Complaints User Guide

This document explains how the Royal Australasian College of Surgeons (RACS) deals with complaints.

Who?

RACS can assess and sometimes help manage complaints:

- about any RACS Fellow, Trainee or International Medical Graduate (IMG)
- from any RACS Fellow, Trainee or IMGs, or patients, families or other health consumers, or other registered health practitioners.

RACS cannot:

- get involved in complaints related to findings or decisions made about Fellows, Trainees or IMGs by regulators or in other legal proceedings
- assist or legally represent Fellows, Trainees or IMGs involved in action by regulators or in other legal proceedings.

RACS can help Fellows, Trainees or IMGs – including those involved in regulatory or other legal action - access counselling and other support from the RACS Support Program.

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What?

RACS can assess and sometimes help manage complaints about any aspect of surgical practice by a Fellow, Trainee or IMG. Complaints may involve: standards of clinical practice, excessive fees, conduct that affects the reputation of the profession or the College, unacceptable behaviours such as bullying, discrimination and sexual harassment, and education and training.

When?

Complaints are always best managed promptly, as soon as possible after the issue of concern happened. Early reporting improves outcomes for all parties. Resolving complaints about things that happened a long time ago is more difficult. The more current the evidence, the more likely it is that RACS can resolve a complaint effectively.

Where?

RACS can deal with concerns about surgeons in Australia and New Zealand.

How?

RACS is committed to assessing and managing complaints fairly. This is sometimes called procedural fairness. Each complaint is unique and is assessed individually, on the available evidence. We recognise that it is particularly difficult for Trainees and IMGs to make a complaint and we do what we can to manage these concerns sensitively and refer individuals to available support services.
Thinking of making a complaint?

RACS recognises that individuals are unique, and so are complaints. Our response to each complaint is tailored to the details of each case.

We recognise that it is often difficult to make a complaint, especially about unacceptable behaviour by someone in the same profession. Common considerations include: What will happen if I complain? How will the person I am concerned about react? What will be the impact on my career, my peers, or my family?

Some people are not sure if they want to lodge a complaint, or they don’t want anyone to know they have raised a concern or are involved in an investigation of the complaint. Often, people want the unacceptable behaviour to stop but feel powerless to make this happen and they want an independent organisation to step in.

Under the RACS complaints framework, it is possible to lodge an enquiry or talk to someone at RACS and seek guidance before making a formal complaint. The person making the enquiry can decide whether to be identified, maintain confidentiality or be anonymous.

What RACS can do depends on the level of information provided. Anyone unsure about whether to lodge a complaint or unclear if RACS is the right organisation to deal with it, can phone RACS on 1800 892 491 (Australia) 0800 787 470 (New Zealand) to discuss. A representative of the office of the RACS Manager, Complaints Resolution will aim to respond within 48 hours (2 business days).

RACS complaints management framework: some examples

A. Anonymous and confidential enquiries about unacceptable behaviour

An anonymous complaint is when the person doesn’t want to be identified for various personal and professional reasons but still wants to raise the issue as a matter of concern.

A confidential complaint is when a person is happy to disclose their identity to RACS but doesn’t want their identity disclosed to the surgeon they are concerned about.

If an anonymous enquiry is lodged, or if the person raising the concern wants to remain confidential, RACS will register the enquiry on the complaints database. In many cases the person making the enquiry will seek guidance on the appropriate process. The database will record only the details of concerns raised about the incident/incidences of unacceptable behaviour.

Examples of enquiries and RACS response include:

Example 1: ANONYMOUS – no identifying details provided. I saw Dr X berate and bully Trainees in the surgical suite/ specialist unit at Hospital Y during our last rotation. I am moving to Hospital Z for my next rotation so I don’t want to pursue this further but I am concerned about the impact of Dr X on other Trainees on placement at Hospital Y.

Example 2: I’m a registrar working in Unit D of Hospital F and I don’t want my name to be mentioned. Dr S (a SET Trainee in his 4th year) has repeatedly made lewd jokes and sent inappropriate texts to me and my colleagues. I can give you examples. We’ve raised our concerns with medical administration before and they spoke to DR S but his behaviour continued. Now I’ve heard other doctors and nursing staff have been affected. He really should be stopped.
In these situations, the person has stated they want to be anonymous, they identify the surgeon, and provide examples of the surgeon's unacceptable behaviour. RACS can register the information in its secure database, but is unable to take the matter any further.

It is important to understand that RACS can only act on a complaint when the person making the complaint gives their consent and authority for RACS to proceed.

RACS response:

It is worth noting that some health care agencies have adopted the “Vanderbilt” model to promote professional behaviour. (A Complementary Approach to Promoting Professionalism: Identifying, Measuring, and Addressing Unprofessional Behaviors: Gerald B. Hickson, MD, James W. Pichert, PhD, Lynn E. Webb, PhD, and Steven G. Gabbe,) <<link http://www.mc.vanderbilt.edu/root/vumc.php?site=cppa&doc=45627>>

The Vanderbilt model promotes an escalation model of graduated interventions, where level 1 is the low level intervention and level 4 the highest.

