



**College of Intensive Care Medicine
of Australia and New Zealand**
ABN: 16 134 292 103

Document Reference	C-Gen	2020
Document Type	Policy	
Document Category	Corporate	
Date Established	November 2019	
Date Last Reviewed	June 2020	

SPEAK UP POLICY

PURPOSE

The purpose of this policy, also referred to as a whistleblower policy, is to affirm the College of Intensive Care Medicine of Australia and New Zealand's (the College) commitment to a culture of corporate compliance, honesty and ethical behaviour in all College activities. This policy is designed to facilitate the reporting of disclosable misconduct (actual, potential or perceived) without fear of retaliation or retribution. The reporter of such misconduct is commonly deemed a 'whistleblower'.

INTRODUCTION

A 'speak up' policy is an important mechanism to facilitate the detection of corrupt, illegal or other undesirable conduct. The College recognises the value of complying with the obligations under the Corporations Act 2001 (Cth) (the Act) and expects all members and College staff to conduct themselves in a manner consistent with the College standards and in compliance with all relevant legislation.

The College is committed to fostering an environment where persons can feel safe to speak up if they observe or suspect misconduct. 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 a culture of transparency and accountability;
- Establishing procedures which enable protection and confidentiality for those reporting their concerns; and
- Facilitating resolution of the issue/s identified.

Nothing in this policy is intended to change or take away any other protections that may be available in law.

SCOPE

In Australia, this policy applies to persons associated with the College including past and present:

- Employed staff
- College members

- Officers and managers
- Board members
- Volunteers
- Individuals who supply goods and services to the College, and their employees
- Commissioned agents and consultants
- A relative of an individual referred to above
- A dependent or spouse of an individual referred to above.

In New Zealand, this policy applies to all employees of the College (as defined in Appendix A) 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.

REPORTING

1. Disclosable misconduct

If the reported disclosure involves an allegation of a criminal nature, the matter may be referred directly to the appropriate authorities. If the matter is deemed to be of a minor nature, the issue will be addressed according to the College's regulations, policies and Constitution.

In Australia, if the person has seen or has reasonable grounds to suspect misconduct, or an improper state of affairs or circumstances, the person may report it.

It is appropriate to make a disclosure that includes, but is not limited 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 or misusing College records without cause or permission;
- involves making false entries in College records, engaging in questionable financial practices, causing substantial financial or non-financial loss or detriment to the College;
- is contrary to, or a serious breach of College codes and policies;
- is potentially damaging to the College, by compromising its training and educational activities;
- represents significant breaches of occupational health and safety laws; or
- victimises someone for making or being involved in a disclosure.

In New Zealand, it is also appropriate to disclose a matter that 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.

2. Personal, work-related grievances

Disclosable Misconduct does not include personal work grievances. These are generally grievances relating to a staff member’s current or former employment or engagement that has personal implications for that individual alone, and that do not have broader implications for the College.

For Bullying, Discrimination and Harassment incidents in the Workplace, these grievances should be reported in accordance with the College’s [IC-20 Prevention of Bullying, Discrimination and Harassment in the Workplace policy](#).

If a Fellow or other person associated with the College identifies or has reasonable grounds to suspect misconduct in their workplace, this is, primarily, the responsibility of the employer. However, such misconduct may be referred to the College especially when it relates to training or specialist qualifications. If the conduct indicates systemic issues relating to the educational program, this may be referred to either or both the College and Australian Health Practitioner Regulation Agency (AHPRA).

The table below provides a guideline on matters that are personal, work-related grievances and disclosures that are protected by the Act. If the person is unclear about the extent of the person’s legal rights and protections, the College encourages the person to seek legal advice.

Personal work-related grievances	Disclosures protected by the Corporations Act 2001
<p>Workplace grievances under the Fair Work such as:</p> <ul style="list-style-type: none"> • Interpersonal conflicts • Transfer • Promotion • Disciplinary decisions • Bullying and harassment • Discrimination • Workplace health and safety • Work environment • Relationships in the workplace • Organisational changes • Terms and conditions of employment 	<ul style="list-style-type: none"> • May relate to matters beyond criminal breaches, including breaches of tax laws, Australian Securities and Investments Commission and Australian Prudential Regulation Authority laws. • Conduct that is not illegal but indicates systemic issues. • Conduct relating to victimisation or retaliation against a person for making a potential or real disclosure.

3. Making a disclosure

A person making a report should have reasonable grounds for believing that the information provided is accurate. Where possible, the report should include:

- The name, job title and workplace address of the person who is the subject of the disclosure;
- Details of the misconduct including dates and places;
- Names of anyone who may substantiate the disclosure; and
- Any other evidence that supports the disclosure such as email, documents, CCTV recordings.

A person and others associated with the College can report suspected or actual improper conduct either:

- Internally to the College
- to the College's Independent External Reviewer
- to external authorities and entities.

