

Australian and New Zealand College of Anaesthetists WHISTLEBLOWER POLICY

1. PURPOSE

A whistleblower policy is an important element in detecting corrupt, illegal or other undesirable conduct. It is expected that all members and College staff will conduct themselves in a manner consistent with current community and College standards and in compliance with all related legislation.

The purpose of this policy is to promote a culture of corporate compliance, honesty and ethical behaviour and to provide an environment where any potential, perceived or actual wrongdoing within the College or by the College, its members or staff can be raised by members or staff freely without fear of reprisal or retribution. This will be achieved by:

- minimising the risk of illegal, corrupt or other improper conduct within the College through appropriate policies, procedures, regulations and good governance practices;
- creating an environment of transparency;
- encouraging staff and members to report their concerns; and
- establishing procedures which enable protection for those reporting their concerns and enabling resolution of the issue/s identified.

1.1 Scope

In Australia this policy applies to all staff (including contractors and consultants) and all ANZCA College members (as defined herein).

In New Zealand this policy applies to all employees of the College (as defined herein) to the extent these protections are equal to or surpass the protections conferred by New Zealand legislation. Where particular provisions of the policy are only applicable in New Zealand, these are separately identified herein.

2. DEFINITIONS

Term	Definition
Appropriate Authority (New Zealand)	Includes the Commissioner of Police, Controller and Auditor-General, Director of Serious Fraud Office, Inspector-General of Intelligence and Security, Ombudsman, Parliamentary Commissioner for the Environment, Independent Police Conduct Authority, Solicitor-General, State Services Commissioner and the Health and Disability Commissioner.

College Employee (New Zealand)	For the purposes of this policy, includes a former employee, a homemaker, a person seconded to the College, a contractor, a person concerned in the management of the College (including members of the Council or governing body of the College) and a volunteer who works for the College.
College Member	For the purposes of this policy, includes those defined in the College Regulations as being 'members' of the College, trainees, non-specialist trainees, specialist international medical graduate (SIMGs) undertaking College requirements for the purposes of obtaining specialist recognition in Australia or New Zealand, and any external person serving on any College entity.
Whistleblower	A person who reports serious wrongdoing in accordance with this policy.
Whistleblowing	Means the disclosure by or for a witness of actual, suspected or anticipated wrongdoing in the College that relates to fraud corruption, illegal activities, gross mismanagement, malpractice or other serious wrongdoing.

3. BODY OF POLICY

3.1 Making a report

The College has a number of channels through which a person who becomes aware of suspected or actual improper conduct may make a report.

In the first instance, the Chief Executive Officer (CEO) shall receive any reports of alleged wrongdoing. If the allegations involve the CEO, the matter should be referred to the President.

Additionally, in New Zealand a College employee may instead report alleged wrongdoing to an Appropriate Authority (as defined herein) if he or she believes on reasonable grounds:

- (a) That the CEO is or may be involved in the serious wrongdoing; or
- (b) Immediate disclosure to an Appropriate Authority is justified because of the urgency of the matter to which the disclosure relates, or some other exceptional circumstances; or
- (c) Disclosure has already been made to the College, but there has been no action or recommended action within 20 working days.

For workplace grievances, College staff should report these instances in accordance with the College's Grievance Policy and Procedure.

It is appropriate to make a whistleblower's report when the disclosure relates to conduct that:

- is fraudulent or corrupt;
- is an abuse of public trust;
- is illegal, such as theft, drug sale or use, violence, harassment, criminal damage to property or other serious breaches of Australian and New Zealand legislation;
- is unethical, such as acting dishonestly, altering College records without cause or permission;
- making false entries in College records, engaging in questionable financial practices;
- is contrary to, or a serious breach of College codes and policies;

- breaches the College Code of Conduct that are not appropriate to discuss with the staff member's supervisor or manager or Human Resources;
- is potentially damaging to the College, by compromising its training and educational activities; or
- represents significant breaches of occupational health and safety laws.

("Improper Conduct")

In New Zealand it is also appropriate to make a whistleblower's report when the disclosure relates to Serious Wrongdoing as defined in section 3 of the Protected Disclosures Act 2000 (New Zealand) as follows:

- an unlawful, corrupt, or irregular use of funds or resources of a public sector organisation;
- an act, omission, or course of conduct that constitutes a serious risk to public health or public safety or the environment;
- an act, omission, or course of conduct that constitutes a serious risk to the maintenance of law, including the prevention, investigation, and detection of offences and the right to a fair trial;
- an act, omission, or course of conduct that constitutes an offence; or
- an act, omission, or course of conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement.

