



Whistleblower Policy

NEXTDC Limited (ACN 143 852 521) and its subsidiaries ("NEXTDC")

1. Purpose

NEXTDC is committed to promoting a culture of corporate compliance and ethical behaviour and aims to create an environment where employees or contractors who have genuine suspicions about improper conduct feel safe to report them without fear of reprisal.

The *Corporations Act 2001* (Cth) and the *Australian Taxation Administration Act 1953* (Cth) provide protections for persons who make a "Qualifying Disclosure" ("Whistleblower Protection Regime").

This Whistleblower Policy ("Policy"):

- explains when disclosure may qualify for protection under the Whistleblower Protection Regime;
- provides information about how Qualifying Disclosures may be made securely and confidentially;
- explains how disclosures will be received, handled, and properly investigated with a view to establishing the truth and correcting any wrongdoing where possible; and
- detail the protections that apply to Qualifying Disclosures.

Outside Australia?

You can report matters under this Policy regardless of your jurisdiction or where the wrongdoing occurred. As NEXTDC operates in multiple countries, this Policy is subject to the laws that apply in those countries. In some cases, disclosures made under this Policy may be handled differently according to legislation or regulation in that jurisdiction. Refer to *Appendix A* for information on how the law might differ in other countries.

2. Requirements for a "Qualifying Disclosure"

2.1 What is a Qualifying Disclosure?

In order for your disclosure to qualify for protection under Whistleblower Protection Regime:

- you must be an "Eligible Whistleblower" (see section 2.2 below);
- you must make the disclosure directly to an "Eligible Recipient" (see section 2.3 below) or certain regulators (see section 3.1 and Appendix B below); and
- you must have reasonable grounds to suspect that the disclosure concerns a 'Disclosable Matter' (see section 2.4 below)

Disclosures that are not 'Qualifying Disclosures' do not qualify for protection under the Whistleblower Protection Regime. Non-qualifying disclosures may still be protected under other legislation, such as in Australia under the *Fair Work Act 2009* (Cth) or other countries' laws. For information on how the law might differ in other countries, refer to Appendix A and Section 1 above.

2.2 Who is an Eligible Whistleblower?

"Eligible Whistleblowers" is any current or former:

- employee of NEXTDC;
- officer or associate (for example, a director or secretary of the Group);
- individuals who supplies goods or services to NEXTDC (whether paid or unpaid), or an employee of a supplier, contractor, subcontractor, or volunteer; or
- any relative, dependent, or spouse of any of the above persons.

2.3 Who is an Eligible Recipient?

Where possible, we encourage you to raise concerns with your **department manager** before raising concerns with an Eligible Recipient under this Policy.

However, for the purposes of protection under the Whistleblower Protection Regime, Eligible Recipients is any of the following:

- NEXTDC's Whistleblower Protection Officer (**WPO**) who is the Head of People and Culture (being a person authorised by NEXTDC to receive Qualifying Disclosures);
- where it is not possible or appropriate for you to report to the WPO, you can raise your report anonymously with the Audit and Risk Management Committee (ARMC) Chair by submitting the Whistleblower Disclosure Form available at the Whistleblower section of our website www.nextdc.com. Once you have submitted your disclosure, you will receive a copy of the information you provided for your records, via email (if provided);
- Other "Eligible Recipients" under the relevant Australian legislation include:
 - an officer or senior managers within NEXTDC (a senior manager is generally regarded as a member of the CXO group); and
 - an auditor (internal or external) or actuary of NEXTDC.

2.4 What is a Disclosable Matter?

A Disclosable Matter under the Whistleblower Protection Regime is information that you have reasonable grounds to suspect:

- Concerns misconduct or an improper state of affairs or circumstances in relation to NEXTDC; or
- Indicates that NEXTDC or ones of its officers or employees has engaged in conduct that:
 - constitutes an offence against the Corporations Act 2001 (Cth), Australian Securities and Investments Commission Act 2001 (Cth), Banking Act 1959, Financial Sector (Collection of Data) Act 2001, Insurance Act 1973, Life Insurance Act 1995, National Consumer Credit Protection Act 2009, Superannuation Industry (Supervision) Act 1993, and any instrument made under these Acts;
 - constitutes an offence against Commonwealth legislation that is punishable by imprisonment for 12 months or more;
 - represents a danger to the public or the financial system; or
 - is prescribed by regulation.

