



WHISTLEBLOWER POLICY

Responsible officer	<i>Dean and CEO, Martin Sutherland</i>
Contact	msutherland@actheology.edu.au 02 8937 5311
Approved by	Board of Directors
Responsible body	Board of Directors
Approval date	23 February 2020
Effective date	23 February 2020
Review date	11 November 2020
Superseded documents	None
Related documents	<i>Anti-Fraud Policy Codes of Conduct Policy Faculty and Professional Staff Handbook Grievance Resolution Policy for Domestic Students Grievance Resolution Policy for Overseas Students Staff Grievance Resolution Policy</i>
Student Lifecycle Stage/s	NA

1. PURPOSE

To encourage disclosures of misconduct or an inappropriate state of affairs within the Australian College of Theology (ACT) and to protect whistleblowers from adverse consequences arising from the making of a disclosure.

2. DEFINITIONS

ACT website is the website for the ACT, at www.actheology.edu.au.

ACT Visitor is a person with authority under the ACT Constitution to determine an appeal on certain decisions of the Board of Directors.

Affiliated College is an institution approved to offer an accredited higher education award of the ACT.

A&RMC see **Audit & Risk Management Committee**

Audit & Risk Management Committee (A&RMC) monitors financial audits and risk management for the ACT.

Australian Prudential Regulatory Authority (APRA) is Australia's prudential regulator of banks, insurance companies and most superannuation funds.

Australian Securities and Investment Commission (ASIC) is Australia's corporate, markets, and financial services regulator.

The Board is the Board of Directors of the *Australian College of Theology Limited*.

Chair of the Board is the chair of the Board of Directors of the **ACT**.

The Dean see **Dean of the ACT**



Dean of the ACT means the Dean and Chief Executive Officer of the **ACT**.

Emergency disclosure is a disclosure of information concerning a substantial and imminent danger to the health or safety of one or more persons or to the natural environment.

Grievance resolution is the process by which any **grievance (complaint or dispute)** is dealt with.

Grievance (staff) is a statement of concern made by a staff member about the behaviour or action of another member or members of staff, which has or is likely to have an unreasonable negative impact on the ability of a staff member to undertake their duties

Officer is a person who is a member of the Board or is the company secretary.

Public interest disclosure is a disclosure of information about wrongdoing in the public sector.

Student is a student of the **ACT**. They may be a prospective, enrolled or former student.

Whistleblower is a person who exposes or brings to the attention of management, a regulator, the government, or the public misconduct or illegal activity, especially from within an organisation.

Whistleblowing is making a disclosure about misconduct or illegal activity, especially within an organisation.

Working days are the normal business days of the **ACT**, comprising Monday to Friday and excluding weekends, public holidays and the office shutdown period over the Christmas/New year period, which shutdown period is determined annually.

3. SCOPE

This policy applies to the Australian College of Theology Ltd and all eligible whistleblowers and eligible recipients as set out in this policy.

4. POLICY STATEMENT

The Australian College of Theology is committed to maintaining high standards in work practice in all its operations and to complying with all applicable laws and regulations. The ACT requires all employees, officers, and volunteers to conduct themselves with integrity and in line with the *Codes of Conduct Policy*. The ACT seeks to promote a culture in which misconduct is challenged and addressed and encourages the reporting of misconduct or an inappropriate state of affairs. The ACT has established a process by which such disclosures may be made as well as the means by which it will seek to protect whistleblowers from reprisal, victimisation, and any other detriment arising from making a disclosure. This policy aligns with and complements legislated protections. For the avoidance of doubt, individuals' statutory rights will not be affected in any way by this policy.

5. PRINCIPLES

5.1 Making disclosures about the ACT under this policy



Who is able to make a disclosure under this policy?

- 5.1.1 A disclosure may be made under this policy only by eligible whistleblowers.
- 5.1.2 An eligible whistleblower is an individual who is, or has been, any of the following:
- (a) an employee, whether full-time, part-time or casual, of the ACT;
 - (b) an Officer of the ACT;
 - (c) an individual who supplies services or goods to the ACT (whether paid or unpaid);
 - (d) an employee of a person that supplies services or goods to the ACT (whether paid or unpaid). For the purposes of this policy, ACT affiliated colleges are deemed to provide services to the ACT;
 - (e) an individual who is an associate of the ACT;
 - (f) the spouse, parent or remoter lineal ancestor, child or remoter issue, or brother or sister of an individual listed in paragraphs (a) to (e);
 - (g) a dependent of an individual referred to in any of paragraphs (a) to (e), or of such an individual's spouse.
- 5.1.3 Students of the ACT are not eligible whistleblowers unless one of the categories in section 5.1.2 also applies. ACT students are encouraged to use ACT's established procedure to make complaints or report concerning conduct, and to lodge formal grievances.
- 5.1.4 If a person is unsure about whether they are an eligible whistleblower they are encouraged to seek independent legal advice.

