

ACTA WHISTLEBLOWER POLICY & PROCEDURE

PURPOSE AND SCOPE

Our Whistleblower Policy is an important tool for helping Australian Clinical Trials Alliance (“ACTA”) to identify wrongdoing that may not be uncovered unless there is a safe and secure way to disclose wrongdoing.

ACTA is committed to the highest standards of integrity and conduct. If you are aware of possible wrongdoing, we encourage you to disclose this information and will support you in doing so in accordance with the provisions of this policy.

ACTA is committed to encouraging the reporting of any instances of suspected unethical, illegal, fraudulent or undesirable conduct involving ACTA’s business and, this policy sets out the protections and measures ACTA will provide so that people who make a report can do so confidentially and without fear of intimidation, disadvantage or reprisal.

OBJECTIVES

- To promote the responsible reporting of Disclosable Matters in connection with ACTA’s business;
- To help deter wrongdoing, in line with ACTA’s risk management and governance framework;
- To ensure people who disclose wrongdoing can do so safely, securely and with confidence that they will be protected and supported;
- To ensure disclosures are dealt with appropriately and on a timely basis;
- To provide transparency around ACTA’s framework for receiving, handling and investigating disclosures;
- To support ACTA’s values, code of conduct policy;
- To support ACTA’s long-term sustainability and reputation; and
- To meet ACTA’s legal and regulatory obligations.

DEFINITIONS

APRA: Australian Prudential Regulation Authority

ASIC: Australian Securities and Investments Commission

ATO: the Australian Tax Office

Corporations Act: *Corporations Act 2001 (Cth)*

CEO is ACTA’s most senior staff member, usually being the Chief Executive Officer or General Manager.

Disclosable Matter has the meaning given in section 2.1 of this Policy.

Eligible Person has the meaning given in section 1.2 of this Policy.

Eligible Recipient has the meaning given in section 3.2 of this Policy.

Protected Whistleblower has the meaning given in section 6.1

Taxation Act: *Taxation Administration Act 1953 (Cth)*.

PROVISIONS

1. Who and what does this policy apply to?

1.1. This policy applies to and provides protections to Protected Whistleblowers.

You are entitled to specific legal protection under the Corporations Act and, if applicable, under the Taxation Act if:

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- you are an Eligible Person; and
- you have disclosed, or intend to disclose, a Disclosable Matter to an Eligible Recipient or to ASIC, APRA, the ATO or another entity prescribed under the Corporations Act.

You will also be entitled to protection if you make disclosure to a legal practitioner for the purposes of getting legal advice on the operation of whistleblowing protection laws.

These protections are:

- identity protection
- protection from detrimental acts, such as victimisation
- compensation and remedies
- civil, criminal and administrative liability protection.

See section 6 for more information.

1.2. An **Eligible Person** is a person who is, or has been, any of the following:

- A director, other officer or employee of ACTA. (This includes current and former employees who are permanent, part-time, fixed-term or temporary, interns, secondees, and managers);
- a person who supplies goods or services to ACTA or an employee of a person who supplies goods or services to ACTA (whether paid or unpaid). This could include current and former volunteers, contractors, consultants, service providers and business partners;
- a person who is an associate of ACTA, as defined in the Corporations Act (for example, a director or company secretary of ACTA),
- a relative, dependent of any of the individuals specified above, or that individual's spouse.

2. Matters the policy applies to

The section below sets out what is a Disclosable Matter and the circumstances in which disclosures by an Eligible Person to an Eligible Recipient will qualify for protection under the Corporations Act or the Taxation Act, where relevant. Disclosures that aren't about a Disclosable Matter will not be protected under the Corporations Act or the Taxation Act and this policy.

