



# Submission to Queensland Government

*Public Interest Disclosure Act 2010*

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-  106 Victoria St, West End Q 4101
-  GPO Box 1289, Brisbane Q 4001
-  (07) 3840 1444
-  (07) 3844 9387
-  [qnmu@qnmu.org.au](mailto:qnmu@qnmu.org.au)
-  [www.qnmu.org.au](http://www.qnmu.org.au)

submission

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### Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the *Queensland Government* for the opportunity to comment on the review of the *Public Interest Disclosure Act 2010* (the Act).

Nursing and midwifery is the largest occupational group in Queensland Health (QH) and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing and midwifery workforce including registered nurses (RN), midwives, nurse practitioners (NP) enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 70,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU. As the Queensland state branch of the Australian Nursing and Midwifery Federation (ANMF), the QNMU is the peak professional body for nurses and midwives in Queensland.

Through our submissions and other initiatives, the QNMU expresses our commitment to working in partnership with Aboriginal and Torres Strait Islander peoples to achieve health equity and ensure the voices of Aboriginal and Torres Strait Islander nurses and midwives are heard. The QNMU supports the Uluru Statement from the Heart and the call for a First Nations Voice enshrined in our Constitution. The QNMU acknowledges the lands on which we work and meet always was, and always will be, Aboriginal and Torres Strait Islander land.

## General comment

Whistleblowing is an important mechanism for accountability in both the public and private sectors and such actions are afforded protection under the Act (Aninian-Walsh, 2020). And while the importance of the contribution that whistleblowing can make to accountability is recognised, and there are legislative provisions to protect whistleblowers in making disclosures, there remain significant issues in the practical operation of this. The contribution of whistleblowers such as Toni Hoffman (Fedele, 2019) demonstrate both the important contribution to the health system in Queensland that such disclosures can make, but also the extreme professional and personal impacts that making such disclosures can have on the whistleblower.

In a recent article by a key Queensland researcher in the area, Professor A.J.Brown (Brown, 2019) notes just how rare public whistleblowing is:

“In our study, 98% of whistleblowers raised their concerns internally. Only 2% went outside their organisations in the first instance. Even when whistleblowers feel forced to go outside, it is rarely directly to the media. In fact,

- only 16% of reporters ever went to an external regulatory body.
- of the 20% of reporters who ever went public, 19% went to a union, professional association or industry body.
- Only 1% of whistleblowers ever went directly to a journalist, media organisation or public website.

These data show there's hardly a crisis of leaking and external disclosure of information in Australian institutions.

As our research highlights, Australia's whistleblowing laws need many reforms to make protections real – including a properly resourced whistleblower protection authority. But reform of public disclosure rules is especially critical.”

The current review of the Queensland *Public Interest Disclosure Act 2010* identifies 10 areas for comment (Queensland Government, 2023). This submission relates particularly to the experiences of the QNMU in representing and supporting our members, with our comments relating to the following areas:

- What is a public interest disclosure?
- Who can make a public interest disclosure?
- Experiences of people who witness and report wrongdoing.

## Recommendations

The QNMU recommends:

- Given that most potential PIDs are resolved within an organisation it is important that, in the health sector, all service providers have clearly

articulated policies regarding processes and protections that support staff in exploring issues.

- That consideration be given to the inclusion of avenues for seeking confidential advice from trusted advisors, such as a union (as in the approach from New Zealand legislation). This could provide a mechanism through which a potential discloser is able to fully explore avenues for resolving their concern, including through more clearly articulated organisation processes.

### **What is a public interest disclosure?**

The actual specification of what is or isn't a Public Interest Disclosure (PID) will always be an initial consideration where a concern is raised regarding a potential disclosure. In a previous submission to the Joint Committee on Corporations and Financial Services Inquiry into Whistleblower Protections (Queensland Nurses' Union, 2017) the QNMU stated that:

Although there may be a broad understanding of the term 'whistleblowing', there remains fundamental ambiguity and confusion about who can make a disclosure, the type of matter being disclosed, where the individual can make a disclosure, to whom it can be made and the circumstances in which they can access protections. These factors are exacerbated in the health sector where a raft of legislation, codes of practice, standards and regulations govern clinical practice.

Recent discussions within the QNMU indicate that even the clear agreement of what is agreed to be a PID remains an issue. Experiences of members highlights a lack of certainty and consistency regarding what will be accepted as a PID, as well as inconsistencies in how disclosures are treated.

There can be a number of issues that raise concern in the workplace. The decision to take the step to make a PID about an issue of concern is a major step, with the following aspects someone considering that action should include in their decision.

- What the issue raised is about – corruption? maladministration?
- Are there opportunities to resolve it in the workplace?
- What would the process for progressing this entail?
- What would be the personal consequences of the disclosure?
- What is the likelihood that any process will resolve this issue?

### **Workplace grievances or a PID?**

In such an initial consideration it should be recognised that there can be an overlap in considerations about workplace grievances, including staff performance or management approaches, and those that relate to corruption. For example, the Issues paper (Queensland Government, 2023, p.9) states that:

*In the Ombudsman Report, the Queensland Ombudsman considered whether personal workplace grievances should be dealt with under the PID Act. The Public Service Commission provides a framework for dealing with workplace grievances which are termed 'individual*

*employee grievances'. These matters largely relate to administrative decision making, conduct or behaviour that may be a breach of the code of conduct or behaviour considered to be unfair or unreasonable. The Ombudsman found there was overlap between grievances which were assessed as PIDs and other mechanisms for dealing with these concerns. It also found that dealing with these matters as PIDs could cause delays in resolving issues as they may be better suited to informal resolution.*

The following example demonstrates staff experiences where what in fact is a workplace grievance has been progressed as a PID:

### **Case study**

A senior Midwife working in maternity was directed do lower skilled duties completely unrelated to their substantive position for an unspecified period while awaiting details of allegations against them. The delay was allegedly because the Hospital and Health Service (HHS) was awaiting assessment from the Crime and Corruption Commission Queensland (CCC) of whether their alleged conduct (which was, at that time, unknown to them) amounted to corrupt conduct and whether PID status would be granted. The member was not provided the allegations for almost 8 months. When received, the allegations were decidedly NOT about corrupt conduct or maladministration. Rather, they were complaints from colleagues about management style.

