

Whistleblower Policy and Procedure

Yilabara-HR-Whistleblower Policy
Effective from: April 2022

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1 Document Identification

Identification	
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2 Document Version Control

Version No.	Date	Updated By	Change Summary
1	14.4.2022	Quality Assurance Team	Review of entire document
1	29.7.2022	CEO	Approved
2	15.8.2023	Quality Assurance Team	Section 8.1 Updated to include contact details to report misconduct (Australian Securities and Investment Commission (ASIC) and Australian Taxation Office (ATO).
2		CEO	Approved
3	30/8/23	Quality Assurance Team	Section 8.1 Updated to include contact details to report misconduct (National Anti-Corruption Commission (NACC).
3	11/9/23	CEO	Approved

3 References and related documents

Document Title
Yilabara-HR-Code of Conduct
Yilabara-CORP-Fraud and Corruption Prevention Policy and Procedure
Yilabara-HR-Conflicts of Interest Policy and Procedure
Yilabara-HR-Gifts and Benefits Policy and Procedure
Yilabara-HR-Feedback and Complaints Policy and Procedure
Yilabara-HR-Confidentiality and Privacy Policy
Yilabara-HR-Privacy Statement

3 Scope

This Policy applies to all Board members, paid employees, volunteers, and contract staff of Yilabara. It covers any detected or suspected breach of conduct in relation to Yilabara business, and which involves a member of staff or the Board who is dealing with:

- Another member of staff or the Board.
- Any party external to Yilabara.

4 Objectives

This Policy explains how staff and Board members can raise concerns about the conduct of others without fear of intimidation, disadvantage, or reprisal, and how breaches of Whistleblower protection are handled.

The objective is to encourage people to report breaches of conduct if they genuinely believe someone has broken the law, has engaged in unethical or undesirable behaviour or contravened Yilabara's:

- Code of Conduct
- Fraud and Corruption Prevention Policy and Procedure
- Conflicts of Interest Policy and Procedure, or
- Gifts and Benefits Policy and Procedure.

5 Purpose

Yilabara is committed to high standards of behaviour and ethical conduct. It is important for members of staff and the Board to understand their responsibilities for reporting detected and suspected breaches of conduct, and the protections afforded them.

6 Definitions

Corrupt Conduct

A person using their position for private or personal advantage.

Corrupt conduct includes:

- A member of staff or the Board using their position or resources dishonestly or improperly, including the misuse of information or material acquired in the course of their duties, even where this misuse occurs when the person no longer undertakes those duties.
- Conduct by a member of staff or the Board which might lead directly or indirectly to the dishonest or improper use of position by a person undertaking official duties.
- Conduct which might directly or indirectly interfere with the carrying out of responsibilities by staff or Board members, including bribery or violence.

Ethical Conduct

The standards of behaviour which govern the way in which we operate in dealing with our stakeholders, including clients, staff, colleagues, the Board, and providers of services. Ethical conduct is underpinned by the values of integrity, impartiality, accountability, and honesty.

Reportable Conduct

Conduct which an employee/staff member believes or has strong suspicion:

- Is dishonest, fraudulent, or corrupt, including bribery

- Is illegal activity (such as theft violence, harassment or intimidation, criminal damage to property or breaches of State or Federal law).
- Is unethical or in breach of Yilabara’s policies (such as dishonestly altering company records or data, adopting questionable accounting practices, or wilfully breaching the Code of Conduct or other policies and procedures.
- Is potentially damaging to Yilabara or Yilabara employees or a third party, such as unsafe work practices, environmental damage, health risks or abuse of Yilabara property of resources.
- May be an abuse of authority
- May cause financial loss to the organisation or damage Yilabara’s reputation or be otherwise detrimental
- Involves harassment, discrimination, victimisation or bullying other than personal work grievances as defined in the Corporations Act 2001 (Cth); or
- Involves any other kind of misconduct or an improper state of affairs or circumstances.