2.1 Disclosable Matter

A disclosure will concern a **Disclosable Matter** if an Eligible Person discloses information that they have reasonable grounds to suspect concerns misconduct or an improper state of affairs or circumstances relating to ACTA. For example, this might include:

- Information about dishonest, fraudulent or corrupt behaviour within ACTA (such as bribery, theft, violence, use of illicit drugs, money laundering or failing to comply with legal or regulatory requirements).
- Information that indicates that ACTA or its employee or officer has engaged in conduct that breaches the Corporations Act, Taxation Act or other specified legislation.
- Misconduct (including fraud, negligence, default, breach of trust and breach of duty).
- Behaviour that represents a danger to the public or the financial system.

2.2 Personal work-related grievances

This Policy does not apply to personal work-related grievances, other than those that relate to the victimization or threat to the whistleblower under s1317AC Corporations Act.

Examples of personal work-related grievances include conflicts between employees, questions about promotional decisions, queries about your conduct or a decision to discipline the discloser. Complaints about injustice in the assessment of an employee's performance, or discrimination will be dealt with under the appropriate ACTA policy.

However, a work-related grievance may still qualify for protection under the law. For example, if:

- it is a mixed report that includes information about a Disclosable Matter, as well as a work-related grievance;

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- ACTA has broken employment or other laws which are punishable by imprisonment for 12 months or more or acted in a way that is a threat to public safety;
- the disclosure relates to information that suggests misconduct that goes further than the whistleblower's personal circumstances; or
- the whistleblower suffers from or is threatened with detriment for making a disclosure.

3. How do I make a report and who do I report to?

3.1. Making a disclosure

Reports can be made to an Eligible Recipient (described below) in person or by telephone, post or email to whistleblower@clinicaltrialsalliance.org.au. The CEO of ACTA will have access to the dedicated email account. Reports can be made within business hours or outside business hours.

If, at any time, you are not sure about whether to make a protected disclosure, you can get independent legal advice. Any discussions you have with a lawyer will be protected under this policy and under law.

3.2 Eligible Recipients

An Eligible Person who becomes aware of, or suspects on reasonable grounds, a Disclosable Matter may report it to any of the following people (each an **Eligible Recipient**):

- your supervisor,
- any director or company secretary of ACTA,
- the CEO of ACTA,
- ACTA's auditor, or a member of the audit team conducting ACTA's audit.

The contact details for each Eligible Recipient are set out in Schedule 1.

3.3 In certain circumstances, an Eligible Person may make disclosure of a Disclosable Matter to

- ASIC;
- APRA;
- the Commissioner of Taxation (for tax related disclosures);
- another Commonwealth authority prescribed by law; or
- a legal practitioner for the purposes of obtaining legal advice in relation to the disclosure

3.4 Also, in more specific and limited circumstances where a matter is of public interest or there is an emergency, a disclosure may be made to a journalist or a member of Parliament may be protected under whistleblowing laws. It is important that you understand the criteria for making a public interest or an emergency disclosure, to be covered by the whistleblower protections. ACTA recommends that you contact an independent legal adviser before making a public interest or an emergency disclosure.

4. False Reports

In making a report, the Eligible Person must have reasonable grounds to suspect their Disclosure concerns a Disclosable Matter. An Eligible Person should expressly refer to this Policy when making a report.

An Eligible Person will still qualify for protection for a disclosure even if their disclosure turns out to be incorrect. However, anyone who knowingly makes a false report of a Disclosable Matter, or who otherwise fails to act honestly, with a reasonable belief in the truth of the report of the Disclosable Matter, may be subject to disciplinary action, including dismissal.

5. Anonymity when reporting

ACTA recognizes that you may not feel comfortable identifying yourself when reporting a Disclosable Matter under this policy. Although an Eligible Person who reports a Disclosable Matter is encouraged to identify themselves, you may

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choose to remain anonymous when making the disclosure, over the course of the investigation and after the investigation is finalised. If you wish to remain anonymous, ACTA encourages you to maintain ongoing two-way communication, so that ACTA can ask follow-up questions. For example, disclosure from an email address from which the discloser's email address cannot be determined, and where the discloser does not identify themselves, will be treated as anonymous disclosure. During any investigations, you can refuse to answer questions, if you feel that the answers can reveal your identity.