Disclosable Matters can also be in relation to the tax affairs of NEXTDC if the discloser considers that this information may assist NEXTDC to perform functions or duties in relation to its tax affairs.

Examples of conduct that may be a Disclosable Matter include:

- conduct which is against the law or is a failure by NEXTDC to comply with any legal or regulatory obligation;
- fraud (including dishonest activity, deliberate falsification, knowingly providing or publishing documentation that is false, money laundering or misappropriation of funds);
- negligence;
- breach of trust or duty (including conduct leading to unfair customer outcomes or accessing systems or customer information without justification or authority);
- corrupt behaviour (including bribery, acting dishonestly, dishonestly failing to act or dishonestly taking advantage of an employment position);
- unethical behaviour, misconduct, or breaches of NEXTDC's policies (including its Code of conduct);

- modern slavery or human trafficking, including within the NEXTDC's supply chain or customers;
- coercion, harassment or discrimination by, or affecting, any employee of NEXTDC;
- conduct which is misleading or deceptive conduct of any kind (including conduct or representations which amount to improper or misleading accounting or financial reporting practices either by, or affecting, NEXTDC)
- illegal accounting or auditing practices;
- criminal offences (including theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property); and
- the concealment of any wrongdoing.

Disclosable matters include conduct that may not involve a contravention of a particular law. For example, 'misconduct or an improper situation or circumstances' may not involve unlawful conduct in relation to NEXTDC generally but may indicate a systemic issue that the relevant regulator should know about to perform its functions properly.

2.5 Personal work-related grievances

Generally, disclosures that relate solely to personal work-related grievances do not qualify for protection under the Whistleblowing Protection Regime. Instead, you may have rights and protections under employment or contract law.

A personal work-related grievance includes any matter in relation to the discloser's employment, or former employment that has or tends to have, implications for the discloser personally. Examples of a personal work-related grievance include:

- an interpersonal conflict with another employee;
- a decision about your employment, transfer, or promotion;
- a decision about the terms and conditions of your employment; and
- a decision to suspend or terminate your employment or otherwise discipline you.

In some circumstances, disclosure of a personal work-related grievance may qualify for protection, including where:

- the information disclosed concerns alleged conduct that would otherwise amount to a Disclosable Matter as described above;
- the information disclosed has significant implications for NEXTDC, which do not relate to you. For example, if NEXTDC generally has breached employment or other laws punishable by imprisonment for a period of 12 months or more, engaged in conduct that represents a danger to the public, or the disclosure relates to information that suggests misconduct beyond the discloser's personal circumstances; or
- the disclosure concerns an alleged contravention of the prohibition against reprisals, and you suffer from or are threatened with detriment due to raising concerns about a disclosable matter.

3. Reporting Procedure

3.1 How do I make a disclosure?

While disclosures can be made to any Eligible Recipient, NEXTDC encourages Eligible Whistleblowers who have reasonable grounds to suspect a Disclosable Matter to make a disclosure directly to NEXTDC's Whistleblower Protection Officer (**WPO**), who is the Head of People and Culture.

If the Eligible Whistleblower does not feel comfortable making the disclosure to the WPO, they can also make a disclosure to any of the Eligible Recipients listed in section 2.3 of this Policy.

It is preferred that Eligible Whistleblowers identify themselves when making a disclosure as this assist with the investigation process. However, Eligible Whistleblowers may choose to make disclosures anonymously if preferred, noting that this may affect the ability to investigate the matter properly and to communicate about the disclosure.

