

# PID ACT INFORMATION SHEET FOR DISCLOSERS

Please read this Information Sheet carefully if you have made, or are considering making, a disclosure of wrongdoing under the *Public Interest Disclosure Act 2013* (Cth) (**PID Act**) in relation to nbn.

Capitalised terms are defined in the [PID 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>.

Not all disclosures of wrongdoing will be disclosures under the PID Act (i.e. a PID).

nbn is also subject to the *Corporations Act 2001* (Cth) (the **Corporations Act**) and the *Taxation Administration Act 1953* (Cth) (the **Tax Administration Act**) (together, the **Whistleblower Regime**). If you are unsure of whether your disclosure is a PID Act disclosure, or 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.

nbn is also subject to the *National Anti-Corruption Commission Act 2022* (Cth) (the **NACC Act**). In certain circumstances under the NACC Act, disclosures about suspected serious or systemic 'corrupt conduct' involving public officials must be referred to the National Anti-Corruption Commissioner by nbn's CEO, Whistleblower Protection Officers (**WPOs**), Whistleblower Investigation Officers (**WIOs**) and any other nbn staff member that performs certain functions under the PID Act. If a disclosure is referred to the National Anti-Corruption Commissioner, the discloser will be informed as soon as reasonably practicable. Referral can impact the way that nbn allocates and investigates a disclosure under the PID Act.

Please note that if you make a PID:

- nbn will be required to handle your disclosure in accordance with the PID Act (and the NACC Act, if applicable).
- You will be subject to certain obligations, but will also be afforded certain protections, under the PID Act, which are summarised below.
- You may make a disclosure anonymously, though this may make it more difficult for nbn to investigate your disclosure and to protect you against reprisals.
- You should not discuss the details of your disclosure with anyone who does not need to know. Discussions with these people will not be covered by the protections in the PID Act.
- **DO NOT** investigate any matter yourself. Doing so may hinder or compromise a potential investigation.

# 1 WHAT IS A PID?

A public interest disclosure (specifically an “internal disclosure”) is a disclosure of information:

- made by a current or former **public official** (see Q2 below);<sup>1</sup>
- that tends to show, or that the public official reasonably believes tends to show, **disclosable conduct** (see Q3 below);<sup>2</sup>
- not made in the course of performing the discloser’s ordinary functions as a public official;<sup>3</sup>
- made to a supervisor, an authorised officer or the Commonwealth Ombudsman (see Q5 below).<sup>4</sup> A supervisor means a public official who supervises or manages the person who is making the disclosure, which at nbn includes a member of EXCO and their Executive General Manager direct reports.

# 2 WHO CAN MAKE A PID TO NBN?

You must be a current or former public official to make a PID under the PID Act.<sup>5</sup> **Public officials**<sup>6</sup> of nbn include:

- all employees and directors of nbn;
- individuals and organisations (and their sub-contractors) that provide goods and services under a contract with nbn or under a contract for and on behalf of nbn (being a type of Commonwealth contract) (**contracted service provider**); and
- officers and employees of contracted service providers who provide services for the purpose (whether direct or indirect) of the Commonwealth contract.

Note that if a Whistleblower Protection Officer (**WPO**) believes that an individual has information that concerns disclosable conduct, the WPO may determine that the person should be treated as a public official for the purposes of the PID Act even where they may not be a public official, by giving notice to the discloser in writing.<sup>7</sup> Examples where a WPO might consider this appropriate include where a disclosure is made by a former volunteer with nbn or by a member of an advisory committee that has ‘inside information’ about nbn’s alleged wrongdoing.

# 3 WHAT CAN BE DISCLOSED?

Public officials of nbn can disclose information that they believe, on reasonable grounds, tends to show 'disclosable conduct'.<sup>8</sup> **Disclosable conduct**<sup>9</sup> is conduct by:

- nbn or another agency;
- a public official in connection with their position; and/or

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<sup>1</sup> s 26(1)(a), PID Act.

<sup>2</sup> s 26 Item 1 Column 3 (a), PID Act.

<sup>3</sup> s 26 Item 1 Column 3 (b), PID Act.

<sup>4</sup> s 26 Item 1 Column 2, s 34 Item 1 Column 2, PID Act.

