Royal Australasian College of Surgeons

POLICY

Portfolio	**People and Culture**	**Ref. No.**	**POL-5533**
Department	**People and Culture**		
Title	**Whistleblower (Protected Disclosures) – Aotearoa New Zealand**		

1. INTRODUCTION

Whistleblower policies are essential to responsible risk management and corporate governance, helping to uncover misconduct that may not be otherwise detected. Often misconduct may only come to our attention because of individuals who are prepared to disclose it, sometimes at significant personal and financial risk.

2. PURPOSE

The Royal Australasian College of Surgeons (RACS) recognises the important role whistleblowers play in protecting our organisation, our mission, the community and in upholding the law. All individuals who are aware of possible wrongdoing have a responsibility to disclose that information.

RACS guarantees that all who, in good faith, disclose perceived wrongdoing will be protected from adverse employment consequences. To effect that guarantee, RACS has established a safe and secure means for reporting disclosable matters and a fair and impartial reporting and investigative process that aims to protect the Discloser throughout the process.

The purpose of this policy is to:

(a) ensure that RACS takes good faith disclosures seriously;

(b) ensure those who make good faith disclosures about perceived wrongdoing will be protected from adverse employment consequences;

(b) set out protections available in respect of eligible disclosures;

(c) assist staff in understanding those which are protected disclosures and those which are not;

(d) support disclosure of wrongdoing/breaches of the law and deter wrongdoing/breaches of the law within RACS' organisation;

(e) seek to ensure that any disclosures made under, and in accordance with, this policy are dealt with effectively and efficiently;

(f) seek to fulfil RACS' legal obligations with respect to the matters dealt with in this policy; and

(g) promote an ethical culture within RACS' organisation.

This policy is to be read in conjunction with the RACS Complaint Handling Policy. Australian staff should refer to the Whistleblower (protected disclosures) policy Australia.

3. SCOPE

This policy applies to and is binding on all eligible disclosures known as protected disclosures in Aotearoa, New Zealand.

4. DEFINITIONS

For the purposes of this policy, the following definitions apply:

(a) **"the Act"** refers to the Protected Disclosures (Protection of Whistleblowers) Act 2022.

(b) **"Appropriate authority"** has the meaning given in section 25 of the Act and includes;

(i) the head of every public sector organisation;

(ii) any officer of Parliament;

(iii) the membership body of a particular profession or trade with the power to discipline its members.

An appropriate authority does not include Ministers of the Crown or members of Parliament.

(c) **"Discloser" or "Whistleblower"** means any individual who is (or was formerly) of RACS:

(i) an officer or employee; or

(ii) a homeworker within the meaning of section 5 of the Employment Relations Act 2000; or

(iii) an individual who supplies services or goods (whether paid or unpaid); or

(iv) an employee of a person who supplies services or goods (whether paid or unpaid); or

(v) a member(s) of council or any governing board.

(d) **"Protected disclosure"** means a disclosure where the person;

(i) believes on reasonable grounds that there is, or has been Serious Wrongdoing in or by the Discloser's organisation; and

(ii) discloses information about that in accordance with the Act; and

(iii) does not disclose it in bad faith.

(e) "**Serious wrongdoing"** as defined in section 10 of the Act.

5. INELIGIBILITY FOR PROTECTION

(a) Disclosures to the media

The Act does not provide for media as a separate reporting avenue, nor as an appropriate authority to which a disclosure can be made. This means that the civil and criminal immunity afforded by sections 18 and 22 of the Act would not apply, and there is a risk that disclosure to media could result in a breach of employment obligations.

(b) Where the Discloser:

(i) knows the allegations are false; and/or

(ii) the Discloser acts in bad faith.

To avoid doubt, this policy is not intended to limit the protections which apply to any individual in relation to RACS pursuant to the Act.

6. DISCLOSABLE MATTERS

(a) A disclosure of information by a Discloser qualifies for the protections under this policy and the Act if it is a disclosable matter.

(b) Examples of matters which may constitute disclosable matters are those of Serious Wrongdoing about RACS or it's activities. Serious Wrongdoing includes any act, omission, or course of conduct in (or by) RACS' that constitutes one or more of the following:

(i) An act, omission, or course of conduct that constitutes an offence, or

(ii) a serious risk to public health, public safety, or the health or safety of any individual or the environment; or

(iii) a serious risk to the maintenance of law, including the prevention, investigation and detection of offences or the right to a fair trial; or

(iv) an unlawful, corrupt, or irregular use of public funds or public resources; or

(v) an act, omission, or course of conduct by a person performing (or purporting to perform) a function or duty or exercising (or purporting to exercise) a power on behalf of a public sector organisation or the Government, that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement.