The Executive

The Chief Executive Officer and senior managers making up the leadership team.

Fraud

A deliberate, wrongful, or criminal deception intended to result in financial or personal gain.

Fraud falls into six main categories:

- Theft, the misappropriation, or misuse of assets for personal benefit.
- Bribery and corruption.
- False accounting and/or making fraudulent statements with a view to do so.
- Personal gain or gain for another; for example, falsely claiming overtime.
- Travel and subsistence, sick leave, or special leave (with or without pay).
- Externally perpetrated fraud against Yilabara.

Manager

The Executive; directors, supervisors, and line/office managers of staff.

Staff

Any person working for NSWALC Employment and Training. This includes:

- Permanent, temporary, and casual employees, including managers and the Executive.
- Members of committees, working groups and advisory bodies.

- Agency staff, consultants, and contractors.
- Volunteers.
- Work experience students.
- Intern placements.

7 Whistleblowing Policy Overview

7.1 Authorities and accountabilities

Whistleblowing plays a crucial role in managing risk and cultivating an ethical culture. Yilabara is ultimately responsible for ensuring reported breaches of conduct are dealt with appropriately, and that the person/s making a report are protected from reprisal. This is a corporate governance responsibility against which the Chief Executive Officer (CEO) is held accountable.

The CEO and other members of the Executive are responsible for the administration, revision, interpretation, and application of this policy.

This Policy and Procedure shall be reviewed annually or following a major 'Whistleblower' event.

7.2 Independent Commission Against Corruption (NSW)

Yilabara is a subsidiary of the NSW Aboriginal Land Council, which is formally constituted as a statutory corporation under the New South Wales Aboriginal Land Rights Act in 1983. As such Yilabara is required to comply with the Independent Commission Against Corruption Act 1988 (NSW).

The ICAC investigates serious and systemic corruption in NSW. Corrupt conduct occurs when:

- a NSW public official improperly uses, or tries to improperly use, the knowledge, power or resources of their position for personal gain or the advantage of others
- a NSW public official dishonestly exercises his or her official functions, or improperly exercises his or her official functions in a partial manner, breaches public trust or misuses information or material acquired during the course of his or her official functions
- a member of the public influences, or tries to influence, a public official to use his or her position in a way that affects the probity of the public official's exercise of functions
- a member of the public engages in conduct that could involve one of the matters set out in section 8(2A) of the ICAC Act where such conduct impairs, or could impair, public confidence in public administration.

A person working in a NSW statutory authority is defined as a NSW public official. If a staff member suspects corrupt conduct, they have a duty report it to directly to the ICAC. Enquiries and reports regarding suspected corrupt conduct can be made to the ICAC by:

- Telephone: 02 8281 5999 or freecall 1800 463 909 (callers outside Sydney)
- Writing to: GPO Box 500 Sydney NSW 2001 or faxing 02 9264 5364
- Online at: <https://www.icac.nsw.gov.au/reporting/report-corruption>
- Email at: icac@icac.nsw.gov.au

Before making a complaint regarding suspected corrupt conduct, staff should first confirm that the matter falls within the ICAC's jurisdiction. More details about the definition of corrupt conduct are found at: <https://www.icac.nsw.gov.au/about-corruption/what-is-corrupt-conduct>.

The ICAC also has a video on how to report corrupt conduct, and this can be found at: <https://www.youtube.com/watch?v=mv9anlOZtZk>

Staff should also check the protections for public officials under the provisions of the *Public Interest Disclosures Act 1994* (NSW).

Note: The ICAC does not have jurisdiction over Commonwealth agencies or matters relating to Commonwealth Government programs such as Workforce Australia.

7.3 Quality Assurance

This Policy ensures that whistleblowing is properly dealt with through:

- Staff and Board members being aware of this policy and procedure, including via induction training.
- Managers and the Board encouraging Whistleblowing.
- Managers and the Board have in place systems and controls to protect Whistleblowers.
- Disciplinary action is taken against anyone who harasses, bullies, discriminates against or disadvantages a Whistleblower, or reveals the identity of a Whistleblower.