While NEXTDC encourages Eligible Whistleblowers to make disclosures internally, in addition to the above, in Australia you also have the right to make a disclosure about a Disclosable Matter to:

- an external legal practitioner for obtaining your own legal advice or legal representation (even if the legal practitioner concludes the disclosure does not relate to a disclosable matter);
- certain Commonwealth regulators and law enforcement authorities (including ASIC, APRA, other Commonwealth bodies prescribed by regulation, and for tax matters, the Commissioner of Taxation); and
- in certain circumstances described in Appendix B, 'emergency disclosures' or 'public interest disclosures' to a journalist or member of Commonwealth, State or Territory Parliament.

Refer to *Appendix B* for guidance on reporting concerns outside of NEXTDC, including 'emergency disclosures' and 'public interest disclosures'. Before doing so, you must understand the criteria for making an 'emergency disclosure' or 'public interest disclosure'.

3.2 How NEXTDC investigates disclosures

Any disclosures reported to department managers, or the WPO will be promptly forwarded to the Chief Executive Officer (CEO) and the Chief Legal Officer (CLO) for investigation in accordance with this Policy.

If a disclosure is made to the ARMC Chair, the ARMC Chair will not usually be involved in the investigation unless there are exceptional circumstances. Instead, the ARMC Chair will ordinarily:

- delegate the management of the disclosure to the CLO, if appropriate given the nature of the disclosure and subject to the restrictions below; or
- appoint an independent investigator to conduct an investigation, provide a report to the Chair and otherwise deal with the disclosure.

Investigation processes will vary depending on the conduct's precise nature. The purpose of the investigation will be to determine the facts of the matter and whether your concerns are substantiated, with a view to NEXTDC then rectifying any wrongdoing uncovered to the extent that this is practicable in the circumstances.

The investigation will be thorough, objective, and fair. It will also be independent of you, anyone subject to the eligible disclosure, and any business unit concerned. The investigation will also have proper regard for the principles of natural justice, ensuring that any persons to whom the report relates are also treated fairly.

3.3 Communicating with you about your disclosure

Where you have not made a disclosure anonymously, the person appointed to investigate the disclosure will keep you informed of the outcome of the investigation, subject to considerations of the privacy of anyone who is the subject of the eligible disclosure and normal confidentiality requirements.

4. Protections available to Whistleblower(s)

4.1 Confidentiality

Under the Whistleblower Protection Regime, Eligible Whistleblowers making a Qualifying Disclosure are protected at law by the requirement that their identity, and information that may lead to their identification, must not be disclosed without the Eligible Whistleblower's consent, except to:

- to ASIC, APRA or the Australian Federal Police;
- to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the Whistleblower provisions of the Corporations Act / this Policy; or
- to a person in circumstances where the disclosure is reasonably necessary for the purposes of investigating the eligible disclosure – and then the person who is disclosing the information must take all reasonable steps to reduce the risk that the Whistleblower will be identified.

Should Eligible Whistleblower feel that their anonymity may have been compromised or that they are the subject of actual or threatened Detrimental Conduct, they are encouraged to contact the Whistleblower Protection Officer (WPO). It is the WPO's role to:

- Seek to protect an Eligible Whistleblower from Detrimental Conduct;
- Assist an Eligible Whistleblower in maintaining their well-being;
- Maintain an Eligible Whistleblower's confidentiality, where relevant, including as required by law;
- Review and consider any complaints of Detrimental Conduct or any concern that the Eligible Whistleblower's disclosure has not been dealt with in accordance with this Policy; and
- Escalate any matter the WPO considers appropriate to the Audit and Risk Management Committee.

4.2 No detriment

NEXTDC will take whatever action is possible consistent with this Policy to ensure that Whistleblowers will not be subject to any sort of detriment as a result of them reporting (or proposing to report) eligible disclosure. Detriment to an employee could include (but is not limited to):

- dismissal;
- demotion;
- reprisal;
- any form of harassment;
- discrimination; or
- current or future bias.

