



# AUSTRALASIAN COLLEGE OF SPORT AND EXERCISE PHYSICIANS

## **P041 Whistleblower Policy and Procedure**

### **1. PURPOSE**

The purpose of this policy is to ensure that the Australasian College of Sport and Exercise Physicians (ACSEP) has procedures in place that allow all staff and those associated with the ACSEP to identify and report genuine concerns about any illegal conduct or improper state of affairs pertaining to the ACSEP, without fear of reprisals. This policy ensures all staff and those associated with the ACSEP are aware of the protections available under this policy and Whistleblower Laws. This policy sits alongside the ACSEP Code of Ethics and Professional Behaviour, Bullying and Harassment, and Discrimination Policy, and the Grievance Policy.

### **2. BACKGROUND**

The ACSEP strives to operate with a culture of ethical and appropriate corporate behaviour in all of its business activities. This includes ensuring that the ACSEP acts with integrity, honesty, and in accordance with good governance principles, free from recrimination and victimisation. To support these aims the ACSEP must ensure that procedures are in place to allow all staff and those associated with the ACSEP to identify and report genuine concerns about any illegal conduct or impropriety pertaining to the ACSEP.

### **3. SCOPE**

This policy applies to anyone who may make a disclosure to the ACSEP, and broadly covers all current or former staff and Officers of the ACSEP (including directors or company secretaries); College members; contractors, or employees of contractors who have supplied goods or services to the ACSEP (either paid or unpaid); any individual who is an associate (as defined in the Corporations Act) of the ACSEP; or spouse, relative or dependent of one of the persons referred to above.



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

## 4. DEFINITIONS

The following definitions apply for this Policy:

- a. College member refers to Registrar trainees, non-specialist trainees, specialist international medicine graduates undertaking College requirements for the purposes of obtaining specialist recognition in Australia or New Zealand, and any external person serving on any College entity.
- b. Discloser(s) refers to the persons eligible to make a reportable conduct disclosure protected by Whistleblower Laws as described in 6.1.
- c. Protected matter as described in 6.2 refers to any suspected or actual misconduct or impropriety or circumstances in relation to the ACSEP that the Whistleblower has reasonable grounds to suspect.
- d. Grounds mean that any reasonable person in the discloser's position would also suspect the information indicates misconduct or a breach of the law.
- e. Journalist includes journalists working for electronic services operated on a non-commercial basis by a body that provides a national broadcasting service.
- f. Officer(s) or Senior Manager(s) is a person who:
  - i. makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the ACSEP; or
  - ii. has the capacity to significantly affect the ACSEP financial standing.
- g. Recipient(s) refers to the persons eligible to receive disclosure protected by Whistleblower Laws. These persons are identified in section 6.4.



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- h. Whistleblower Laws refers to the protections contained in Part 9.4AAA of the Corporations Act 2001 and Taxation Administration Act (TAA).
- i. Whistleblowing Officer of the ACSEP refers to the officer of the ACSEP who is responsible for receiving disclosures of wrongdoing and overseeing its investigation and resolution. These officer(s) are identified in section 6.4.

## 5. POLICY STATEMENT

As a Specialist Medical College, the ACSEP is committed to providing a safe culture and environment which encourages disclosure of legitimate concerns free from victimisation and is committed to adhering to highest standards of integrity and legal and ethical behaviour.

## 6. POLICY

### 1. Reportable Conduct

- a. A reportable conduct disclosure is protected by Whistleblower Laws if:
  - i. The disclosure relates to Protected Matters, identified in section 6.2;
  - ii. The information is disclosed by an eligible Whistleblower, identified in section 6.3; and
  - iii. The disclosure is made to an eligible Recipient, identified in section 6.4.

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

### 2. Protected Matters

- a. An individual may make a report under this policy if they have reasonable grounds to suspect that the ACSEP, its members or associates or staff or officers or senior managers of the ACSEP, have engaged in conduct that is:
  - i. A contravention of the Corporations Act 2001 (Cth).
  - ii. Conduct that constitutes an offence under any law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more.
  - iii. Criminal activity.



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- iv. A wilful breach of the ACSEP Code of Ethics and Professional Behaviour or other policies.
  - v. Financial and/or tax fraud or mismanagement.
  - vi. Conduct that represents a danger to the public or the financial system.
  - vii. Bribery or corruption.
  - viii. Conduct likely to cause damage to the reputation of the ACSEP or its members or Office Bearers.
  - ix. Likely to cause serious financial or non-financial loss to the ACSEP
  - x. Conduct otherwise detrimental to the ACSEP's interests.
- b. 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.