8 Whistleblower Policy

8.1 Making a Report

A staff member/employee may make a report under this Policy if they have reasonable grounds to suspect that a Board member, Manager, employee, contractor, supplier, tenderer, or other person who has business dealings with Yilabara has engaged in Reportable Conduct

Yilabara has several channels for its employees or contactors to make a report if they become aware of any issue or behaviour which they consider to be Reportable Conduct. These are outlined in Section 2 of Yilabara Code of Conduct.

If the detected or suspected fraud, corrupt conduct, maladministration, or serious or substantial waste involves:

- One or more members of staff or the Board, or an external party, then the person should report the issue to their manager. The manager will report it to an Executive or the Chair, depending on the allegation.
- The person's manager, then it should be reported report it as a complaint to an Executive then it can be reported to the Chair.

When these options are not practical, it may be reported to the CEO of the NSW Aboriginal Lands Council, the parent company of Yilabara.

If the person is not satisfied with the outcome of the complaint or how it was handled, it may be escalated according to the reporting hierarchy.

Under the Corporations Act, employees may also raise the matter with an 'officer' or 'senior manager' of Yilabara.

Appendix A describes special protection for Whistleblowers who disclose information concerning misconduct or an improper situation in relation to Yilabara under the Corporations Act.

Appendix B describes special protections for Tax Whistleblowers.

Appendix C: Describes protections for whistleblowers and witnesses who provide information or give evidence about a corruption issue under NACC Act.

Contacts for reporting misconduct:

- Australian Securities and Investments Commission by:
Website: asic.gov.au/report-misconduct
Phone: 1300 300 630
In writing: Australian Securities and Investments Commission, GPO Box 9827, Brisbane QLD 4001
- Australian Taxation Office
Website: www.ato.gov.au/tipoffform
Phone: 1800 060 062
In writing: Australian Taxation Office, Tax Integrity Centre, Locked Bag 6050, Dandenong, VIC 3175
- National Anti-Corruption Commission
Website: <https://www.nacc.gov.au>
Phone : 1300 489 844
In writing : National Anti-Corruption Commission, GPO Box 605 Canberra, ACT 2601

8.2 Investigating Reportable Conduct

Yilabara will investigate all issues reported as soon as practicable.

A senior member of staff, a member of the Board or an external investigator will be appointed to investigate reported breaches of conduct. This person, the appointed investigator, will have unrestricted access to staff; Board members, including the Chair; the Executive, including the CEO; external auditors; and legal services.

With the consent of the person making the report, the Investigating Officer may appoint a person to assist in the investigation. Yilabara will provide feedback, where appropriate, on the progress of the investigation and/or the outcome to the person making the report, subject to privacy considerations.

Yilabara commits to conducting objective and fair investigations, having regard to the nature of the Reportable Conduct and the circumstances.

The Investigating Officer is required to adhere to the following principles and process when investigating a matter:

- Handle the report discreetly.
- Treat all information, received and/or gathered, confidentially. Do not disclose or discuss the investigation or its results with anyone other than those who have a legitimate need to know to:
 - Avoid damaging the reputations of persons suspected but subsequently found innocent of a breach of conduct.
 - Protect Yilabara from potential civil liability.
 - Protect the identity of any Whistleblower.
- Remember that the person/s being investigated has a right to the presumption of innocence and has a right to respond to the allegations made against them.
- Carry out a thorough investigation, with the support of a qualified auditor, where necessary.
- Gather evidence, take statements, and write reports on the findings.
- Liaise with the CEO when the investigation concludes that a breach of conduct has taken place, to determine whether any external authorities need to be notified.
- Prepare a final report which:
 - Identifies any weaknesses in policies and procedures, as well as management and operations practices, that may have contributed to the breach.
 - If appropriate, provides any other feedback related to the outcome.
 - If necessary, makes recommendations for remedial action, or explains why no action is recommended.

