



Whistleblowing

Whistleblowing is the reporting or disclosure of conduct that is reasonably suspected by an individual (whistleblower) to concern misconduct or an improper state of affairs or circumstances arising in connection with their employer or former employer. ('disclosable conduct').^{1, 2}

Misconduct can include fraud, negligence, default, breach of trust and breach of duty. An improper state of affairs or circumstances can include:

- An offence or breach of regulations
- Conduct that represents a danger to the public or financial system
- Insolvent trading
- Activities that risk harm to consumers or other employees
- Activities that do not breach the law but may be unethical

The nature of the disclosure must be in the public interest and be more than reporting of personal work grievances and disputes.

It is the policy of the Australian Nursing and Midwifery Federation that:

1. Nurses, midwives and assistants in nursing³ should be able to speak out without fear of reprisal or intimidation in circumstances of suspected or actual disclosable conduct.
2. Employers should have policies and procedures in place to assist employees, including managers, to deal with making, receiving and responding to complaints or reports of suspected or actual disclosable conduct.
3. Entities subject to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth)*⁴ (the Act) must have a Whistleblower policy in place in accordance with the Act.
4. Responding appropriately and in a timely manner to employee concerns and complaints will improve the health, safety and general wellbeing of employees and people accessing health services.
5. The policies and procedures of health care organisations must comply with professional standards and reporting requirements of the Act and the Australian Health Practitioners Regulation Agency and should provide robust mechanisms at the local level that:
 - 5.1 Maintain the privacy and the anonymity of the persons making a complaint or report of disclosable conduct.
 - 5.2 Ensure whistleblowers do not suffer any form of retaliation, victimisation, discrimination or adverse action as a result of submitting a complaint or report of actual suspected disclosable conduct.



- 5.3 Provide alternate steps to be taken when immediate supervisors are implicated in complaints or reports of disclosable conduct or where the outcome of the investigation does not satisfy the whistleblower's concerns. The policy should identify a senior person within the organisation responsible for responding to complaints or reports or nominate an independent external person or body to receive complaints or reports.
- 5.4 Ensure all complaints and reports of suspected or actual disclosable conduct are investigated and managed with procedural fairness, as soon as practicable.
- 5.5 Ensures that any relevant third party bodies are notified of the disclosable conduct.
- 5.6 Ensure whistleblowers are kept informed about the progress of the investigation and, with due consideration of privacy principles and procedural fairness, any actions that are to take place, and any related findings and recommendations from the investigation.
6. Whistleblowers should use internal procedures wherever possible to make a complaint or report to their employer of suspected or actual disclosable conduct. All such complaints or reports should initially be investigated internally.
 - 6.1 The investigation should commence as soon as practicable and be conducted in accordance with procedural fairness, including ensuring the investigation is undertaken by a suitably qualified and independent person.
 - 6.2 Investigation by an external independent person may also be appropriate in some circumstances.
 - 6.3 In making a complaint or report, registered health practitioners must also comply with reporting requirements of the Australian Health Practitioner Regulation Agency⁵.
7. In circumstances where the disclosable conduct is or is reasonably suspected to give rise to an imminent threat to health and safety or an immediate danger or emergency, the whistleblower may report directly to an external body, such as AHPRA, the police or other regulatory body. In such circumstances, the whistleblower must be afforded appropriate whistleblower protection including protection from any adverse action or discrimination.
8. Health care managers who receive complaints or reports of disclosable conduct must manage the complaint in accordance with relevant legislation and the organisation's policies and procedures.
9. Nurses, midwives or assistants in nursing who make a complaint or report or who are the subject of a complaint or report should seek support and advice from their ANMF State or Territory Branch. Where appropriate, the ANMF State or Territory Branch will recommend members seek legal advice with respect to accessing whistleblower protection under the Act or other legislation.
10. Employers have an obligation to ensure they comply with any relevant whistleblower legislation (State, Territory and Commonwealth). Legislation provides legal protection against reprisals in some circumstances, for example the Act or the *Corporations Act 2001* (Cth)⁶.



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Reviewed and re-endorsed August 2020*

References

¹ The Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019(Cth) (the Act)

² Note: this is in abbreviated definition based on the Act

³ The term assistant in nursing also refers to care workers (however titled)

⁴ <https://www.legislation.gov.au/Details/C2019A00010>

⁵ Nursing and Midwifery Board of Australia. Nursing and Midwifery Guidelines for Mandatory Notifications. <http://www.nursingmidwiferyboard.gov.au/Codes-and-Guidelines.aspx>

⁶ <http://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/>