

# PUBLIC INTEREST DISCLOSURE PROCEDURES

## 1 STATEMENT

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

Each of those persons are public officials of nbn for the purposes of these procedures.

This document sets out nbn's procedures in relation to disclosures made under or in accordance with the *Public Interest Disclosure Act 2013 (PID Act)* and the relevant nbn policies that may apply, including the [Whistleblower Policy](#).

Disclosures that are not made under or in accordance with the PID Act will be dealt with in accordance with the relevant nbn policies that may apply, including:

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

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

If you wish to make a public interest disclosure, we encourage you to use the [Public Interest Disclosure Form](#).

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

## 2 ROLES AND RESPONSIBILITIES

### 2.1 APPOINTMENT OF AUTHORISED OFFICERS

The principal officer of nbn (being the Chief Executive Officer of nbn) has:

- made the following initial appointments as authorised officers<sup>1</sup> (whose principal role is to receive and allocate public interest disclosures under the PID Act) and consequently as authorised internal recipients of public interest disclosures under the PID Act:<sup>2</sup>
  - Rachael McIntyre, the Executive General Manager Reputation and Stakeholder Engagement, and if she is not available, is unable to act or is identified in the disclosure by name or role;

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<sup>1</sup> s 36(b)(ii), PID Act.

<sup>2</sup> s 34, PID Act.

- Ben Doctor, the Deputy Chief Financial Officer, and if he is not available, is unable to act or is identified in the disclosure by name or role;
- James Clifford, the General Manager Legal and Company Secretary, and if he is not available, is unable to act or is identified in the disclosure by name or role;
- Anna Haynes, the General Manager Governance and Strategic Initiatives, and if she is not available, is unable to act or is identified in the disclosure by name or role;
- Tracy Davenport, the Executive General Manager SEO Corporate:

(the **WPO Priority List**), each of whom are also Whistleblower Protection Officers (**WPOs**) at nbn for the purposes of nbn's Whistleblower Policy; and

- separately, appointed KPMG FairCall and the KPMG FairCall personnel that receive disclosures from a nbn public official as authorised officers,<sup>3</sup> and consequently as authorised internal recipients.<sup>4</sup>

The WPO Priority List may be amended from time to time in writing by the Chief Executive Officer of nbn.

## 2.2 DELEGATION OF FUNCTIONS AND POWERS OF PRINCIPAL OFFICER

The principal officer of nbn has delegated<sup>5</sup> all of the functions and powers of the principal officer under the PID Act to the WPO Priority List. In exercising these functions and powers, a delegate must comply with any directions issued by the principal officer.<sup>6</sup>

A delegate is also the WPO at nbn for the purposes of nbn's Whistleblower Policy.

## 2.3 RESPONSIBILITIES

WPOs have the following responsibilities as appointed authorised officers and as delegates of nbn's principal officer:<sup>7</sup>

- receiving disclosures from current or former public officials of nbn about disclosable conduct;
- assessing purported disclosures (having regard to relevant considerations)<sup>8</sup> and making any preliminary inquiries necessary to make a decision to either:
  - allocate the disclosure to nbn and/or another agency (with that agency's consent); or
  - not allocate the disclosure to any agency because there is "no reasonable basis" on which the disclosure could be considered to be an internal disclosure, or the conduct disclosed would be more appropriately investigated under another Commonwealth law or power;
- complying with various notification obligations under the PID Act, including in relation to the discloser and the Ombudsman;
- consenting to the allocation of a disclosure by an authorised officer of another agency;
- establishing procedures that comply with the PID Act and the PID Standard for facilitating and dealing with public interest disclosures relating to nbn, including procedures for:
  - assessing risks that reprisals may occur in relation to PIDs against persons who make disclosures and any witnesses; and
  - providing for confidentiality of the investigative process;
- taking reasonable steps to protect public officials of nbn against reprisals that have been or may be taken in relation to a PID;

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<sup>3</sup> s 36(b)(ii), PID Act.

