

# Whistleblower Policy

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## Purpose

The Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG/College) strives to operate with a culture of ethical and appropriate corporate behaviour in all our business activities. This includes ensuring that the College acts with integrity, honestly and in accordance with good governance principles free from recriminations and victimisation.

All College Staff, members, trainees, contractors and volunteers must comply with the RANZCOG Code of Conduct and conduct themselves in a manner that reflects the standard of professional and ethical behaviour expected by the College.

This purpose is supported by:

- ensuring that the College has sound procedures to allow all staff and their families to identify and report genuine concerns about illegal conduct or any improper state of affairs pertaining to the College, without fear of reprisals; and
- ensuring all staff and officers of the College are aware of the protections available under this policy and Whistleblower Laws.

## Scope

This policy will commence on 1 November 2019. It replaces all other policies dealing with whistleblowers and Whistleblower Laws in both Australia and New Zealand. The provisions of this policy, unless otherwise specified, apply to both Australian and New Zealand jurisdictions.

This policy applies to the following people who can make a disclosure to the College, and broadly covers all current or former:

- Staff of the College;
- Officers of the College (includes a director or company secretary);
- Contractor, or an employee of a contractor, who has supplied goods or services to the College (either paid or unpaid);
- Individual who is an associate (as defined in the Corporations Act) of the College; or
- Spouse, relative or dependant of one of the people referred to above.

This policy is not intended to create any contractually binding obligation on the College and does not form part of any contract of employment or other contract for engagements with the College.

## Definitions

**Discloser(s)** refers to the persons eligible to make a disclosure protected by Whistleblower Laws. These persons are identified in section 3 below.

**Grounds** mean that any reasonable person in the Discloser's position would also suspect the information indicates misconduct or a breach of the law.

**Journalist** includes journalists working for electronic services operated on a non-commercial basis by a body that provides a national broadcasting service.

**Officer(s) or Senior Manager(s)** is a person who:

- makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the College; or
- has the capacity to significantly affect the College's financial standing.

**Protected Matters** refers to the types of matters outlined at section 2 below, which are protected by Whistleblower Laws and the terms of this policy.

**Recipient(s)** refers to the persons eligible to receive disclosure protected by Whistleblower Laws. These persons are identified in section 4 below.

**Whistleblower Laws** – For Australian jurisdiction, would refer to the protections contained in Part 9.4AAA of the *Corporations Act 2001* and *Taxation Administration Act (TAA)*.

For New Zealand jurisdiction, would refer to protections contained under Part 3 *Protected Disclosures (Protection of Whistleblowers) Act 2022* (PDA 2022)

**Whistleblowing Officer** of the College is responsible for receiving whistleblower disclosures of wrongdoing and overseeing its investigation and resolution. These officer(s) are identified in section 4.1 below.

## Policy

### 1. Reportable Conduct

In Australia, a reportable conduct disclosure is protected by Whistleblower Laws if:

- The disclosure relates to **Protected Matters** identified in section 2 below;
- The information is disclosed by an **Eligible Whistleblower** identified in section 3 below; and
- The disclosure is made to an **Eligible Recipient** identified in section 4 below.

All of the above three conditions must be satisfied for a disclosure to be protected by Australian Whistleblower Laws.

In New Zealand under the *Protected Disclosures (Protection of Whistleblowers) Act 2022 (PDA 2022)*, a disclosure is protected if:

- the discloser believes on reasonable grounds that there has been a *serious wrongdoing* in or by the discloser's organisation;
- disclosed in accordance with the *PDA 2022*, and
- does not disclose in bad faith.

Under the New Zealand whistleblower laws, a disclosure is not protected if the discloser acts in bad faith, is aware that the allegations are false, and that the information being disclosed is protected by legal professional privilege.

## 2. Protected Matters/ Disclosures

An individual in Australia may make a report under this policy if they have reasonable grounds to suspect that the College, its associate or staff or officers or senior managers of the College, have engaged in conduct that:

- Concerns misconduct, or an improper state of affairs or circumstances, relating to the College;
- Breaches of legislation in the corporate, financial and credit sectors (including, but not limited to the National Consumer Credit Protection Act 2009 (Cth) and the Australian Securities and Investments Commission Act 2001 (Cth));
- Breaches of any Commonwealth legislation punishable by 12 months or more;
- Concerns behaviour which represents a danger to the public, or to the financial system;
- Concerns conduct that may not be in contravention of particular laws but may still be of a serious enough nature to warrant disclosure, for example conduct that may indicate a "systemic issue"; or
- Where an individual reasonably considers the information will help the College to perform their duties under taxation law.