3.1. Making a disclosure internally

The College supports openness and teamwork. This policy does not replace the College's first obligation to resolve issues quickly and internally where appropriate. All reasonable attempts to resolve an issue should be tried first.

If the person does not feel safe or able to raise misconduct with the person's supervisor or senior manager, the person may make a disclosure to:

- a) a person authorised by the College to receive disclosures (Disclosure Officer) or
- b) an actuary of the College (as defined in Appendix A) or a member of an audit team conducting an audit of the financial or tax affairs of the College.

The Disclosure Officer has been appointed to receive the disclosure either directly from the person or from the Independent External Reviewer.

The College's Disclosure Officer to whom the person may make a disclosure and their contact details are below:

Name and position	Location	Contact Details
Julia Harper, CEO	Suite 101, 168 Greville Street, Prahran, VIC	E: julia@cicm.org.au T: +61 3 9514 2888

If the CEO is the subject matter, the matter should be referred to one of the following Disclosure Officers:

Name and position	Location	Contact Details
Lisa Davidson, Fellowship General Manager	Suite 101, 168 Greville Street, Prahran, VIC	E: lisad@cicm.org.au T: +61 3 9514 2888
Daniel Angelico, Training General Manager	Suite 101, 168 Greville Street, Prahran, VIC	E: daniel@cicm.org.au T: +61 3 9514 2888

In New Zealand, a College employee may instead report alleged wrongdoing to an Appropriate Authority (as defined in Appendix A).

3.2. Making a disclosure to an Independent external reviewer

The College has appointed an Independent External Reviewer (the Reviewer) to assist individuals who do not feel safe or able to make a disclosure internally.

The Independent External Reviewer acts as an intermediary, providing the means for a whistleblower to retain anonymity. The Reviewer remains independent and will only communicate with those authorised within the College. Disclosures received by the Reviewer are reported to the College in accordance with this policy. The Reviewer will also enable the College to obtain further information if required and provide the whistleblower with updates from the College.

The Reviewer will:

- make a record of the information that the person provides
- ensure the person's identity is kept confidential if the person wishes it to be
- refer the disclosure, including the information and documents provided by the person, to the Disclosure Officer within one business day.

If a disclosure relates to a Disclosure Officer, the Reviewer will exclude that relevant Disclosure Officer from all communications when providing the disclosure to the College. The Disclosure Officers who are not named in the disclosure will then receive and determine how the matter will be addressed or investigated as required.

The College's External Reviewer to whom the person may make a disclosure and their contact details are below:

Name and position	Contact Details
Joanne Dwyer, External consultant	E: reportingcicm@outlook.com.au T: +61 3 9514 2806

The Reviewer is not the decision-maker. All decisions relating to dealing with the disclosure including the investigation and resolution of the disclosure are entirely the responsibility of the College.

3.3. Making a disclosure to external authorities and entities

Whistleblower Protection Laws in Australia prescribe that whistleblower policies include specific information about the protections available to Australian whistleblowers as outlined in the Appendix B.

None of the protections outlined should be construed as limiting the rights or protections of whistleblowers in other jurisdictions in which the College operates.

4. False reporting

Anyone who makes a disclosure knowing it to be false or vexatious may be subject to the College's disciplinary action, including dismissal. The disciplinary action will depend on the severity, nature and circumstance of the false disclosure.

5. Anonymity

The disclosure can be made anonymously. However, unattributed reports are difficult to investigate and respond to. For this reason, the College encourages the whistleblower to disclose his or her identity.

CONFIDENTIALTY AND PRIVACY

The College treats all disclosures with sensitivity and in the strictest confidence. All reports and records relating to a disclosure will be stored securely and will be accessible only by authorised staff. The confidentiality provisions do not preclude anyone involved in the disclosure from sharing the information with their legal representative or support person.

The College will not disclose the identity or any information that will likely identify the person unless:

- the person gives his or her consent to share that information; or
- the disclosure is allowed or required by law; or
- the disclosure is essential to prevent serious risk to the public health, public safety or the environment (relevant in New Zealand); or
- the disclosure is essential having regard to the principles of natural justice (relevant in New Zealand).

If the information is likely to identify the whistleblower in the course of the investigation, the College will take all reasonable steps to reduce the risk that the person will be identified.

An unauthorised disclosure of the whistleblower's identity and/or information that is likely to identify the whistleblower will be subjected to the College's disciplinary procedures.

PROTECTION AND SUPPORT

1. Protection against victimisation and from retaliation

The College is committed to doing what is reasonably possible to support and protect anyone who:

- intends to or who makes a disclosure
- is mentioned in the disclosure
- acts as a witness

- assists with the investigation and resolution of the disclosure

from being penalised or personally disadvantaged, by any of the following:

- dismissal or suspension
- demotion
- any form of harassment, discrimination, current or future bias or threats of any kind.