<sup>4</sup> s 34, PID Act.

<sup>5</sup> s 77(1), PID Act.

<sup>6</sup> s 77(2), PID Act.

<sup>7</sup> s 59 and 60, PID Act.

<sup>8</sup> s 43(5) and (6), PID Act.

- ensuring disclosures are properly investigated, preparing an investigation report and taking appropriate action in response to the report;
- providing information and assistance to the Ombudsman, including in relation to PID Act annual and six-monthly reporting;
- acting as the point of contact for staff for any queries or questions regarding nbn's PID Act obligations and compliance;
- providing education and training to public officials of nbn on PIDs and related matters as well as ensuring authorised officers and supervisors have appropriate training and education to perform their duties under the PID Act;
- facilitating PIDs by:
  - ensuring there is a sufficient number of authorised officers who are readily accessible and known to public officials of nbn; and
  - encouraging and supporting public officials who make or consider making disclosures and any other persons who assist in relation to disclosures; and
- providing information and advice to individuals who disclose information concerning disclosable conduct and who may be unaware of the consequences of making a PID.

As WPO's are responsible for allocating and investigating disclosures under the PID Act, they also have a mandatory referral obligation under the *National Anti-Corruption Commission Act 2022* (Cth) (the **NACC Act**).<sup>9</sup> Where a WPO becomes aware of a "corruption issue" concerning a current or former staff member of nbn and the WPO suspects that the issue could involve "corrupt conduct" that is "serious or systemic", the WPO may be required to refer the matter to the National Anti-Corruption Commissioner. nbn's CEO, WIOs and any other staff responsible for allocating or investigating disclosures under the PID Act, including delegates and third party contracted service providers, also have a mandatory referral obligation under the NACC Act.<sup>10</sup>

## 3 PROCEDURES

### 3.1 STEP 1: DISCLOSURE IS MADE

A public official of nbn may, in accordance with the [PID Information Sheet for Disclosers](#), make a public interest disclosure to a PID supervisor or manager or directly to an authorised officer (i.e. a WPO). The disclosure can be made orally or in writing (for example, in person, by telephone, email or post), however public officials are encouraged to use the PID Disclosure Form.

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.

In addition, disclosures may be made to KPMG FairCall via the online disclosure mechanism.

### 3.2 STEP 2: WPO CONSIDERS WHETHER A DISCLOSURE MEETS THE REQUIREMENTS FOR A PID

#### 3.2.1 WPO CONSIDERS DISCLOSURE AND MAKES NECESSARY INQUIRIES

Following receipt of a disclosure, the WPO will allocate the disclosure to an agency, unless they are satisfied on reasonable grounds that:

- there is "**no reasonable basis**" on which the disclosure could be considered an internal disclosure for the purposes of the PID Act; or
- the conduct disclosed would be more appropriately investigated under another Commonwealth law or power.

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<sup>9</sup> s 35, NACC Act.

<sup>10</sup> ss 33 and 35, NACC Act.

**If a disclosure is made to KPMG FairCall or a supervisor that is not a WPO:** KPMG FairCall or the supervisor will not consider whether a disclosure meets the requirements for a public interest disclosure (or PID).

If the disclosure is made to a supervisor, and the supervisor has reasonable grounds to believe the disclosure concerns or could concern disclosable conduct, the supervisor will inform the discloser that the disclosure could be treated as an internal disclosure under the PID Act, explain the PID procedure and the protections that are available under the PID Act and advise them about the circumstances in which the disclosure must be referred to another agency, person or body under another Commonwealth law.<sup>11</sup>

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

- the discloser has not consented to KPMG FairCall providing their contact details to nbn and/or the Ombudsman and where nbn has made a written request to KPMG FairCall; or
- nbn has made a written request to KPMG FairCall,

(a **Point of Contact Request**) KPMG FairCall will act as the point of contact between a discloser and: a WPO in its capacity as authorised officer; a WPO in its capacity as principal officer; or the Ombudsman (as applicable). This may include, without limitation:

- forwarding questions and other information from nbn or the Ombudsman to the discloser;
- facilitating direct communication between nbn and the discloser (where the discloser consents);
- updating the discloser on the progress of investigations into the disclosure;
- informing the discloser of any extensions to investigation timeframes; and/or
- providing the discloser with a copy of the investigation report.