A discloser in New Zealand may make a report under this policy if they have reasonable grounds to suspect that the College, its associate or staff or officers or senior managers of the College, have engaged in serious wrongdoing that is:

- an offence
- A serious risk to –
  - Public health; or
  - Public safety; or
  - The health or safety of any individual; or
  - The environment
- A serious risk to the maintenance of law, including –

- The prevention, investigation, and detection of offences; or
- The right to a fair trial:
- An unlawful, a corrupt, or an irregular use of public funds or public resources;
- Oppressive, unlawfully discriminatory, or grossly negligent or that is gross mismanagement and is done (or is an omission) by a person performing (or purporting to exercise) a power on behalf of a public sector organisation or the Government.

## 2.1 Personal work-related grievances excluded

The disclosure of information related to a personal work-related grievance is excluded by Whistleblower Laws and is not dealt with by this Policy.

Examples of personal work-related grievances include interpersonal conflicts between staff; decisions regarding engaging, transferring or promoting a staff member; decisions to discipline a staff member; or decisions to suspend or terminate the engagement of a staff member

For personal work-related grievances, please refer to *Grievance and Dispute Resolution Policy and Procedure*.

## 3. Eligible Whistleblowers

Each of the following individual is an eligible whistleblower if the individual is, or has been any of the following:

- Staff of the College;
- Officers of the College (includes director or company secretary);
- Contractor, or an employee of a contractor, who has supplied goods or services to the College (either paid or unpaid);
- Individual who is an associate (as defined in the Corporations Act) of the College; or
- Spouse, relative or dependant of one of the people referred to above.

Protected disclosures can also be made anonymously

## 4. Eligible Recipients

If you become aware of a reportable conduct the College provides the channels to report the matter:

### 4.1 Internal Reporting

For the purposes of this Policy the disclosure of a protected matter may be made to

- Whistleblowing Officer as listed below:

For disclosures relating to staff, officers, or senior managers of the College	Ms Vase Jovanoska  Chief Executive Officer (CEO)  <a href="mailto:ceo@ranzcog.edu.au">ceo@ranzcog.edu.au</a>  03 9417 1699
	Any member of the Executive Leadership Team (ELT)

For disclosures relating to the President, Board Member and/or CEO	Ms Candy Caballero  Independent External Reviewer  <a href="mailto:ier@ranzcog.edu.au">ier@ranzcog.edu.au</a>  Independent External Reviewer's details are available on the website
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## 4.2 External Reporting

- In Australia
  - ASIC or APRA; or any Commonwealth authority prescribed in relation to the company;
  - If no action is taken after 90 days, and the whistleblower does not have reasonable grounds to believe that action is being or has been taken to address the matters to which the first disclosure related they can make a "public interest disclosure" or an "emergency disclosure" to a Member of Parliament or a journalist:
    - where the whistleblower having reasonable grounds to believe the information disclosed concerns a substantial and imminent danger to the health or safety of one or more persons, or the natural environment;
    - the whistleblower has given written notification to the authority that they intend to make a public interest disclosure;
    - the extent of the information disclosed is no greater than necessary to inform the recipient of the misconduct or improper state of affairs to which the first disclosure related.

- A legal practitioner for the purposes of obtaining legal advice or representation in relation to Whistleblower Laws; and
  - An auditor or member of an audit team conducting an audit on the College
- In New Zealand a discloser subject to this Policy can make a protected disclosure to an *Appropriate authority* if the discloser is not confident about making the disclosure within their organisation at any time.
    - *Appropriate Authority* includes the head of any public sector organisation, officer of the Parliament, membership body of a particular profession, trade or calling with the power to discipline its members.

## 5. Protection to the Whistleblower

### 5.1 Confidentiality

Subject to compliance with legal requirements under the Australian Whistleblower Laws, upon receiving a disclosure of reportable conduct under this policy, the College will only share the identity of a Discloser or disclosing information that is likely to lead to the identification of the Discloser if:

- Discloser consents;
- The matter is reported to Australian Securities and Investments Commission (ASIC), Australian Prudential Regulation Authority (APRA), the Tax Commissioner or the Australian Federal Police (AFP); or
- The matter is raised with a legal practitioner for the purposes of obtaining legal advice or representation.