<sup>5</sup> s 26(1)(a), PID Act.

<sup>6</sup> s 69, PID Act.

<sup>7</sup> s 70, PID Act.

<sup>8</sup> s 26 Item 1 Column 3, PID Act.

<sup>9</sup> s 29, PID Act.

- a contracted service provider for a Commonwealth contract in connection with entering into or giving effect to that contract, if that conduct:
  - contravenes a local law, or contravenes a foreign law that applies to nbn, the public official or the contracted service provider (e.g. foreign interference offences);
  - perverts the course of justice;
  - involves corruption of any kind (including “corrupt conduct” for the purposes of the NACC Act);
  - constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent;
  - is an abuse of public trust;
  - is fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific evaluation, analysis or advice;
  - results in wastage of public money or public property;
  - unreasonably endangers health and safety;
  - endangers the environment;
  - is prescribed by the PID rules;
  - involves, or is engaged in for the purpose of, a public official abusing their position; and/or
  - could give reasonable grounds for disciplinary action resulting in termination of the public official.<sup>10</sup>

It does not matter whether the public official or contracted service provider alleged to have committed the wrongdoing has since ceased to be a public official or contracted service provider.<sup>11</sup>

Please note that if your disclosure does not concern **serious** disclosable conduct, nbn may decide not to investigate your disclosure (see Step 3 of Q10).<sup>12</sup> For other matters such as:

- possible breaches of nbn policies and procedures, workplace disputes or allegations of improper conduct, please contact a member of the nbn P&C Team;
- health and safety concerns, please contact a member of the nbn Safety & Wellbeing Team; and
- legal matters, please contact a member of nbn's Legal Team.

If you are unsure whether your complaint should be disclosed under the PID Act, please contact a member of nbn's Legal Team or the Ombudsman for more information.

## 4 WHAT IS NOT DISCLOSABLE CONDUCT?

The following conduct is not disclosable conduct under the PID Act:<sup>13</sup>

- Conduct that relates only to:
  - a government policy or proposed policy;
  - an action or proposed action by a minister, the Speaker of the House of Representatives or the President of the Senate;

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<sup>10</sup> s 29(2), PID Act.

<sup>11</sup> s 29(3)(c) and (d), PID Act.

<sup>12</sup> s 48(1)(c), PID Act.

<sup>13</sup> s 31 and 29(2A) PID Act.

- expenditure or proposed expenditure related to such policy or action, with which the discloser disagrees.
- Personal work-related conduct, unless the conduct:
  - would constitute taking a reprisal against another person in relation to a PID, or an offence of taking reprisal;<sup>14</sup> or
  - the conduct is of such a significant nature that it would undermine public confidence in nbn or another agency, or has other significant implications for nbn or another agency).

Personal work-related conduct is conduct by one public official that occurs in relation to, or in the course of, another public official's engagement, appointment, employment or other exercise of their functions and powers as a public official, and that has, or would tend to have personal implications for the other public official. Examples of personal work-related conduct include:

- interpersonal conflict between public officials (e.g. bullying or harassment);
- conduct relating to the transfer or promotion;
- conduct relating to the terms and conditions of engagement or appointment;
- disciplinary action; and
- the suspension or termination of employment or appointment as a public official.

A disclosure does not need to *only* include information about disclosable conduct. A disclosure can still be an "internal disclosure" even if it also includes other information, including information that relates to personal work-related conduct.<sup>15</sup>

## 5 WHO CAN A PUBLIC INTEREST DISCLOSURE BE MADE TO?

You can gain the protections available under the PID Act if you use one of the avenues identified below.<sup>16</sup> You will not receive these protections if you give the information to someone outside government like a journalist or union representative, unless the conditions for an emergency<sup>17</sup> or external disclosure<sup>18</sup> are met, or you make a disclosure directly to the National Anti-Corruption Commissioner.<sup>19</sup> If you make a disclosure to someone outside the government, 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.<sup>20</sup>

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<sup>14</sup> s 13 and 19, PID Act.

<sup>15</sup> s 29(2B), PID Act.

<sup>16</sup> s 26(1)(b), PID Act.

<sup>17</sup> s 26 Item 3, PID Act.

<sup>18</sup> s 26 Item 2, PID Act.