The vast majority of enquiries equate to the level 1 Vanderbilt intervention. These are best handled by the relevant health agency consistent with their usual protocol.

Relevant issues

Sometimes addressing a complaint directly by citing the examples provided can identify the person or group of people making the complaint. RACS will do its best to make sure that no one is victimised for making a complaint, but we can’t control the behaviour of the person being complained about.

If you want to lodge a complaint on behalf of other people, and are giving RACS second or third hand information about something that happened, we first need to have a signed, written authority from the people who were directly affected by the unacceptable behaviour. Without this signed authority, we can only enter the concerns on the RACS complaints database but we can’t take the matter further.

Example 3: CONFIDENTIAL – no consent to release name to person of concern. I was a patient on Ward G at Hospital K and I saw Dr N make inappropriate remarks to the nurses on rounds. I have a recurrent condition and Dr N is my specialist so I am uncomfortable with him knowing I have complained, but I still think this behaviour is unacceptable and I wanted you to know about it.

RACS response:
Again, RACS can’t act on complaints without consent. But if more enquiries or complaints are received that indicate there may be a pattern of conduct, RACS can decide to look more closely at the issues raised. This could involve analysing the concerns raised, identifying a possible pattern of conduct, gathering corroborative evidence and/or if appropriate, talking with the surgeon about the concerns that have been raised about their unacceptable behaviour. Often, providing someone with feedback and encouraging them to reflect on their behaviour is enough for them to change the way they operate.

Example 4: CLUSTER CONFIDENTIAL - several Trainees (individually or as a group) “unofficially” report bullying by a particular surgeon yet don’t feel comfortable making an “official” complaint. What is reported is a pattern of behaviour rather than an immediate issue of risk to personal safety of the Trainees.

RACS’ response:

B. Complaint

Example 1: If Trainees give their written authority to proceed, RACS can triage the complaint to decide what the issues are, and explore what to do about it. One possible outcome is that RACS can arrange for an independent Fellow to assess the complaint and give feedback to the surgeon who has been complained about. This can be an effective way to help someone reflect and then change their behaviour. Another possible option is that the relevant Training Board can get involved and consider a review of the training post, which can be a helpful way of getting more information about the issues involved.

RACS response:
Identified Complaints

There is a range of things that we can do if a person is willing to give RACS details about who they are, the name of the surgeon they are concerned about, what happened and details of any witnesses. In these cases, the Manager, Complaints Resolution will contact you to discuss what you want to happen, what can happen and what are the most appropriate dispute resolution pathways, given the circumstances.

RACS response:

Now your complaint is registered what happens next?

Triage:

The Manager, Complaints Resolution will work with senior RACS managers to identify the most appropriate way to address and ideally resolve the complaint. This may involve the RACS CEO, an Executive Director for Surgical Affairs, RACS General Counsel, Divisional Directors and Department Managers.

Pathways: Options for resolving complaints and disputes

There is a range of different options for resolving complaints and disputes, including:

**Surgeon assessment:** A senior, independent surgeon can give feedback to the person about whom concerns have been raised, discussing the allegations and possible interventions if required.

**Conciliation/Document exchange:** RACS forwards the allegations to the person complained about (respondent), who reviews the issues raised and provides a response. RACS provides the complainant with a copy of the response. Sometimes providing an acknowledgement, apology and or explanation is enough to resolve the complaint. When this is not the case, the Manager, Complaints Resolution, will discuss with the complainant how the outstanding issues may be addressed or resolved.

**Meetings:** RACS can sometimes arrange a meeting between the complainant and the respondent, if everyone involved agrees to be conciliatory and a facilitated discussion would be helpful. RACS will create an agenda to which all parties agree. Both the complainant and the respondent can bring a support person to the meeting. When everyone agrees to some actions or outcomes, these are summarised and shared. Sometimes after these meetings the matters can be referred for mediation which can lead to a mediated agreement.

**Formal proceedings:** RACS can refer for external investigation very serious cases or systemic matters, or appeals against a previous College decision. This happens rarely. Applications for appeal typically involve legal representation and follow a defined process.
Outcomes

People make complaints for different reasons. Most often, people who make a complaint want:

- acknowledgement of what happened or the issues raised
- an apology for the offence caused
- an explanation for what happened
- a commitment from the person complained about to change their behaviour so the same thing doesn’t happen again.

Other outcomes people sometimes look for include:

- change in reporting lines
- transfer
- penalty or punishment for the person complained about.

Not all of these outcomes are achievable in all cases.

