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Funding Body

Public Interest Disclosure Policy

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Please submit all requests for changes to the author of this document.

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1. Introduction

The Public Interest Disclosure Act 2013 (the Act) promotes the integrity and accountability of the Commonwealth public sector by:

- Encouraging and facilitating the making of disclosures of wrongdoing by public officials;
- Ensuring that public officials who make protected disclosures are supported and protected from adverse consequences relating to the making of a disclosure; and
- Ensuring that disclosures are properly investigated and dealt with (ss6, 7).

2. Public Interest Disclosure (PID) Principles

The National Health Funding Body (NHFB) is committed to having in place procedures to facilitate and manage public interest disclosures relating to the agency.

A public interest disclosure scheme removes the barriers preventing people who work in the public sector from speaking up about serious problems that impact on public administration. All staff across the public sector have a part to play in ensuring that problems are identified early, appropriate action is taken and those who report wrongdoing are protected from reprisal.

3. Scope and Context

Current and former Commonwealth public sector employees, officers and employees of contracted service providers and other public officials including Board and Committee members, who make a disclosure under the Act for the purpose of this Policy shall be referred to as the 'Discloser'.

The Act supplements existing avenues for complaints and investigations and recognises the role of specialist investigative agencies.

Disclosures can be made or allocated (with consent) to:

- The Commonwealth Ombudsman (Ombudsman);
- The Inspector-General of Intelligence and Security (IGIS); and
- Prescribed investigative agencies as appropriate.

This flexible approach allows existing investigative processes and the expertise that goes with them to be utilised, while providing the necessary protection to Disclosers.

4. PID Standards

Individuals and agencies are obliged to comply with the PID Standards. Under s 74 of the Act, the Ombudsman may make Standards in relation to:

- Procedures, to be complied with by the principle officers of agencies, for dealing with internal disclosures;
- The conduct of investigations under the Act;
- The preparation, under section 51, of reports of investigations; and
- The giving of information and assistance under subsection 76(3), and the keeping of records for the purposes of that subsection.

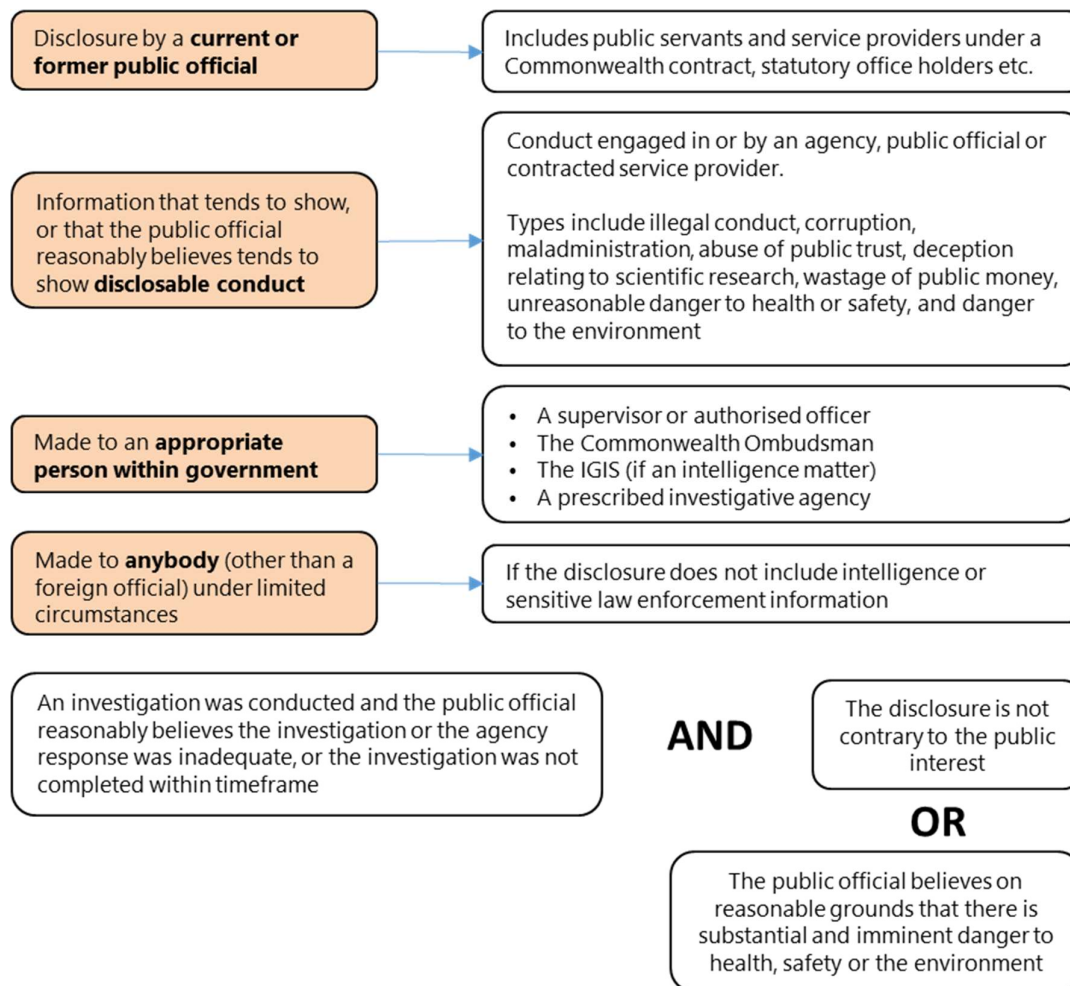
5. What is a Public Interest Disclosure?

