



australian  
nursing federation

Submission No.....	49
Date Received.....	M.R.

9 September 2008

RECEIVED  
09 SEP 2008  
BY: LACA

The Secretary of the Committee  
House Standing Committee on Legal and Constitutional Affairs

Email: [laca.reps@aph.gov.au](mailto:laca.reps@aph.gov.au)

### **Inquiry into whistleblowing protections within the Australian Government public sector**

The Australian Nursing Federation (ANF) was established in 1924. The ANF is the national union for nurses and midwives and assistants in nursing, with Branches in each state and territory of Australia.

The ANF is also the largest professional organisation in Australia, with a membership of over 170,000 nurses, employed in a wide range of enterprises in urban, rural and remote locations in both the public and private sectors. The ANF's core business is the industrial and professional representation of our membership.

The ANF participates in the development of policy in nursing, nursing regulation, health, community services, veteran's affairs, education and training, occupational health and safety, industrial relations, immigration and law reform.

The ANF is delighted to have this opportunity to make submission to the inquiry into whistle blowing protections within the Australian government public sector. The ANF wishes at the outset to express a strong desire to see greater recognition for and protection of individuals who make public disclosure statements.

While there is no globally recognised and accepted definition for whistleblowing there are a number of different descriptions which attempt to distinguish how whistleblowing is different from other forms of disclosure.

In 1994 a senate select committee on public interest: whistleblowing, described it as 'the disclosure by organisations' members (former or current) of illegal, immoral or illegitimate practices under the control of their employers to persons that may be able to effect action'. In Australia this definition has been widely used since then to define whistleblowing<sup>1</sup>.

It is the position of the ANF that whistleblowing is the truthful public disclosure of information by an employee to the employer or any other higher authority. Furthermore the ANF contends that truthful disclosure must be dealt with in a timely and efficient manner by the employer and internal policies must be in place to inform employees and employers of the process that should be followed.

Equally, the ANF does not support spurious or vexatious reports for the purpose of airing disagreements, to maliciously cause embarrassment or for personal benefit.

#### **RECOMMENDATION**

*Truthful disclosure must be dealt with in a timely, transparent manner and policies must be in place to inform the process.*

It is the firm view of the ANF that any nurse, midwife or other health professional should be free to speak out against misconduct or corruption that they identify in the course of their employment and that they should be facilitated to do so without the fear of reprisal or mistreatment. Individuals often feel intimidated and may shy away from making disclosures particularly if it is regarding the performance or management of personnel in higher authority. The imbalance of power between employees is often the cause of significant workplace issues including bullying and harassment.

One of the important features of public disclosure statements is the timeliness with which they are acknowledged and investigated. The ANF understands that in many workplaces internal policy provides for excellent processes when cases of public disclosure are made. However, there still remain examples where employees concerns have been poorly handled and in some cases ignored.

In the health sector there are a range of circumstances under which the ANF supports public disclosure. The most important is in cases of danger to public health and safety.

However, the ANF also contends that in the course of one's employment as a health care professional there may well be a myriad of reasons for public disclosure to occur. These may include but is not limited to, inappropriate use of resources, misconduct and wastage of public funds.

#### **RECOMMENDATION**

*Public disclosure is supported through appropriate processes when public health and safety is at risk.*

The ANF recommends that any person who makes a truthful claim should be protected from both reprisal and legal action.

Providing protection from legal action could ensure a level of comfort and security in a situation of uncertainty for a person who 'blows the whistle'. Threats of suits for defamation etc are often high in the consciousness of the employee and protection from such action would be an advantage for those who are in the position of being forced to disclose information.

The question remains however of how best to protect people who for whatever reason are forced or make a conscious decision to 'blow the whistle'?

Little legal protection exists and in most states and territories the law is weak in this regard, therefore the ANF would be keen to see a strengthening of the whistleblower protection acts in each jurisdiction so that whistleblowers' identities are kept confidential, that penalties are imposed for employers who fail to investigate thoroughly and properly and where truthful assertions are made and substantiated the whistleblower is protected by law from ongoing action.

**RECOMMENDATION**

*Persons making truthful disclosures must be protected from legal action and victimisation.*

**RECOMMENDATION**

*Strengthening of the whistleblower protection act to maintain confidentiality and penalties for employers who fail to investigate claims thoroughly.*

Furthermore the ANF holds strong views that the establishment of a national body to assist staff who find themselves in this situation would be extremely useful. The role of such a group would be to support workers, maintain anonymity and provide information.

**RECOMMENDATION**

*Establishment of a national body to support and protect whistleblowers, to provide information and to ensure compliance with regulations.*

The ANF again thanks the committee for its work in relation to this matter.

Yours sincerely

GERARDINE (GED) KEARNEY  
Federal Secretary

---

<sup>i</sup> Australia. Commonwealth of Australia. 1994. *Report on the Senate Select Committee on Public Interest Whistleblowing*. The Parliament of the Commonwealth of Australia: Canberra.