



BMS002915 | Rev 5.0 | 04/10/18  
Owner: Legal

## PID Act Information Sheet for Disclosures

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**.

Not all disclosures of wrongdoing will be disclosures under the PID Act (i.e. a PID). If you wish to make a complaint regarding a Human Resources related matter e.g. a possible breach of **nbn's** Code of Conduct, or if you do not think your complaint relates to serious disclosable conduct (see Q3 below), you should instead raise your grievance in accordance with the Managing Workplace Grievances Policy.

Please note that if you make a PID:

- **nbn** will be required to handle your disclosure in accordance with the PID Act.
- 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 PID is a disclosure made:

- by a current or former **public official** (see Q2 below);<sup>1</sup>
- of information that tends to show, or that the public official reasonably believes tends to show **disclosable conduct** (see Q3 below);<sup>2</sup>
- to a supervisor, an authorised officer or the Commonwealth Ombudsman.<sup>3</sup>

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

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

<sup>3</sup> s 26 Item 1 Column 2, s 34 Item 1 Column 2, PID Act.



## 2. Who can make a PID about nbn?

You must be a current or former public official to make a PID under the PID Act.<sup>4</sup> **Public officials**<sup>5</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** (**contracted service provider**); and
- officers and employees of contracted service providers.

Note that if a Whistleblower Protection Officer (**WPO**) believes that an individual has information that concerns disclosable conduct, an authorised officer may determine that a 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>6</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>7</sup> **Disclosable conduct**<sup>8</sup> is conduct by:

- **nbn** or another public sector agency;
- a public official in connection with their position; and/or
- a contracted service provider 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;
  - perverts the course of justice;
  - is corrupt;
  - constitutes maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent;
  - is an abuse of public trust;
  - involves fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice;
  - results in wastage of public money or public property;
  - unreasonably endangers health and safety;
  - endangers the environment; and/or
  - is prescribed by the PID rules.

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<sup>4</sup> s 26(1)(a), PID Act.

<sup>5</sup> s 69, PID Act.

<sup>6</sup> s 70, PID Act.

<sup>7</sup> s 26 Item 1 Column 3, PID Act.

<sup>8</sup> s 29, PID Act.



Without limiting any of these grounds, disclosable conduct also includes conduct by a public official that involves or is engaged in for the purpose of abusing their position as a public official, and conduct that could give reasonable grounds for disciplinary action against the public official.<sup>9</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>10</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>11</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** 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.

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>12</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;
  - expenditure or proposed expenditure related to such policy or action.
- Conduct that is wholly private and has no bearing on the person's position as a public official.

## 5. Who can a public interest disclosure be made to?

You must use one of the avenues identified below to gain the protections available under the PID Act.<sup>13</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>14</sup> or external disclosure<sup>15</sup> are met. 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>16</sup>

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<sup>9</sup> s 29(2), PID Act.

<sup>10</sup> s 26(1)(a), PID Act.

<sup>11</sup> s 48(1)(c), PID Act.

<sup>12</sup> s 31, PID Act.

<sup>13</sup> s 26(1)(b), PID Act.

<sup>14</sup> s 26 Item 3, PID Act.

<sup>15</sup> s 26 Item 2, PID Act.

<sup>16</sup> s 12, PID Act.



## 5.1 Internal Disclosures

You can report suspected wrongdoing regarding **nbn** either to:

- your current supervisor or manager;<sup>17</sup>
- an authorised officer of **nbn**;<sup>18</sup> or
- the Commonwealth Ombudsman.<sup>19</sup>

If you report suspected wrongdoing to your current supervisor or manager, your supervisor or manager will refer your disclosure to a WPO (or, where applicable, in accordance with the Managing Workplace Grievances Policy).

If you have information about suspected wrongdoing in a public sector agency that is not **nbn**, you can make a disclosure to an authorised officer in that agency.<sup>20</sup>

**nbn's** authorised officers are:

<b>FairCall*</b>	Phone:	1800 179 054
	Email:	faircall@kpmg.com.au
	Online:	www.faircall.kpmg.com.au
	Post:	The Faircall Manager, KPMG Forensic  PO Box H67, Australia Square, 1213 Sydney
	Fax:	(02) 9335 7466
<b>The Company Secretary</b>	Phone:	(03) 8662 8080
	Email:	debraconnor@nbngo.com.au
	Post:	727 Collins Street  Melbourne Victoria 3000
	Fax:	(03) 8662 8001
<b>The Chief Customer Officer Residential</b>	Phone:	(02) 8918 5869
	Email:	bradwhitcomb@nbngo.com.au
	Post:	Level 11, 100 Arthur Street  North Sydney NSW 2060
	Fax:	(02) 9926 1901

<sup>17</sup> s 26 Item 1 Column 2, PID Act.

