above-listed external recipients, it will not be protected and you may be in breach of your duty to maintain appropriate confidentiality in relation to official information you have gained in the course of your work or be subject to other civil, criminal or disciplinary action.

### 5.1 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 WPOs);
- appointed KPMG FairCall personnel;
- 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, auditor or a member of an audit team conducting an audit of nbn or a related body corporate (internal or external);
- for disclosures relating to nbn's tax affairs (in addition to the Eligible Recipients above in relation to nbn):
  - 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 nbn; or
  - any other employee or officer of nbn who has functions or duties that relate to the tax affairs (within the meaning of section 14ZZT of the Tax Administration Act) of nbn.

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<sup>9</sup> s1317AA, Corporations Act; s14ZZT, Tax Administration Act.

<sup>10</sup> s1317AAD(2), Corporations Act.

<sup>11</sup> s1317AAD(1), Corporations Act.

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 our encouragement to you above, if a disclosure is made to an Eligible Recipient of nbn who is not a WPO, it is nbn's policy that the Eligible Recipient will refer the disclosure to a WPO. Where you provide your contact details to an Eligible Recipient of nbn, your identity and contact details will not be provided to the WPO without your consent. The referral by the Eligible Recipient will be made subject to the protections accorded to disclosers under the Whistleblower Regime including confidentiality obligations<sup>12</sup> and prohibitions on detrimental conduct.<sup>13</sup>

Details for KPMG FairCall and nbn's WPOs are set out below:

NAME	CONTACT
<b>Faircall*</b>	<b>Phone:</b> 1800 179 054  <b>Online:</b> <a href="http://www.faircall.kpmg.com.au">www.faircall.kpmg.com.au</a>  <b>Post:</b> The Faircall Manager, KPMG Forensic, PO Box H67, Australia Square, 1213 Sydney
<b>Rachel McIntyre</b>  Executive General Manager – Stakeholder Relations	<b>Email:</b> <a href="mailto:rachaelfmcintyre@nbnc.com.au">rachaelfmcintyre@nbnc.com.au</a>  <b>Post:</b> Level 4, 202 Pier Street, Perth, WA 6000
<b>Ben Doctor</b>  Executive General Manager – Commercial Finance	<b>Email:</b> <a href="mailto:bendoctor1@nbnc.com.au">bendoctor1@nbnc.com.au</a>  <b>Post:</b> Level 13, 100 Mount Street, North Sydney, NSW 2060
<b>Philip Knox</b>  Chief Financial Officer	<b>Email:</b> <a href="mailto:philipknox@nbnc.com.au">philipknox@nbnc.com.au</a>  <b>Post:</b> Level 13, 100 Mount Street, North Sydney, NSW 2060

\* nbn has appointed KPMG as an Eligible Recipient to receive disclosures under the Corporations Act 2001 (Cth) and/or Taxation Administration Act 1953 (Cth). KPMG will treat all disclosures in accordance with the following Policy: [Privacy Statement: Faircall - KPMG Australia \(home.kpmg\)](#). KPMG FairCall is an independently monitored, external service operated by KPMG Australia to enable nbn Eligible Whistleblowers to make a disclosure of Disclosable Matter.

This list may be amended from time to time in writing by the Chief Executive Officer of nbn.

<sup>12</sup> s1317AAE, Corporations Act; s14ZZW, Tax Administration Act.

<sup>13</sup> s1317AC, Corporations Act; s14ZZY, Tax Administration Act.

## 5.2 OTHER EXTERNAL DISCLOSURES

Nothing in this document (or any other nbn document) prevents an Eligible Whistleblower from making a disclosure about Disclosable Matter externally to:

- ASIC or APRA;
- the Commissioner of Taxation, Tax Practitioners Board or Inspector-General of Taxation (for matters relating to tax affairs); or
- a Commonwealth authority or any entity of which the discloser is a member, prescribed for the purposes of the Whistleblowing Regime,

or from talking to:

- an independent lawyer to get independent legal advice about speaking up; or
- under the Tax Administration Act Whistleblower Regime, medical practitioners or psychologists to obtain medical or psychiatric care, treatment or counselling.