Any such retaliatory action or victimisation due to 'whistleblowing' will not be tolerated. The College will thoroughly investigate reports of victimisation or retaliation. If proven, those who have victimised another will be subject to the College's disciplinary procedures.

2. Support to the 'whistleblower'

The welfare of those who make or cooperate with protected disclosures is essential to the effective implementation of this policy.

The College provides support to staff and College members mentioned or involved in a disclosure through resources such as the Member Assistance Program – Converge International. For more information, please visit the College's [Member Health & Wellbeing](#) page.

In some cases, a Welfare Officer may be appointed by the Disclosure Officer and may be from within the College or a third party. Whether a Welfare Officer is appointed depends on an assessment of the person's circumstances. In particular, the College will assess whether there are real risks of detrimental action.

The Welfare Officer may arrange or coordinate support for the protected person. The support may include a support person and or other support services appropriate in the circumstances.

The College recognises that the level of welfare support depends on the individual's needs, but may include:

- advising the person of their rights under the Act
- taking proactive steps to avoid detrimental action
- receiving and responding to any concerns they may raise
- in the case of an employee, fostering a supportive work environment.

3. Immunity

Subject to this policy, any person making a report or participating in any subsequent investigation by the College will not be subject to any civil, criminal or disciplinary action.

This policy does not protect the discloser if they are also involved in or connected to the improper conduct or illegal activities that are the subject of a report. The person's protection only extends to the consequences of making the report, not the activity itself, other than in limited circumstances.

The College encourages the whistleblower to seek independent legal advice if they are unclear about their legal rights and protections.

INVESTIGATION PROCESS

On receipt of a report internally or from the Reviewer, the Disclosure Officer will:

- initially assess whether an investigation is required
- coordinate and oversee the investigation where an investigator has been appointed
- if considered necessary, appoint a Welfare Officer
- take all reasonable steps to ensure the identities of the whistleblower and the subject of the disclosure are kept confidential
- assess the immediate welfare and protection needs of any whistleblower
- address any issues or concerns of victimisation/detrimental treatment
- advise the whistleblower (through the Reviewer where anonymity is requested) of the progress of the matter to the extent it is legally permissible and appropriate to do so.

If the Disclosure Officer decides that an investigation is required, the Disclosure Officer will determine the appropriate investigation process including:

- the nature and scope of the investigation
- the investigating officer and whether that person should be external to the College
- the nature of any technical, financial or legal advice that may be required
- a timeframe for the investigation (depending on the level of risk).

The Disclosure Officer may decide not to investigate a report if it is considered that:

- 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
- the report is deemed frivolous, vexatious or malicious.

1. Conduct of investigation

The investigation will be conducted in a constructive, impartial and lawful way in accordance with the principles of natural justice and procedural fairness. The investigation process will vary, depending on the nature of the report and the amount of information provided.

Once the Disclosure Officer appoints an investigator, the Investigator will:

- gather information, material and documentation concerning the disclosure as quickly as possible
- take a record of interview or tape formal interviews with witnesses
- keep information gathered in the investigation in a confidential and secure system
- take all reasonable steps to protect the identity of the whistleblower
- complete the investigation and provide a report of the findings as soon as is reasonably practical.

In some cases, an external investigator may be appointed to conduct the investigation. The investigator will be able to consult with any other external expert advisers as considered necessary.

2. Person against whom the report is made

If further investigation is not warranted, the Disclosure Officer may notify the person that a wrongdoing was reported. Factors considered in making that decision include preserving the integrity of the person, protecting the whistleblower and workplace harmony.

Where the Disclosure Officer decides that a matter requires an investigation, the principles of procedural fairness will apply. The person who is the subject of the reported matter will be notified and given a chance to respond to comments that may be included in the investigation report.

The College is committed to supporting a person who is the subject of a report and will ensure the person's identity is kept confidential as far as possible.

REPORTING OF FINDINGS

A written annual report of all whistleblower incident reports made under this policy will be provided by the Disclosure Officer to the College Board. Subject to privacy and confidentiality, the report should summarise whether an investigation was warranted, the conduct of the investigation, the evidence collected, and any conclusions drawn including recommendations for response by the College.

If any wrongdoing has been identified, the Board will take appropriate action either on an internal basis or by referral of the matter to an appropriate external body. Based on the findings, the College will take reasonable steps to review policies and processes to prevent misconduct in the future.

REVIEW

The College will review this policy every five years. However, the College may modify or amend the policy at any time to ensure it meets its objectives.

Any amendments to this policy shall be made known to staff and College members by posting an updated version on the College's website.