A Public Interest Disclosure (s 26 (1)) is a disclosure of information, by a public official that is a:

1. Disclosure within the government, to an authorised internal recipient or a supervisor, concerning suspected or probable illegal conduct or other wrongdoing (referred to as “disclosable conduct”); or
2. Disclosure to anybody, if an internal disclosure of the information has not been adequately dealt with, and if wider disclosure satisfies public interest requirements; or
3. Disclosure to anybody if there is substantial and imminent danger to health or safety; or
4. Disclosure to an Australian legal practitioner for purposes connected with the above matters.

There are limitations however, to take into account the need to protect intelligence information. Figure 1, Making a disclosure under the PID Act, summarises elements of making a disclosure under the PID Act.

Figure 1 Making a disclosure under the PID Act



5.1. Who can make a Public Interest Disclosure?

A person must be a current or former 'public official' as defined in s 69 of the Act, to make a public interest disclosure. This includes a Commonwealth public servant, statutory office holder or other person who exercises powers under a Commonwealth law.

Individuals and organisations that provide goods and services under a Commonwealth contract (defined in s 30(3)) and their officers or employees are also included. This includes subcontractors who are responsible for providing goods or services for the purposes of the Commonwealth contract (s 30(2)).

An authorised officer is also able to deem an individual to be a public official (s 70) if they reasonably believe the individual has information about wrongdoing and proposes to make a disclosure. Examples where an authorised officer might consider this appropriate include where a former volunteer with an agency, someone who has received funding from the Australian Government or a member of an advisory committee has 'inside information' about the agency's wrongdoing.

5.2. What can be disclosed?

A public official can disclose information that they believe, on reasonable grounds, tends to show 'disclosable conduct'.

Disclosable conduct is conduct by:

- An agency;
- A public official in connection with their position; or
- A contracted Commonwealth service provider in connection with entering into or giving effect to the contract.

If that conduct:

- Contravenes a Commonwealth, State or Territory law;
- In a foreign country, contravenes a law in force in that foreign country, that applies to the agency, official or service provider, where that foreign law corresponds to a law in force in the Australian Capital Territory;
- 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 of one or more persons (or increases the risk of such danger);
- Endangers the environment (or increases the risk of such danger); and
- Is prescribed by the PID Rules (s 29 (1)).

Without limiting any of those grounds, disclosable conduct also includes conduct by a public official that involves, or is engaged in, for the purposes of abusing their position as a public official, and conduct that could give reasonable grounds for disciplinary action against the public official (s 29 (2)). It does not matter if the conduct occurred before or after 15 January 2014, or if the public official or contracted service provider alleged to have committed the wrongdoing has since ceased to be public official or contracted service provider, as the case may be (s 29 (3)).

An agency is broadly defined in section 71.

This includes:

- A Department;
- An executive agency under the Public Service Act 1999 (PS Act) – that is, an agency established by the Governor-General rather than by legislation;
- A statutory agency under the PS Act;
- A prescribed entity established by a Commonwealth law; or
- A prescribed person holding an office established by a Commonwealth law.

