



Australian College of Nursing

POLICY AND PROCEDURE

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Title of Document	Whistleblower Policy

This policy encompasses the Australian College of Nursing Ltd (ACN 154 924 642), The College of Nursing (ACN 000 106 829), Royal College of Nursing, Australia (ACN 004 271 103), Australian College of Nursing Foundation (ABN 55 745 393 419) and The National Nursing Archives of Australia Limited (ACN 664 634 253) – collectively referred to as (the “ACN Group”).

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1 Definitions

In this Policy, unless the context otherwise requires:

- (a) **ACN Group** means the Australian College of Nursing Ltd (ACN 154 924 642), The College of Nursing (ACN 000 106 829), Royal College of Nursing, Australia (ACN 004 271 103), Australian College of Nursing Foundation (ABN 55 745 393 419) and The National Nursing Archives of Australia Limited (ACN 664 634 253);
- (b) **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in the ACT;
- (c) **Corporations Act** means *Corporations Act* 2001 (Cth) and includes its regulations;
- (d) **Eligible Whistleblower/s**: In order to recognise and protect yourself as a whistleblower you need to meet the following “eligibility criteria” as required in the Corporations Act.:
 - Staff of the ACN Group.
 - an individual or their employee who supplies services or goods to the ACN Group Company (whether paid or unpaid) or their employees and sub-contractors and volunteers. For example, appointees to expert committees, Company Associates of ACN Group;
 - a relative, dependent, or spouse of an individual referred to in any of the points above;
- (e) **Eligible Recipient**: To be a disclosure that qualifies for protection the disclosure must be made to one of the following:
 - (i) an officer or senior manager of the ACN Group (for ACN Group this would include a Board (See ACN website for names or the Board Secretariat);
 - (ii) the external auditor, or member of an audit team conducting an audit of the ACN Group or related body corporate;
 - (iii) a person authorised by the Company to receive Eligible Whistleblower disclosures (that is, the Whistleblower Protection Officer);
 - (iv) Recipient Authority: Australian Securities and Investment Commission, Australian Prudential Regulation Authority, or another Commonwealth authority prescribed by the Corporations Act for this purpose; or
 - (v) a legal practitioner (for the purpose of obtaining legal advice or representation about the operation of the Whistleblower protections set out in the Corporations Act);
- (f) **Detriment Conduct**: Under the Act, detrimental conduct is defined to include the following:
 - (i) Unfair dismissal of an employee;
 - (ii) injury of an employee in his or her employment;
 - (iii) alteration of an employee’s position or duties to his or her disadvantage;
 - (iv) discrimination between an employee and other employees of the same employer;
 - (v) harassment or intimidation of a person;
 - (vi) harm or injury to a person, including psychological harm;
 - (vii) damage to a person’s property;
 - (viii) damage to a person’s reputation;
 - (ix) damage to a person’s business or financial position;
 - (x) any other damage to a person.
- (g) **Major Amendments** means any amendment which materially changes the operation of the policy which is not otherwise a Minor Amendment

- (h) **Minor Amendment** means any amendment to style, to correct grammatical mistakes, formatting, and updates which do not change materially and does not materially alter the operation of the Policy.
- (i) **Officer** is an officer as defined in *the Corporations Act 2001 (Cth)* which includes the Board, the Company Secretary, the CEO, COO, and anyone acting in their positions.
- (j) **Personal Workplace Grievance** is a grievance about any matter in relation to an individual's employment or former employment which has, or tends to have, implications only for the individual personally, and where the information does not:
 - have significant implications to the entity to which it relates, or any other entity, that does not relate to the individual;
 - concern Eligible Whistleblower victimisation; or
 - concern the following types of misconduct or an improper situation or circumstances:
 - a criminal offence or contravention of *the Corporations Act 2001 (Cth)* or *Australian Securities and Investments Commission Act 2001 (Cth)* suspected to have been committed by ACN Group, or an ACN Group's Officer or employee
 - a Commonwealth criminal offense punishable by more than Twelve months imprisonment suspected to have been committed by ACN Group, or an officer or employee of ACN Group;
 - a danger to the public or the financial system posed by ACN Group, or an ACN Group or employee; or - misconduct or an improper situation or circumstances in relation to ACN Group's Tax Affairs, or the Tax Affairs of a Company Associate of ACN Group.
- (k) **Staff** means all the employees of the ACN Group including
 - Officer as defined above
 - Part-time and full time employees,
 - a contractor or subcontractor,
 - an apprentice or trainee and
 - a volunteer
- (l) **Whistleblower Protection Officer** means a person authorised by ACN Group to receive disclosures. This is currently the Company Secretary, email: Company.Secretary@acn.edu.au.