**When a disclosure is made to or received by a WPO:** The WPO will consider whether to allocate the disclosure, including by determining whether:

- the information provided by the disclosers consists of an "internal disclosure" under the PID Act. To be an internal disclosure:
  - the discloser must provide information which tends to show (or which the discloser believes tends to show) one or more instances of "disclosable conduct";<sup>12</sup> and
  - the disclosure must not be made in the course of performing the discloser's ordinary functions as a public official;<sup>13</sup> and
- the disclosure has been made by a current or former public official.

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.

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<sup>11</sup> s 60A, PID Act.

<sup>12</sup> A disclosure can be an "internal disclosure" even if it also includes other information, including information that relates to personal work-related conduct: s 23(2A) and 43(4A), PID Act.

<sup>13</sup> s 26 Item 1 Column 3, PID Act.

### 3.2.2 WPO MAKES DECISION TO ALLOCATE OR NOT ALLOCATE DISCLOSURE

The WPO must use their best endeavours to make a decision about whether or not to allocate the disclosure within 14 days of the disclosure being made or given to the WPO.<sup>14</sup>

**If the WPO is satisfied of an internal disclosure:** he or she will allocate the disclosure to nbn or another agency for handling and investigation in accordance with the process set out at Step 3 below.<sup>15</sup>

**If the WPO is not so satisfied:** the disclosure will not be allocated.<sup>16</sup>

If the WPO is satisfied on reasonable grounds that the conduct disclosed would be more appropriately investigated under another Commonwealth law or power, the WPO must take reasonable steps to refer the conduct disclosed, or to facilitate its referral, for investigation under the other law or power.<sup>17</sup>

### 3.2.3 IF WPO DECIDES NOT TO ALLOCATE, WPO MUST NOTIFY RELEVANT PERSONS

If contacting the discloser is reasonably practicable, the WPO must give written notice to the discloser of:

- the decision not to allocate and the reasons for the decision; and
- if applicable, the details of any action taken or proposed to be taken to refer the conduct for investigation under another Commonwealth law or power; or
- if the WPO has not taken or does not propose to take any action, any courses of action that might be available to the discloser under another Commonwealth law or power.<sup>18</sup>

The WPO must also keep a written record of the following matters in relation to the notice of the decision not to allocate:

- whether the notice was given to the discloser (and if not, why not);
- the date and time the discloser was notified; and
- the means by which the discloser was notified.<sup>19</sup>

The WPO must give written notice to the Ombudsman of:

- the decision not to allocate and the reasons for the decision;
- whether they have taken or propose to take action to refer the conduct for investigation under another Commonwealth law or power; and
- if applicable, the details of any such action taken or proposed.<sup>20</sup>

Where the disclosure has been referred from KPMG FairCall and the discloser did not consent to KPMG FairCall providing their contact details to nbn, the WPO will require that KPMG FairCall notifies the discloser.

## 3.3 STEP 3: WPO ALLOCATES THE DISCLOSURE

**If the disclosure is made to or received by a WPO:** The WPO will allocate the disclosure to the WPO highest on the WPO Priority List.

The WPO may make any inquiries and obtain any information that they deem necessary in order to allocate a PID.<sup>21</sup> Where the disclosure has been referred from KPMG FairCall and the WPO makes a Point of Contact Request, KPMG FairCall will operate

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<sup>14</sup> s 43(11), PID Act. To the extent a “stop action direction” under the NACC Act prevents the allocation of a disclosure, the WPO has 14 days after the day when the WPO becomes aware that the direction no longer applies.

<sup>15</sup> s 43(3)(a), PID Act.