Conduct that does not cause Detriment includes:

- administrative action that is reasonable for the purpose of protecting a Disclosing Person from Detriment; and/or
- managing a Disclosing Person's unsatisfactory work performance, in circumstances where such action is in line with NEXTDC's performance management framework

Whistleblowers are also not subject to any civil or criminal liability for making the report but are not protected from civil or criminal liability for their own conduct, which may be revealed by the report.

The Whistleblower Protection Officer will take reasonable measures to ensure that Whistleblowers are not personally disadvantaged as a consequence of making a report. If you feel that, as a consequence of reporting a concern under this Policy, you have been or are likely to be personally disadvantaged in any way by another Employee (including your department manager or NEXTDC Representative), please contact the Whistleblower Protection Officer.

A Whistleblower may request that NEXTDC, through the WPO:

- grant the Whistleblower leave of absence during the investigation;
- relocate the Whistleblower to a position of equivalent pay and seniority at a different location or in a different department; and
- provide independent professional counselling to the Whistleblower for the distress caused by the matters which led to the report.

NEXTDC will give due consideration to granting such requests wherever it is reasonably practicable to do so.

Any person found in breach of the provisions of this Policy (including the requirement that a Whistleblower not suffer detriment as a result of making an eligible disclosure) will be subject to disciplinary action, up to and including termination of their employment with NEXTDC.

4.3 False Reporting

A false report of an eligible disclosure could significantly affect NEXTDC's reputation and the reputations of other Employees and cause considerable waste of time and effort. Any deliberately false reporting of a Reportable Matter, whether under this Policy or otherwise, will be treated as a serious disciplinary matter. Similarly, if the Whistleblower themselves is found to have engaged in serious misconduct or illegal conduct, they will also be subject to disciplinary action as a result of that conduct.

4.4 Fair Treatment

NEXTDC will take all reasonable steps to ensure that any NEXTDC employee or other person who is the subject of, or mentioned in, a Qualifying Disclosure will be, as appropriate:

- informed about the matter in accordance with the principles of natural justice and procedural fairness;
- given a reasonable opportunity to put their case if any investigation is conducted; and
- informed of the outcome of the investigation (but will not be given a copy of any investigation report).

Where an investigation is unable to substantiate a Qualifying Disclosure, the fact that an investigation has been carried out, the results of the investigation, and the identity of any person(s) who is the subject of the Qualifying Disclosure, will to the extent and as contemplated by this Policy remain confidential.

5. Governance

5.1 Training and Awareness

Education on the Policy is provided to all new employees as part of their induction training and in ongoing mandatory annual training for all employees.

Separate specialist training is also delivered at least annually for staff responsible for key elements of the Program, including Eligible Recipients and investigators. Executive management and the Board members receive updates throughout the year to reiterate their responsibility for maintaining effective whistleblowing arrangements.

5.2 Policy Breaches

All instances of breaches of the Policy must also be made known immediately to the Chief Legal Officer, and appropriate remediation measures must be agreed upon and implemented.

5.3 Availability of this Policy

This Policy is made available to employees on the NEXTDC intranet site. For volunteers, suppliers or other individuals, this Policy is also publicly available via the NEXTDC website.

5.4 Review of this Policy

The Audit and Risk Management Committee will review this Policy at least annually with input from the Chief Executive Officer, the Chief Legal Officer, Risk & Compliance Team, and the Whistleblower Protection Officer.

A report will be made to the Board of Directors by the Committee of the outcome of any such review and recommended changes to the Policy. The review must generally address the efficacy of the Policy. In particular, it must consider the fairness of investigations undertaken, the actual consequences for persons who report concerns and compliance with the Policy generally.

Appendix A: Jurisdictional variations

Malaysia

If you are reporting from Malaysia or your concern or report relates to anyone based in, or conduct connected to, NEXTDC's business in Malaysia, the Policy should be read subject to the following provisions, which add to or replace, as relevant, the provisions of the Policy.