5.3. What is not disclosable conduct?

It is not disclosable conduct just because a person disagrees with:

- A government policy or proposed policy;
- Action or proposed action by a Minister, the Speaker of the House of Representatives or the President of the Senate; or
- Expenditure or proposed expenditure related to such policy or action.

Disclosable conduct by a public official must be conducted in connection with their position as a public official – conduct that is wholly private and has no bearing on their position as a public official is not disclosable conduct.

5.4. Who can a public disclosure be made to?

A disclosure must be made to an appropriate person in order to gain the protections available under the Act (s 26). The Act focuses on the reporting and investigating of wrongdoing within government, but allows for reporting outside government in specified circumstances.

5.4.1. Internal disclosures

Staff can report suspected wrongdoing either to their supervisor (defined in s 8) or to an authorised officer of:

- The NHFB; or
- The agency to which the discloser last belonged (if they are a former public official); or
- The agency to which the conduct relates to.

Authorised officers are the principal officer (Chief Executive Officer (CEO)), and officers that the principal officer appoints under the Act (s 36).

5.4.2. Other people – external and emergency disclosures

A staff member can make a public interest disclosure to other people, including people outside government, in limited circumstances as set out below. Two other restrictions apply to these disclosures, namely that:

- The matter must not include intelligence information or sensitive law enforcement information or concern an intelligence agency; and
- A disclosure may not be made to a foreign public official.

It is anticipated that external and emergency disclosures will be rare.

5.4.3. External disclosure

A staff member who has made an internal disclosure under the Act may make a disclosure to any person if:

- The internal investigation under the Act was not completed (meaning that the report of investigation was not finalised) within 90 days or within a timeframe approved by the Ombudsman; or
- They believe on reasonable grounds that the investigation under the Act was inadequate; or
- They believe on reasonable grounds that the agency took inadequate action after the investigation was completed (whether the investigation was conducted under the Act or under other legislation); and
- It is not on balance contrary to the public interest for an external disclosure to be made (s 26 (1) (2)).

A staff member making an external disclosure must not disclose more information than is reasonably necessary to identify wrongdoing (s 26).

5.5. When is it in the public interest for a disclosure to be made?

Matters that reflect private or personal interest are generally not matters of public interest, unless they are so fundamental (such as the rights to privacy) that protecting those interests is seen as being in the public interest.

Individual grievances or workplace conflicts would generally be appropriately dealt with by other existing agency and public sector mechanisms rather than be the subject of an investigation under the Act. However, where the nature of a disclosure or potential disclosure suggest that an individual grievance or workplace conflict could be reasonably construed as a matter more broadly representative of a larger or systemic issue (bullying or harassment matters that may be representative of a culture or bullying or harassment), then further investigation under the Act might be appropriate.

It must be noted that a public official is not required to show that it is in the public interest for them to make a disclosure. The public official are entitled to choose to make a disclosure under the PID Act about a matter that appears to reflect a personal interest, such as an individual grievance or workplace conflict, even if there is another mechanism available to them to report their concerns.

If that disclosure meets the threshold for an internal disclosure, the fact that it is primarily a matter of personal interest is irrelevant and the agency's obligations under the PID Act to manage the disclosure and apply the protection and immunity as provided under the PID Act will apply regardless.

6. Principal Officer

The Chief Executive Officer (CEO), as the principal officer of the NHFB, must establish procedures for facilitating and dealing with public interest disclosures relating to the agency.

The procedures must include:

- a) Assessing risks that reprisals may be taken against the persons who make those disclosures; and
- b) Providing for confidentiality of investigative processes.
- c) The procedures must comply with the standards made under section 74(1)(a) and are not legislative instruments.

The CEO must take reasonable steps to:

- a) Protect public officials who belong to the agency from detriment, or threats of detriment, relating to public interest disclosures made by those public officials; and
- b) Ensure that the number of authorised officers of the agency is sufficient to ensure that they are readily accessible by public officials who belong to the agency; and
- c) Ensure that public officials who belong to the agency are aware of the identity of each authorised officer of the agency.

The CEO must ensure that appropriate action is taken in response to recommendations in a report under section 51, or any other matters raised in such a report, that relate to the agency.