<sup>16</sup> s 43(3)(b), PID Act.

<sup>17</sup> s 44A(2), PID Act.

<sup>18</sup> s 44A(3)(a), PID Act.

<sup>19</sup> s 9, PID Standards.

<sup>20</sup> s 44A(3)(b) and (4), PID Act.

<sup>21</sup> s 43(10), PID Act.

as the point of contact between the WPO and the discloser for the purposes of making such inquiries and obtaining such information.

Allocations must be notified to each of nbn, the Ombudsman and the discloser<sup>22</sup> in accordance with Step 4 below.

**If the disclosure does not substantially relate to nbn** but relates to another agency, then the WPO will allocate the disclosure to the most appropriate agency, having regard to the principle that an agency should only handle a disclosure if some or all of the disclosable conduct relates to the agency and any other matters the WPO considers relevant.<sup>23</sup>

A disclosure can only be allocated to another agency with that agency's consent.<sup>24</sup>

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 a disclosure while that direction remains in place. If this occurs, the WPO must give written notice to the Ombudsman.<sup>25</sup> The WPO must also keep a written record of the details of the direction, including when the direction was made and when the stop action direction no longer applies,<sup>26</sup> and whether it was reasonably practicable or appropriate for the discloser to be given a copy of the notice.<sup>27</sup>

## 3.4 STEP 4: WPO NOTIFIES RELEVANT PERSONS OF ALLOCATION

### 3.4.1 NOTIFYING NBN OR OTHER AGENCY OF ALLOCATION

The WPO must, as soon as reasonably practicable after deciding to allocate the disclosure to nbn or another agency, give written notice to the principal officer of each agency the disclosure is allocated to.<sup>28</sup> If the disclosure is allocated to nbn, the notice will be provided to the relevant WPO in accordance with Step 6.

The notice must contain the following matters:<sup>29</sup>

- the allocation to the agency;
- the information that was disclosed;
- the conduct disclosed; and
- the discloser's name and contact details (if the discloser's name and contact details are known to the WPO and the discloser consents to this information being provided).

### 3.4.2 NOTIFYING THE OMBUDSMAN

The WPO must, as soon as reasonably practicable after deciding to allocate the disclosure to nbn or another agency, give written notice to the Ombudsman of the matters listed in 3.4.1 above.<sup>30</sup>

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<sup>22</sup> s 44, PID Act.

<sup>23</sup> ss 43(5), PID Act.

<sup>24</sup> s 43(9), PID Act.

<sup>25</sup> s 44B, PID Act.

<sup>26</sup> s 8, PID Standards.

<sup>27</sup> s 9(2) and (3), PID Standards.

<sup>28</sup> s 44(2) and (3)(a), PID Act.

<sup>29</sup> s 44(2), PID Act.

<sup>30</sup> s 44(2) and (3)(b), PID Act.

### 3.4.3 NOTIFYING THE DISCLOSER

If contacting the discloser is reasonably practicable, the WPO will, as soon as reasonably practicable, give the discloser a copy of the written notice of allocation provided to the allocated agency and Ombudsman,<sup>31</sup> and record this in accordance with Step 5.<sup>32</sup>

Where the disclosure has been referred from KPMG FairCall and the WPO makes a Point of Contact Request, KPMG FairCall will operate as the point of contact between the WPO and the discloser for the purposes of providing such information to the discloser.

### 3.4.4 NOTIFICATION OF REFERRAL TO NATIONAL ANTI-CORRUPTION COMMISSIONER

Where the WPO is required to refer the disclosure to the National Anti-Corruption Commissioner, they will inform the discloser of the referral as soon as reasonably practicable, if contacting the discloser is reasonably practicable.