References and related documents

- Corporations Act 2001 (Australia)
- Protected Disclosures Act 2000 (New Zealand)
- Human Rights Act 1993 (New Zealand)
- Australasian College for Emergency Medicine Whistleblowers policy
- Australia and New Zealand College of Anaesthetists Whistleblowers policy
- CICM Constitution
- CICM Regulations
- IC-20 Prevention of Bullying, Discrimination and Harassment in the Workplace
- IC-21 Professional Code of Conduct
- Australian Securities and Investments Commission Whistleblower protections for not-for-profit organisations <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/whistleblower-protections-for-not-for-profit-organisations/>
- Australian Charities and Not-For-Profits Commission Whistle-blower protections <https://www.acnc.gov.au/tools/factsheets/whistleblower-protections>

Acknowledgments

Not applicable.

Document Control

Date created	21/10/2019
Date approved by Board	21/11/2019
Revision frequency	5 years
Document revisions	2020
Next review	2024

Revision History

Date	Pages revised/ Brief explanation of revision
2020	Minor update of Disclosure Officer details

Further Reading

- Australian Prudential Regulation Authority - Becoming a 'whistleblower' and making a public interest disclosure at <https://www.apra.gov.au/information-being-whistleblower-and-making-public-interest-disclosure>
- Australian Health Practitioner Regulation Agency Public Interest Disclosure (Whistleblower) Policy at <https://www.ahpra.gov.au/About-AHPRA/Complaints/Whistleblower-policy.aspx>
- Australian Securities and Investments Commission – Regulatory Guide 270 Whistleblower policies at <https://download.asic.gov.au/media/5340534/rg270-published-13-november-2019.pdf>

Publishing Statement

Published by CICM: June 2020. This Professional Document has been prepared with regard to general circumstances, and it is the responsibility of the practitioner to have regard to the particular circumstances of each case, and the application of this document in each case. The college's Professional Documents are reviewed from time to time, and it is the responsibility of the practitioner to ensure the current version has been obtained. Professional Documents have been prepared according to the information available at the time of their publication, and the practitioner should therefore have regard to any information, research or material which may have been published or become available subsequently. Whilst the college endeavours to ensure its Professional Documents are as current as possible at the time of their preparation, it takes no responsibility for matters arising from changed circumstances or information or material which may have become available subsequently.

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APPENDIX A

DEFINITIONS

Term	Definition
The Act	Corporations Act 2001 (Commonwealth)
Actuary	A business professional who analyses the financial consequences of risk.
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, committee members, panels of examiners, Trainees, non-specialist trainees, specialist international intensive care medicine graduates (IMGs) undertaking College requirements for the purposes of obtaining specialist recognition in Australia or New Zealand, 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.
Disclosure Officer	A person within the client organisation who is responsible for ensuring that all serious complaints are handled appropriately. The Disclosure Office is responsible for the organisation's role in managing disclosures and being the contact point for both the Reviewer and the Board and/or senior management.
Investigator	A person appointed by the Disclosure Officer either internally or externally who will conduct the investigation in accordance with this policy.
Welfare Officer	A person appointed from within the organisation or a third party to arrange or coordinate support for anyone who has or in the process of making a disclosure.

The Independent External Reviewer	A person appointed by the College to act as an intermediary between the College and the whistleblower to retain anonymity.
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APPENDIX B

The following protections are available to Australian whistleblowers under the Act.

Concerning misconduct under the Act

If the misconduct relates to section 1317AA (1) of the Act the person may make a disclosure to Australian Securities and Investments, Australian Prudential Regulation Authority or a Commonwealth authority.

Concerning disclosures made to a legal practitioner

The person is protected under the Act if the person makes a disclosure to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of Part 9.4 under subsection 1317AA(1) of the Act.

Concerning public interest disclosures

The person may make a disclosure in the public interest to a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory or a journalist if:

- the person has previously made a disclosure of that misconduct, and
- at least 90 days have passed since the previous disclosure was made; and
- the person does not have reasonable grounds to believe that action is being, or has been, taken,
- to address the misconduct to which the previous disclosure related; and
- the person has reasonable grounds to believe that making a further disclosure of the misconduct would be in the public interest; and
- after the end of the 90-day period the person gives the person to whom the person made the previous disclosure a written notification that:
 - includes sufficient information to identify the previous disclosure; and
 - states that the person intends to make a public interest disclosure; and
- 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
- the extent of the information disclosed in the public interest disclosure is no greater than is necessary to inform the recipient referred to in paragraph (g) of the misconduct or the improper state of affairs or circumstances referred to in subsection 1317AA(4) or the conduct referred to in subsection 1317AA(5), as the case may be.

Concerning emergency disclosures

The person may also make an emergency disclosure to a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory or a journalist if:

- the person previously made a disclosure that qualifies for protection under the Act (Part 9.4 under subsection 1317AA(1) ; and
- the person 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; and
- the person 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 person intends to make an emergency disclosure; and
- 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
- the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the recipient referred to in paragraph (d) of the substantial and imminent danger