<sup>18</sup> s 34 Item 1 Column 2 (a), (b), PID Act.

<sup>19</sup> s 34 Item 1 Column 2 (c), PID Act.

<sup>20</sup> s 34 Item 1 Column 2 (a), PID Act.



<b>The Executive General Manager Supply</b>	Phone:	(03) 9209 7513
	Email:	craigmarshall@nbnco.com.au
	Post:	360 Elizabeth Street Melbourne Victoria 3000
	Fax:	(03) 8662 8001
<b>The Executive General Manager Commercial Finance</b>	Phone:	(03) 9209 7552
	Email:	johnbraddon@nbnco.com.au
	Post:	360 Elizabeth Street Melbourne Victoria 3000
	Fax:	(03) 8662 8001

\* 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>21</sup> you may make an emergency disclosure to anyone, 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>22</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>23</sup> and
- you must not disclose intelligence information, including sensitive law enforcement information.<sup>24</sup>

## 5.3 External Disclosures

If you have already made an internal disclosure under the PID Act,<sup>25</sup> you may later make an external disclosure to any person<sup>26</sup> if:

- the internal investigation under the PID Act was not completed within 90 days or the extended timeframe approved by the Ombudsman;
- you believe on reasonable grounds that the investigation under the PID Act was inadequate;<sup>27</sup> or

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<sup>21</sup> s 26 Item 3 Column 3 (a), PID Act.

<sup>22</sup> s 26 Item 3 Column 3 (b), PID Act.

<sup>23</sup> s 26 Item 3 Column 3 (c), (d), PID Act.

<sup>24</sup> s 26 Item 3 Column 3 (f), PID Act.

<sup>25</sup> s 26 Item 2 Column 3 (b), PID Act.

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

<sup>27</sup> s 26 Item 2 Column 3 (c)(i), PID Act.



- you believe on reasonable grounds that **nbn** took inadequate action after the investigation was completed;<sup>28</sup> and
- it is not on balance contrary to the public interest for an external disclosure to be made.<sup>29</sup>

If you make an external disclosure you must ensure that:

- you do not disclose more information than is reasonably necessary to identify the wrongdoing;<sup>30</sup> and
- you must not disclose intelligence information, including sensitive law enforcement information (ie information whose disclosure is reasonably likely to prejudice Australia's law enforcement interests).<sup>31</sup>

## 6. Can I make an anonymous disclosure?

Yes<sup>32</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>33</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>34</sup>, subject to limited exceptions including your consent.<sup>35</sup>
- It will be difficult to ensure your protection from reprisal if **nbn** does not know your identity.
- The authorised officer 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>36</sup> If they cannot contact you to seek necessary further information, the matter may not proceed.<sup>37</sup>
- 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>38</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>39</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.

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<sup>28</sup> s 26 Item 2 Column 3 (c)(ii), PID Act.

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

<sup>30</sup> s 26 Item 2 Column 3 (f), PID Act.

<sup>31</sup> s 26 Item 2 Column 3 (h), PID Act.

<sup>32</sup> s 28(2), PID Act.

<sup>33</sup> s 44(1)(d), PID Act.

<sup>34</sup> ss 20(1), 20(2), PID Act.

<sup>35</sup> s 20(3), PID Act.

<sup>36</sup> s 43, PID Act.

<sup>37</sup> s 43(4), PID Act.

<sup>38</sup> s 48(1)(i), PID Act.

<sup>39</sup> ss 44(4), 50(5), 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 paragraph 6 above), your name and contact details;
- 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 *Disclosure Form* 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.

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 will not be covered by the protections in the PID Act;<sup>40</sup>
- 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.<sup>41</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>42</sup>

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<sup>40</sup> s 12, PID Act.