<sup>19</sup> s 32, NACC Act; s 26(1A), PID Act.

<sup>20</sup> s 12, PID Act.

## 5.1 INTERNAL DISCLOSURES

You can report suspected wrongdoing regarding nbn to any of the following authorised internal recipients:

- a PID supervisor or manager;<sup>21</sup>
- an authorised officer of nbn;<sup>22</sup> (if you believe on reasonable grounds that it would be appropriate for the disclosure to be investigated by the Commonwealth Ombudsman), the Commonwealth Ombudsman.<sup>23</sup>

If you report suspected wrongdoing to a PID supervisor or manager, they will refer your disclosure to a WPO.

If you have information about suspected wrongdoing in a agency that is not nbn, you can make a disclosure to an authorised officer in that agency.<sup>24</sup>

nbn's authorised officers are:

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>Rachael McIntyre</b> Executive General Manager – Reputation and Stakeholder Engagement	<b>Email:</b> <a href="mailto:rachaelmcintyre@nbnco.com.au">rachaelmcintyre@nbnco.com.au</a> <b>Post:</b> Level 4, 202 Pier Street, Perth, WA 6000
<b>Ben Doctor</b> Deputy Chief Financial Office	<b>Email:</b> <a href="mailto:bendoctor1@nbnco.com.au">bendoctor1@nbnco.com.au</a> <b>Post:</b> Level 13, 100 Mount Street, North Sydney, NSW 2060
<b>James Clifford</b> General Manager Legal and Company Secretary	<b>Email:</b> <a href="mailto:jamesclifford@nbnco.com.au">jamesclifford@nbnco.com.au</a> <b>Post:</b> Level 13, 100 Mount Street, North Sydney, NSW 2060

<sup>21</sup> s 26 Item 1 Column 2, PID Act.

<sup>22</sup> s 34 Item 1 Column 2 (a), (b), PID Act.

<sup>23</sup> s 34 Item 1 Column 2 (c), PID Act.

<sup>24</sup> s 34 Item 1 Column 2 (a), PID Act. In certain circumstances you may also disclose to IGIS or another investigative agency: s 34 Item 1 Column 2(ca) and (d), PID Act.

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NAME	CONTACT
<b>Anna Haynes</b> General Manager Governance and Strategic Initiatives	<b>Email:</b> <a href="mailto:annahaynes@nbnco.com.au">annahaynes@nbnco.com.au</a> <b>Post:</b> Level 13, 100 Mount Street, North Sydney, NSW 2060
<b>Tracy Davenport</b> Executive General Manager SEO Corporate	<b>Email:</b> <a href="mailto:tracydavenport@nbnco.com.au">tracydavenport@nbnco.com.au</a> <b>Post:</b> Level 14, Tower 5, 727 Collins Street, Docklands, VIC, 3008

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\* FairCall is an independently monitored, external service operated by KPMG Australia to enable nbn public officials to report concerns of possible wrongdoing.

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

## 5.2 EMERGENCY DISCLOSURES

If you believe on reasonable grounds that the information you have concerns a **substantial and imminent danger to the health or safety** of one or more people or to the environment,<sup>25</sup> you may make an emergency disclosure to anyone (other than a foreign public official), provided that:

- the extent of the information you disclose must be only what is necessary to alert the recipient of the substantial and imminent danger;<sup>26</sup>
- if you have not previously made an internal disclosure about the matter, or if you have done so and the investigation is not yet completed, there must be **exceptional circumstances** justifying your action;<sup>27</sup> and
- you must not disclose intelligence information, including sensitive law enforcement information.<sup>28</sup>

## 5.3 EXTERNAL DISCLOSURES

If you have already made an internal disclosure under the PID Act,<sup>29</sup> you may later make an external disclosure to any person (other than a foreign public official)<sup>30</sup> if:

- the internal investigation under the PID Act was not completed within 90 days or the extended timeframe approved by the Ombudsman;<sup>31</sup>
- you believe on reasonable grounds that the investigation under the PID Act was inadequate;<sup>32</sup> or

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<sup>25</sup> s 26 Item 3 Column 3 (a), PID Act.

<sup>26</sup> s 26 Item 3 Column 3 (b), PID Act.

<sup>27</sup> s 26 Item 3 Column 3 (c), (d), PID Act.