2 Policy Statement, Purpose, and Application

2.1 Policy Statement

- (a) ACN Group is committed to the highest standards of integrity and conduct and to provide a culture and environment in which people feel free to raise issues relating to the ACN Group's operations.
- (b) To assist in the prevention and detection of Improper Conduct (including fraud, corruption, and misconduct), ACN Group has developed this Policy.

2.2 Purpose

The purpose of this Policy is to:

- (a) To help deter wrongdoing, by encouraging disclosure of wrongdoing and providing a safe environment for an Eligible Whistleblower to be able to make disclosure safely, securely, and with confidence that they will be protected and supported.

- (b) This policy reinforces the ACN Group's commitment to providing a safe and confidential environment where concerns regarding any wrongdoing can be raised without fear or victimisation.
- (c) outline the procedures and protections (Whistleblower Protection Scheme) that apply to Eligible Whistleblower under *the Corporations Act 2001 (Cth)* **(the ACT)**.
- (d) You are a protected Eligible Whistleblower and entitled to protection under the Act if:
 - You are an "Eligible Whistleblower; and
 - you make a disclosure that qualifies for the protections under the Act; and
 - the disclosure is made to an Eligible Recipient.

2.3 Application

This policy applies to all Staff of the ACN Group.

3 Types of Disclosure

Disclosures can be made under this policy where an Eligible Whistleblower has reasonable grounds to suspect that the information being disclosed concerns misconduct or an improper situation or circumstances in relation to the ACN Group its Officers or Staff and has reasonable grounds and that there is a reasonable objective basis for the suspicion. It may not require proof of allegations but must be more than an allegation with no supporting information or documents.

The disclosure however cannot solely be about a Personal Workplace Grievance.

Examples of misconduct or an improper situation or circumstances include:

- contraventions of the *Act or Australian Securities and Investments Commission Act 2001 (Cth)* suspected to have been committed by ACN Group, or an Officer or employee of ACN Group (such as a breach of Officers' duty, breaches of Eligible Whistleblower protections, falsification of books or false or misleading statements made in accounts or books lodged with ASIC);
- a Commonwealth criminal offense punishable by more than 12 months imprisonment, suspected to have been committed by the ACN Group, or an Officer or employee of ACN Group (such as false dealings with accounting documents);
- a danger to the public or the financial system posed by the ACN Group, or an Officer or employee of the ACN Group;
- misconduct or an improper state of affairs or circumstances in relation to the ACN Group's Tax Affairs, or the Tax Affairs of a Company Associate of ACN Group;
- fraudulent or corrupt conduct such as dishonesty, fraud, misuse of information or material acquired, and dishonestly altering ACN Group records or data;
- coercion, harassment, or discrimination by, or affecting any Staff;
- misleading or deceptive conduct of any kind, including conduct or representations which amount to improper or misleading accounting or financial reporting practices;
- conduct that may cause financial loss to the ACN Group or damage the ACN Group's reputation or is otherwise detrimental to the ACN Group's interests;
- failure to rectify or take reasonable steps to report a matter likely to give rise to a significant and avoidable cost or loss to ACN Group;
- abuse of power or authority for any unauthorised or ulterior purpose; and
- any other criminal conduct.

Note that some possible conduct that might be the subject of a disclosure may not be illegal per se but may indicate a systemic failing that warrants regulator involvement. Other possible conduct fitting this description might be unethical or dishonest conduct that is harmful to the ACN Group or which is prohibited by the Staff Code of Conduct and Handbook for Volunteers.

Examples of conduct that would not warrant a disclosure include:

- Normal proceedings were taken against an employee as part of a grievance process;
- Management action was taken in response to employee in accordance with ACN Group policy; or
- Disclosing confidential information with the consent of the owner of that information.

False reporting, where a discloser deliberately reports information they know to be untrue, does not attract the legal protections afforded to Eligible Whistleblower but may itself be a criminal offence dependent on the circumstances. Where disclosure is found to be deliberately false, the ACN Group will take appropriate disciplinary action against the discloser.