<sup>41</sup> s 61, PID Act.

<sup>42</sup> s 10(1)(a), PID Act.



- you will have absolute privilege in proceedings for defamation in respect of the disclosure;<sup>43</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>44</sup> and
- a contract to which you are a party cannot be terminated because of your disclosure.<sup>45</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 make a disclosure that:

- is intentionally false or misleading;<sup>46</sup> or
- contravenes a designated publication restriction without a reasonable excuse for doing so.<sup>47</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>48</sup>

## 10. What happens after I have made a disclosure?

### 10.1 Step 1: The authorised officer will decide whether your disclosure is covered by the PID Act.<sup>49</sup> They may make preliminary inquiries and may ask you for further information.<sup>50</sup>

*If not satisfied* that there are reasonable grounds to suspect the disclosable conduct has occurred,<sup>51</sup> the authorised officer will notify you of this decision, provide reasons and provide any other course of action that might be available to you under other laws of the Commonwealth.<sup>52</sup> Such other courses of action may include a complaint to the Commonwealth Ombudsman under the Ombudsman Act 1976 or an action under the Fair Work Act 2009.

*If satisfied* that there are reasonable grounds to suspect the disclosable conduct has occurred, the authorised officer will take **Step 2**.

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<sup>43</sup> s 10(2)(a), PID Act.

<sup>44</sup> s 10(1)(b), PID Act.

<sup>45</sup> s 10(1)(b), PID Act.

<sup>46</sup> s 11(1), PID Act.

<sup>47</sup> s 11A, PID Act.

<sup>48</sup> s 12, PID Act.

<sup>49</sup> s 43, PID Act.

<sup>50</sup> s 43(4), PID Act.

<sup>51</sup> s 43(2), PID Act.

<sup>52</sup> s 44(3), PID Act.





## 10.2 Step 2: The authorised officer will allocate the matter to a WPO within **nbn**, or where appropriate, to the Ombudsman, within 14 days of your initial disclosure.<sup>53</sup>

If you consent, your name and/or contact details will be provided to the person receiving the allocation.<sup>54</sup> You will be notified of this allocation.<sup>55</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**).

## 10.3 Step 3: The WPO must investigate your disclosure, unless an exemption applies.<sup>56</sup>

The WPO may decide not to investigate your disclosure or not to continue to investigate your disclosure,<sup>57</sup> if:

- you are not a current or former public official;
- your disclosure does not concern serious disclosable conduct;
- 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 conduct that is the same or substantially the same as disclosable conduct being investigated under a law of the Commonwealth (other than the PID Act) 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.

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>58</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 of this decision, provide reasons and provide any other course of action that might be available to you under other laws of the Commonwealth.<sup>59</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.

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<sup>53</sup> s 43(5), PID Act.

<sup>54</sup> s 44(1)(d), PID Act.

<sup>55</sup> s 44(2), PID Act.

<sup>56</sup> s 47, PID Act.

<sup>57</sup> s 48, PID Act.

<sup>58</sup> s 49, PID Act.

<sup>59</sup> s 50(2)(b), PID Act.



## 10.4 Step 4: After the investigation, the WPO must prepare a report within 90 days of the date the matter was allocated for investigation and send you a copy.<sup>60</sup>

The Ombudsman may grant one or more extensions of time in relation to the investigation, in certain circumstances.<sup>61</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 detrimental action to you, and **nbn's** response to those claims.<sup>62</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>63</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.

## 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. What should I do if someone causes a reprisal to be made against me because of my disclosure?

You should immediately advise an authorised officer 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>60</sup> ss 51, 52, PID Act.

<sup>61</sup> s 52(3), PID Act.

<sup>62</sup> s 51(2), PID Act.

<sup>63</sup> s 51(5), PID Act.



## 12. 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 Assist program which offers short term solution focused counselling. This can be provided face-to-face or over the telephone, depending on what is most convenient for you. To access Employee Assist please call 1300 360 364.

The WPO will also aim to take your individual circumstances into account and may appoint a member of the **nbn** HR 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 [www.ombudsman.gov.au/docs/Speaking\\_up\\_about\\_wrongdoing.pdf](http://www.ombudsman.gov.au/docs/Speaking_up_about_wrongdoing.pdf), which is published by the Commonwealth Ombudsman.