These disclosures also qualify for protection under the Whistleblower Regime.

Eligible Whistleblowers are also able to make disclosures about “corrupt conduct” involving public officials to the National Anti-Corruption Commissioner under the *National Anti-Corruption Commission Act 2022* (Cth) (the **NACC Act**).

## 5.3 PUBLIC INTEREST DISCLOSURES

If you have made a Qualifying Disclosure to ASIC or APRA or a prescribed Commonwealth authority (**previous disclosure**), you may make a public interest disclosure to a member of the Parliament of the Commonwealth or the State, the legislature of a Territory or a journalist, that will also be protected, provided that:

- at least 90 days have passed since the previous disclosure was made;
- you do not have reasonable grounds to believe that action is being taken, or has been taken, to address the matters to which the previous disclosure related;
- you have reasonable grounds to believe that making a further disclosure of the information in accordance with this exception would be in the public interest;
- after at least 90 days have passed since the previous disclosure was made, you gave the body which the previous disclosure was made to, a written confirmation which:
  - includes sufficient information to identify the previous disclosure; and
  - states that you intend to make a public interest disclosure; and
- the extent of the information you disclose is no greater than necessary to inform the recipient of the public interest disclosure of a Disclosable Matter.<sup>14</sup>

Please note that if you intend to make a public interest disclosure, it is important for you to understand the relevant criteria (set out above). We recommend that you obtain independent legal advice prior to doing so. nbn

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<sup>14</sup> s1317AAD(1), Corporations Act.

Legal Team lawyers act for nbn so they are not legally able to provide independent legal advice or representation to individuals/nbn staff.

## 5.4 EMERGENCY DISCLOSURES

If you have made a Qualifying Disclosure to ASIC or APRA or a prescribed Commonwealth authority (**previous disclosure**), you may make an emergency disclosure to a member of the Parliament of the Commonwealth or the State, legislature of a Territory or a journalist, that will also be protected, provided that:

- you do have 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;
- you give the body which the previous disclosure was made to a written confirmation which:
  - includes sufficient information to identify the previous disclosure; and
  - states that you intend to make an emergency disclosure; and
- the extent of the information you disclose is no greater than necessary to inform the recipient of emergency disclosure of the substantial and imminent danger.<sup>15</sup>

Please note that if you intend to make an emergency disclosure, it is important for you to understand the relevant criteria (set out above). We recommend that you obtain independent legal advice prior to doing so. nbn Legal Team lawyers act for nbn so they are not legally able to provide independent legal advice or representation to individuals/nbn staff.

## 6 CAN I MAKE AN ANONYMOUS DISCLOSURE?

Yes, and anonymous disclosures will be acted on where possible. You can remain anonymous while making a disclosure, over the course of any investigation and after the investigation is finalised. If you make a disclosure to KPMG FairCall and provide your contact details, but do not consent to your contact details being provided to nbn, KPMG FairCall can act as a point of contact between you and a WPO to ensure that you remain anonymous.

You may also decide to provide your name and/or contact details to an Eligible Recipient but request that your name and/or contact details are not provided by the Eligible Recipient to a WPO.

If your disclosure is to an Eligible Recipient who is not a WPO or KPMG FairCall, the Eligible Recipient may seek your consent to disclose your identity to a WPO.

Please note that there are good reasons why you might consider identifying yourself to an Eligible Recipient and consenting to the disclosure of your identity to a WPO, or at the very least providing a means of contact. These include:

- nbn is required to keep the identity of individuals who have made a Qualifying Disclosure confidential<sup>16</sup>, subject to limited exceptions including your consent;<sup>17</sup>
- It will be difficult to ensure your protection from detrimental conduct if nbn does not know your identity;

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<sup>15</sup> s1317AAD(2), Corporations Act.

<sup>16</sup> s1317AAE, Corporations Act; s14ZZW, Tax Administration Act.

<sup>17</sup> s1317AAE(2)(f), Corporations Act; s14ZZW(2)(e), Tax Administration Act.