<sup>28</sup> s 26 Item 3 Column 3 (f), PID Act.

<sup>29</sup> s 26 Item 2 Column 3 (b), PID Act.

<sup>30</sup> s 26 Item 2 Column 2, PID Act.

<sup>31</sup> s 26 Item 2 Column 2 (c)(iii), PID Act.

<sup>32</sup> s 26 Item 2 Column 3 (c)(i), PID Act.

- you believe on reasonable grounds that nbn took inadequate action in response to the investigation after it was completed;<sup>33</sup>

If you make an external disclosure you must ensure that:

- it is not on balance contrary to the public interest for an external disclosure to be made.<sup>34</sup>
- you do not disclose more information than is reasonably necessary to identify the disclosable conduct;<sup>35</sup>
- the information does not consist of intelligence information, including sensitive law enforcement information (ie information whose disclosure is reasonably likely to prejudice Australia's law enforcement interests);<sup>36</sup>
- none of the conduct relates to an intelligence agency.<sup>37</sup>

## 5.4 LEGAL PRACTITIONER DISCLOSURE

A current or former public official may make a disclosure to an Australian legal practitioner if the following requirements are met:<sup>38</sup>

- the disclosure is made for the purpose of obtaining legal advice, or professional assistance, from the lawyer in relation to the discloser having made, or proposing to make, a public interest disclosure;
- if any of the information has a national security or other protective security classification, the lawyer holds the appropriate level of security clearance; and
- the information does not consist of, or include, intelligence information.

Please note that the nbn Legal Group act for nbn so they cannot provide independent legal advice or representation to individuals of nbn.

## 5.5 NACC DISCLOSURE

A person makes a NACC disclosure if they:

- refer or provide information about an issue of whether a person has, is, or will engage in 'corrupt conduct' to the National Anti-Corruption Commissioner; or
- gives evidence or produces a document to the National Anti-Corruption Commissioner in accordance with the NACC Act.<sup>39</sup>

A NACC disclosure will constitute a public interest disclosure if:

- the disclosure is made by a current or former public official; and

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<sup>33</sup> s 26 Item 2 Column 3 (c)(ii), PID Act.

<sup>34</sup> s 26 Item 2 Column 3 (e), PID Act.

<sup>35</sup> s 26 Item 2 Column 3 (f), PID Act.

<sup>36</sup> s 26 Item 2 Column 3 (h), PID Act.

<sup>37</sup> s 26 Item 2 Column 3 (i), PID Act.

<sup>38</sup> s 26 Item 4 Column 3 (i), PID Act.

<sup>39</sup> ss 9 and 23, NACC Act.

- the information tends to show, or the discloser believes on reasonable grounds that the information tends to show disclosable conduct.<sup>40</sup>

## 6 CAN I MAKE AN ANONYMOUS DISCLOSURE?

Yes<sup>41</sup> and anonymous disclosures will be acted on where possible. You may also decide to provide your name and/or contact details to an authorised officer but request that your name and/or contact details are not provided by the authorised officer to a WPO and/or the Ombudsman.<sup>42</sup>

Please note that there are good reasons why you might consider identifying yourself to an authorised officer, 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 PID confidential<sup>43</sup>, subject to limited exceptions including your consent and if you act in a way that is inconsistent with keeping your identity confidential.<sup>44</sup>
- It will be difficult to ensure your protection from reprisal if nbn does not know your identity.
- The WPO who receives an anonymous report must have reasonable grounds to suspect the disclosable conduct has occurred in order to allocate the matter for investigation.<sup>45</sup> If they cannot contact you to seek necessary further information, the matter may not proceed.
- It may be difficult to conduct an investigation if you cannot be contacted for further information. An investigator has the discretion not to investigate, or investigate further, if you do not provide your name and contact details or if you are unable to give the investigator further information or assistance if needed.<sup>46</sup>
- If you do not provide any contact details, you cannot be updated on the progress of your disclosure, including the outcome of any investigation.<sup>47</sup>

If you have made an anonymous disclosure, you may come forward at a later stage to disclose your identity and seek the protections of the PID Act.