The *Whistleblower Protection Act (WPA)* in Malaysia aims to protect individuals who report or disclose information on wrongdoing, corruption, or other illegal activities occurring within an organisation. While both Malaysia and Australia have whistleblower protection policies in place, there are some key differences between the two. Here are a few general distinctions:

- **Legal Framework:**
In Malaysia, the Whistleblower Protection Act (WPA) provides the legal framework for whistleblower protection. In Australia, the primary legislation governing whistleblowing is the Public Interest Disclosure Act 2013 (PID Act) at the federal level, with some variations at the state and territory levels.
- **Scope of Coverage:**
The WPA in Malaysia primarily focuses on protecting whistleblowers who disclose information related to misconduct, corruption, or other illegal activities within the public sector. In contrast, the PID Act in Australia covers both the public and private sectors, protecting whistleblowers who report wrongdoing, including misconduct, corruption, fraud, and other breaches of the law.
- **Reporting Channels:**
Under the WPA in Malaysia, employers are encouraged to establish internal reporting mechanisms for employees to report concerns or wrongdoing. The PID Act in Australia also emphasises the importance of internal reporting channels, but it also allows for external reporting to designated government entities, known as "Prescribed Entities."
- **Anonymous Reporting:**
In Malaysia, the WPA does not explicitly address anonymous reporting. However, organisations are encouraged to provide secure and confidential channels for reporting. In Australia, the PID Act allows for anonymous disclosures, ensuring whistleblowers can remain anonymous.
- **Compensation and Remedies:**
The WPA in Malaysia does not explicitly mention whistleblowers' compensation, although it protects them from civil and criminal liability. In Australia, the PID Act provides remedies and compensation to whistleblowers who experience retaliation or suffer losses due to their disclosures.
- **Whistleblower Protection Authority:**
Malaysia does not have a dedicated authority for overseeing whistleblower protection. In Australia, the Office of the Commonwealth Ombudsman is responsible for handling and investigating disclosures made under the PID Act at the federal level. State and territory bodies may have their own oversight agencies.

Appendix B – External Reporting

You will qualify for protection as a whistleblower under Australian law if you are someone who can report under this Policy, and you make:

- (a) A disclosure about a 'disclosable matter' (Appendix C) to ASIC, the Commissioner of Taxation or a Commonwealth body prescribed by regulation;
- (b) A disclosure to a legal practitioner for the purposes of obtaining legal advice or legal representation about the operation of whistleblowing laws in Australia;
- (c) A Public Interest Disclosure, that is, the disclosure of information to a journalist or a parliamentarian, where:
 - i. the discloser has previously made a disclosure of the information to ASIC, APRA or another Commonwealth body prescribed by regulation (the 'previous disclosure');
 - ii. at least 90 days have passed since the discloser made the previous disclosure;
 - iii. the discloser does not have reasonable grounds to believe that action is being, or has been taken, in relation to their previous disclosure;
 - iv. the discloser has reasonable grounds to believe that making further disclosure of the information is in the public interest;
 - v. before making the Public Interest Disclosure, the discloser has given written notice to the body to which the previous disclosure was made that:
 - includes sufficient information to identify the previous disclosure; and
 - states that the discloser intends to make a Public Interest Disclosure; and
 - vi. the extent of the information disclosed in the Public Interest Disclosure is no greater than is necessary to inform the recipient of the previous disclosure of the misconduct or improper state of affairs.
- (d) an Emergency Disclosure, that is the disclosure of information to a journalist or parliamentarian, where:
 - i. the discloser has previously made a disclosure of the information to ASIC, APRA or another Commonwealth body prescribed by regulation (the 'previous disclosure');
 - ii. the discloser has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment;
 - iii. before making the emergency disclosure, the discloser has given written notice to the body to which the previous disclosure was made that:
 - includes sufficient information to identify the previous disclosure; and
 - states that the discloser intends to make an emergency disclosure; and
 - iv. the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the journalist or parliamentarian of the substantial and imminent danger.

Further information on the above is available at: [ASIC Information Sheet 239: How ASIC handles whistleblower reports \(INFO 239\)](#)