The investigation process and enquiries adopted will be determined by the nature and substance of the report as soon as practicable after the receipt of the report. If the report is not anonymous the person making the report will be contacted by the Quality Assurance Officer to discuss the investigation process including who may be contacted and other matters relevant to the investigation. Where a report is submitted anonymously, Yilabara will conduct the investigation based on the information provided to it.

8.3 Protection of Whistleblowers

Yilabara is committed to ensuring confidentiality in respect of all matters raised under this Policy. And that those who make a report are treated fairly and do not suffer detriment.

The principle is that Staff and Board members shall be able to report detected and suspected breaches of conduct without fear of prejudice or harassment and shall not be discriminated against or disadvantaged for making a report in accordance with this policy. This applies if the matter is proven or not, and whether it is reported internally or to an external authority.

8.3.1 Protection against detrimental conduct

Detrimental treatment includes dismissal, demotion, threat to job security, harassment, bullying, discrimination, disciplinary action, bias, threats, or other unfavourable treatment connected with making a report.

If a person is subject to detrimental conduct because of making a report under this Policy, they should inform the Protected Disclosure Officer or a senior manager immediately.

8.3.2 Protection of identity and confidentiality

Subject to compliance with legal requirements, upon receiving a report under this Policy, Yilabara will only share a person's identity as a Whistleblower or information that may reveal your identity if:

- The person consents.
- The concern is reported to the Australian Securities and Investments Commission (ASIC), the Tax Commissioner, National Anti-Corruption Commission (NACC) or the Australian Federal Police (AFP); or
- The concern is raised with a lawyer for the purpose of obtaining legal advice or representation.

If Yilabara needs to investigate a report, it may disclose information that could lead to the person's identity being disclosed. However, Yilabara will take all reasonable steps to reduce this risk.

Any disclosures of a person's identity or information that may lead to their identity will be made available on a strictly confidential basis.

8.3.2 Protection of files and records

All files and records created for an investigation will be retained securely.

Unauthorised release of information to someone not involved in the investigation (other than senior managers or Board members who have a need to know to take appropriate action, or for corporate governance purposes) without the Whistleblower's consent will be a breach of the Policy.

A release of information in breach of this Policy is a serious matter and will be dealt with under Yilabara's disciplinary procedures.

The Corporations Act gives special protection to disclosures about breaches of that Act, provided certain conditions are met. Refer to Appendix A for further details.

The Taxation Administration Act also gives special protection to disclosures about breaches of any Australian tax law provided certain conditions are met. Refer to Appendix B for further details.

9 Duties of Employees, Managers, Board Members and CEO

9.1 Employees

All employees are responsible for ensuring Yilabara maintains the highest level of probity and that the organisation is not brought into disrepute.

Employees have an individual responsibility to report possible breaches of conduct — including suspected instances of fraud, corrupt conduct, maladministration, or serious or substantial waste — so that they can be fully investigated.

If you report a breach of conduct, it:

- Must be made in good faith.
- Must not be malicious, deliberately misleading, or frivolous.

Otherwise, you may face disciplinary action. Disciplinary action may result in the termination of your employment, Board membership, contract or other engagement with Yilabara.

All employees must assist in the investigation of any detected or suspected breach of conduct. They must take care to avoid doing anything which might prejudice the case against or reveal the identity of:

- The member of staff or the Board member detected or suspected of a breach of conduct.
- The Whistleblower.

Employees must not take detrimental action against the Whistleblower in reprisal for reporting a breach of conduct. This includes any action that could reasonably be perceived to be detrimental action in reprisal.

If an employee knows the identity of a Whistleblower, they must not:

- Harass, bully, discriminate against or disadvantage the Whistleblower.
- Reveal the identity of the Whistleblower.
- Share information about the detected or suspected breach of conduct if they are informed of it or become aware of it, or are involved in its investigation, except with persons who have a legitimate need to know.