- It may be difficult to conduct an investigation of the Disclosable Matter if you cannot be contacted for further information; and
- If you do not provide any contact details, you cannot be updated on the progress of your disclosure, including the outcome of any investigation.

## 7 WHAT INFORMATION SHOULD I INCLUDE IN MY DISCLOSURE?

We encourage our people to speak up about misconduct or an improper state of affairs at nbn, and there are no prescribed information requirements. However, in our experience, if you decide to make a disclosure under the Whistleblower Regime, it helps us to determine how to proceed if you provide the following details:

- unless your disclosure is anonymous (see paragraph 6 above), your name and contact details;
- the nature of the Disclosable Matter;
- who you think committed the conduct associated with the Disclosable Matter;
- when and where the conduct occurred;
- relevant events surrounding the issue;
- if you did anything in response to the Disclosable Matter;
- others who know about the Disclosable Matter and have allowed it to continue;
- whether you believe your information is a Qualifying Disclosure under the Whistleblower Regime (though you do not have to describe it in this way in order for it to be treated as a Qualifying Disclosure); and
- if you are concerned about possible detrimental conduct as a result of making a disclosure.

Please use the [CATA Disclosure Form](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> to make or to inform your disclosure (because your disclosure can be oral or in writing).

If possible, please also provide any supporting correspondence or other documents, such as file notes or a diary of events, and the names of any people who witnessed the conduct or who may be able to verify what you are saying in your disclosure.

## 8 WHAT ARE MY OBLIGATIONS AS A DISCLOSER?

If you make a Qualifying Disclosure:

- you should not discuss the details of your disclosure with anyone who does not need to know. Discussions with those people will not be covered by the protections under the Whistleblower Regime;
- you should be discreet about the fact that you have made a disclosure, the information in your disclosure and any information that would identify someone that you allege has acted wrongly; and
- if you are contactable, you should be prepared to provide further information to help the investigator, as this may often be required.

## 9 WHAT ARE MY PROTECTIONS UNDER THE WHISTLEBLOWER REGIME?

If you make a Qualifying Disclosure, emergency or public interest disclosure:

- which is made anonymously, your anonymity is protected;<sup>18</sup>
- you will not be subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure;<sup>19</sup>
- no contractual or other remedy may be enforced and no contractual or other right may be exercised against you on the basis of your disclosure;<sup>20</sup>
- the information in your disclosure to the entities listed in section 5.2, or to a recipient of an emergency or public interest disclosure, may not be admissible in evidence against you in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information;<sup>21</sup> and
- a contract to which you are a party cannot be terminated because of your disclosure.<sup>22</sup>

Even if the information provided in your disclosure turns out to be incorrect or cannot be substantiated, your disclosure will be protected under the Whistleblower Regime, provided that you made a Qualifying Disclosure (see Q2, Q3 and Q5).

Making a disclosure will not necessarily protect you from the consequences of your own wrongdoing, including where you have been involved in the conduct being disclosed.

### 9.1 PROTECTION FROM DETRIMENTAL CONDUCT

#### 9.1.1 WHAT IS DETRIMENTAL CONDUCT?

Detrimental conduct occurs where a person engages in conduct which causes or will cause Detriment to another person (including, for example, a discloser or a witness). The person engaging in such conduct does so because they believe or suspect that person, or anyone else, made, may have made, proposes to make or could make a Qualifying Disclosure, or emergency or public interest disclosure.<sup>23</sup> This includes, threatening to engage in detrimental conduct. The threat may be express or implied, conditional or unconditional.<sup>24</sup> This conduct is unlawful under the Whistleblower Regime.

Detriment includes any of the following:<sup>25</sup>

- dismissal of an employee;

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<sup>18</sup> s1317AAE, Corporations Act; s14ZZW, Tax Administration Act.

<sup>19</sup> s1317AB(1)(a), Corporations Act; s14ZZX(1)(a), Tax Administration Act.

<sup>20</sup> s1317AB(1)(b), Corporations Act; s14ZZX(1)(b), Tax Administration Act.