A report may be made verbally or in writing. A person making a report should have reasonable grounds for believing that the information provided is accurate. The report should include as much information and evidence as possible, including where possible information on:

- the nature of the alleged improper conduct has occurred;
- when and how the alleged conduct occurred;
- the people involved in the conduct.

Anyone making a report must act in good faith and have reasonable grounds for believing the information disclosed constitutes Improper Conduct or Serious Wrongdoing as defined in this clause.

3.2 Anonymity

A Whistleblower may make a report anonymously. However an anonymous report makes it more difficult to investigate the report and take appropriate action. As such, anonymous reports will be examined, but may not be able to be progressed to the extent that would otherwise be possible. For this reason, ANZCA would prefer the Whistleblower to disclose his or her identity.

Alternatively, the Whistleblower could provide his or her name and contact details and request that the details be kept confidential. In such circumstances ANZCA will, as far as reasonably possible, protect the person's identity unless it is disclosed in accordance with clause 3.4. If it is necessary to identify the Whistleblower, this will first be discussed with the Whistleblower, where practicable.

In New Zealand, ANZCA will instead use its best endeavours not to disclose information that might identify the Whistleblower, unless it does so in accordance with clause 3.4.

Any such report should be in writing and include as much information as possible so as not to compromise the ability to fully investigate the report.

The act of whistleblowing should not protect whistleblowers from the consequences of any involvement in the Improper Conduct or Serious Wrongdoing disclosed in the report. Involvement in the Improper Conduct or Serious Wrongdoing may lead to disciplinary action, including termination of employment or ANZCA membership. However, an admission may be a mitigating factor when considering disciplinary action.

3.3 False Reporting

If it is found that a Whistleblower has knowingly made a false or vexatious report or not made a report in good faith, then that conduct itself will be considered a serious matter and may lead to disciplinary action, including termination of employment or ANZCA membership.

3.4 Confidentiality

The College commits to absolute confidentiality, fairness and impartiality in respect of any matter raised under this policy and, pursuant to clause 3.2, will protect the Whistleblower's identity. The College will not make public any information unless:

- the person making the report gives consent;
- the disclosure is required or authorised by law; or
- the disclosure is necessary as part of the investigation process.

In New Zealand, the College will not disclose information that might identify the Whistleblower unless:

- the person making the report gives consent;
- the disclosure is essential to the effective investigation of the allegations;
- the disclosure is essential to prevent serious risk to public health or public safety or the environment; or
- the disclosure is essential having regard to the principles of natural justice.

Reports may be submitted anonymously. However this may have significant limitations on a full and complete investigation occurring and will impact whistleblower protection under legislation and this policy.

It should be noted that maintaining confidentiality of the identity of the Whistleblower may be difficult where the nature of the matter points to one particular individual and others may be able to deduce their identity.

3.5 Protection of whistleblowers

Whistleblowers who report matters in good faith, and provided he or she has not been involved in the conduct reported, will not be penalised or personally disadvantaged under any College policy because they have reported a matter, by any of the following:

- Dismissal or suspension;
- Demotion;
- Any form of harassment;
- Discrimination; or
- Bias or other adverse conduct.

A Whistleblower who believes he or she, or his or her family, has been the victim of any of the above by reason of their status as a Whistleblower, should immediately report the same to the CEO.

Any employee or manager who is found to have dismissed, demoted, harassed, or discriminated against a Whistleblower by reason of their status as a Whistleblower, may be subjected to disciplinary measures, including summary dismissal.

A Whistleblower who has been involved in the reported conduct may still be provided with immunity by the College or by any disciplinary proceedings, by agreement with ANZCA. ANZCA, however, has no power to provide immunity from criminal prosecution in Australia.

In New Zealand, College employees who make a protected disclosure of Serious Wrongdoing (as defined in clause 3.1) are immune from any civil or criminal proceeding or to a disciplinary proceeding for having made that disclosure.

3.6 Protection from Retaliation

ANZCA will not tolerate any retaliation against a person because the person has made a report under this policy and is committed to protecting and respecting the rights of a person who reports any wrongdoing in good faith.

The person (or entity) must not be disadvantaged or victimised for having made the report by:

- dismissal or termination of services or supply;
- demotion; or
- any form of discrimination or harassment, current or future bias or threats of any kind.

