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| Portfolio | People and Culture | Ref. No. | REL-HRS-047 |
| Department | People and Culture | | |
| Title | Whistleblower Policy | | |

1. INTRODUCTION

The Royal Australasian College of Surgeons (RACS) recognises the important role whistleblowers play in protecting our organisation and our mission, the community and in upholding the law. All employees, volunteers, contractors and partners who are aware of possible wrongdoing have a responsibility to disclose that information. RACS guarantees that staff and volunteers who, in good faith, disclose perceived wrongdoing will be protected from adverse employment consequences. To affect that guarantee, RACS has established a fair and impartial investigative process which provides protection for whistleblowers. This policy is to be read in conjunction with the RACS Complaint Handling Policy.

The Corporations Act, which applies to RACS, provides certain protections for whistleblowers. As an accredited non-government organisation with the Department of Foreign Affairs and Trade (DFAT), RACS is also obliged to operate in accordance with the Australian Council for International Development (ACFID) Code of Conduct (Code) and Quality Assurance Framework (Framework), which also prescribe processes to guarantee certain protections for those who make good faith disclosures of wrongdoing.

2. PURPOSE

Consistent with its obligations under the Corporations Act, and in compliance with its obligations under Code and the Framework, RACS has in place the necessary protections to protect whistleblowers when a whistleblower comes forward with a Disclosable Matter. This includes providing a safe and secure means for reporting Disclosable Matters and remedying any necessary matters arising from the Disclosable Matters.

When a Disclosable Matter is made known we will treat it with the appropriate seriousness and ensure we investigate as appropriate.

The purpose of this policy is to:

- a) assure staff, volunteers, contractors and partners that good faith disclosures are welcome and that 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 what is a Disclosable Matter and those which are not (for example, personal work grievances are not Disclosable Matters; however, RACS has other policies and processes that deal with personal work grievances);
- 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;

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- 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.

3. SCOPE

This policy applies to and is binding on all eligible Whistleblowers.

4. DEFINITIONS

- a) For the purposes of this policy, the following definitions apply: “**ASIC**” means the Australian Securities and Investments Commission.
- b) “**Associate**” has the meaning given in the Corporations Act.
- c) “**Corporations Act**” means the *Corporations Act 2001* (Cth).
- d) “**Disclosable Matter**” means information which a Discloser has reasonable grounds to suspect:
- i) concerns misconduct or an improper state of affairs or circumstances in relation to RACS or a Related Body Corporate;
 - ii) indicates that RACS, a Related Body Corporate or an officer or employee of RACS or a Related Body Corporate has engaged in conduct that:
 - (A) constitutes an offence against or contravention of a provision of any of the following:
 - the Corporations Act;
 - the *Australian Securities and Investments Commission Act 2001* (Cth);
 - the *Banking Act 1959* (Cth);
 - the *Financial Sector (Collection of Data) Act 2001* (Cth);
 - the *Insurance Act 1973* (Cth);
 - the *Life Insurance Act 1995* (Cth);
 - the *National Consumer Credit Protection Act 2009* (Cth);
 - the *Superannuation Industry (Supervision) Act 1993* (Cth); or
 - an instrument made under any of the Acts outlined above,
 - (B) constitutes a breach of the Australian Charities and Not-for-profits Commissions' External Conduct Standards (which can be accessed at <https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/acnc-external-conduct-standards>);
 - (C) constitutes an offence against any other Commonwealth law that is punishable by imprisonment for a period of 12 months or more;

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(D) represents a danger to the public or the financial system; or

(E) is conduct prescribed under the Regulations.

- e) **“Discloser”** means an individual who makes a disclosure of information.
- f) **“Eligible Whistleblower”** means any individual who is or has been any of the following:
- i) an officer or employee of RACS;
 - ii) an individual who supplies services or goods to RACS (whether paid or unpaid);
 - iii) an employee of a person who supplies services or goods to RACS (whether paid or unpaid);
 - iv) an Associate of RACS; and
 - v) a relative, a dependant or a dependant of a spouse of an individual referred to in any of sections 1.1(a)i) to 1.1(a)iv) of this policy.
- g) **“Eligible Disclosure”** means a disclosure by an Eligible Whistleblower that is:
- i) in respect of a Disclosable Matter and made:
 - (A) directly to an Eligible Recipient, ASIC, or any body prescribed by the Regulations; or
 - (B) as a public interest disclosure or emergency disclosure (as described in section 8 of this policy) in accordance with the Corporations Act; or
 - ii) to a legal practitioner for the purpose of obtaining legal advice or representation in respect of Part 9.4AAA – Protection for Whistleblowers in the Corporations Act.
- h) **“Eligible Recipient”** means any individual who is:
- i) an officer or senior manager of RACS or a Related Body Corporate;
 - ii) an auditor, or a member of an audit team conducting an audit of RACS or a Related Body Corporate of RACS;
 - iii) an actuary of RACS or a Related Body Corporate of RACS;
 - iv) where the complaint is about the CEO of RACS or a member of the RACS Executive Leadership Team, then, the President of the RACS Council or
 - v) a person authorised by RACS to receive disclosures that may qualify for protection (including the Whistleblower Protection Officer and other individuals specified in section 12 of this policy).
- i) **“RACS”** means Royal Australasian College of Surgeons.
- j) **“Regulated Entity”** has the meaning given in section 1317AAB of the Corporations Act.
- k) **“Regulations”** means the *Corporations Regulations 2001* (Cth).
- l) **“Related Body Corporate”** has the meaning given in the Corporations Act.
- m) **“Victimisation Provisions”** means the provisions contained in section 1317AC of the Corporations Act.