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

If you decide to make a disclosure under the PID Act, you should provide as much detail regarding the following matters as possible in order to assist nbn to determine how to proceed:

- unless your disclosure is anonymous (see section 6 above), your name and contact details;

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<sup>40</sup> s 26(1A), PID Act.

<sup>41</sup> s 28(2), PID Act.

<sup>42</sup> s 44(2)(d), PID Act.

<sup>43</sup> ss 20(1), 20(2), PID Act.

<sup>44</sup> s 20(3), PID Act.

<sup>45</sup> s 43(4)(a), PID Act.

<sup>46</sup> s 48(1)(i), PID Act.

<sup>47</sup> s50(5), PID Act.

- the nature of the wrongdoing;
- who you think committed the wrongdoing;
- when and where the wrongdoing occurred;
- relevant events surrounding the issue;
- if you did anything in response to the wrongdoing;
- others who know about the wrongdoing and have allowed it to continue;
- whether you believe your information is a PID under the PID Act (though you do not have to describe it in this way in order for it to be treated as a PID); and
- if you are concerned about possible reprisal as a result of making a disclosure.

Please use the attached [PID Disclosure Form](#) to make or to inform your disclosure (as 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.

In your disclosure you should **be clear and factual, avoid speculation, personal attacks and emotive language**, as these divert from the real issues.

## 8 WHAT ARE MY OBLIGATIONS AS A DISCLOSER?

If you make a PID:

- you should not discuss the details of your disclosure with anyone who does not need to know. Discussions with those people may not be covered by the protections in the PID Act;
- 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
- you should be prepared to provide further information to help the investigator, as this will often be required. The PID Act requires all public officials to use their best endeavours to assist in any investigation and generally to assist other public officials to exercise rights or perform duties or functions under the PID Act.<sup>48</sup>

## 9 WHAT ARE MY PROTECTIONS UNDER THE ACT?

If you make a PID:

- you will not be subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure;<sup>49</sup>

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<sup>48</sup> s 61, PID Act.

<sup>49</sup> s 10(1)(a), PID Act.

- you will have absolute privilege in proceedings for defamation in respect of the disclosure;<sup>50</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>51</sup> and
- a contract to which you are a party cannot be terminated on the basis your disclosure constitutes a breach of the contract.<sup>52</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 PID Act, provided that you:

- made the disclosure to an appropriate person under the PID Act (see Q5); and
- **honestly believe on reasonable grounds** that the information tends to show disclosable conduct.

However, the protections above will not apply if you knowingly make a disclosure that:

- is false or misleading;<sup>53</sup> or
- contravenes a designated publication restriction without a reasonable excuse for doing so.<sup>54</sup>

Incidents of false reporting may be referred to the Chief Human Resources Officer for disciplinary action.

Making a disclosure will not necessarily protect you from the consequences of your own wrongdoing, including where you have been involved in the misconduct being reported.<sup>55</sup> Any person who provides assistance (such as a witness) in relation to a PID will receive the same protections as a person who makes a PID.<sup>56</sup> A person 'provides assistance' if they give information or produce a document or other thing, or answer a question, that the person considers on reasonable grounds to be relevant to:

- allocation of a disclosure;
- a disclosure investigation; or
- review by the Ombudsman about the handling of a disclosure.<sup>57</sup>

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<sup>50</sup> s 10(2)(a), PID Act.

<sup>51</sup> s 10(1)(b), PID Act.

<sup>52</sup> s 10(2)(b), PID Act.

<sup>53</sup> s 11(1), PID Act.

<sup>54</sup> s 11A, PID Act.

<sup>55</sup> s 12, PID Act.

<sup>56</sup> ss 12A and 12B, PID Act.

<sup>57</sup> s 12A(2), PID Act.

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

### 10.1 STEP 1: THE WPO WILL DECIDE WHETHER YOUR DISCLOSURE IS COVERED BY THE PID ACT.<sup>58</sup> THEY MAY MAKE PRELIMINARY INQUIRIES AND MAY ASK YOU FOR FURTHER INFORMATION.<sup>59</sup>

If a disclosure is made to KPMG FairCall or a supervisor that is not a WPO, the recipient will not decide whether a disclosure meets the requirements for a public interest disclosure. All disclosures received by KPMG FairCall or a supervisor or manager will be referred to the WPO that is highest on the WPO Priority List.