7. Appointing Authorised Officers

As the Principle Officer of the NHFB, the CEO may appoint authorised officers to receive public interest disclosures (s 36).

Appointed authorised officers must be public officials who belong to the agency and are appointed in writing.

In appointing 'readily accessible' authorised officers, the CEO should consider such factors as the size of NHFB, the geographical location of staff; and the risk that requiring reports to be made to a particular area or particular officer may not encourage certain staff to be forthcoming or may raise a conflict of interest.

The CEO must ensure that staff members who are employed by the NHFB are aware of the identity of each authorised office (s 59(3) (c)). The contact details of authorised officers are to be clearly displayed within the NHFB. In addition, the contact details of authorised officers are to be publically available on the Public Hospital Funding website.

8. Training

Training will be delivered regularly to all NHFB staff pertaining to:

- How to make a disclosure, rights and obligations of Disclosers?, the investigative process and outcomes;
- Managers and supervisors in assisting to recognise when a matter may be a public interest disclosure and what action to take, including ensuring that staff are supported and protected against reprisal;
- Authorised officers' specific responsibilities under the Act, including making allocation decisions, notification requirements, conducting risk assessments and supporting Disclosers, and awareness of other avenues for staff to take action (such as bullying and harassment); and
- Investigators' specialised training in conducting investigations, including investigation planning, procedural fairness requirements, interviewing witnesses, analysing evidence and report writing.

9. Authorised officers

Authorised officers have a range of decision-making, notification and other responsibilities under the Act, including.

- Receiving disclosures from current or former public officials about disclosable conduct (s 26);
- Deeming a person to be a public official to facilitate the making of a public interest disclosure (s 70);
- Informing a person who may be unaware of the Act's requirements, that information the authorised officer reasonably believes could concern disclosable conduct, could be treated as an internal disclosure, explaining the requirements of the Act and advising the person of any designated publication restrictions (as defined in s 8) that may affect disclosure;
- Assessing reported information to determine if there are no reasonable grounds to believe the information could be considered to be a public interest disclosure;
- Making any preliminary inquiries necessary to make an allocation decision (s 43(4));
- Allocating all or part of a disclosure to the CEO and/or another agency, with the other agency's consent (ss 43(1),(6));
- Informing the CEO or principal officer of each relevant agency, and the Ombudsman, of allocation decisions and associated information (ss 44(1), 44 (1A));
- Informing a discloser of an allocation decision (s 44(2));
- Consenting to the allocation of a disclosure by an authorised officer of another agency (s 43(6)); and
- Advising a discloser of a decision not to allocate a disclosure, the reasons why and any other courses of action that may be available under other Commonwealth laws (s 44(3)).

An individual may have decided to make a disclosure or may want to first seek advice about the process or the protections available to them, and an authorised officer should be prepared to explain what the Act requires (s 60).

10. Freedom of information requests

Documents associated with a public interest disclosure are not for that reason exempt from the operation of the *Freedom of Information Act 1982* (FOI Act). Requests for access to documents under the FOI Act must be considered on a case by case basis.

11. Confidentiality

The NHFB will ensure every reasonable effort is made to protect the discloser's identity. It is a criminal offence for a public official who is involved in handling a disclosure to reveal the discloser's identifying information to anyone else without their consent or use it for another purpose, unless it is for the purposes of the Act, an investigation by the Ombudsman or another Commonwealth law or prescribed law, or if the information has already lawfully been published (s 20).

11.1. Ensuring confidentiality

It is an offence for a person who has information obtained in the course of conducting a disclosure investigation or in connection with their powers and functions under the Act to disclose or use the information (s 65(1)). The penalty is imprisonment for two years or 120 penalty units, or both.

No offence is committed if the:

- Disclosure or use of the information is for the purposes of the Act or in connection with the person's powers and functions under the Act;
- Disclosure or use is for the purposes of, or in connection with, taking action in response to a disclosure investigation;
- Information has previously been lawfully published and is not intelligence information; or
- If the disclosure contains intelligence information, the principal officer of the source agency (s 66) has consented to the disclosure or use of this information (s 65(2)).