However, if you do not share your identity, there may be some practical limitations which will impact ACTA's ability to conduct an investigation.

If you don't share your identity, ACTA will assess your disclosure in accordance with this policy.

6. Protections for Protected Whistleblowers

6.1 Confidentiality

A **Protected Whistleblower** is an Eligible Person who discloses a Disclosable Matter to an Eligible Recipient.

The identity of a Protected Whistleblower will be treated confidentially by ACTA. Once a report is received, the Eligible Recipient will make sure immediate steps are taken to protect the identity of the whistleblower.

This may include redacting the name and position of the Protected Whistleblower from any written record of the report, and making sure appropriate document security is implemented.

It is illegal for a person to identify a Protected Whistleblower or disclose information that is likely to lead to their identification. ACTA will not disclose the Protected Whistleblower's identity, or any information which is likely to lead to their identification, except if:

- the Protected Whistleblower consents to the information being shared;
- the disclosure is to a recipient permitted by law such as the Commissioner of Taxation or Australian Federal Police; or
- the disclosure is otherwise allowed or required by law (for example, disclosure to a lawyer of ACTA to receive legal advice relating to the law on whistleblowing).

Information disclosed by the whistleblower that may lead to their identification may only be disclosed if it is reasonably necessary for the purposes of investigating the disclosure and the Eligible Recipient or investigator takes all reasonable steps to reduce the risk that the discloser will be identified.

Any unauthorized disclosure of a Protected Whistleblower's identity is a breach of this policy. ACTA may take disciplinary action against any employee who makes an unauthorised disclosure under this policy. If you are a Protected Whistleblower, you may lodge a complaint with ACTA if you consider that there has been an unauthorised disclosure of your identity or identifying information has been made about you to another person.

6.2 Protection against detrimental treatment

A Protected Whistleblower has the right to be protected from victimization or detriment. It is illegal for a person to engage in conduct that causes (or threatens) detrimental treatment to a Protected Whistleblower in the belief or suspicion that a person has made, may make, proposes to make or could make a report of a Disclosable Matter and where that belief or suspicion is a reason for the conduct.

Detrimental treatment could include dismissal, demotion, harassment, damage to reputation, discrimination, disciplinary action, alteration to an employee's position or duties, bias, threats or other unfavourable treatment connected with making a disclosure as a Protected Whistleblower.

ACTA will all take reasonable steps to protect a Protected Whistleblowers from detrimental treatment because they have made (or are intending to make) a disclosure under this policy. Personnel found to have caused or threatened to cause detriment to an Eligible Person may be subject to disciplinary action including, in serious cases, dismissal.

To protect Protected Whistleblowers from detrimental treatment, ACTA will take all reasonable steps to:

- make an assessment of the risk of detriment against a Protected Whistleblower as soon as possible after receiving a disclosure of a Disclosable Matter;

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- make sure the relevant ACTA employees and officers are aware of their responsibilities to maintain the confidentiality of a Protected Whistleblower, appropriately address the risks of detriment and ensure fairness when managing the performance of, or taking other management action relating to, a Protected Whistleblower; and
- take practical action, as appropriate, to protect a Protected Whistleblower from the risk of detriment and intervene if detriment has already occurred.

If a Protected Whistleblower believes that they have been subject to detrimental treatment, they should inform an Eligible Recipient immediately.

6.3 Other protections for Protected Whistleblowers

Protected Whistleblowers are protected from civil, criminal or administrative liability (including disciplinary action) for making reports of Disclosable Matters. No contractual right (including under an employment contract) can be exercised against a Protected Whistleblower to stop them disclosing a Disclosable Matter.