*If the WPO decides not to allocate the disclosure,*<sup>60</sup> the WPO will notify you and the Ombudsman of this decision and provide reasons.<sup>61</sup> If the WPO has or proposes to take action to refer the conduct disclosed for investigation under another Commonwealth law or power, the notice will also contain these details.<sup>62</sup> If the WPO has not taken or does not propose to take any such action, the notice will also set out any courses of action that might be available to you.<sup>63</sup>

*If the WPO is required to allocate the disclosure,* the WPO will take **Step 2**.

The WPO will also consider whether the disclosure:

- is a “Qualifying Disclosure” under the CATA Regime; and/or
- concerns “corrupt conduct” that the WPO is required to refer to the National Anti-Corruption Commissioner under the NACC Act.

### 10.2 STEP 2: THE WPO WILL ALLOCATE THE MATTER TO NBN, OR WHERE APPROPRIATE, TO ANOTHER AGENCY, WITHIN 14 DAYS.<sup>64</sup>

The WPO is required, as soon as reasonably practicable, to give written notice to the principal officer of the agency to which the disclosure is allocated and the Ombudsman.<sup>65</sup> If you consent, your name and/or contact details will be provided to the person receiving the allocation.<sup>66</sup> At nbn, the allocation will be made to the WPO, as the delegate of the principal officer (who is the Chief Executive Officer of nbn). If reasonably practicable, you will receive a copy of the notice of allocation.<sup>67</sup>

If your disclosure raises a corruption issue concerning a current or former staff member of nbn that could involve “corrupt conduct” that is “serious or systemic”, your disclosure may need to be referred to the National Anti-Corruption Commissioner. If this occurs, the WPO will inform you of the referral as soon as reasonably practicable.

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<sup>58</sup> s 43, PID Act.

<sup>59</sup> s 43(10), PID Act.

<sup>60</sup> s 43(3)(b), PID Act.

<sup>61</sup> s 44A(3) PID Act.

<sup>62</sup> s 44A(4), PID Act.

<sup>63</sup> s 44A(3)(a), PID Act.

<sup>64</sup> s 43(11), PID Act.

<sup>65</sup> s 44(3), PID Act.

<sup>66</sup> s 44(2)(d), PID Act.

<sup>67</sup> s 44(4), PID Act.

In certain circumstances, nbn may be issued with a “stop action direction” from the National Anti-Corruption Commissioner which can prevent the WPO from allocating some or all of your disclosure while that direction remains in place.<sup>68</sup>

### 10.3 STEP 3: THE WPO MUST INVESTIGATE YOUR DISCLOSURE, UNLESS AN EXCEPTION APPLIES.<sup>69</sup>

The WPO may decide not to investigate your disclosure or not to continue to investigate your disclosure,<sup>70</sup> if:

- you are not a current or former public official;
- the information disclosed does not concern serious disclosable conduct;
- your disclosure is frivolous or vexatious;
- the information disclosed is the same or substantially the same as information which has previously been disclosed under the PID Act and:
  - a decision was previously made not to investigate the earlier disclosure or not to investigate it further; or
  - the earlier disclosure has been or is being investigated as a disclosure investigation;
- the conduct disclosed, or substantially the same conduct, is being investigated under another Commonwealth law or power, and the WPO is satisfied, on reasonable grounds, that:
  - it would be inappropriate to conduct an investigation under the PID Act at the same time; or
  - the WPO is reasonably satisfied that there are no further matters concerning the conduct that warrant investigation;
- the WPO is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another Commonwealth law or power;
- 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
  - of the age of the information.

If your disclosure is investigated by the Ombudsman, the Ombudsman may use its separate investigative powers rather than conducting the investigation under the PID Act.<sup>71</sup>

If the WPO decides *not to investigate* your disclosure or (once any investigation has commenced), to *not investigate the disclosure further*, they will notify you and the Ombudsman of this decision and provide reasons. If the WPO has or proposes

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<sup>68</sup> s 43(12), PID Act.

<sup>69</sup> s 47, PID Act.

<sup>70</sup> s 48, PID Act.

<sup>71</sup> s 49, PID Act.

to take action to refer the conduct disclosed for investigation under another Commonwealth law or power, the notice will also contain these details.<sup>72</sup> See Q10.1 for other courses of action that might be available to you.