In some cases, a Personal Workplace Grievance may still qualify for protection as a disclosure. For example, if:

- the Personal Workplace Grievance contains information about misconduct;
- the Personal Workplace Grievance contains information that suggests misconduct beyond the particular circumstances in the grievance;
- the discloser seeks legal advice about the operation of the relevant legal protections relating to Eligible Whistleblower; or
- the discloser is threatened with detriment for making the disclosure.

4 Protection

4.1 Support and Protection for Eligible Whistleblowers

The ACN Group will support Eligible Whistleblower Disclosures made in good faith in accordance with this policy by:

- the Eligible Whistleblower will be referred to in a gender-neutral context to protect anonymity;
- disclosures by Eligible Whistleblower to internal Eligible Recipients will be handled and investigated by qualified staff.
- all paper and electronic documents and other materials relating to a Whistleblower's disclosure will be stored securely;
- access to all information relating to an Eligible Whistleblower's disclosure will be limited to those directly involved in managing and investigating the Detrimental Conduct;
- the Employee Assistance Program is available to Eligible Whistleblower.

4.2 Protection from Victimisation

No person may cause or threaten any Detriment Conduct to any person for a reason which includes that they or another person:

- are or is or propose/s to be an Eligible Whistleblower; or
- are or suspected or believed to be, or could be, an Eligible Whistleblower.

An Eligible Whistleblower who suffers Detriment Conduct as a result of a disclosure, or by way of the ACN Group failing to protect them from Detriment Conduct may be able to seek compensation or other remedies in the courts.

A Eligible Whistleblower may also be protected from legal action arising because of their disclosure. An Eligible Whistleblower, however, may be held liable for any personal misconduct revealed by their disclosure or an investigation following a disclosure.

4.3 Confidentiality

No person may disclose or reveal the identity of an Eligible Whistleblower (or information that is likely to lead to their identity becoming known) unless:

- the Eligible Whistleblower has consented to the disclosure;

- the disclosure is made to a legal practitioner for the purposes of obtaining legal advice or legal representation in relation to the operation of the Australian Whistleblower Laws as applicable;
- if the Whistleblower Protection Officer considers it appropriate, the disclosure is made to:
 - the Australian Federal Police;
 - ASIC;
 - APRA;
 - the Australian Commissioner of Taxation if the disclosure concerns ACN Group's Tax Affairs or the Tax Affairs of a Company Associate of ACN Group; or
 - the Police force of a State or Territory; or
 - the disclosure is required or authorised by a State, Territory, or Commonwealth law.

No person may disclose or produce to a court or tribunal any information or documents which disclose the identity of an Eligible Whistleblower (or information that is likely to lead to their identity becoming known) without first seeking the advice of the General Counsel.

The Whistleblower Protection Officer may disclose the content of disclosure without the Eligible Whistleblower's consent if:

- the information does not disclose the Eligible Whistleblower's identity;
- all reasonable steps have been taken to reduce the risk of identification stemming from the information; and
- it is reasonably necessary for investigating the issues raised in the disclosure.

5 Whistleblower Procedure and Reporting

5.1 Whistleblower Procedure

Disclosures made in accordance with this policy will be investigated by the ACN Group in the following way, except where, in the opinion of a Whistleblower Protection Officer, it would be inappropriate or unreasonable in the circumstances to do so:

- a. Disclosures to an internal Eligible Recipient can be made by email, mail, or in person. The contact details are as follows:
 - Company Secretary; or
 - via email – Company.Secretary@acn.edu.au; or
 - Company Secretary, Locked Bag 2, Deakin ACT 2600
- b. An Eligible Recipient who receives a disclosure must provide the information to a Whistleblower Protection Officer as soon as practicable, removing any information which identifies or may identify the Eligible Whistleblower of the information prior to doing so unless the Eligible Whistleblower has provided consent to that disclosure.
- c. Upon receipt of the disclosure, the Whistleblower Protection Officer will notify the Eligible Whistleblower, within five business days that the disclosure has been received, if the Eligible Whistleblower is contactable;
- d. As soon as practicable, the Whistleblower Protection Officer must determine whether the disclosure falls within the scope of this Policy and, if so, appoint an external legally qualified investigator with no personal interest in the matter to investigate the matters disclosed, if they determine it to be necessary or appropriate. The Whistleblower Protection Officer will notify the Eligible Whistleblower within five business days that an investigation is to occur, or, no further action is to be taken if the Eligible Whistleblower is contactable;
- e. The Whistleblower Protection Officer will instruct the investigator to conduct an investigation in an objective and fair manner, ensuring to provide any Staff who has been adversely mentioned in the information provided by a Whistleblower an opportunity to respond to the allegations made in respect of them prior to any findings being made;
- f. The outcome of the investigation must be reported to the Board and may be reported to the Eligible Whistleblower and any persons affected as the Whistleblower Protection Officer