## 3.5 STEP 5: WPO MAKES A RECORD OF THE ALLOCATION DECISION

When a WPO allocates the disclosure to nbn or another agency, he or she will keep an appropriate written record of:

- the allocation decision, including:<sup>33</sup>
  - the decision;
  - the reasons for the decision; and
  - the consent provided by the authorised officer of the agency to which the allocation is made; and
- the communication with the discloser, including:<sup>34</sup>
  - whether the notice was provided to the discloser (and if not, why not);
  - the date and time the discloser was notified; and
  - the means by which the discloser was notified.

These records will be kept confidential.

## 3.6 STEP 6: WPO RECEIVES ALLOCATION

A WPO may receive an allocation of a disclosure from:

- a WPO in their capacity as an authorised officer of nbn, following a determination that the disclosure should be allocated internally; or
- an authorised officer of an external agency, if the agency allocates the disclosure to nbn, due to the disclosable conduct relating to nbn.

## 3.7 STEP 7: WPO PROVIDES INFORMATION TO DISCLOSERS

Within 14 days of the allocation of a PID to nbn, a WPO will ensure that the discloser is given information about the WPO's discretion, as a delegate of the principal officer, to:<sup>35</sup>

- decide not to investigate the disclosure;
- decide not to investigate the disclosure further;

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<sup>31</sup> s 44(4), PID Act.

<sup>32</sup> s 8, PID Standards.

<sup>33</sup> s 8, PID Standards.

<sup>34</sup> s 9(2), PID Standards.

<sup>35</sup> s 14, PID Standards.

- decide to investigate the disclosure under a separate investigative power; or
- decide to investigate the disclosure under another Commonwealth law or power.

Where the allocation of the PID has been an internal allocation by a WPO in its capacity as an authorised officer, the information will have been provided to them in the [PID Information Sheet for Disclosers](#), or ensure that the contents of it have otherwise been conveyed, by the relevant WPO (or, where applicable, KPMG FairCall).

Where the allocation has originated from an external agency, then the WPO (in his or her capacity as the principal officer's delegate) will ensure that the discloser receives a copy of the [PID Information Sheet for Disclosers](#), or ensure that the contents of it have otherwise been conveyed.

## 3.8 STEP 8: WPO CONSIDERS WHETHER TO INVESTIGATE DISCLOSURE

### 3.8.1 WPO MUST INVESTIGATE UNLESS EXCEPTION APPLIES

After receiving an allocation, a WPO must investigate the disclosure, except in certain circumstances where the WPO may exercise a discretion not to investigate.<sup>36</sup> Investigating involves determining whether there are one or more instances of disclosable conduct and can also include considering whether a different investigation should be conducted by another agency or body under another Commonwealth law or power.<sup>37</sup>

In certain circumstances, the WPO may decide not to commence or continue an investigation, including if:

- the disclosure is frivolous or vexatious;
- the information concerns the same, or substantially the same, disclosable conduct as an earlier disclosure that has been or is being investigated;
- the WPO is satisfied, on reasonable grounds, that the conduct disclosed would be more appropriately investigated under another Commonwealth law or power;<sup>38</sup>
- the discloser does not wish an investigation to be pursued and the WPO is satisfied, on reasonable grounds, that there are no matters warranting investigation;<sup>39</sup> or
- it is impracticable for the disclosure to be investigated.<sup>40</sup>

If the WPO decides to exercise this discretion mid-investigation, the process in Step 9 below should still be undertaken.

A referral to the National 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 also prevent the WPO from commencing or continuing an investigation while that direction remains in place.<sup>41</sup>

### 3.8.2 SEEKING FURTHER INFORMATION FROM DISCLOSERS

On occasion, it may be difficult for a WPO to decide whether to investigate a disclosure on the basis of the information provided in the initial disclosure, particularly where the WPO is considering not investigating on the basis that it is impractical to do so due to the absence of information provided in the initial disclosure. In such cases, the WPO may, where practicable, seek further information from disclosers in order to make such an assessment.<sup>42</sup>

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<sup>36</sup> s 47(1), PID Act.

<sup>37</sup> s 47(2) and (3), PID Act.