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- n) “**Whistleblower Protection Officer**” means the individual specified in section 0 of this policy.

5. ELIGIBILITY FOR PROTECTION

- a) A disclosure of information by a Discloser qualifies for the protections under this policy and the Corporations Act if it is an Eligible Disclosure, except in relation to **personal work-related grievances** as provided in section 7 of this policy and except as otherwise provided in this policy.
- b) To avoid doubt, this policy is not intended to limit the protections which apply to any individual in relation to RACS pursuant to the Corporations Act.
- c) RACS has a range of policies and procedures that deal with personal work grievances. You should carefully review RACS’ policies to ensure that personal work grievances are raised in accordance with the relevant policy/ies and not under this policy.

6. DISCLOSABLE MATTERS

- a) Examples of matters which may constitute Disclosable Matters include:
- i) fraud, money laundering or misappropriation of funds;
 - ii) offering or accepting a bribe;
 - iii) financial irregularities;
 - iv) breaches of regulatory requirements;
 - v) systemic improper conduct in relation to RACS’ financial affairs.
- b) The examples in section 1.1a) are not exhaustive and other matters may constitute Disclosable Matters.
- c) Disclosable Matters may include conduct which is not necessarily unlawful but which otherwise concerns misconduct or an improper state of affairs or circumstances in relation to RACS or a Related Body Corporate, for example, a significant risk to public safety, gross mismanagement or waste or systemic record keeping failures.
- d) Disclosures that are not about Disclosable Matters do not qualify for protection under the Corporations Act.
- e) Further, we discourage deliberate false reporting (e.g. a report that the Discloser knows to be untrue) as it undermines confidence in this policy and workplace harmony.

7. PERSONAL WORK-RELATED GRIEVANCES

- a) A disclosure is not protected under this policy, to the extent that the information disclosed concerns a “**personal work-related grievance**” of the Discloser and is neither:

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- i) concerned with a contravention, or an alleged contravention, of the Victimisation Provisions, that involves detriment caused to the Discloser or a threat made to the Discloser; or
 - ii) disclosed to a legal practitioner for the purpose of obtaining legal advice or representation in respect of Part 9.4AAA – Protection for Whistleblowers in the Corporations Act.
- b) Information disclosed concerns a “**personal work-related grievance**” of the Discloser if:
- i) the information concerns a grievance about any matter in relation to the Discloser's employment, or former employment, having (or tending to have) implications for the Discloser personally; and
 - ii) the information:
 - (A) does not have significant implications for RACS, or another Regulated Entity, does not relate to the Discloser (for example, an interpersonal conflict between the Discloser and another employee, a decision relating to the engagement, transfer or promotion of the Discloser, a decision relating to the terms and conditions of engagement of the Discloser or a decision to suspend or terminate the engagement of the Discloser, or otherwise to discipline the Discloser); and
 - (B) does not concern conduct, or alleged conduct, referred to in section 1.1(a)ii) of this policy.

8. PUBLIC INTEREST DISCLOSURES AND EMERGENCY DISCLOSURES

- a) A public interest disclosure is a disclosure of information where:
- i) the Discloser has previously made an Eligible Disclosure to ASIC or anybody prescribed by the Regulations (including the ATO);
 - ii) at least 90 days have passed since the disclosure was made;
 - iii) the Discloser does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the previous disclosure related;
 - iv) the Discloser has reasonable grounds to believe that making a further disclosure of the information in accordance with this subsection would be in the public interest;
 - v) after at least 90 days, the Discloser gave the body to which the previous disclosure was made a written notification that includes sufficient information to identify the previous disclosure states that the Discloser intends to make a public interest disclosure; and
 - vi) the public interest disclosure is made to a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory or a journalist; and

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vii) the extent of the information disclosed in the public interest disclosure is no greater than is necessary to inform ASIC, or any body prescribed by the Regulations (as the case may be) of the Disclosable Matters.

b) An emergency disclosure is a disclosure of information where:

- i) the Discloser has previously made an Eligible Disclosure to ASIC, or any body prescribed by the Regulations;
- ii) the Discloser has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment;
- iii) the Discloser gives the body to which the previous disclosure was made a written notification that includes sufficient information to identify the previous disclosure and states that the Discloser intends to make an emergency disclosure; and
- iv) the emergency disclosure is made to a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory or a journalist; and
- v) the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform ASIC, or any body prescribed by the Regulations (as the case may be) of the substantial and imminent danger.