RACS is a college, not an employer and cannot require or make workplace changes or enforce disciplinary proceedings started or being conducted by another agency, like an employer or a regulator.

RACS works with employers to decide which agency is best placed to manage the matter. RACS does everything possible to avoid duplicating a process that is already underway by another agency.

Working with others

RACS has signed agreements (sometimes a memorandum of understanding (MoU) and sometimes a Statement of Intent) with a range of stakeholders from the public and private sectors, in metropolitan and regional areas. The aim of negotiating these is to set a framework to work together on information sharing, improving surgical education and training, and implementing the RACS Action Plan: Building Respect, Improving Patient Safety. They commit both organisations to addressing instances of unacceptable behaviour promptly and effectively and ensuring that repeat offenders are managed in line with employment legislation and the RACS Code of Conduct and Sanctions policy.

Most complaints relate to matters that happen in a hospital or a health service where a surgeon works. In these cases, RACS believes it is usually best to work with the employer, wherever possible and within the law, sharing information.
If you are the subject of a complaint

Everyone – including all surgeons - has the right to work in a safe environment free of discrimination, bullying and sexual harassment. We encourage all surgeons to operate with respect, and to ‘call out’ unacceptable behaviour.

This means that sometimes, your behaviour may be challenged. RACS is committed to procedural fairness. We know that there are always at least two sides to every story. If someone has made a complaint or raised a concern about you, we encourage you to call the RACS Manager, Complaints Resolution, to discuss it. If you receive a letter from the office of the RACS Manager, Complaints Resolution, giving you feedback about an issue that has been raised about you, we ask you to do some things, and avoid doing others.

Do:

• Review the allegation(s) and complainant comments
• Genuinely reflect on your behaviour in the circumstances
• Review the Code of Conduct
• Thoughtfully choose how to respond. For example have you considered the position of the complainant? How would you have reacted if you were the complainant? Do you have records to support your perspective?
• Write back in a timely way to Manager, Complaints Resolution, acknowledging the concerns that have been raised and explaining your perspective of what happened. You might want to offer to apologise to the person who has raised the concern or offer a solution.

If you are upset about the allegation/s that have been made and/or you are not sure what to do or how to respond, call the Manager, Complaints Resolution, for a confidential discussion.

Don’t:

• Ignore the request for a response, it won’t ‘just go away’
• Be dismissive, aggressive or threatening
• Over-think the ‘what ifs’…or dwell on wondering “if only I….they had done……”

You can’t change what has happened. You can choose how you respond and you can learn from what happened. You can also get support from the RACS Support Program and your medical defence organisation.
Types of Complaints addressed by RACS

RACS can assess and sometimes help manage complaints about any aspect of surgical practice by a Fellow, Trainee or IMG. Complaints may involve: standards of clinical practice, conduct that affects the reputation of the profession or the College (this may include media reports), unacceptable behaviours such as bullying, discrimination and sexual harassment, and excessive fees and education and training.

Standards of clinical practice

RACS can receive requests for a formal review of a surgeon's practice, from another surgeon, a hospital or a regulator. These requests are received in writing and are managed formally. All parties agree to the terms of reference and are supported by legal indemnities. RACS Executive Directors for Surgical Affairs (EDSAs) coordinate these reviews, according to the process set out below:

Conduct that affects the reputation of the profession or the College

These complaints include concerns about misleading advertising about a surgeon’s skills, or claims about their clinical outcomes or those of their colleagues. These concerns relate to behaviour that is not compliant with the RACS Code of Conduct. These matters may be referred to a RACS Professional Conduct Committee (PCC) and if a breach of the Code is confirmed, may lead to a sanction for the surgeon.

Media reports: RACS can receive and respond to media reports about a surgeon's poor clinical outcomes. In these instances, RACS will seek an explanation from the surgeon involved. The surgeon's response is reviewed and the matter may be referred to the Professional Standards Board and managed consistently with the process described below.
Unacceptable behaviours

Behaviours considered unacceptable are detailed in the Unacceptable Behaviours fact sheet available on the RACS website:

http://www.surgeons.org/respect/

Please refer to complaint management pathway below:
**Excessive fees**

RACS can receive complaints from patients who feel they have been charged unreasonable fees. These complaints must be made in writing and all relevant documents, including invoices and health insurance refund details provided. RACS will seek an explanation from the surgeon involved, and will forward all the information provided. The Chair of the Professional Standards will review the surgeon’s response and make a decision. The complaint management process is detailed below:
Education and training

RACS registers and makes an initial assessment of all complaints about training and assessment. A Fellow, Trainee or IMG can ask for a decision made by a RACS Committee to be reviewed. A request for review of a decision is referred to the relevant Training Board for consideration. The RACS Manager, Complaints Resolution, monitors the progress of each matter, which is managed by a division of the College, with oversight from the relevant Education Board. The assessment and review process is described below.