<sup>38</sup> s 48(1)(ga) and (1A), PID Act. The WPO cannot be satisfied only because the conduct disclosed raises a “corruption issue” for the purposes of the NACC Act.

<sup>39</sup> s 48(1)(h), PID Act.

<sup>40</sup> s 48(1)(i), PID Act.

<sup>41</sup> s 47(4), PID Act.

<sup>42</sup> s 53(2), PID Act.

### 3.8.3 KEEPING A RECORD OF THE INVESTIGATION DECISION

When a WPO decides to investigate or not investigate or not further investigate a disclosure, they will keep an appropriate written record of:<sup>43</sup>

- the investigation decision, including:
  - the decision; and
  - the reasons for the decision; and
- if the WPO was satisfied that the conduct disclosed would be more appropriately investigated under another non-investigative law or power, details of:
  - the other non-investigative law or power in question;
  - the agency or person to which the conduct has, or will be, referred; and
  - any steps taken to refer or facilitate the referral of the conduct; and
- the communication with the discloser, including:
  - whether the notice was provided to the discloser (and if not, why not);
  - the date and time the discloser was notified; and
  - the means by which the discloser was notified.

These records will be kept confidential.

## 3.9 STEP 9: WPO CONDUCTS RISK ASSESSMENT

Protection of disclosers and other public officials against reprisals in relation to public interest disclosures is a key requirement of the PID Act. When a WPO receives an allocation of a PID (regardless of whether or not the WPO decides to investigate), that WPO will conduct an assessment of the risk of reprisals against public officials of nbn.<sup>44</sup> See section 4 below.

## 3.10 STEP 10: WPO NOTIFIES THE DISCLOSER AND OMBUDSMAN

### 3.10.1 IF THE DISCLOSURE WILL NOT BE INVESTIGATED

If a WPO decides not to investigate a disclosure they must, as soon as reasonably practicable, give written notice to the discloser and the Ombudsman of:

- **The discloser:** the decision not to investigate the disclosure, the reasons for the decision, and (if applicable) details of any action taken or proposed to be taken to refer the conduct for investigation under another Commonwealth law or power.<sup>45</sup> Where the WPO does not have contact details for the discloser but the relevant authorised officer does have such details, the WPO will request that the authorised officer sends the notification on to the discloser.

Where KPMG FairCall operates as the point of contact with the discloser, the WPO will request KPMG FairCall to notify the discloser of the decision not to investigate their disclosure.

In providing the reasons to not investigate to the discloser, the WPO may delete/redact any reasons that would cause the document to be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*.<sup>46</sup>

- **The Ombudsman:** the WPO's decision not to investigate, the reasons for the decision, whether the WPO has taken or proposes to take action to refer the conduct for investigation under another Commonwealth law or power and if so specific details of such action<sup>47</sup>

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<sup>43</sup> s 10, PID Standards.

<sup>44</sup> s 59(9), PID Act.

<sup>45</sup> s 50(1)(b), 50(2), PID Act.

<sup>46</sup> s 50(3), PID Act.

<sup>47</sup> s 50A(1) and (3), PID Act.

A decision not to investigate does not preclude the matter being investigated otherwise than as a PID under the PID Act.<sup>48</sup> This may include the disclosure being investigated as a HR matter.

### 3.10.2 IF THE DISCLOSURE WILL BE REFERRED FOR INVESTIGATION UNDER ANOTHER COMMONWEALTH LAW OR POWER

If the WPO decides that the conduct disclosed would be more appropriately investigated under another Commonwealth law or power, they must, as soon as reasonably practicable, take reasonable steps to refer the conduct disclosed, or to facilitate its referral, for investigation under the other law or power.<sup>49</sup>

### 3.10.3 IF DISCLOSURE CANNOT BE INVESTIGATED BECAUSE OF A STOP ACTION DIRECTION

If the WPO cannot investigate the disclosure because of a “stop action direction” under the NACC Act, the WPO will be required to provide written notice to the Ombudsman and the discloser.<sup>50</sup> If the WPO begins or continues an investigation after a “stop action direction” under the NACC Act ends, the WPO must give written notice to the discloser as soon as reasonably practicable.<sup>51</sup>