Failure to comply may result in disciplinary action which may include termination of employment, Board membership, contract, or other engagement with Yilabara.

Any employee who bullies, harasses, discriminates against or disadvantages a member of staff or the Board in reprisal for having disclosed a breach of conduct, could be committing a criminal offence, which could result in imprisonment if convicted.

Employees must inform their manager, an executive or the Chair, as applicable, if they detect or suspect a fellow member of staff or the Board may be/ is breaching this Policy or Procedure.

9.2 Managers and Board Members

The Executive and managers shall implement this policy and an effective internal control structure.

The Chief Executive Officer, in consultation with the relevant managers and members of the Executive, shall determine disciplinary action against any person who breaches this policy.

Managers and Board members are responsible for encouraging and protecting Whistleblowers, and must:

- Ensure that an adequate system of internal control exists within their area of responsibility, appropriate to the risk involved, and that the controls are properly operated and complied with.
- Review and test control systems to satisfy themselves that the systems continue to operate effectively.
- Inform the Chief Executive Officer if they detect, or suspect staff or fellow Board members may be/are breaching this Policy and Procedure.
- Inform the Chair, if they detect or suspect the Chief Executive Officer may be/ is breaching this Policy and Procedure.

9.3 CEO

If the CEO is informed that:

- The identify of a Whistleblower has deliberately been revealed.
- A Whistleblower has been subjected to bullying, harassment, discriminated against or disadvantaged.
- A reported breach of conduct was not made in good faith, or has been found to be malicious, deliberately misleading, or frivolous.
- Whistleblowing has been discouraged by any member staff or the Board.

It is the responsibility of the CEO to have it investigated and dealt with according to the requirements set out in Section 2 of the Yilabara Code of Conduct.

10 Legislation

- Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019.
- Independent Commission Against Corruption Act 1988.
- Corporations Act 2001 (Cth).
- Taxation Administration Act.
- National Anti-Corruption Commission Act 2022

Appendix A: Special Protections under the Corporations Act

The Corporations Act (Part 9 4AAA) gives special protections to disclosures about any misconduct or improper situation if the following are satisfied:

- (a) The Whistleblower is or has been:
 - I. An officer or employee of Yilabara
 - II. An individual who supplies goods or services to Yilabara or an employee of a person who supplies goods or services to Yilabara
 - III. An individual who is an associate of Yilabara, or
 - IV. A relative, dependent, or the spouse of any individual referred to in I to III above.
- (b) The report is made to:
 - I. An officer or senior manager or Board member of Yilabara
 - II. Yilabara's external auditor
 - III. The Australian Securities and Investments Commission (ASIC)
 - IV. The Australian Prudential Regulation Authority (APRA); or
 - V. A legal practitioner for the purposes of obtaining legal advice or legal representations to the operation if the Whistleblower provisions in the Corporations Act.
- (c) The Whistleblower has reasonable grounds to suspect that the information being disclosed concerns misconduct, or an improper situation or circumstances in relation to Yilabara. This may include a breach of legislation, including the Corporations Act, an offence against Commonwealth punishable by imprisonment for 12 months or more, or conduct that represents a danger to the public or financial system.

Examples of conduct which may amount to a breach of the Corporations Act include: insider trading, insolvent trading, breach of the continuous disclosure rules, failure to keep accurate financial records, falsification of accounts, failure of a director or other officers of the company to act with the care and diligence that a reasonable person would exercise, or at least act in good faith in the best interests of the company or failure of a director to give notice of any material personal interest relating to the affairs of the company.