About what may a disclosure be made?

- 5.1.5 Disclosures may be received where an eligible whistleblower has reasonable grounds for believing that there has been misconduct or is an improper state of affairs at the ACT. 'Reasonable grounds' means that a reasonable person would suspect the information indicates misconduct or an improper state of affairs.
- 5.1.6 Misconduct or an improper state of affairs include the following:
- fraud, negligence, breach of trust, and breach of duty;
 - corrupt or illegal acts;
 - misleading or deceptive conduct including practices or representations which amount to improper or misleading accounting or financial reporting practices;
 - breaches the *Corporations Act* or of other financial sector laws enforced by the Australian Securities and Investment Commission (ASIC) or the Australian Prudential Regulatory Authority (APRA);
 - an offence or contravention of Australia's corporations and financial services legislation, or any other Commonwealth or State offence that carries a penalty of at least twelve (12) months imprisonment;



- a danger to the public or the financial system.
- 5.1.7 A disclosure about misconduct or an improper state of affairs, as outlined in section 5.1.6 above, may also be reported in relation to a person or entity outside of but associated with the ACT (for example, regarding an affiliated college, supplier, or contractor) where the conduct could have legal or regulatory implications for the ACT.
- 5.1.8 Disclosures about personal work-related grievances should follow ACT's grievance resolution processes and are only disclosable under this policy in certain circumstances, including:
- the work-related grievance relates to conduct set out under sections 5.1.5 and 5.1.6;
 - the work-related grievance involves experiencing detriment in response to reporting the grievance or to seeking legal advice or representation in response to the grievance;
 - the work-related grievance also involves legal implications for the ACT or suggests systemic misconduct beyond the personal circumstances.
- 5.1.9 Examples of personal grievances that may not be reported under this policy (subject to section 5.1.7) include: interpersonal conflict between employees; a grievance about a decision relating to engagement or the terms and conditions of engagement, transfer or promotion; and a grievance about disciplinary action taken under ACT's policy.
- 5.1.10 The *Corporations Act* also provides protection for public interest disclosures and emergency disclosures which meet specific requirements prescribed by the Act.
- 5.1.11 If a person is unsure about whether a matter constitutes an eligible disclosure under the whistleblower protections, they are encouraged to seek independent legal advice.

To whom may a disclosure be made?

- 5.1.12 A disclosure under this policy must be made to an eligible recipient.
- 5.1.13 Eligible recipients are:
- (a) an Officer or senior manager (such as the Dean) of the ACT or a related body corporate;
 - (b) the ACT Visitor, as a person authorised by the ACT to receive disclosures;
 - (c) an auditor, or a member of an audit team, conducting an audit of the ACT or a related body corporate;
 - (d) ASIC;
 - (e) parliamentarians (whether Commonwealth, State, or Territory) and journalists, but only for public interest or emergency disclosures that meet the legislated requirements;
 - (f) the Commissioner of Taxation in the case of disclosures about the ACT's tax



affairs.

How to make a disclosure

- 5.1.14 A disclosure may be made to any eligible recipient, as set out in section 5.1.13, though generally the disclosure should first be made to the Dean, unless the disclosure is about the Dean in which case it should be made to the Chair of Board or the ACT Visitor.
- 5.1.15 The names of eligible recipients are available on the ACT website as below.

Members of the Board, including the Chair of the Board and Chair of the Audit and Risk Management Committee	https://www.actheology.edu.au/about/governance-board-of-directors /
Dean and CEO	https://www.actheology.edu.au/about/staff/
The ACT Visitor	https://www.actheology.edu.au/about/governance-board-of-directors
Auditor of the ACT	Please refer to the most recent version of the Annual Report, available at: https://www.actheology.edu.au/about/strategy/

- 5.1.16 A form to make disclosures to any of the recipients in the table above is available on the ACT website at: <https://www.actheology.edu.au/whistleblower-disclosure/>. Disclosures may also be made in writing and mailed to a recipient at the address below in an envelope marked 'Confidential'.