- considers appropriate. Where the matters disclosed are substantiated and a breach has occurred or is occurring, steps will be taken to address the issue and any person(s) responsible will be disciplined as appropriate in the circumstances of the case. Where the matters disclosed are not substantiated, the ACN Group may choose to take no further action;
- g. Except as permitted in this policy (see the section titled 'Confidentiality' above) or otherwise by law, the identity of an Eligible Whistleblower (or information that is likely to lead to their identity becoming known) must be always kept confidential during and after the investigation (including in any reporting to the Board or to any persons affected). All persons responsible for or involved in an investigation must take all reasonable steps to reduce the risk that an Eligible Whistleblower will be identified; and
 - h. The Eligible Whistleblower may raise any concerns or complaints regarding this policy or their treatment with the Whistleblower Protection Officer.

5.2 Reporting

Subject to the Confidentiality requirements above, the Whistleblower Protection Officer must provide the Board with a biannual report on all active whistleblower matters, including information on:

- the number and nature of disclosures made in the last six months;
- the status of any investigations underway;
- the outcomes of any investigations completed, and actions taken as a result of those investigations; and
- identification of any systemic organisational weaknesses exposed by disclosures or disclosure investigations.

6 Civil, Criminal and administrative liability protection

A Whistleblower is protected from any of the following in relation to their Disclosure:

- civil liability (for example, any legal action against the Whistleblower for breach of an employment contract, duty of confidentiality or another contractual obligation);
 - criminal liability (for example, attempted prosecution of the Discloser for unlawfully releasing information, or other use of the Disclosure against the Whistleblower in a prosecution (other than for making a false disclosure)); and
 - administrative liability (for example, disciplinary action for making the Disclosure).
- These protections do not grant immunity for any misconduct a Whistleblower has engaged in that is revealed in their disclosure about Improper Conduct.

7 False Reports by an Eligible Whistleblower

If an investigation has confirmed that a Whistleblower has knowingly, vexatiously, or recklessly made a false, trivial, malicious, fraudulent, or dishonest Disclosure, the Company will take appropriate disciplinary action, which may include dismissal of an employee or termination of a consultant or contractor's agreement.

8 Consequences of non-compliance with policy

Any breach of this policy by Staff will be taken seriously by ACN Group, and maybe the subject of a separate investigation and/or disciplinary action. Allegations of criminal conduct may also be referred to an appropriate authority.

A breach of this policy may also amount to a civil or criminal contravention under Australian Whistleblower Laws, giving rise to significant penalties.

9 Policy Relationship with Australian Whistleblower Laws and the Grievance and Dispute Management

Disclosures made in accordance with this policy may be afforded protection under Australian Whistleblower Laws, whether or not the disclosure later proves to be incorrect and whether anonymous or not. For more information about these laws, see the information available on the ASIC website and the ATO website.

Apart from the compulsory legal obligations, the ACN Group has under this policy, this policy does not prevent management from taking any action in relation to any grievance or disciplinary proceeding which might be affected by this policy.

Where disclosure is made which is substantially the same or related to a grievance made under the ACN Group Grievance and Dispute Management, the disclosure is to be dealt with separately from the grievance.

10 Review of Policy

- The Board Secretariat may, without the approval of the Board, make Minor Amendments to this Policy anytime provided its reported to the next scheduled Board Meeting
- Major Amendments require the approval of the Board.
- If you have any queries about this Policy, please contact the Board Secretariat.

11 Responsibility

Each Officer has a responsibility as defined below:

- The Board is Responsible for approval of the policy and Major Amendment
- The Board Secretariat Must comply with the policy and be responsible for Minor Amendments
- Staff must comply with the Policy
- The Whistleblower Protection Officer must comply with this policy and receives complaints. Decides method of investigation within the policy and reports to the Board on Whistleblower matters.

12 Policy Availability

This Policy is made available to Staff of the Company by:

- posting the Policy on the ACN Intranet and website; and
- incorporating the Policy in Staff induction information packs and training for new starters and refresher training for existing Staff.

Responsibility for Review	Board Secretariat
Endorsement	Executive Committee
Approval	ACN Board via GaSC
Date of Issue	October 2020
Date Last Reviewed	January 2025 – update review table and contact address only