- (d) The protections given by the Corporations Act when these conditions are met are:
 - I. The Whistleblower is immune from any civil, criminal, or administrative legal action (including disciplinary action) for making the disclosure
 - II. No contractual or other remedies may be enforced, and no contractual or other right may be exercised, against the Whistleblower for making the report
 - III. In some circumstances, the reported information is not admissible against the Whistleblower in criminal proceedings or in proceedings for the imposition of a penalty, (For example where the disclosure had been made to ASIC or APRA, or where the disclosure qualifies as a public interest or emergency disclosure.)
 - IV. Anyone who causes or threatens to cause detriment to a Whistleblower or another person in the belief or suspicion that a report has been made, or may have been made, proposes to or could be made, may be guilty of an offence and may be liable for damages

- V. A Whistleblower's identity cannot be disclosed to a Court or tribunal except where considered necessary, and
- VI. The person receiving the report commits an offence if they disclose the substance of the report or the Whistleblower's identity, without the Whistleblower's consent, to anyone except ASIC, APRA, the AFP or a lawyer for the purposes of obtaining legal advice or representation in relation to the report.

Confidentiality

If a report is made, the identity of the discloser must be kept confidential unless one of the following exceptions applies:

- (a) The discloser consents to the disclosure of their identity.
- (b) Disclosure details that might reveal the discloser's identity is reasonably necessary for the effective investigation of the matter.
- (c) The concern is reported to ACICAPRA, or the AFP, or
- (d) The concern is raised with a lawyer for the purposes of obtaining legal advice or representation.

Appendix B: Special Protections under the Taxation Administration Act

The Taxation Administration Act gives special protection to disclosures about a breach of any Australian Tax law or misconduct in relation to Yilabara's taxation affairs if the following conditions are met:

- (a) The Whistleblower is or has been:
 - I. An officer or employee of Yilabara
 - II. An individual who supplies goods or services to Yilabara or an employee of a person who supplies goods or services to Yilabara
 - III. An individual who is an associate of Yilabara, or
 - IV. A spouse, child, dependent of the spouse of any individual referred to in I to III above.
- (b) The report is made to:
 - I. An officer or senior manager or Board member of Yilabara
 - II. A director, secretary, or senior manager of Yilabara
 - III. Yilabara's external auditor or a member of the audit team
 - IV. A registered tax agent or BAS agent who provides tax or BAS services to Yilabara
 - V. Any other employee or officer of Yilabara who has functions or duties relating to tax affairs of Yilabara
 - VI. The Commissioner of Taxation; or
 - VII. A legal practitioner for the purposes of obtaining legal advice or legal representations to the operation of the Whistleblower provisions in the Taxation Administration Act.
- (c) If the report is made to a Yilabara recipient, the Whistleblower:
 - I. Has reasonable grounds to suspect that the information indicates misconduct, or an improper situation, or circumstances, in relation to the tax affairs of Yilabara or an associate of the organisation, and
 - II. Considers that the information may assist the Yilabara recipient to perform functions or duties in relation to the taxation affairs of Yilabara or an associate of the organisation.
- (d) If the report is made to the Commissioner of Taxation, the Whistleblower considers that the information may assist the Yilabara recipient to perform functions or duties in relation to the taxation affairs of the organisation or an associate of the organisation.

The protections given by the Taxation Administration Act when these conditions are met are:

- (a) The Whistleblower is immune from any civil, criminal, or administrative legal action (including disciplinary action) for making the disclosure.
- (b) No contractual or other remedies may be enforced, and no contracted or other right may be exercised against the Whistleblower for making the report.
- (c) Where the disclosure was made to the Commissioner of Taxation, the reported information is not admissible against the Whistleblower in criminal proceedings or in proceedings for the imposition of a penalty, except where the proceedings are concerned with whether the information is false.

- (d) Unless the Whistleblower has acted unreasonably, a Whistleblower cannot be ordered to pay costs in any legal proceedings in relation to a report.
- (e) Anyone who causes or threatens to cause detriment to a Whistleblower or another person in the belief or suspicion that a report has been made, or may have been made, proposes to or could be made, may be guilty of an offence and liable to pay damages.
- (f) The person receiving the report commits an offence if they disclose the substance of the report or the Whistleblower's identity, without the Whistleblower's consent, to anyone except the Commissioner of Taxation, the AFP or a lawyer for the purposes of obtaining legal advice or representation in relation to the report.