<sup>21</sup> s1317AB(1)(c), Corporations Act; s14ZZX(1)(c), Tax Administration Act.

<sup>22</sup> s1317AB(2)(b), Corporations Act; s14ZZX(2)(b), Tax Administration Act.

<sup>23</sup> s1317AC, Corporations Act; s14ZZY, Tax Administration Act.

<sup>24</sup> s1317AC(4), Corporations Act; s14ZZY(3), Tax Administration Act.

<sup>25</sup> s1317ADA, Corporations Act; s 14ZZZAA, Tax Administration Act.

- injury of an employee in his or her employment;
- alteration of an employee's position or duties to his or her disadvantage;
- discrimination between an employee and other employees of the same employer;
- harassment or intimidation of a person;
- harm or injury to a person, including psychological harm;
- damage to a person's property;
- damage to a person's reputation;
- damage to a person's business or financial position; or
- any other damage to a person.

It may be a criminal offence to engage in the detrimental conduct described above and there are serious penalties attached.

Courts are given broad scope to make orders remedying a Detriment or threatened Detriment under the Whistleblower Regime. These include injunctions, compensation orders (including against individual employees and their employers), reinstatements, exemplary damages, and the making of apologies. A discloser, or any other person, can seek compensation and other remedies through the courts if they suffer loss, damage or injury because of a Qualifying Disclosure and nbn failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct. We encourage you to obtain independent legal advice.

## 9.2 CONFIDENTIALITY

Strict confidentiality obligations apply in respect of Qualifying Disclosures, and emergency and public interest disclosures under the Whistleblower Regime. It is an offence for an Eligible Recipient, or anyone else, to disclose your identity as a discloser or information that is likely to lead to the identification of the discloser except in very limited circumstances, including with the discloser's consent.<sup>26</sup> Each of these offences is punishable by imprisonment, or significant fines, or both.

Unless you as the discloser consent, your identity or any information that may lead to your identification, must not be disclosed by the Eligible Recipient, or any other person, to anyone (subject to the exceptions set out below).

Under the Whistleblower Regime:

- anonymous disclosures are still capable of being protected (though it may be difficult to investigate these disclosures effectively);
- if you do not consent to your identity being disclosed to any other persons, it will still be lawful for nbn to:
  - disclose your identity to:
    - ASIC, APRA, the AFP, the Commissioner of Taxation, the Inspector-General of Taxation, the Tax Practitioners Board or the Commissioner of the Australian Charities and Not-for-profits Commission;
    - a legal practitioner for the purposes of obtaining advice about the disclosure; or
    - to a body prescribed by the regulations,

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<sup>26</sup> s1317AAE(2)(f), Corporations Act; s 14ZZW(2)(e), Tax Administration Act.

- disclose information that may lead to your identification if this is reasonably necessary for the purpose of investigating the Qualifying Disclosure and nbn takes all reasonable steps to reduce the risk that you will be identified as a result of the disclosure (for example, by ensuring the information does not include your identity and removing information such as your name, position title and other identifying details).
- All disclosures received and made under this Whistleblower Regime will be held in confidence and securely, as appropriate.
- If you are concerned about a breach of confidentiality in relation to a Qualifying Disclosure, you can lodge a complaint with one of the nbn's WPOs using the contact details listed above. You can also lodge a complaint with ASIC, APRA or the ATO.

## 10 SUPPORT FOR DISCLOSERS

nbn will support you as a discloser by potentially taking some or all of the following steps as required and appropriate:

- appointing a support person to assist you as a discloser, who is responsible for checking on your wellbeing regularly;
- ensuring that you are informed (if you are contactable) of the progress of the investigation by providing regular updates (however the frequency and timing of updates may vary depending on the nature of the disclosure);
- if you are an nbn employee, advising you of the availability of the Employee Assistance Program – see [myWellbeing](#);
- where there are any concerns about your health and wellbeing, (subject to confidentiality restrictions/requirements) liaising with a member of the nbn HSE Team who are responsible for work health and safety in nbn; and
- if you work at nbn, where appropriate (and in consultation with you, if consultation is possible) transferring you to a different area or providing you with a temporary line manager within the workplace.