In certain circumstances, the WPO may appoint an independent third party investigator to investigate your disclosure.

A referral to the National Anti-Corruption Commissioner does not prevent nbn from investigating a public interest disclosure in accordance with the PID Act. 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 cannot investigate the disclosure because of a “stop action direction” under the NACC Act, the WPO will be required to provide notice to the Ombudsman and inform you.<sup>73</sup> If the WPO begins or continues an investigation after a “stop action direction” under the NACC Act ends, the WPO must inform you as soon as reasonably practicable.<sup>74</sup>

## 10.4 STEP 4: AFTER THE INVESTIGATION, THE WPO MUST PREPARE A REPORT AND SEND YOU A COPY.<sup>75</sup>

Investigations will be conducted within 90 days of the allocation or, if a “stop action direction” under the NACC Act applies, the day on which the WPO becomes aware that the direction no longer applies.<sup>76</sup>

The Ombudsman may grant one or more extensions of time in relation to the investigation, in certain circumstances.<sup>77</sup>

The investigation report will set out the matters considered, how long the investigation took, any findings that were made, any action recommended or taken, any claims or evidence of reprisal taken against you or any other person, and nbn's response to those claims.<sup>78</sup>

The WPO will give you and the Ombudsman written notice of completion of the investigation together with a copy of the investigation report.<sup>79</sup>

Some material may be deleted from the copy of the report that you receive if it is likely to identify any person, is intelligence information, would be exempt under the *Freedom of Information Act 1982* or would contravene a publication restriction or protective security classification.<sup>80</sup>

If the investigation is conducted under another law by the Ombudsman, you will be informed that the investigation is complete and the information you will receive will depend on the law under which the investigation was conducted.

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<sup>72</sup> ss 50(2)(b) and 50A(3), PID Act.

<sup>73</sup> ss 50(1)(c) and 50A(3), PID Act.

<sup>74</sup> s 50(4A), PID Act.

<sup>75</sup> ss 51, 52, PID Act.

<sup>76</sup> s 52(1), PID Act.

<sup>77</sup> s 52(3), PID Act.

<sup>78</sup> s 51(2), PID Act.

<sup>79</sup> s 51(4), PID Act.

<sup>80</sup> s 51(5), PID Act.

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

If 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:

- 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.

## 11 REFERRAL OF INFORMATION TO POLICE AND OTHERS

There may be circumstances in which your disclosure must be referred to another agency, or other person or body, under another law of the Commonwealth (other than the PID Act), for example, to the police or the National Anti-Corruption Commission (as discussed in section 10.2 above).

If the investigator of your disclosure suspects on reasonable grounds that information you disclosed, or information that is obtained during the course of the investigation, constitutes evidence of a serious offence against a Commonwealth, state or territory law, (that is, punishable by imprisonment for two years or more) the investigator may be required to refer that information to a member of a relevant police force.<sup>81</sup>

## 12 WHAT SHOULD I DO IF SOMEONE CAUSES A REPRISAL TO BE MADE AGAINST ME BECAUSE OF MY DISCLOSURE?

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

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<sup>81</sup> ss 56(3) and 56(4), PID Act.

## 13 WHERE CAN I GET SUPPORT?

Please note that while your discussions with people authorised under the PID Act (including a lawyer) are protected, discussions with other people are not. You should not disclose any confidential information to them, including identifying people you allege have committed wrongdoing, but you may find it helpful to talk about what you are going through.

nbn also has an Employee Assistance program which offers short term solution focused counselling. For more information see [myWellbeing](#).

The WPO will also aim to take your individual circumstances into account and may appoint a member of the nbn P&C Team to provide support to you during the PID process.

For further information on making a disclosure under the PID Act see *Speaking Up About Wrongdoing: a guide to making a disclosure under the Public Interest Disclosure Act 2013* accessible from [https://www.ombudsman.gov.au/\\_data/assets/pdf\\_file/0014/29030/speaking\\_up\\_about\\_wrongdoing.pdf](https://www.ombudsman.gov.au/_data/assets/pdf_file/0014/29030/speaking_up_about_wrongdoing.pdf), which is published by the Commonwealth Ombudsman.