

WHISTLEBLOWER POLICY

1. Purpose

Transparent whistleblower policies are essential to good risk management and corporate governance. They help uncover misconduct that may not otherwise be detected. Often, such wrongdoing only comes to light because of individuals (acting alone or together) who are prepared to disclose it, sometimes at great personal and financial risk.

NAC's Whistleblower Policy aims to:

- encourage disclosures of wrongdoing;
- help deter wrongdoing, in line with the entity's risk management and governance frameworks;
- ensure individuals who disclose wrongdoing can do so safely, securely and with confidence that they will be protected and supported;
- ensure disclosures are dealt with appropriately and on a timely basis;
- provide transparency around the NAC's procedures for receiving, handling and investigating disclosures;
- support the NAC's values and Human Resources Policy and Procedure Manual;
- support and protect NAC's long-term sustainability and reputation; and
- to meet the entity's legal and regulatory obligations.

2. Application

Disclosers

The Policy applies to any individual who is, or has been:

- an officer or employee (e.g. current and former employees who are permanent, part-time, fixed-term or temporary, interns, secondees, managers, and directors);
- a supplier of services or goods to the NAC (whether paid or unpaid), including their employees (e.g. current and former contractors, consultants, service providers and business partners);
- an associate of NAC; or
- a relative, dependant or spouse of an individual (e.g. relatives, dependants or spouse of current and former employees, contractors, consultants, service providers, suppliers and business partners).

Such a 'discloser' will be an 'eligible whistleblower' under this Policy, qualifying for protection under the *Corporations Act 2001* (Cth) "CA" if they have:

- made a disclosure of information relating to a 'disclosable matter' directly to an 'eligible recipient' or to the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA), or another Commonwealth body prescribed by regulation;
- made a disclosure to a legal practitioner for the purposes of obtaining legal advice or legal representation about the operation of the whistleblower provisions in the CA; or
- they have made an 'emergency disclosure' or 'public interest disclosure'.

Disclosable matters

'Disclosable matters' include misconduct where there are reasonable grounds to suspect wrongdoing, such as:

- illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property;
- fraud, money laundering or misappropriation of funds;
- offering or accepting a bribe;
- financial irregularities;
- failure to comply with, or breach of, legal or regulatory requirements; and
- engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or is believed or suspected to have made, or be planning to make, a disclosure.

A discloser can still qualify for protection even if their disclosure turns out to be incorrect.

Disclosable matters do not include personal work-related grievances, including those covered under the complaints process in the Human Resources Policy and Procedure Manual, and therefore do not qualify for protection under this Policy or the CA.

3. Legal protections for disclosers

The CA provides protections for disclosers who qualify for protection as a whistleblower:

- information provided by whistleblowers;
- identity protection (confidentiality);
- protection against legal action;
- protection from detrimental acts or omissions;
- compensation and remedies; and
- civil, criminal, and administrative liability protection.

These protections include disclosures to internal and external eligible recipients, including public interest and emergency disclosures. They do not grant immunity for any misconduct a discloser has engaged in that is revealed in their disclosure. Examples of actions that are not considered detrimental conduct include:

- Administrative action that is reasonable for the purpose of protecting a discloser from detriment (e.g. moving a discloser who has made a disclosure about their immediate work area to another office to prevent them from detriment).
- Managing a discloser's unsatisfactory work performance, if the action is in line with the NAC's performance management practices as part of its Human Resources Policy and Procedure Manual.

Disclosers can seek compensation and other remedies through the courts if:

- they suffer loss, damage or injury because of a disclosure; and
- NAC failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

4. Who can receive a disclosure

The discloser needs to make a disclosure directly to one of the NAC's eligible recipients to qualify for protection under the CA. The NAC's 'eligible recipients' for disclosures are:

- an officer or senior manager of NAC, such as the Chief Executive Officer (CEO);
- NAC's external auditor;
- ASIC;
- APRA;
- another Commonwealth body prescribed by regulation; or
- a journalist or parliamentarian under certain circumstances (public interest or emergency disclosure).

A public interest or emergency disclosure will only be eligible for protection if it meets the criteria set out in the CA under s 1317AAD. It is important for disclosers to understand these criteria:

- a disclosure must have previously been made to ASIC, APRA or a prescribed body;
- written notice must have been provided to the body to which the disclosure was made; and
- in the case of a public interest disclosure, at least 90 days must have passed since the previous disclosure.

A discloser should contact an independent legal adviser before making a public interest disclosure or an emergency disclosure. Disclosures to a legal practitioner for the purposes of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the CA are protected (even in the event that the legal practitioner concludes that a disclosure does not relate to a 'disclosable matter').

5. How to make a disclosure

Disclosers may contact the CEO or Governance Manager to obtain additional information before making a disclosure. Disclosures may be made anonymously and/or confidentially and will still be protected under the CA. NAC is legally obligated to protect the confidentiality of a discloser's identity.

It is illegal for a person to identify a discloser, or disclose information that is likely to lead to the identification of the discloser, unless it is disclosed:

- to ASIC, APRA, or the Australian Federal Police;
- to a legal practitioner;
- to person or body prescribed by regulations; or
- with the consent of the discloser.