Note that support for disclosers does not prevent a person who has made a Qualifying Disclosure being the subject of legitimate workplace performance management or administrative action that is reasonable for the purpose of protecting a discloser from detriment. Such management or administrative action is not detrimental conduct. However, where appropriate, the WPO, the relevant nbn HRBP and any relevant supervisors / managers should ensure that:

- there are sufficient grounds for the action;
- the action is reasonable and proportionate;
- the action is not being taken because the person made a disclosure; and
- the discloser understands the reason for the entity's management or administrative action.

### 10.1 HANDLING DETRIMENTAL CONDUCT

Disclosers and witnesses should be encouraged to advise the relevant WPO if they believe they are being or may be subject to detrimental conduct. You may also seek independent legal advice or contact ASIC, APRA or the ATO if you believe you have

suffered detriment. Please note that nbn Legal Team lawyers act for nbn so they are not legally able to provide independent legal advice or representation to individuals/nbn staff. Every allegation of detrimental conduct or the threat of detrimental conduct will be taken seriously, recorded and responded to. All those involved in handling the Qualifying Disclosure and aware of your identity – which may include the Authorised Person (e.g. the WPO), investigator, supervisor, manager and anyone else to whom you have consented to reveal your identifying information – need to monitor the work environment for signs of Detriment and if necessary, take corrective action early. nbn will not tolerate harassment or victimisation consistent with our obligations under the Whistleblower Regime.

Responses to alleged detrimental conduct will depend on their seriousness and other circumstances. Actions which may be taken to resolve workplace conflict include:

- holding discussions with staff;
- providing guidance and support and closer supervision of the workplace for inappropriate workplace behaviours;
- disciplinary measures taken under the relevant code of conduct, policy and/or employment contract; and/or
- reporting to the police.

If the situation is potentially serious enough to require significant action such as transfer, relocation, a leave of absence, physical protection or an injunction, options should be discussed with the WPO and where appropriate, the nbn HR Team and the relevant non-implicated managers within nbn.

## 11 FAIR TREATMENT OF PERSONS WHO ARE THE SUBJECT OF A QUALIFYING DISCLOSURE

nbn will also seek to support individuals who are the subject of an investigation of a Qualifying Disclosure. Where the name of an employee is raised by someone who is speaking up about a concern, nbn is committed to treating all employees involved fairly, as appropriate in the circumstances.

nbn will take all reasonable steps to ensure that the named employee is treated fairly, as appropriate in the circumstances of the disclosure, such as provision of a support person. 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.

nbn will maintain the confidentiality of the relevant employee's identity to the fullest extent possible, and will not take disciplinary action (e.g. written warnings or termination of the employee) unless it is considered to be necessary to mitigate the risk of further misconduct or illegal activity.

## 12 WHAT HAPPENS AFTER I HAVE MADE A DISCLOSURE?

Unless otherwise required by law/regulator guidance, if you make a disclosure to an Eligible Recipient at nbn or FairCall, the following steps may take place, as appropriate.

## 12.1 STEP 1: THE ELIGIBLE RECIPIENT (IF NOT A WPO) MAY SEEK YOUR CONSENT TO DISCLOSE YOUR IDENTITY AND WILL REFER THE MATTER TO A WPO.

If you consent, your name and/or contact details will be provided by the Eligible Recipient to a WPO to determine whether or not the disclosure meets the requirements of a Qualifying Disclosure and should be investigated under the Whistleblower Regime. You will be notified of the WPO contact, as appropriate.

If you do not consent, the Eligible Recipient may nevertheless pass your disclosure to a WPO for determination of whether or not it meets the requirements of a Qualifying Disclosure and should be investigated under the Whistleblower Regime and nbn will do its best to ensure that you are not identified (see further below).