If you are a Protected Whistleblower and the disclosure is to an Eligible Recipient or other designated body as set out above or is a public interest disclosure or emergency disclosure, the information you disclose also can't be used against you in criminal proceedings or in proceedings for the imposition of a penalty (except if the proceedings are in respect of the falsity of the information).

However, whistleblower protections do not grant immunity for any misconduct a discloser has engaged in that is revealed in their disclosure.

Protected Whistleblowers may also be entitled to seek compensation and other remedies through the courts if they suffer loss or damage because of a disclosure and ACTA fails to take reasonable precautions to protect the Protected Whistleblower from detriment.

7. How we will investigate disclosures

ACTA is committed to the fair, timely and independent investigation of Disclosable Matters raised in reports by an Eligible Person to an Eligible Recipient under this policy. ACTA will need to assess each disclosure to determine if it qualifies for protection, and the extent of the investigation required.

7.1 Assessment and information gathering

Once a report of a Disclosable Matter has been received by an Eligible Recipient from an Eligible Person, who has provided reasonable grounds for their belief that the Disclosable Matter has occurred, the Eligible Recipient will promptly work with the appropriate personnel to undertake a timely investigation.

- ACTA may appoint a person to assist in the investigation of a report.
- ACTA may appoint a lawyer or independent external investigator to assist in the investigation of a report. Depending upon the information contained in the report, the assessment and investigation may be carried out in stages.
- Where appropriate ACTA may nominate a person to be the Eligible Person's nominated contact.
- An Eligible Person may be asked for further information in relation to Disclosable Matters raised in the report. Any additional information sought by ACTA will be done in a manner which complies with this policy, including the obligations of confidentiality.

7.2 Escalating reports

ACTA's response to a report will vary depending upon the information contained in the report. However, each report will be escalated to the Board, which will consider the contents of the investigation report and the recommendations made by the investigator.

The Board is the final decision-maker in respect of any reports, investigation results and recommendations provided to them. In circumstances where the Board determines that the investigation process substantiates the misconduct raised in the disclosure, the Board will decide what action to take. The Board may determine that the issues raised in the report are not covered by this Policy or that no further action is required by ACTA (eg if the report is investigated and found to be unsubstantiated).

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Reasonable efforts will be made to communicate the outcome of the investigation and/or other conclusion to the matter, as appropriate, to the Eligible Person and/or any person against whom allegations were made.

8. Communications with the Protected Whistleblower

ACTA will ensure that, if the Eligible Person is contactable, the Protected Whistleblower is kept informed during the key stages of the investigation of their disclosure. The frequency and timeframe of communication may vary depending on the nature of the disclosure. As far as reasonably practicable, ACTA will communicate with the discloser even where the discloser has communicated through anonymous channels.

However, there may be circumstances where it may not be appropriate to provide details of the outcome of the investigation to the discloser.

9. Further support for Protected Whistleblowers

Where practicable and appropriate, a confidential counselling service or flexible work arrangements may be made available to support a Protected Whistleblower.

10. Policy details

10.1 How this policy is made available

This policy is made available to all staff as part of the ACTA Policy Library and will be included in Staff and Board induction packs. A copy of the policy may also be requested by any member of the public by emailing whistleblowers@acta.org.au.

10.2 Related policies

This policy should be read in conjunction with ACTA's other relevant policies including:

- ACTA Constitution
- ACTA Employee Handbook, including the Code of Conduct Policy
- ACTA Conflicts of Interest Policy

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SCHEDULE 1: CONTACT DETAILS FOR EACH ELIGIBLE RECIPIENTS

Directors and Company Secretaries:	Email Contact
Prof Steve Webb MBBS MPH PhD FCICM FRACP FAHMS ACTA Board Chair	steve@stevewebb.com.au
Prof Meg Jardine, MBBS, PhD, FRACP ACTA Board Director	meg.jardine@ctc.usyd.edu.au
Ms Anne McKenzie, AM ACTA Board Director	Anne.McKenzie@telethonkids.org.au
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