### 3. Eligible Whistleblowers

- a. Each of the following individual is an eligible Whistleblower if the individual is, or has been any of the following:
- i. Staff of the ACSEP;
  - ii. Officer of the ACSEP (includes director or company secretary);
  - iii. A College member
  - iv. Contractor, or an employee of a contractor, who has supplied goods or services to the ACSEP (either paid or unpaid);
  - v. Individual who is an associate (as defined in the Corporations Act) of the ACSEP; or Spouse, relative or dependant of one of the people referred to above.

Protected matter disclosures can also be made anonymously.



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## 4. Eligible Recipients

- a. If you become aware of reportable conduct, the ACSEP provides the channels to report the matter:
- b. Internal Reporting; For the purposes of this Policy the disclosure of a protected matter may be made to the Whistleblowing Officer as listed:  
Chief Executive Officer (CEO)  
(03) 9654 7672  
Kate Simkovic  
k.simkovic@acsep.org.au  
or an officer or senior manager of the ACSEP.
- c. External Reporting
  - i. Australian Securities and Investments Commission (ASIC) or Australian Prudential Regulation Authority (APRA); or any Commonwealth authority prescribed in relation to the company.
  - ii. A legal practitioner for the purposes of obtaining legal advice or representation in relation to Whistleblower Laws; and/or
  - iii. an auditor or member of an audit team conducting an audit on the ACSEP.
- d. 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:
  - i. 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;
  - ii. the Whistleblower has given written notification to the authority that they intend to make a public interest disclosure;
  - iii. the extent of the information disclosed is no greater than necessary to inform the recipient of the misconduct or impropriety to which the first disclosure related.

## 5. Protection to the Whistleblower

- a. Confidentiality; Subject to compliance with legal requirements under Whistleblower Laws, upon receiving a disclosure of reportable conduct under this policy, the ACSEP will only



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share the identity of a Discloser or disclosing information that is likely to lead to the identification of the Discloser if:

- i. The Discloser consents;
  - ii. The matter is reported to ASIC, APRA, the Tax Commissioner or the Australian Federal Police (AFP); or
  - iii. The matter is raised with a legal practitioner for the purposes of obtaining legal advice or representation.
- b. The ACSEP 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.
- c. Any disclosures of discloser's identity or information likely to reveal his/her identity will be made on a strictly confidential basis.
- d. Victimization Prohibited; Whistleblower Laws prohibit any person or the ACSEP from:
- i. 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; or
  - ii. 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.
- e. Detrimental treatment includes dismissal, harassment, discrimination and disadvantages in employment, physical and psychological harm.
- f. 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.
- g. Persons who have their contracts terminated in contravention of these protections may also have their contracts reinstated by a Court.
- h. If a Discloser is subjected to detrimental treatment because of making a report under this policy they should inform the Whistleblowing Officer, officer or senior manager in accordance with Section 6.4.b of this policy.



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- i. Protections 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:
  - i. 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 based on the disclosure;
  - ii. No contract of employment or contract for services can be terminated on the basis that a protected disclosure constitutes a breach of contract;
  - iii. Whistleblowers are provided with immunity so that the information they disclose will not be admissible in evidence against them;
  - iv. 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.
- j. Protections 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 Whistleblower:
  - i. A Whistleblower's identity cannot be disclosed to a Court or tribunal except where considered necessary;
  - ii. 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 obtaining legal advice or representation in relation to the report;
  - iii. The Whistleblower is immune from any civil, criminal or administrative legal action (including disciplinary action) for making the disclosure;
  - iv. No contractual or other remedies may be enforced, and no contractual or other right may be exercised, against the Whistleblower for making the report;
  - v. 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;



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- vi. Unless the Whistleblower has acted unreasonably, a Whistleblower cannot be ordered to pay costs in any legal proceedings in relation to a report; and
- vii. 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.