(Name of recipient)

Australian College of Theology

Level 5, 33 York Street

Sydney NSW 2000

To make a disclosure to the auditor of the ACT, use the contact address available in the Annual Report.

- 5.1.17 The provision of a name and contact details may assist in the investigation of a disclosure; however, disclosures may be made anonymously without the provision of the whistleblower's name and position.
- 5.1.18 While the ACT does not require a whistleblower to have absolute proof of the reported misconduct or state of affairs, to support an investigation a disclosure should provide the reasons for the concern and make full disclosure of the relevant details and available supporting documentation. If a report is made it will be valued,



even if it is not confirmed by subsequent investigation.

Making disclosures to ASIC

- 5.1.19 Disclosures to ASIC may be made online at <https://asic.gov.au/report-misconduct>, alternatively disclosures can be made in writing to ASIC at:

Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001

5.2 Investigation of disclosures by ACT

- 5.2.1 The ACT will take responsible and proportionate action in response to receiving a disclosure and an investigation will be conducted as promptly and sensitively as possible.
- 5.2.2 The recipient will acknowledge receipt of the disclosure to the whistleblower within five (5) working days. This only applies where contact details have been provided.
- 5.2.3 A decision as to whether a preliminary investigation should be carried out will be made within two (2) weeks of the disclosure being received. Where this is not possible, the whistleblower will receive an explanation of the delay.
- 5.2.4 The Dean will investigate disclosures except for those that are about the Dean, in which case the Chair of the Board will investigate. The Dean may elect to refer the disclosure to the Chair of the Board for investigation if they consider it more appropriate to the nature of the disclosure.
- 5.2.5 If the nature of a disclosure is such that both the Dean and Chair of the Board are inappropriate persons to investigate the matter, then it may be referred to the ACT Visitor.
- 5.2.6 The recipient of a disclosure will direct it to the appropriate person for investigation after first confirming with the whistleblower about their willingness for their identity to be disclosed.
- 5.2.7 The investigation will involve the following processes:
- 5.2.7.1 Principles of procedural fairness will apply to all investigations of disclosures. These include:
- Lack of bias;
 - Evidence-based decision making, considering only relevant factors;
 - A hearing as appropriate to the circumstances; and
 - Inquiry into matters in dispute and verification of asserted facts.
- 5.2.7.2 The investigator will maintain the confidentiality of the whistleblower as far as possible and in accordance with their wishes. Care will be taken to avoid releasing information that may unintentionally reveal the identity of the whistleblower.
- 5.2.7.3 The whistleblower will be reminded of the legislated protections and protections



and support available through the ACT under this policy.

- 5.2.7.4 Except in the case of anonymous disclosures, the whistleblower will be asked to prepare a verbal or written statement, if they have not already done so.
- 5.2.7.5 The person/s against whom the disclosure is made will normally be informed at an early stage, provided with supporting evidence, and given an opportunity to respond. This will normally follow the verification of claims made in the disclosure, to the extent that it is possible. Depending on the nature and seriousness of the report, the person/s against whom the disclosure is made may be suspended or placed under alternative work arrangements while the investigation is undertaken.
- 5.2.7.6 The whistleblower is entitled to be accompanied by a support person of their choice throughout the procedure when making a report.
- 5.2.7.7 To avoid jeopardising an investigation, the whistleblower is required to keep confidential the fact that they have made a disclosure and its content (subject to any legal requirements).
- 5.2.7.8 The whistleblower will be informed of the outcome of the investigation within five (5) working days of its completion. The exact nature of any disciplinary action decided against any other person will not be disclosed to the whistleblower.
- 5.2.7.9 The investigator may seek independent legal advice to inform their handling of the investigation.
- 5.2.8 The investigation will be completed within ten (10) working days from its commencement except in serious or complicated cases where this may not be possible. In such cases, the whistleblower will be informed about the expected time frame.
- 5.2.9 Records will be kept of all disclosures and official written reports on the investigative process and outcomes. The records will be securely maintained by the Dean, with the exception of any disclosures about the Dean which will be securely maintained by the Chair of the Board.
- 5.2.10 Summary reports will be presented to the Board on disclosures received by the ACT and the outcomes of any investigations on an annual basis. This reporting will include information on disclosures received and deemed outside the scope of this policy.

Possible outcomes of an investigation for whistleblowers

- 5.2.11 If the investigation reveals that the whistleblower is implicated in the misconduct or inappropriate state of affairs, disciplinary action may be taken against them. However, their role as a whistleblower will be taken into account in the determination of that action.
- 5.2.12 Disciplinary action may be taken against the whistleblower if it is demonstrated that the disclosure was based on false and unsubstantiated allegations and that it was made maliciously.



