



AUSTRALIAN NURSING AND MIDWIFERY FEDERATION NEW SOUTH WALES BRANCH

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# ANMF NSW BRANCH WHISTLEBLOWER POLICY

in accordance with the *Fair Work  
(Registered Organisations) Act 2009*

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*Endorsed May 2019*

*Approved Brett Holmes  
Branch Secretary, ANMF NSW Branch*

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# **ANMF NSW Branch**

## **Whistleblower Policy**

**in accordance with the**

### ***Fair Work (Registered Organisations) Act 2009***

#### **1. PURPOSE**

The Australian Nursing and Midwifery Federation NSW (ANMF NSW) Branch is committed to the highest standards of legal, ethical and moral behaviour. Accountability and systems promote and support transparency in decision making and good governance.

The ANMF NSW acknowledges that there are protections for Whistleblowers contained in the *Fair Work (Registered Organisations) Act 2009*.

This policy documents our commitment to maintaining an environment in which a whistleblower may report, without fear of reprisal, conduct that qualifies for protection that they believe may be occurring in the name of the ANMF NSW.

#### **2. DEFINITIONS**

For the purpose of this policy:

*Act* – should be read as the *Fair Work (Registered Organisations) Act 2009*.

*ANMF NSW* – should be read as meaning the Australian Nursing and Midwifery Federation New South Wales (ANMF NSW) Branch.

*Discloser* – is a person who makes a disclosure relating to disclosable conduct who may also be called a whistleblower.

*Elected Officer* – means the Branch Secretary and/or Branch Assistant Secretary of the ANMF NSW Branch.



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*Officer, staff and/or employee / former Officer, staff and/or employees* – means all Managers, Officers (however defined), and administrative staff (however defined) employed by the ANMF NSW Branch or formerly in these positions.

*Member / former member* – should be read as meaning a current member (however defined) or former member of the ANMF NSW Branch.

ROC – Registered Organisations Commission

*Whistleblowing* – defined as the deliberate, voluntary disclosure of individual or organisational disclosable conduct.

### 3. SCOPE

This policy applies to all current or former ANMF NSW employees, members and external stakeholders who have had transactions with our union.

It relates to conduct which:

- breaches the ANMF NSW's internal rules and policies; and/or
- is Disclosable Conduct under the Act.

This policy does **not** apply to a Complaint in relation to service levels, policy decisions, or an employment-related grievance with another person within the ANMF NSW, which is not Disclosable Conduct or a breach of ANMF NSW rules or policies.

If you have a Complaint about a service issue or policy decision or you wish to raise a grievance issue, refer to the Complaints Policy or speak to your supervisor, or the relevant committee or Human Resources' contact person.

### 4. WHO CAN MAKE A PROTECTED DISCLOSURE AND BE A WHISTLEBLOWER

A person is able to make a protected disclosure if they are:

- A member or former member of the ANMF NSW
- An officer or former officer of the ANMF NSW
- An employee or former employee of the ANMF NSW
- A person who has or has had a contract for the supply of goods and services or has or has had any other transaction with the ANMF NSW, or its officer or employees



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- An officer, former officer, employee or former employee of the person who has the contract or transaction

For the disclosure to be protected it must be made to the right person and be about 'disclosable conduct'.

### 5. WHAT IS DISCLOSABLE CONDUCT

While any information may be voluntarily given to an agency, only certain disclosures are protected within the Act. These include disclosures where it is suspected on reasonable grounds that by an act or omission, the ANMF NSW, or its officers or employees have contravened a provision of the Act, the *Fair Work Act 2009*, the *Competition and Consumer Act 2010* or constitutes an offence against a law of the Commonwealth.

Examples of things which would be Disclosable Conduct include:

- a breach of an officer's duties to the ANMF NSW in relation to financial management;
- providing false or misleading information in a document;
- misuse of the ANMF NSW's resources;
- unauthorised payments being made;
- election-related offences;
- coercion to exercise or not exercise a workplace right;
- failing to lodge required documents.

Things that (on their own) would usually not be Disclosable Conduct include:

- complaints about the level of service received from the ANMF NSW or a particular official;
- a difference of opinion about a policy adopted by the ANMF NSW;
- not being elected as a workplace representative;
- employment disputes with your employer (where your employer is not the registered organisation);
- disagreeing with the decision of the ANMF NSW to donate to a particular cause.

### 6. WHO DOES THE WHISTLEBLOWER NEED TO DISCLOSE TO

Although Disclosable Conduct can be reported to external agencies, such as the ROC, in many cases, if it is dealt with promptly and effectively, the ANMF NSW will be capable of dealing with the matter internally to reach an appropriate resolution.



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### Disclosing to the NSW Branch

The whistleblower may make the disclosure to the ANMF NSW.

When a matter is reported regarding a breach of internal rules, policy or Disclosable Conduct under this Policy, you should provide as much information as possible. Information such as dates, times, location, individuals involved, other witnesses, physical evidence (e.g. documents, images) and any other general information may be helpful to assist the ANMF NSW to determine how to take appropriate action.