### 3.10.4 IF THE DISCLOSURE WILL BE INVESTIGATED

If the WPO determines that, under the PID Act, nbn is required to investigate the disclosure, then the WPO will, as soon as reasonably practicable, give written notice to the discloser of the decision to investigate<sup>52</sup> as well as the estimated length of the investigation.<sup>53</sup>

Where KPMG FairCall operates as the point of contact with the discloser, the WPO will request that KPMG FairCall notify the discloser of a decision to investigate their disclosure.

## 3.11 STEP 11: WPO CONSIDERS WHETHER TO APPOINT AN INVESTIGATOR AND WHO

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

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

- an internal Whistleblower Investigation Officer (**WIO**); or
- an external investigator contracted by nbn (**External Investigator**),

(each an **Appointed Investigator** and together, the **Appointed Investigators**).

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

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<sup>48</sup> s 48(2), PID Act.

<sup>49</sup> s 50AA, PID Act.

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

<sup>51</sup> s 50(4A), PID Act.

<sup>52</sup> s 50(1)(a), PID Act.

<sup>53</sup> s 50(1A), PID Act.

## 3.12 STEP 12: WPO CONDUCTS INVESTIGATION

Investigations must be completed within 90 days of the allocation.<sup>54</sup> If more time is required, the WPO investigating the disclosure may apply to the Ombudsman for additional time.<sup>55</sup> The investigation is completed when the WPO has prepared the report of the investigation (Step 13, below).<sup>56</sup>

### 3.12.1 NOTIFICATION OF ANY EXTENSION

Where an investigator considers that it is likely or known that the investigation will not be completed within 90 days (or within any extension granted by the Ombudsman), the investigator or WPO (as applicable) will apply to the Ombudsman for an extension of time.<sup>57</sup> The Ombudsman will inform the discloser and give reasons for the extension where reasonably practicable.<sup>58</sup> Where the Ombudsman does not have the discloser's identifying or contact details, the WPO may be asked to notify the discloser. In addition, where an extension is granted, the WPO will let the discloser know, as soon as reasonably practicable after the extension is granted, about the progress of the investigation.<sup>59</sup>

Where KPMG FairCall operates as the point of contact with the discloser, the WPO will request KPMG FairCall to notify the discloser of the extension.

### 3.12.2 REFERRAL OF INFORMATION TO POLICE AND OTHERS

An investigator who suspects on reasonable grounds that information disclosed as part of an internal disclosure, or information that is obtained during the course of an investigation, constitutes evidence of an offence against a Commonwealth, state or territory law, may disclose that information to a member of a relevant police force.<sup>60</sup>

However, in cases where the potential offence is serious (that is, punishable by imprisonment for two years or more), notification of the relevant police force is mandatory unless certain specific exceptions apply, including if the information raises a "corruption issue" under the NACC Act and it has already been referred to the National Anti-Corruption Commissioner.<sup>61</sup>

The investigator may also be required to refer "corruption issues" to the National Anti-Corruption Commissioner if, in the course of investigating an internal disclosure, they become aware of an issue concerning a current or former staff member of nbn and they suspect that the issue could involve "corrupt conduct" that is "serious or systemic".<sup>62</sup>

## 3.13 STEP 13: WPO PREPARES A REPORT OF THE INVESTIGATION

The WPO will prepare a report of the investigation.<sup>63</sup>

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<sup>54</sup> s 52(1), PID Act. If a "stop action direction" under the NACC Act applies, investigations must be completed within 90 days of the day on which the WPO becomes aware that the direction no longer applies.

<sup>55</sup> s 52(3), PID Act.

<sup>56</sup> s 52(2), PID Act.

<sup>57</sup> s 52(3)(b), PID Act.

<sup>58</sup> s 52(5)(a), PID Act.

<sup>59</sup> s 52(5)(b), PID Act.