Any such retaliatory action or victimisation due to whistleblowing will be treated seriously and may be considered serious misconduct resulting in disciplinary action, which may include termination of employment or ANZCA membership.

Note that where a Whistleblower makes a disclosure in accordance with this policy, it will not prevent management from taking any reasonable management action, carried out in a reasonable manner, to manage the conduct and/or performance of College staff, where this is warranted.

3.7 Investigation Process

All reports of alleged or suspected wrongdoing received will be initially assessed as to the seriousness of the report. Factors relating to the seriousness may include, but are not limited to:

- the gravity of the conduct itself;
- the context in which the conduct occurred;
- the extent of the potential or actual consequence/s; or
- the potential to expose systematic wrongdoing beyond the allegation made.

On receipt of a report, ANZCA has the discretion to determine whether it is appropriate to conduct an investigation. ANZCA may decide not to investigate a report if it is considered that:

- the alleged conduct is not reportable conduct under this policy;
- the report is not made in good faith or is frivolous, vexatious or malicious;
- the report is made anonymously and there is insufficient information to undertake an investigation;

- the subject matter of the report has been satisfactorily dealt with or resolved through another grievance or reporting procedure;
- some other more appropriate procedure is available in relation to the matter – for example, the matter may be able to be reported through Workplace Health and Safety reporting mechanisms.

3.8 Conduct of Investigation

An investigation will generally be conducted if the matter is deemed to be serious. However the investigation process will vary, depending on the nature of the report and the amount of information provided.

In some cases, an external investigator may be appointed to conduct the investigation. Terms of reference for the external investigation may be developed in order to provide guidance and a reference tool. The investigator will be able to consult with any other external expert advisers as considered necessary.

All investigations will be conducted in a fair, independent and timely manner that affords procedural fairness to all involved.

If the reported matter involves an allegation of a criminal nature, the matter may be referred directly to the College solicitor and/or appropriate authorities. If the matter is deemed to be of a minor nature, College regulations, policies and the Constitution shall be used to address the issue.

3.9 Person against whom the report is made

The College recognises that individuals against whom a report is made must also be supported during the handling and investigation of the allegation. The College will take reasonable action to ensure that the person who is the subject of the allegations is treated fairly and that procedural fairness is applied.

Once an investigation has commenced, then the person who is the subject of the allegations should be informed that an investigation has commenced and have the opportunity to respond to any allegations made.

4. REPORTING OF FINDINGS

On completion of an investigation, a written report of the findings will be provided by the investigator to the Council. The report should summarise the conduct of the investigation and the evidence collected and should detail any conclusions drawn, as well as making recommendations for response by the College.

If any wrongdoing has been found to have occurred, the Council will take appropriate action, either on an internal basis or refer the matter to an appropriate external body.

The College will also take reasonable steps to review policies and processes to prevent the conduct, which is the subject of the report, continuing or occurring in the future.

Where applicable, the Council may provide feedback to the person who made the initial report regarding the progress of the investigation and/or the final outcome.

5. CONCERNS OR COMMENTS

If you have any concerns about Whistleblower Policy please contact the Corporate Office on +61 3 9510 6299 or via ceo@anzca.edu.au. Requests must be in writing and resolution of concerns will be sought as promptly as possible.

6. CHANGES TO ANZCA WHISTLEBLOWER POLICY

The College may modify or amend this policy at any time. Formal notice of amendments will not ordinarily be given, but the latest version of the Whistleblower Policy can be accessed via the College website <http://www.anzca.edu.au/networks/corporate-policies>.

7. RELATED DOCUMENTS

- ANZCA Fraud and Corruption Control Policy
- ANZCA Conflict of Interest Policy
- ANZCA Staff Code of Conduct
- ANZCA Staff General Grievance Policy
- ANZCA Staff Discipline and Termination Policy
- ANZCA ICT Code of Conduct

8. REFERENCES

- Corporations Act 2001 (Australia)
- Protected Disclosures Act 2000 (New Zealand)
- Human Rights Act 1993 (New Zealand)
- Australian Standard on Whistleblower Protection for Entities (AS8004-2003)

9. CHANGE CONTROL REGISTER

Version	Author	Approved by	Approval Date	Sections Modified
1.0	EGM Corporate Resources	Council	18/08/2012	Initial Release
1.1	Policy	CEO	11/03/2014	Copyright statement added
2.0	Corporate Office	CEO	18/11/2017	Entire policy updated and revised

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