7. MAKING A DISCLOSURE

7.1 How to make a disclosure

(a) A disclosure may be made:

(i) internally, to the Whistleblower Protection Officer or an eligible recipient specified in section 10 of this policy;

(ii) to another eligible recipient;

(iii) externally to an independent reporting service via the whistleblower notification hotline on 0800000 457 or the whistleblower notification website on https://www.raisementalhealth.co.nz/whistleblower.html.

(iv) externally to an appropriate authority; or

(v) anonymously.

(b) Disclosures may be made in person, or by post, email or via telephone.

(c) Disclosers are encouraged to make a disclosure internally, to the Whistleblower Protection Officer or an eligible recipient specified in section 10 of this policy, in the first instance.

(d) If a Discloser is uncertain about whether the information they wish to report is a disclosable matter the Ombudsman can be contacted for advice.

(e) Advice can be sought from the Ombudsman in a number of ways:

(i) Telephone: 0800 802 602
(ii) Email: info@ombudsman.parliament.nz
(iii) Post: PO Box 10152, Wellington 6143

(f) Alternatively, the Ombudsman's guidance document on making a protected disclosure is available.

(i) The Ombudsman's Guide to Making Protected Disclosures https://ombudsman.parliament.nz/resources/making-protected-disclosure-guide-blowing-whistle

7.2 Anonymous disclosures

(a) Disclosures may be made anonymously and will still be eligible for protection under this policy.

(b) A Discloser can choose to remain anonymous throughout any investigation into the disclosure and after the investigation into the disclosure has been finalised.

(b) A Discloser may refuse to answer questions if they feel it could reveal their identity, including during follow up conversations after the initial disclosure.

(c) If a Discloser wishes to remain anonymous, it is best if they maintain ongoing dialogue and communication with RACS so that RACS may seek any further information that is required.

(d) To protect the anonymity of a Discloser, Disclosers may adopt a pseudonym and/or disclosures may be made through an anonymised email address, if the Discloser chooses to do so.

7.3 Process of receiving a disclosure

Where a disclosure is made, there are a number of steps that will generally be taken by RACS in relation to the disclosure.

(a) RACS will assess the disclosure to determine whether:

(i) it is a disclosable matter;

(ii) a formal investigation is required; and

(iii) any other steps are required.

(b) RACS will seek to ensure that individuals mentioned in an eligible disclosure are treated fairly, including by ensuring, where possible and appropriate, that:

(i) all disclosures are handled confidentially;

(ii) where an investigation is undertaken, the process is fair, impartial and independent; and

(iii) individuals mentioned in a disclosure are notified at the appropriate time of the investigation (if any), and prior to any adverse findings being made against them.

(c) If the receiver of a protected disclosure considers it appropriate, the receiver can also refer the disclosure to an appropriate authority.

(d) Where an anonymous disclosure is made RACS may seek advice from the Ombudsman.

7.4 Investigation

(a) If RACS considers that an investigation is required, an investigation plan may be developed by RACS to ensure all relevant questions are addressed, the scale of the investigation is in proportion to the seriousness of the disclosure to ensure sufficient resources are allocated to the investigation. Due to this the process may vary depending on the nature of the disclosure.

(b) RACS may appoint an internal or external investigator to conduct the investigation. The appointed investigator will be responsible for ensuring that as far as reasonably practicable:

(i) actions taken to investigate the disclosure are appropriate to the circumstances;

(ii) the confidentiality of the disclosure;

(iii) proper records and documentation are kept in respect of the steps;

(iv) retaliatory action will not been taken against the Discloser;

(v) any technical, financial or legal advice that is required in the investigation is obtained;

(vi) the investigation is dealt with in a timely and efficient manner; and

(vii) further support is provided to the Discloser if necessary.

(c) RACS may seek further information from the Discloser to assist any investigation it conducts. This may include details of the conduct that is the subject of the disclosure, including the:

(i) nature of the conduct;

(ii) person or persons involved;

(iii) facts on which the Discloser believes the conduct occurred; and

(iv) nature and whereabouts of any further evidence, if known.

(d) RACS will endeavour to ensure that the investigation process is undertaken efficiently and without delay, where possible. However, the timeline is likely to vary, depending on the nature of the disclosure.

(e) The Discloser will be notified within 20 working days from the date of the disclosure of RACS decision whether or not the alleged Serious Wrongdoing is to be investigated providing reasons for this decision. If it is impracticable to do this within 20 working days RACS will begin the process and inform the Discloser how long it may take.

(f) The investigation that RACS is able to undertake into the disclosure may be limited, where the disclosure is made anonymously and where the Discloser has not provided a means by which they may be contacted.

(g) RACS will consider any appropriate steps based on the findings of the investigation.

(h) A decision not to investigate alleged Serious wrongdoing must be recorded in writing and does not prevent RACS from taking further action in relation to matters raised in the protected disclosure, as appropriate. However, the original Discloser will be informed about any further action that may be taken, should it require further disclosure to any other person.