<sup>60</sup> s 56(2), PID Act.

<sup>61</sup> ss 56(3) and 56(4), PID Act.

<sup>62</sup> s 35, NACC Act.

<sup>63</sup> s 51(1), PID Act.

### 3.14 STEP 14: WPO PROVIDES NOTICE OF COMPLETION OF INVESTIGATION AND A COPY OF REPORT

Once a report has been prepared, the WPO must ensure that, subject to the PID Act, a copy of the report is provided to the discloser (if reasonably practicable) and the Ombudsman within a reasonable time after the preparation of the report.<sup>64</sup>

If a copy of the report is not provided to the discloser, the WPO must keep an appropriate written record of the reasons why the report was not provided.<sup>65</sup>

### 3.15 STEP 15: FURTHER ACTION TAKEN AFTER THE INVESTIGATION

Once an investigation has been completed, a report prepared and the Ombudsman and the discloser notified (if contacting the discloser is reasonably practicable), the WPO will ensure appropriate action is taken in response to any recommendations that may be contained in an investigation report, or to any information which arises during the course of an investigation.<sup>66</sup> The actions that may be available and appropriate will depend on the specific circumstances of the investigation, but may include:

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

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

Under the PID Act, it is also open to the Ombudsman to review the handling of a disclosure at nbn, if the Ombudsman has received a notification or report in relation to the disclosure.<sup>67</sup> If the Ombudsman reviews the handling of a disclosure and makes recommendations to nbn, the WPO can respond to such recommendations as the WPO thinks fit.<sup>68</sup> However, the WPO must give written notice to the Ombudsman of any action taken in response to recommendations, or if no action is proposed to be taken, the reason why.<sup>69</sup>

## 4 RISK ASSESSMENT AND CONFIDENTIALITY

### 4.1 REPRISALS

There are serious penalties (i.e. imprisonment or a fine (or both), and/or civil penalties) that apply under the PID Act if someone takes a reprisal against another person, that is:

- engages in conduct that results in detriment to a person; or
- engages in conduct that results in or consists of a threat to cause such detriment,

because they believe or suspect that the person (or any other person) has made, may have made, proposes to make or could make a public interest disclosure.

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<sup>64</sup> s 51(4), PID Act.

<sup>65</sup> s 10, PID Standards.

<sup>66</sup> s 59(6), PID Act.

<sup>67</sup> s 55(1) and (3), PID Act.

<sup>68</sup> s 55(7), PID Act.

<sup>69</sup> s 55(8), PID Act.

**Detriment** includes any of the following:

- dismissal of an employee;
- injury of an employee in their employment;
- alteration of an employee's position to their disadvantage;
- discrimination between employees;
- harassment or intimidation;
- physical or psychological harm or injury to a person (including a stress-related injury); or
- damage to a person's property, reputation, business, financial position, or any other damage (e.g denying them a reference or a promotion without appropriate reasons).

nbn takes reprisals seriously. Please let a WPO know if you believe that you or someone else are being or may be subject to a reprisal.

## 4.2 RISK ASSESSMENT

Risk assessments will be conducted as early as possible in the process of handling a PID by the following people in the following circumstances:

- if a PID has been received by an authorised officer of nbn, but allocated to an external agency other than nbn, the authorised officer that has received the disclosure will conduct a risk assessment.
- if a PID has been received and allocated to nbn, the WPO that has received the allocation will conduct a risk assessment. A risk assessment will be conducted regardless of whether a WPO decides to investigate or not.

In conducting a risk assessment, the relevant WPO will:

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

## 4.3 CONFIDENTIALITY

nbn takes all disclosures seriously. In relation to any information that a discloser provides in relation to a disclosure and any information obtained during the course of an investigation, all efforts will be made to also keep the information confidential, subject to the need to conduct an adequate investigation and in accordance with the PID Act. All documents, reports and records relating to the investigation of disclosures will be confidentially stored and retained in an appropriate and secure manner.