12. Risk assessment

The NHFB procedures must include assessing risks that reprisals may be taken against a person who makes a public interest disclosure (s 59(1)). The risk assessment should be completed as soon as possible after a disclosure is received, or after the NHFB has been notified that a disclosure concerning the agency has been received.

The NHFB will undertake the risk assessment in line with the [guidance](#) issued by the Commonwealth Ombudsman under the Public Interest Disclosure Scheme.

12.1. Reprisals

A person who makes a public interest disclosure¹ is protected from reprisal in the following ways:

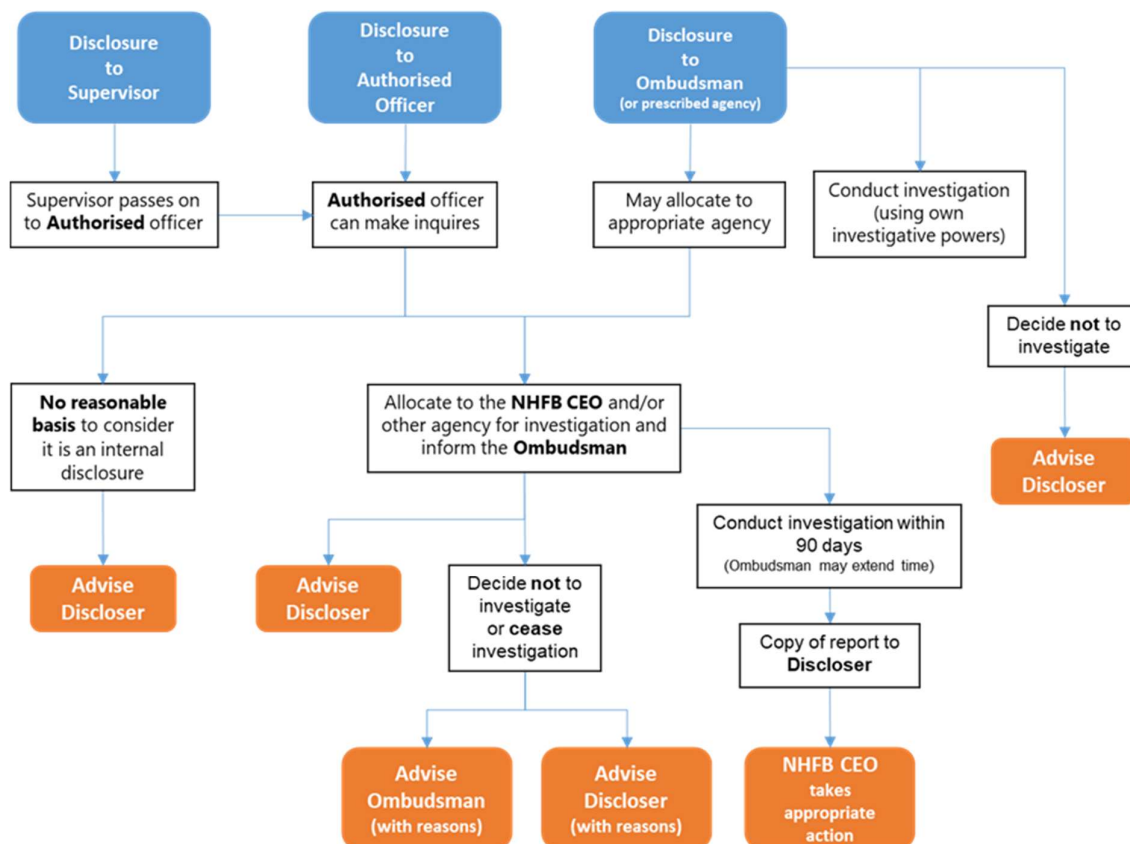
- It is a criminal offence to cause detriment to a person because it is suspected or believed that they have made or will make a public interest disclosure;
- A Discloser has the right to apply for an injunction to prevent a reprisal; and
- A Discloser has the right to apply for compensation for loss, damage or injury suffered from a reprisal.

¹ More information on managing reprisals can be found under the Commonwealth Ombudsman [guidance](#)

13. Allocating disclosures

Once a report of wrongdoing had been made to a supervisor, manager or authorised officer, the Act requires certain steps to be taken as demonstrated in Figure 2 Allocating disclosures.