Confidentiality

If a report is made, the identity of the discloser will be kept confidential unless one of the following exceptions applies:

- (a) The discloser consents to the disclosure of their identity
- (b) Disclosure details that might reveal the discloser's identity is reasonably necessary for the effective investigation of the matter.
- (c) The concern is reported to the Commissioner of Taxation or the AFP, or
- (d) The concern is raised with a lawyer for the purposes of obtaining legal advice or representation.

Appendix C: Protections for whistleblowers and witnesses under National Anti-Corruption Commission Act

The National Anti-Corruption Commission Act gives protection to disclosures about:

- a) Conduct of any person that adversely affects a public official's honest or impartial exercise of powers or performance of official duties.
- b) Conduct of a public official that involves a breach of public trust.
- c) Conduct of a public official that involves abuse of office.
- d) Conduct of a public official or former public official that involves the misuse of documents or information they have gained in their capacity as a public official.

The following protections are provided for whistleblowers and others who provide information to the Commission:

- a) Anyone who makes a referral, provides information or gives evidence to the NACC about a corruption issue is protected from civil, criminal or administrative liability (including disciplinary action) for doing so, and no contractual right or remedy can be taken against them. However, this does not prevent action being taken for making false or misleading statements.
- b) It is a criminal offence punishable by imprisonment for anyone to take any reprisal action against a person for making a referral, providing information or giving evidence to the Commission.

Protection from liability:

This means, for example, that a person who refers a corruption issue has immunity from defamation proceedings in respect of the disclosure. Similarly, a contract to which the person is a party could not be terminated for breach of contract on the basis of the disclosure. Disciplinary action cannot be taken against them for making the disclosure.

Protection from reprisals:

It is also a criminal offence for anyone to take, or threaten to take, reprisal action of any kind against a person for making a referral, providing information or giving evidence to the Commission. A 'reprisal' is when a person causes another person detriment because they believe or suspect that the other person has, may or could disclose a corruption issue to the NACC.

Detriment includes:

- a) dismissal from employment
- b) injury in employment
- c) detrimental changes to an employment position
- d) discrimination between a person and other employees of the employer.

The maximum penalty for taking a reprisal, or threatening to take a reprisal, against a person is imprisonment for two years.

Reasonable administrative action by an organisation to protect a person from detriment is not a reprisal. For example, if a person makes a disclosure about practices in their immediate work area, it may be appropriate to help them transfer to another area, so they do not experience any detriment.

These protections from liability or reprisal are generally available to any person who refers or provides other information about a corruption issue to the NACC. This applies even where their disclosure involves breaching another law, though this is subject to some exceptions (see below).

Reputational damage:

The Commissioner has powers and obligations to make statements, or include statements in reports, to avoid damage to the reputation of persons who have been investigated or who have given evidence at a hearing:

- a) where the person has been investigated, and the Commissioner forms the opinion that the person has not engaged in corrupt conduct, the Commissioner must include a statement to that effect in the report at the completion of the investigation.
- b) where the person has given evidence at a hearing and is not the subject of any findings or opinions in relation to the investigation, the Commissioner may include a statement to that effect in the report at the completion of the investigation, if satisfied it is appropriate and practicable to do so to avoid damage to the person's reputation; and
- c) the Commissioner may make public statements during an investigation.

Procedural fairness:

The Commission must give individuals or agencies who may be the subject of adverse opinions or findings in the report an opportunity to respond. A summary of the relevant submissions made by the person or agency must be included in the report at their request.

Judicial review of findings is available, by application to the Federal Court.

Exceptions to protections:

- a) A person **does not** receive protection from liability for their own conduct by disclosing it to the NACC. For example, a public servant who misuses an official power to advance a personal interest and then refers their own conduct to the NACC in the hope of avoiding liability for that conduct does not obtain protection.
- b) A person who knowingly makes a false or misleading disclosure to the NACC is not protected from liability for false or misleading statements.