Any information you provide to the ANMF NSW may be used by the ANMF NSW in assessment of an investigation or other appropriate action. Examples of actions could include:

- a satisfactory explanation can be provided in relation to the matter;
- the matter is resolved by speaking to one or more parties;
- the matter is recorded and monitored going forward;
- a decision is made to investigate (internally or via independent, external investigators);
- the matter is referred to another agency; or
- a combination of the above.

Where practicable, you will be contacted and advised of what action will be undertaken.

### Disclosing to an external body

The whistleblower may make the disclosure to one of the following:

- The Commissioner or the staff of the ROC
- The General Manager or the staff of the Fair Work Commission
- A member of the Fair Work Commission
- The staff of the Fair Work Ombudsman

A disclosure from a whistleblower to any of the people listed above will trigger the whistleblower process. Protected disclosures may be made through a person's lawyer, allowing that person to remain anonymous.

A person does not need to use the word 'whistleblower' to be protected however it may help the agency receiving the information to recognise the importance of the disclosure. The person also has no obligation to give the agency their name or contact details, however this can have implications for whether a disclosure is investigated. A person who makes a disclosure, and provided their contact details, will be notified of the steps as the process progresses.



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### 7. INVESTIGATIONS

Whistleblower disclosures must be investigated unless an authorised official determines that it fits one of the prescribed reasons in the regulations.

Prescribed reasons are:

- The information does not, to any extent, concern serious disclosable conduct
- The disclosure is frivolous or vexatious
- The discloser has informed the investigator that the discloser does not wish the investigation to be pursued, and the investigator is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation
- It is impracticable for the disclosure to be investigated:
  - because the discloser's contact details have not been disclosed; or
  - because the discloser refuses or fails, or is unable, to give, for the purposes of the investigation, such information or assistance as the investigator asks the discloser to give, or
  - because of the age of the information
- The information is being, or has been, dealt with adequately in another manner.

Authorised officials are:

- The Commissioner, ROC
- The General Manager, Fair Work Commission
- The Fair Work Ombudsman

The Act has set timeframes that an agency must adhere to, however an extension of time may be sought if needed to complete the investigation.

Timeframes are:

- Within 14 days the matter will be allocated to an authorised official
- Within 90 days the investigation will be completed

The ANMF NSW may be contacted, if required, as part of the investigation. This may involve sharing details of the disclosure to the ANMF NSW to ensure that they are able to properly answer the allegations made against them. In some cases, this may involve identifying the whistleblower to the ANMF NSW. There is no guarantee under the Act of anonymity, however, there are times when the agencies need to seek the whistleblower's consent to disclose their information. There are however, protections against reprisals.



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Whilst anonymous reports are accepted under this Policy, they may have significant limitations that inhibit a proper and appropriate inquiry or investigation. These limitations may include the inability to provide feedback on the outcome and/or to gather additional particulars to assist the inquiry/investigation.

### Investigations Conducted by the ANMF NSW

If the ANMF NSW determines that your matter should be investigated, the investigation may be conducted by the Legal and Compliance Officer or by an external investigator appointed by the ANMF NSW. All investigations will be conducted in a manner that is procedurally fair, confidential, conducted without bias and in a timely manner.

At the end of an investigation, you may be informed of the outcome of the investigation by the ANMF NSW. The ANMF NSW may in certain circumstances, whether required by law or in its discretion, inform the ROC, the Fair Work Commission or the relevant authority of any contents of the investigation.

## 8. REPRISALS AND PENALTIES FOR BREACHING WHISTLEBLOWER PROTECTIONS

The Act provides protection to a person who makes a 'protected disclosure' and protects them against reprisals being taken against them for making that disclosure. The whistleblower is protected against many types of conduct which including but not limited to:

- Any civil or criminal liability for making the disclosure (the person may still be liable for their conduct revealed by the disclosure)
- Any contractual or other remedy being enforced on the basis of disclosure
- Any form of reprisal, which is detriment being caused by another person due to the whistleblower's disclosure, including:
  - Dismissal
  - Injury in their employment
  - Discrimination between them and other employees
  - Harassment or intimidation
  - Harm or injury (including psychological injury)
  - Damage to property
  - Damage to reputation

The Federal Court or Federal Circuit Court can order significant civil remedies for reprisals which include taking or threatening to take a reprisal against a whistleblower.



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There are also criminal offences that attach to the protections. A person commits an offence if they take or threaten a reprisal against a whistleblower for making or proposing to make a protected disclosure.

Note that the Act protects an eligible disclosure reported internally to the ANMF NSW as if the person made, or could have made, the disclosure to the ROC or other authorised recipient.

### 9. COSTS

Costs may apply where it is determined the proceedings were instated vexatiously.

### 10. REVIEW AND APPROVAL

This Policy is to be reviewed every three years or earlier where changes are required to be made to the processes undertaken. The next review date is by xxx 2022. Changes to this policy must be authorised by the Branch Secretary.

*Endorsed by ANMF NSW Branch Council – May 2019*