## 12.2 STEP 2: THE WPO WILL DECIDE WHETHER YOUR DISCLOSURE MEETS THE REQUIREMENTS OF A QUALIFYING DISCLOSURE.

**If your 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 you consists of a Qualifying Disclosure under the Whistleblower Regime. The WPO will also consider whether your disclosure:

- is a PID under the PID Act; and
- concerns “corrupt conduct” that the WPO is required to refer to the National Anti-Corruption Commissioner under the NACC Act.

The WPO may ask you questions to determine whether the information is about Disclosable Matter.<sup>27</sup>

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

Where the WPO is required to refer the disclosure to the National Anti-Corruption Commissioner, they will inform you of the referral as soon as reasonably practicable. A referral does not prevent nbn from investigating a Qualifying Disclosure in accordance with the process set out at Step 3 below. However, if nbn is issued with a “stop action direction” from the National Anti-Corruption Commissioner, this may prevent nbn from commencing or continuing an investigation while that direction remains in place.

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

- the disclosure will not be investigated under the Whistleblower Regime; and
- if contacting you is reasonably practicable, the WPO will inform you in writing of:
  - the reasons why the disclosure does not disclose a Disclosable Matter and will not be investigated; and
  - if appropriate or required by law or regulator guidance, any other course of action that might be available to you.

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<sup>27</sup> s1317AA, Corporations Act; s14ZZT, Tax Administration Act

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

A decision not to investigate under the Whistleblower Regime does not preclude the matter being investigated under another regime, for example, as a PID under the PID Act or as an HR matter or otherwise, in nbn's absolute discretion. If the disclosure is a PID it will be dealt with by the WPO in accordance with the PID Procedures and PID Act.

## 12.3 STEP 3: THE WPO MAY INVESTIGATE YOUR DISCLOSURE.

The WPO may decide not to investigate your disclosure or not to continue to investigate your disclosure, if for example:

- your disclosure does not concern Disclosable Matter;
- your disclosure is the same or substantially the same as a disclosure which has been or is being investigated as a disclosure investigation;
- your disclosure concerns Disclosable Matter that is the same or substantially the same as the Disclosable Matter being investigated under a law of the Commonwealth or the executive power of the Commonwealth and:
  - it would be inappropriate to conduct another investigation at the same time; or
  - the WPO is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation;
- you have informed the WPO that you do not wish the investigation of your disclosure to be pursued and the WPO is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation; or
- it is impracticable for your disclosure to be investigated because:
  - your name and contact details have not been disclosed;
  - you refuse or fail or are unable to give, for the purpose of the investigation, such information or assistance as the investigator asks you to give; or
  - because of the age of the information.

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

## 12.4 STEP 4: WPO MAY PREPARE A REPORT.

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). However, the process and timeframe may vary depending on the nature of the disclosure.

If appropriate or required by law/regulator guidance, and subject to confidentiality requirements, the WPO may prepare a report of the investigation and provide it to the relevant nbn stakeholder(s).

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. The way nbn documents and reports any findings will depend on the nature of the disclosure. There may be circumstances where it may not be appropriate to provide details of the outcome to the discloser.

## **12.5 STEP 5: WHAT HAPPENS AT THE END OF AN INVESTIGATION WILL VARY WITH THE CIRCUMSTANCES.**

If an investigation is conducted and nbn finds that your disclosure is substantiated, it may take any of a variety of actions that are available and appropriate and that will depend on the specific circumstances of the investigation. These may include (each subject to ongoing confidentiality and other requirements of the Whistleblower Regime and PID Act, if applicable):

- no action;
- referral of the matter to the police or another body that can take further action;
- mediation or conciliation of a workplace conflict;
- disciplinary action pursuant to nbn policies and procedures;
- an internal audit or other review of an issue or the operations of a particular unit;
- implementing or changing policies, procedures or practices; and/or
- conducting training and awareness sessions for staff.

## **13 WHAT SHOULD I DO IF SOMEONE CAUSES DETRIMENT TO ME BECAUSE OF MY DISCLOSURE?**

You should immediately advise a WPO if you believe you are being or may be subject to detrimental conduct. nbn takes these matters seriously and will take appropriate steps to address your concerns.