8. PROTECTIONS

8.1 Identity protection (confidentiality)

(a) Subject to the exceptions explained in this section, the identity of a Discloser is to remain confidential. A person cannot disclose the identity of a Discloser or information that is likely to lead to the identification of the Discloser. It is illegal to do so.

(b) A person may disclose the information contained in an eligible disclosure if:

(i) the information does not include the identity of the Discloser;

(ii) the person has taken all reasonable steps to reduce the risk that the Discloser will be able to be identified; and

(iii) it is reasonably necessary to investigate issues that have been raised in the disclosure made by the Discloser.

(c) RACS will endeavour to protect the confidentiality of the Discloser's identity wherever possible, by ensuring that, among other things:

(i) in the disclosure:

- all personal information or reference to the Discloser will be redacted; and
- the Discloser will be referred to in a gender neutral context.

(ii) all documents and materials relating to the disclosure will be stored securely; and

(iii) access to information relating to the disclosure will be limited to those directly involved in the management of the disclosure.

8.2 Protection from detrimental acts or omissions

(a) A person must not engage in conduct that causes detriment to another person where the first person:

(i) believes or suspects that the second person or any other person made, may have made, proposes to make, or could make, a disclosure that qualifies for protection under this Policy; and

(ii) engaged in the detrimental conduct because of that belief or suspicion.

(b) A person must also not make a threat to cause any detriment to the second person or to a third person where the first person:

(i) intends the second person to fear that the threat will be carried out; or

(ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(iii) makes the threat because the second person or third person makes or may make a disclosure in accordance with this Policy.

(c) Examples of detrimental conduct may include:

(i) dismissing an employee;

(ii) harassment or intimidation of a person;

(iii) victimisation.

(d) There are a range of examples of conduct that would not constitute detrimental conduct (for example, managing a person's unsatisfactory work performance (in line with our policies) and may include reasonable administrative action to protect a Discloser, such as moving them from their work area to a different office to protect them from any detrimental conduct.

(e) RACS will endeavour to ensure that a Discloser is protected from detrimental acts or omissions wherever possible (this may include providing the Discloser with protection even in circumstances where the matter genuinely reported is not a disclosable matter).

(f) Allegations of detrimental acts or omissions in breach of this policy will be treated seriously by RACS. In respect of employees, RACS may take disciplinary action, up to and including termination, against any person found to have engaged in detrimental acts or omissions in breach of this policy. In respect of other persons to whom this policy applies, RACS may take action, up to and including termination of contracts, against any person found to have engaged in detrimental acts or omissions in breach of this policy.

7.9 Civil, criminal and administrative liability protection

Where the criteria has been met, the Discloser will have the following protections:

(a) be immune from any civil, criminal, or disciplinary proceedings by reason of having made a protected disclosure; and

(b) be protected from adverse treatment as a result of disclosure, including discrimination or bias, victimisation or harassment; and

(c) where the Discloser is an employee, retaliatory action including any employment disadvantage such as dismissal or disciplinary action.

Where a Discloser is an employee and believes they have suffered retaliatory action, that person may bring a personal grievance under the Employment Relations Act 2000.

Where a Discloser believes they have been treated less favourably than others in the same circumstances because they made a disclosure, they can make a claim under the Human Rights Act 1993.

9. GENERAL PRINCIPLES REGARDING RACS' WORKPLACE POLICIES

Note to employees and contractors of RACS: Policies and procedures are not binding on RACS and are not a term of or incorporated into an employee's contract of employment or any contract between RACS and any person to whom this policy applies.

RACS expressly reserves the right to vary this policy from time to time. RACS will endeavour to take reasonable steps to notify employees of any significant changes to this policy, prior to the changes coming into operation.

This policy will be made available to the public via the RACS website and also to employees through training, the intranet and the employee Welcome Booklet.

This policy is to be read in conjunction with other RACS policies.

10. ASSOCIATED DOCUMENTS

Whistleblower (Protected Disclosures) Policy Australia

Protected Disclosures (Protection of Whistleblowers) Act 2022

11. FURTHER INFORMATION AND SPECIFIED ELIGIBLE RECIPIENTS

(a) Questions about this policy can be directed to the Whistleblower Protection Officer or any other eligible recipient specified in this section.

(b) The following individuals are specified eligible recipients for the purpose of this policy:

(i) Whistleblower Protection Officer:

- Chief People Officer

(ii) Other specified Eligible Recipients.

(iii) Other members of the RACS Executive Leadership Team, namely:

- Chief Executive Officer

- Chief Financial & Risk Officer
- Chief Operations and Partnerships Officer
- Executive General Manager Education Pathways
- Executive General Manager Fellowship Experience