Under *New Zealand Whistleblower Laws in addition to discloser consent* the College will only share the identity of a Discloser or disclosing information that is likely to lead to the identification of the Discloser if:

- There are reasonable grounds to believe that the release of the identifying information is essential:
  - For the effective investigation of the disclosure; or
  - To prevent a serious risk to public health, public safety, the health and safety of any individual, or the environment; or
  - To comply with the principles of natural justice; or
  - To an investigation by a law enforcement or regulatory agency for the purposes of law enforcement.
- Complaints can be made under the *New Zealand Privacy Act 2020* for breaches of this protection.

The College may also disclose the existence of the Protected Matters (without disclosing the identity of the Discloser) to the extent necessary for the matters to be investigated, provided all reasonable steps are taken to reduce the risk that the Discloser's identity can be discovered.

Any disclosures of Discloser's identity or information likely to reveal his/her identity will be made on a strictly confidential basis

## 5.2 Victimisation prohibited

Australian and New Zealand Whistleblower Laws prohibit any person or College from:

- Engaging in any conduct that causes detriment to any person because that person (or another person) made a disclosure about a Protected Matter pursuant to Whistleblower Laws. In addition, New Zealand *Whistleblower Laws* protection extends to person intending, encouraging someone to make a disclosure, or has giving information in support of a Protected Matter pursuant to Whistleblower Laws; or
- Carrying out any threats to cause detriment to any person (whether express or implied threats) because that person (or another person) made a disclosure about a Protected Matter pursuant to Whistleblower Laws. In addition, New Zealand *Whistleblower Laws* protection extends to threats made to any person intending, encouraging someone to make a disclosure, or has giving information in support of a Protected Matter pursuant to Whistleblower Laws; or

Detrimental treatment includes dismissal, harassment, discrimination and disadvantages employment, physical and psychological harm.

Where a person or company engages in breaches of these protections, significant fines apply and persons who are adversely affected may obtain compensation orders from a Court in relation to any detriment caused.

Persons who have their contracts terminated in contravention of these protections may also have their contracts reinstated by a Court.

If Discloser is subjected to detrimental treatment as a result of making a report under this policy they should inform Whistleblowing Officer, officer or senior manager in accordance with Section 4 of this policy.

In New Zealand a person or a company may be subjected to orders from the Court for breaches of the anti-victimisation protections under the New Zealand Human Rights Act 1993.

## 5.3 Protections in Australia under Corporations Act

Subject to compliance with conditions prescribed for disclosures qualifying for protections under the Corporations Act, the following protections are given to whistleblowers:

- If a Discloser makes a disclosure protected by Whistleblower Laws, the Discloser cannot be subject to any civil or criminal liability for making the disclosure and cannot be subject to any contractual breach or other civil claim on the basis of the disclosure;
- No contract of employment or contract for services can be terminated on the basis that a protected disclosure constitutes a breach of contract;
- Whistleblowers are provided with immunity so that the information they disclose will not be admissible in evidence against them;
- Protections for whistleblowers against victimisation/retaliation;
- A whistleblower's identity cannot be disclosed to a Court or tribunal except where considered necessary; and
- Penalties in relation to victimisation and breaches of the confidentiality obligation have been significantly increased.

#### 5.4 Protections in Australia under Taxation Administration Act

Subject to compliance with conditions prescribed for disclosures qualifying for protections under the Taxation Administration Act, the following protections are given to the whistleblowers:

- A whistleblower's identity cannot be disclosed to a Court or tribunal except where considered necessary;
- Substance of the report cannot be disclosed without the whistleblower's consent, to anyone except the Commissioner of Taxation, the AFP or a lawyer for the purpose of obtaining legal advice or representation in relation to the report;
- The whistleblower is immune from any civil, criminal or administrative legal action (including disciplinary action) for making the disclosure;
- No contractual or other remedies may be enforced, and no contractual or other right may be exercised, against the whistleblower for making the report;
- The reported conduct is not admissible against the whistleblower in criminal proceedings or in proceedings for the imposition of a penalty, except proceedings in respect of the falsity of the information;
- Unless the whistleblower has acted unreasonably, a whistleblower cannot be ordered to pay costs in any legal proceedings in relation to a report; and
- Anyone who causes or threatens to cause detriment to a whistleblower or another person in the belief or suspicion that a report has been made, or may have been made, proposes to or could be made, may be guilty of an offence and liable to pay damages.