- 5.2.13 If a whistleblower is not satisfied with the outcome of the investigation, they may consider informing other bodies as appropriate.

5.3 Protections and support available to whistleblowers

How the ACT will protect and support whistleblowers

- 5.3.1 Subject to compliance with legal reporting requirements, ACT will protect the confidentiality of whistleblowers by not disclosing their identity without consent, by disclosing information contained in the disclosure only to the extent that it is required for the investigation of the disclosure, and by undertaking reasonable measures to prevent the identity of the whistleblower being revealed through the process of investigation.
- 5.3.2 The ACT prohibits the victimisation of a whistleblower including causing detriment and the issuing of threats against them (whether expressed or implied and whether conditional or unconditional). Detriment includes:
- dismissal of an employee;
 - injury of an employee in his or her employment;
 - alteration of an employee's position or duties to his or her disadvantage;
 - discrimination between an employee and other employees of the same employer;
 - harassment or intimidation of a person;
 - harm or injury to a person, including psychological harm;
 - damage to a person's property;
 - damage to a person's reputation;
 - damage to a person's business or financial position;
 - any other damage to a person.
- 5.3.3 Where applicable, the ACT will make available to whistleblowers alternative work arrangements to support them during an investigation. These arrangements may include the option to work from home, where this is practicable, and alternative supervision arrangements.
- 5.3.4 The ACT will make personal counselling services available to whistleblowers.
- 5.3.5 Unless required by law, any disclosure of the whistleblower's identity without their consent is a breach of this policy and disciplinary action will be taken in response. It may also be an offence subject to penalties under the *Corporations Act*.
- 5.3.6 Any act of victimisation against a whistleblower is also a breach of this policy and disciplinary action will be taken in response. This may extend to situations where a person believes or suspects someone has made or could have made a disclosure. A breach of this kind may also be an offence subject to penalties under the *Corporations Act*.



Legislated protections for whistleblowers

5.3.7 Legislated protections available to whistleblowers include:

- the right to have their identity protected;
- the right to have information provided as part of the disclosure handled in accordance with the provisions of legislation;
- the right to be protected from civil, criminal or administrative liability (including disciplinary action) for making the disclosure; from contractual or other remedy on the basis of the disclosure; and from the admissibility of the information provided in evidence against the person;
- the right to be protected from victimisation, including threats and any form of detrimental treatment;
- the right to compensation and other remedies in accordance with the provisions of legislation (including a right not to be required to pay costs incurred by another person when litigation is commenced); and
- the right not to be required to disclose their identity before any court or tribunal.

5.3.8 The *Taxation Administration Act* also provides protection for disclosures of information about misconduct or an improper state of affairs, in relation to the tax affairs of an entity or an associate of an entity.

Fair treatment of employees mentioned in disclosures

5.3.9 The ACT will ensure the fair treatment of its employees who are mentioned in a disclosure made under this policy by:

- maintaining procedural fairness in the investigation of disclosures and following the process of investigation outlined in this policy;
- employees mentioned in disclosures will be protected from victimisation, including threats and any form of detrimental treatment; and
- offering supports available to whistleblowers under this policy.

5.4 Communication of this policy to officers and employees of the ACT

5.4.1 This policy is made known to all ACT officers, employees, and volunteers through the workplace induction process. It is available on the ACT website and referenced in the Faculty and Professional Staff Handbook, which is available to affiliated colleges for the induction of staff.

6 RELATED DOCUMENTS AND LEGISLATION

[*Corporations Act 2001 \(Cth\)*](#)

[*Taxation Administration Act 1953 \(Cth\)*](#)

7 REFERENCES



[Australian Charities and Not-for-profits Commission Factsheet – Whistleblower Protections](#)

[Australian Securities and Investment Commission - Whistleblower rights and protections](#)

[Australian Taxation Office – Tax whistleblowers](#)

8 VERSION HISTORY

Version	Approved by	Approval date	Effective date	Changes made
1	Board of Directors	11 November 2019	1 January 2020	New policy
2	Subpanel of Board of Directors	23 February 2020 (by email)	23 February 2020	Revisions to sections 5.1.2 and 5.1.13 made on legal advice. Minor formatting changes.

Any hard copy of this electronic document may not be current as the ACT regularly reviews its policies. The latest version can be found online at

<https://www.actheology.edu.au/documents/>.