9. MAKING A DISCLOSURE

9.1. 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 12 of this policy;
 - ii) to another Eligible Recipient;
 - iii) externally, to ASIC, or any body prescribed by the Regulations; or
 - iv) externally, in accordance with section 8, if the disclosure is a public interest disclosure or emergency disclosure as described in that section.
- 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 12 of this policy, in the first instance.

9.2. Anonymous disclosures

- a) Disclosures may be made anonymously and will still be eligible for protection under this policy, in accordance with the Corporations Act.

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- b) A Discloser can choose to remain anonymous throughout any investigation into the disclosure and after the investigation into the disclosure has been finalised.
- c) A Discloser may refuse to answer questions if they feel it could reveal their identity, including during follow up conversations after the initial disclosure.
- d) 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.
- e) 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.

9.3. Process of receiving a disclosure

- a) Where a disclosure is made, there are a number of steps that will generally be taken by RACS in relation to the disclosure.
- b) RACS will assess the disclosure to determine whether:
 - i) it is an Eligible Disclosure;
 - ii) a formal investigation is required; and
 - iii) any other steps are required.
- c) 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.
- d) Subject to RACS' confidentiality obligations in respect of disclosures received by it (under this policy and the applicable legislation), disclosures made to an Executive Leadership Team member will be reported to the CEO and/or the President of the RACS Council (except in circumstances where the disclosure relates to the President or CEO, as may be applicable).

9.4. 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 and sufficient resources are allocated to the investigation.

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- 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 be 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) RACS will endeavour to ensure that the Discloser is provided with regular updates throughout the investigation process, if they are able to be contacted, including through anonymous channels of communication. The frequency of these updates will vary, depending on the disclosure.
- 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.

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10. PROTECTIONS

10.1. 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 can disclose the identity of a Discloser or information that is likely to lead to the identification of the Discloser if it is made:
 - i) to ASIC;
 - ii) to a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979* (Cth));
 - iii) to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to Part 9.4AAA – Protection for Whistleblowers in the Corporations Act;
 - iv) to a person or body prescribed by the Regulations; or
 - v) with the consent of the Discloser.
- c) A person may also 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.
- d) RACS will endeavour to protect the confidentiality of the Discloser's identity wherever possible, by ensuring that, among other things:
 - i) in the disclosure:
 - (A) all personal information or reference to the Discloser will be redacted; and
 - (B) 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.

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10.2. 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.

10.3. Compensation and other remedies

- a) In the event that a Discloser has:

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- i) suffered loss, damage or injury because of a disclosure; and
- ii) RACS failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

the Discloser can seek compensation and other remedies from the Courts.

- b) It is recommended that Disclosers seek legal advice in this regard, prior to seeking this avenue of compensation/remedies.

10.4. Civil, criminal and administrative liability protection

- a) If a Discloser makes an Eligible Disclosure, they will not be subject to any:
 - i) civil liability (e.g. legal action for breach of employment contract);
 - ii) criminal liability (e.g. prosecution for unlawfully releasing information, other than proceedings in respect of the falsity of the information); or
 - iii) administrative liability (e.g. disciplinary action),

for making the Eligible Disclosure.
- b) However, there is no immunity for the Discloser in respect of any misconduct that they have engaged in that is revealed in their disclosure.

11. GENERAL PRINCIPLES REGARDING RACS' WORKPLACE POLICIES

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

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

12. 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
 - Executive General Manager, People and Culture:

[Contact details](#)
 - ii) Other specified Eligible Recipients

Other members of the RACS Executive Leadership Team, namely;

 - Chief Executive Officer
 - Deputy CEO and Executive General Manager Operations

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- Executive General Manager Fellowship Engagement
- Executive General Manager Education

Contact details as follows: [Executive Team contact details](#)

- In the case of a complaint regarding the CEO or a member of the Executive Leadership Team, the President of the RACS Council

Contact details as follows: College.President@surgeons.org

c) Further information can also be obtained from the following external agencies:

ASIC | 1300 300 630 | www.asic.gov.au

d) Support can be sought from:

Employee Assistance Program | Converge International 1300 687 327

Lifeline | 13 13 1