#### 5.5 Protections in New Zealand

An Eligible *Whistleblower* who made protected disclosures are not liable to any civil, criminal, or disciplinary proceedings. This applies despite any contractual or legal prohibition to disclose a protected matter.



## 6. Reporting and Investigating Protected Matters

Persons may disclose reportable conduct by submitting a report to the persons identified in Section 4 of this policy.

For New Zealand disclosures, College will endeavour to complete all actions required within twenty (20) working days from receipt of the disclosure.

### 6.1 Investigations

The College will refer reportable conduct to its relevant Whistleblowing Officer for an investigation to determine whether misconduct or an improper state of affairs exists.

With the prior consent of the Discloser, the CEO or the ELT may refer the matter to the Independent External Reviewer to investigate the relevant issues.

Where disclosure is referred to an Independent External Reviewer, they may assume the role of the Chief Executive Officer in facilitating the report of wrongdoing made under this policy.

Every investigation process will differ according to the relevant circumstances. However, the Whistleblowing Officer will ordinarily ensure that appropriate enquiries are made to determine whether:

- The allegations are substantiated; and
- Responsive action needs to be taken in order to address any established misconduct or other improper states of affairs.
- Decide no action is required

The Whistleblowing Officer will investigate the relevant matters in a manner compliant with the confidentiality obligations outlined in Section 5.1 of this policy.

The Whistleblowing Officer, alternatively, may refer reportable conduct directly to ASIC, APRA or the Australian Federal Police.

In New Zealand the Whistleblowing Officer, alternatively, may refer reportable conduct to an *Appropriate Authority*. However, before referring the protected disclosure, the *Whistleblowing Officer*, must consult the discloser and intended recipient of the referral first.

## 7. Supporting Whistleblowers, providing fair treatment and protection from detriment

The College intends to support Disclosers making disclosures about Protected Matters and to put in place procedures to promote fair treatment of Disclosers and protect them from detriment.

This can be achieved by:

- Providing access to EAP counselling services to all Disclosers. These services may be accessed by contacting EAP or provide information about other crisis support services ([Lifeline](#));
- Investigating all complaints in accordance with the procedures outlined in this policy;
- Implementing investigation processes which are procedurally fair to both Disclosers and respondents to allegations;
- In circumstances where a Discloser consents, having an appropriate senior manager or human resources officer monitor the Discloser's treatment in the workplace for relevant periods to ensure no victimisation takes place;
- Communicating this policy to College Staff and officers; and
- Taking appropriate disciplinary action against any Staff or contractors that breach the victimisation or confidentiality provisions of the Whistleblower Laws

## 8. Access to this Policy

This policy will be made available to all individuals wishing to use it by the following means:

- College will implement training for 'eligible recipients', to ensure that whistleblower disclosure are recognised and dealt with confidentially and sensitively and ensure that whistleblowers are not subjected to detrimental conduct;
- The policy will also form part of the induction program for all new staff;
- The policy will be made available on the College intranet and website and in such other ways as will ensure the policy is available to individuals wishing to use it; and
- The policy will be communicated to all staff and officers by way of an email. Staff will be instructed to make a report under this policy when they become aware of actual or suspect Reportable Conduct.

## 9. Breaches of this Policy

All staff and contractors of the College are required to comply with this policy at all times as well as with Whistleblower Laws applicable to their current place of work.

Non-compliance with this policy or Whistleblower Laws may result in disciplinary action up to and including termination of employment or termination of a contractor's services.

## 10. Related RANZCOG documents

- Bullying, Harassment and Discrimination Policy and Procedure
- RANZCOG Code of Conduct
- Conflict of Interest Policy
- Disciplinary Policy and Procedure
- Grievance and Dispute Resolution Policy and Procedure
- Complaints Policy
- Independent External Reviewer Policy

Version	Date of Version	Pages revised / Brief Explanation of Revision
v1	October 2019	Executive Leadership Team
v2	October 2020	RANZCOG Board, Code of Conduct update
v3	September 2022	Executive Leadership Team
v4	May 2023	Incorporation of Independent External Reviewer Policy and New Zealand Whistleblower laws

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