As most potential PID are initially raised internally it is important that organisations have clearly identified and defined processes through which staff can initially safely raise concerns and identify possible avenues through which they could be progressed, whether it is through seeking PID status or through internal processes.

This lack of clarity and direction appears to remain an issue. An associated consideration is the possible avenues through which workplace issues could be resolved, with the formal progression of an issue as a Public Interest Disclosure (PID) the highest escalation. While it is important to have this option, and also important that issues of corruption are identified, the complexity of the issue requires that progression to this level should be a very considered decision.

The ANMF recommends in their policy on Whistleblowing (2017) that where possible internal procedures should be used to reach a declaration and that such complaints are investigated internally. While the QNMU does seek to support members resolving issues within their organisations and through the identified processes, this approach does rely on the presence of publicly available, supported and well documented processes. Where there are clear guidelines regarding the identification of a PID and guidance and support in making appropriate decisions this also should facilitate the resolution of lower level issues such as workplace grievances, without resorting to the provisions of the Act, but also avoiding the potential reportee feeling the need to walk away from the concern.

The QNMU recommends that all organisations have processes that support the decision processes for potential disclosers. This should clearly scope the identification of a PID, the alternative processes through which issues of concern can be addressed, and also the processes that a discloser would follow if making a PID.

### **Who can make a public interest disclosure?**

Healthcare workers can make a PID, and clearly there are issues of clear public interest that could occur in their workplaces around which making a PID would be appropriate. So for healthcare workers the issue is more likely to be not: “Can I?” but “Should I, how do I do it and what will happen?”

As most examples of whistleblowing start with internal disclosures, it is important that people have an avenue through which these questions can be addressed. Progression of an issue that **could** have been resolved through internal processes, will take extensive time and may cause extensive disruption. Further, once the formal process is initiated it is very difficult to withdraw or reverse. Thus, it is recognised that such a decision needs to be careful and informed.

One issue this raises are the avenues through which staff can make their initial decisions. For those staff who do look for advice externally to their workplace, Brown (2019) indicates that one major avenue was to discuss their concerns with their union, with only a very small number approaching the media.

An interesting point raised in the Issues Paper (Queensland Government, 2023, p. 14) regards New Zealand’s legislation. New Zealand does allow disclosures to third parties, for example to friends, colleagues and union representatives, if done as a part of the process of confidentially seeking advice. Clarification of this role would appear to provide support for mechanisms through which a union member could seek advice, away from their workplace, regarding how to proceed. And this aligns with the need for workplaces to have clear policies and processes to support people considering issues they might see as requiring a PID – processes which a union can then help members navigate.

The following example raises an example of protections not being offered around an issue that was a PID – as it had already been reported by another staff member.

#### **Case study**

The QNMU have assisted a member where, in the course of responding to allegations as part of a ‘show cause’ process (being a formal disciplinary process commenced under s 187 of the *Public Service Act 2008*) a member offered information about their direct manager that would have usually been considered a PID. The member was (initially) denied PID status in relation to the information they disclosed about their manager as, according to the HHS, that information had already been received by it from another source. The HHS stated that the information (as disclosed from another source) was on a similar nature to that disclosed by our member and had not been assessed as amounting to corrupt conduct. As a result, the HHS declined to assess our member’s disclosure as being a potential PID, and therefore she was not afforded PID status. As a direct result, they was not protected from exposure to potential reprisal action from their manager.



### **Experiences of people who witness and report wrongdoing.**

A common concern, and one raised within the issues paper is that of protections for people who do make a PID.

The example of Toni Hoffman provides insight into the experience of a whistleblower across the entire process. This is one of the best-known cases of a nurse-whistleblower, relating to concerns raised about poor surgical outcomes and patient deaths at Bundaberg Base Hospital (Fedele, 2019). While this was an important case, with significant outcomes, including changes to the healthcare system, he also commented on her experience:

While she would 'absolutely' blow the whistle again if it meant protecting patients, the impact of her decision more than a decade ago has taken an immeasurable toll.

These days, she refers to herself as 'still a work in progress'. "The personal toll has unravelled as the years have gone on. I've always worked in intensive care and I was always a really good nurse, a really good clinician, and I lost all that," Ms Hoffman says.

"The effect on me professionally, personally, financially... it's just been horrendous. It really more or less just stops your life and you have to start over again."

In this case the wrongdoing was clearly very extreme and the justification for the action taken unquestionable, with changes also made to the system in response to the actions. However, it was not an easy process with major repercussions also for the whistleblower. And while legislative approaches include consideration of protections for the whistleblower, the potential difficulties faced by whistleblowers is likely to also be, at some level, a disincentive to others.

However, in considering whether to make a disclosure, it is appropriate to consider a range of avenues through which the concern might be addressed before taking the formal step of making a PID.

These would include:

- Management within one's workplace through internal processes.
- Australian Health Practitioner Regulation Agency (AHPRA) – the health regulator, where this is relevant.
- The union, for confidential advice on progressing the issue.

## References

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