## 7. PROCEDURE

### 1. Making a report

- a. When a person becomes aware of any suspected or actual improper conduct, they may make a report. In the first instance, the CEO (the Whistleblowing Officer) or an officer or senior manager of the ACSEP shall receive any reports of alleged wrongdoing. If the allegations involve the CEO, the matter in this instance should be referred to the President. Additionally, in New Zealand, individuals may instead report alleged wrongdoing to an Appropriate Authority if they believe on reasonable grounds:
  - i. That the CEO is or may be involved in the serious wrongdoing; or
  - ii. Immediate disclosure to an Appropriate Authority (as defined within the New Zealand Protected Disclosures Act 2000) is justified because of the urgency of the matter to which the disclosure relates, or some other exceptional circumstances; or
  - iii. Disclosure has already been made to the ACSEP, but there has been no action or recommended action within 20 working days.
- b. For workplace grievances, ACSEP staff should report these instances in accordance with the ACSEP Grievance Policy and Procedure.
- c. It is appropriate to make a Whistleblower report when the disclosure relates to conduct that is described in section 6.2.
- d. A Whistleblower who believes they, or their family, has been victimised, as described in 5.d, by reason of their status as a Whistleblower, should immediately report the same to the CEO.
- e. Any employee 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.



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- f. A Whistleblower who has been involved in the reportable conduct may still be provided with immunity by the ACSEP or by any disciplinary proceedings, by agreement with the ACSEP. The ACSEP, however, has no power to provide immunity from criminal prosecution in Australia.
- g. In New Zealand, ACSEP employees who make a report of a protected matter (as described in section 6.2) are immune from any civil or criminal proceeding or to a disciplinary proceeding for having made that disclosure.

## 2. Protection from Retaliation

- a. The ACSEP will not tolerate any retaliation against a person because the person has made a report under this policy and the ACSEP is committed to protecting and respecting the rights of a person who reports any wrongdoing in good faith.
- b. The person (or entity) must not be disadvantaged or victimised for having made the report by:
  - i. dismissal or termination of services or supply;
  - ii. demotion; or
  - iii. 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 of the ACSEP membership.

- c. 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 ACSEP staff, where this is warranted.

## 3. Investigation Process

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



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- b. On receipt of a report, the ACSEP has the discretion to determine whether it is appropriate to investigate. The ACSEP may decide not to investigate a report if it is considered that:
  - i. the alleged conduct is not reportable conduct under this policy;
  - ii. the report is not made in good faith or is frivolous, vexatious or malicious;
  - iii. the report is made anonymously and there is insufficient information to undertake an investigation.

## 4. Conduct of Investigation

- a. 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.
- b. In some cases, an external investigator may be appointed to conduct the investigation. Terms of reference for any external investigation may be developed to provide guidance. The investigator will be able to consult with any other external expert advisers as considered necessary.
- c. All investigations will be conducted in a fair, independent and timely manner that affords procedural fairness to all involved.
- d. If the reported matter involves an allegation of a criminal nature, the matter may be referred directly to the ACSEP solicitor and/or appropriate authorities. If the matter is deemed to be of a minor nature, ACSEP regulations, policies and the Constitution shall be used to address the issue.

## 5. False Reporting

- a. Anyone making a report must act in good faith and have reasonable grounds for believing the information disclosed constitutes reportable conduct as stated in 6.1.
- b. 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 ACSEP membership.

## 6. Reporting of findings

- a. On completion of an investigation, a written report of the findings will be provided by the Investigator/s to the Board.
- b. The report should summarise the conduct of the investigation and the evidence collected and should detail any conclusions drawn, as well as making recommendation/s for response by the College.



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- c. If any wrongdoing has been found to have occurred, the Board will take appropriate action, either on an internal basis or refer the matter to an appropriate external body.
- d. 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.
- e. Where applicable, the Board may provide feedback to the person who made the initial report regarding the progress of the investigation and/or the outcome.

## 7. Access to this Policy

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

## 8. Breaches of this Policy

- a. All staff and contractors of the ACSEP are required to comply with this policy at all times as well as with Whistleblower Laws.
- b. 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.

## 8. RELEVANT LEGISLATION

Corporations Act 2001 (Australia)

Protected Disclosures Act 2000 (New Zealand)

## 9. KEY RELATED DOCUMENTS

P001 Bullying, Harassment and Discrimination Policy

P015 Code of Ethics and Professional Behaviour

P002 Grievance Policy and Procedure



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## APPROVAL AND REVIEW DETAILS

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Advisor or Advisory Committee to Approval Authority	ACSEP CEO
Administrator	ACSEP Programs, Policies and Systems Administrator
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