For a report to be investigated, it must contain enough information to form a reasonable basis for investigation. It is important therefore that disclosers provide as much information as possible. This includes any known details about the events underlying the report such as the:

- date;
- time;
- location;
- name of person(s) involved;
- possible witnesses to the events; and
- evidence of the events (e.g. documents, emails).

The report should include any steps disclosers may have already taken to report the matter elsewhere or to resolve the concern.

Communication with disclosers can be through anonymised email addresses, and a discloser may adopt a pseudonym for the purpose of their disclosure.

6. Support and practical protection for disclosers

NAC will support and protect disclosers from detriment by:

- implementing processes for assessing the risk of detriment against a discloser and other persons (e.g. other staff who might be suspected to have made a disclosure), which will commence as soon as possible after receiving a disclosure;
- implementing processes to ensure management is aware of their responsibilities to maintain the confidentiality of a disclosure, address the risks of isolation or harassment, manage conflicts, and ensure fairness when managing the performance of, or taking other management action relating to, a discloser;
- all personal information or reference to the discloser witnessing an event will be redacted;
- the discloser will be referred to in a gender-neutral context;
- where possible, the discloser will be contacted to help identify certain aspects of their disclosure that could inadvertently identify them;
- all paper and electronic documents and other materials relating to disclosures will be stored securely;
- only a restricted number of people who are directly involved in handling and investigating a disclosure will be made aware of a discloser's identity (subject to the discloser's consent) or information that is likely to lead to the identification of the discloser;
- disclosures will be handled and investigated by senior staff;
- NAC will not tolerate any detriment inflicted on reporters because they or somebody else has made, or might make, a report of reportable conduct, whether any concerns raised in a report are found to be true, provided that the reporter is acting honestly and ethically and made the report on reasonable grounds.

7. False reports or disclosures

Protected disclosures must be made on reasonable grounds. Anyone who knowingly makes a false report/disclosure of reportable conduct may be subject to disciplinary action, including dismissal.

The disciplinary action will depend on the severity, nature and circumstance of the false disclosure.

8. Handling and investigating a disclosure

When NAC receives a disclosure it will be assessed within two business days to ascertain if it:

- qualifies for protection; and
- if a formal, in-depth investigation is required.

NAC may not be able to undertake an investigation if it is not able to contact the discloser.

If the disclosure qualifies for protection under the CA, NAC will determine within five business days:

- the nature and scope of the investigation;

- the person(s) within and/or outside NAC that should lead the investigation;
- any technical, financial or legal advice that may be required to support the investigation; and
- the timeframe for the investigation.

The NAC, led by the CEO, will:

- ensure workers are made aware of their rights and responsibilities in relation to whistleblowing at induction
- ensure workers are regularly encouraged to speak up about concerns of reportable conduct
- determine whether the report falls within the scope of the Policy
- determine whether and how a report should be investigated
- investigate or appoint a whistleblowing investigator where an investigation is deemed appropriate
- ensure investigations are conducted in accordance with this Policy and findings are made on a fair and objective assessment of the evidence gathered during the investigation
- ensuring any reports involving a director or the CEO are reported to the Chair of the Board
- update reporters on progress and details of outcomes to the fullest extent possible
- maintain to the fullest extent possible confidentiality of the identity of and reports received by reporters
- immediately report concerns in relation to any detrimental conduct to the Chair of the Board (provided that the concerns do not relate to them)
- determine the appropriate courses of action to remediate or act on the investigation
- reporting matters to relevant authorities
- prepare a report at the conclusion of the investigation outlining
 - a finding of all relevant facts;
 - a determination as to whether the allegation(s) have been substantiated or otherwise;
 - the action that will be taken, which may include disciplinary action and dismissal
- make recommendations to prevent future instances of reportable misconduct

This process and the time taken to complete it may vary depending on the nature of the disclosure. Where possible and appropriate, having regard to NAC's privacy and confidentiality obligations, the whistleblower will be informed of the outcome of any investigation into their concerns

9. Ensuring fair treatment of individuals mentioned in a disclosure

NAC will ensure the fair treatment of employees who are mentioned in a disclosure that qualifies for protection, including those who are the subject of a disclosure:

- disclosures will be handled confidentially, when it is practical and appropriate in the circumstances;
- each disclosure will be assessed and may be the subject of an investigation;
- the objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters reported;
- when an investigation needs to be undertaken, the process will be objective, fair and independent;

- an employee who is the subject of a disclosure will be advised about the subject matter of the disclosure as and when required by principles of procedural fairness and prior to any actions being taken.

10. Ensuring the policy is easily accessible

This Policy will be made available to all employees by appending to the Human Resources and Policy Manual, and to all directors by appending to the Board Policy and Procedure Manual (or its successor, the Board Charter). It will be easily accessible by disclosers within and outside the entity by publication on the NAC website.

11. Review

This document is due for review two years from the approval date of the last major version.

12. Change history

Version	Approval date	Approved by
1.1	27 February 2020	NAC Board of Directors.