Figure 2 Allocating disclosures



14. Conducting an investigation

An internal disclosure may be investigated in one of two ways:

- Under the Act; or
- Under other legislation applying to the Ombudsman and prescribed agencies.

Investigations under other legislation applying to the Ombudsman and prescribed investigative agencies occur when these bodies use their own separate investigative powers rather than investigating under the Act (s 49).

15. Recordkeeping

Details about how and when a public interest disclosure was made must be recorded and kept in a secure place, ensuring that all action taken regarding the receipt and processing of a public interest disclosure is reviewable. If the disclosure was given verbally, consideration should be given to asking the Discloser to sign a record of the disclosure. Details of the reprisal risk assessment, allocation decisions (including reasons), investigation decisions (including reasons), the investigation, notifications to the discloser and others should also be kept. The records should be factual and free from personal opinions.

Each disclosure should be given a unique reference number.

The NHFB is required to provide, to the Ombudsman, certain information about disclosures that they have handled for the purposes of the annual report.

16. Criminal matters

An investigator who suspects that information disclosed as part of the internal disclosure, or information that is obtained during the course of an investigation, constitutes evidence of an offence against the Commonwealth, State or Territory law, may disclose that information to a member of a relevant police force (s 56(1)). In these instances, and for the PID investigation to not jeopardize the criminal matter in any way, PID investigator ceases the investigation immediately and refers the allegation for consideration under the relevant criminal adjudication investigation framework.

Note, in cases, where the potential offence is serious (that is, punishable by imprisonment for two years or more), notification to a member of the relevant police force is mandatory (s 56(2)).

17. Keeping the Discloser informed

A Discloser can easily become concerned or dissatisfied if they feel they are being left in the dark or that nothing is happening. The Act requires the Discloser to be notified at various stages in the process, provided the person's contact details are available.

18. After an investigation

After an investigation, the CEO will ensure that a report is prepared and that appropriate action is taken by the NHFB. The CEO will give a copy of the investigation report to the Discloser within a reasonable time of preparing it (s 51(4)).

19. Pitfalls to avoid

Some common problems to avoid include:

- Significant delay in completing investigations;
- Lack of awareness of legislation, procedures and guidance material;
- Not maintaining confidentiality of the identity of the discloser during the investigation;
- Perceived or actual conflicts of interest;
- Giving witnesses the opportunity to collude;
- Not pursuing obvious lines of enquiry;
- Contacting the person subject to the disclosable conduct, if it is known that the matter will be referred to be considered under another investigative framework (criminal/misconduct). The requirements to provide procedural fairness and natural justice will be applied appropriately within these frameworks.
- Poor quality of investigation reports, with findings lacking sufficient substantiating evidence; and
- Investigators having little or no experience or training in conducting PID investigations.

20. Protecting the Disclosers identity

The Act provides a means for protecting public officials, and former public officials, from adverse consequences of disclosing information that, in the public interest, should be disclosed (s 7(1)). Supporting and protecting disclosers and other staff is an important responsibility that is reinforced by the CEO and is key to successful implementation of the scheme.

Consider including information about criminal offence under s 20

20 Use or disclosure of identifying information

Disclosure of identifying information

- (1) A person (the **first person**) commits an offence if:
- (a) another person (the **second person**) has made a public interest disclosure; and
 - (b) the first person discloses information (**identifying information**) that:
 - (i) was obtained by any person in that person's capacity as a public official; and
 - (ii) is likely to enable the identification of the second person as a person who has made a public interest disclosure; and
 - (c) the disclosure is to a person other than the second person.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

21. Immunity from liability

A person who makes a public interest disclosure is not subject to any civil criminal or administrative liability (including disciplinary action) for making the disclosure (s 10(1)(a)) except where the public official:

- Knowingly makes a disclosure of information that is false or misleading (s 11); or
- Knowingly breaches a designated publication restriction without reasonable excuse (s 11A).

It is also important to note that making a disclosure about matters that include a Discloser's own wrongdoing does not protect the Discloser from liability for their wrongdoing (s 12).

22. Support

The NHFB will ensure that support through the Employees Assistance Program is available to staff as requested. The NHFB will also ensure that the discloser:

- feels supported and is aware of the protections as provided within the Act
- Is aware of the process to forward their concerns in respect to the risk of reprisal
- sees that the agency's procedures are fair and transparent