Queensland Council of Unions

Honorary President: **Rohan Webb** General Secretary: **Ros McLennan** Assistant General Secretary: **Michael Clifford**

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Dr Patrick Hodder
Committee Secretary
Parliamentary Joint Committee on Corporations
and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Dr Hodder

The Queensland Council of Unions (QCU) has an interest in the concept of whistleblower protection in as much as it provides a potential for improving the ability of employees to make complaint. Whistleblower protection is not well understood within the community and from reading the issues paper in relation to this inquiry, it would appear that current provisions that pertain to the private and non-government sectors are underutilised. This submission is brief and provides some background in relation to the experience of unions in attempting to enforce a minimum standard in industrial and employment legislation.

As Queensland's peak union council, the QCU, can provide some comment with respect to whistleblower legislation. The Goss Government's introduction of whistleblower legislation in the early 1990s heralded the end of an era of corruption that had beset Queensland. Fear of reprisal motivated many Queenslanders to walk past corrupt practices that were endemic in this state. It is also noteworthy that whistleblower legislation in Queensland was accompanied by a strong and independent anti-corruption commission.

Chapter 11 Part 4 A of the *Fair Work (Register Organisations) Act 2009* purports to provide protection for whistleblowers making disclosure about registered organisations. These provisions, introduced by 2016 amendments, include a prohibition of victimisation and compensation for victims. As far as we understand, these provisions have yet to be used so their adequacy remains untested. Chapter 3 Part 1 of the Fair Work Act 2009 has since that

act's inception contained General Protections. General Protections provide for a prohibition on adverse action against employees in their pursuit of workplace rights. These provisions appear to have been well used since their introduction in 2009.

A range of breaches of industrial and employment laws in Australia is reaching rampant proportions. Noncompliance with industrial instruments is not only perpetrated by low-end, unsophisticated employers but national organisations with well recognised brands have been the subject of recent scandals. It appears that the owners of these national brands care little for their corporate reputation and less for the welfare of the people who work for them. Many breaches of industrial and employment legislation are not as simple as a clerical error. Breaches of workplace health and safety legislation puts lives at risk. Dressing up an employee to appear to be an independent contractor through sham contractor arrangements is fraudulent. Deliberately underpaying employees is tantamount to theft.

It is also apparent that workers are in fear of reprisal if they speak out in relation to employers breaching workplace laws. It has been established by a number of inquiries and academic research that this fear of reprisal is worse amongst those in precarious employment, a common characteristic of labour hire employment. When guest workers are subject to fear of deportation, that precariousness has been well described as layered. That is in addition to fear of unemployment, guest workers fear for their immigration status as it often relies upon the goodwill of their employer. This combination of triangulated labour hire arrangements allowing easy termination of employment coupled with the use of guest workers, whose immigration status is largely determined by their employment status, has produced some of the more extreme examples of exploitation of workers.

Existing protections for employees who make complaint about their employer breaking the law are insufficient. There are a number of reasons for the inadequacy of protections to employees making a complaint. Firstly, the remedies made available to employees who have their employment terminated are woefully inadequate. In most cases, tribunals will award compensation rather than order reinstatement because of a breakdown in the employment relationship. Whilst victimisation for making a complaint is likely to be an invalid reason for employment termination, therefore, not subject to the same six-month cap as an unfair dismissal, such findings are generally rare. Compensation for unfair dismissal capped at six months' pay, and is rarely anywhere near that level, rather being more likely to be in the order of four weeks' pay. It is against this backdrop of inadequate compensation for employees having their employment terminated that silence is hardly surprising.

Our brief submission is intended to have the inquiry consider that current protections for employees are clearly insufficient for employees to make complaint about their employment conditions.

Yours faithfully

Ros McLennan
General Secretary