Guide to investigating and managing potential breaches of the Australian Code for the Responsible Conduct of Research

Public consultation draft

November 2016
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- Better Practice Guides Working Group
- Code Review Committee
1 Executive summary

Australian institutions that conduct research and train and employ researchers have primary responsibility for the prevention, detection, investigation and resolution of concerns or complaints about the conduct of that research.

This Guide to investigating and managing potential breaches of the Australian Code for the Responsible Conduct of Research (the Guide) describes a model process for investigating, managing and resolving such concerns or complaints. It complements the Australian Code for the Responsible Conduct of Research (the Code), which articulates the broad principles and responsibilities that underpin the conduct of Australian research.

This Guide applies to a wide variety of institutions and research disciplines. These institutions vary in size, maturity, experience and organisational structure and range from small privately funded institutes, to large and complex universities.

This Guide is not a legally binding document. Its purpose is to assist institutions to fulfil their responsibility under the Code to investigate and manage concerns or complaints about potential breaches of the Code.

Departures from the principles and responsibilities of the Code and responsible research practice are referred to as breaches of the Code. This Guide provides examples of the range of behaviours that can constitute a breach of the Code. The seriousness of a breach of the Code is to be determined on a case-by-case basis and requires good judgement, careful deliberation, an appreciation of the context and accepted disciplinary norms.

The model process presented in Sections 4–7 is provided to assist institutions to meet their responsibilities to afford procedural fairness to the complainant and respondent at all stages during the investigation and management of a potential breach of the Code.

Considerations for establishing inter-institutional processes for investigating and managing potential breaches in collaborative research are also provided.
2 Introduction

Maintaining high research standards is a shared responsibility for all Australian research institutions, researchers and funding agencies.

This Guide applies to investigations in all fields of research, regardless of the complexity or cause of the potential breach of the Code.

Utilisation of the Guide requires deliberation, exercise of judgement and an appreciation of institutional and disciplinary context.

This Guide should be used to inform the application of existing institutional processes. For those institutions without relevant processes, it is expected that this Guide be used as a basis for their development.

2.1 Institutional responsibilities

Institutions have primary responsibility for managing concerns or complaints about the conduct of research for which they are responsible and for investigating concerns, complaints or allegations of breaches of the Code.

Further, to be in compliance with the Code, institutions are required to:

• promote a culture that promotes and rewards responsible research practice generally
• develop, disseminate, implement and review institutional processes that promote adherence to the Code
• demonstrate processes that enable a complainant to lodge concerns formally in the knowledge that these will be addressed confidentially and sensitively, and with care, to avoid adverse consequences for the individual
• regularly review the effectiveness of their processes.

2.2 Researcher responsibilities

Researchers should ensure that their research conduct and practice reflects the principles and responsibilities as set out in the Code.
3 Breaches of the Code

3.1 Definition

A breach is defined as behaviour by a researcher or researchers that fails to meet the principles or responsibilities of the Code, or fails to comply with relevant policies or legislation, and may refer to a single breach or multiple breaches.

Examples of breaches of the Code include, but are not limited to, the following:

(i) **Not meeting required research standards**
   - Conducting research without ethics approval as required by the *National Statement on Ethical Conduct in Human Research and the Australian Code for the Care and Use of Animals for Scientific Purposes*
   - Failing to conduct research as approved by an appropriate ethics review body
   - Conducting research without the requisite approvals, permits or licences
   - Misuse of research funds

(ii) **Fabrication, falsification, plagiarism**
   - Fabrication of research data or source material
   - Falsification of research data or source material
   - Misrepresentation of research data or source material
   - Plagiarism of someone else’s work, including theories, concepts, research data and source material
   - Duplicate publication (also known as redundant or multiple publication, or self-plagiarism) without acknowledgment of the source
   - Falsification and/or misrepresentation to obtain funding
   - Concealment or facilitation of breaches of the Code by others

(iii) **Record keeping**
   - Failure to maintain research records, and/or the inappropriate destruction of research records, research data and source material

(iv) **Supervision**
   - Failure to provide adequate guidance or mentorship for researchers or research trainees under their supervision

(v) **Authorship**
   - Failure to acknowledge the contributions of others fairly
   - Misleading ascription of authorship including failing to offer authorship to those who qualify or awarding authorship to those who do not meet the requirements

(vi) **Conflicts of interest**
   - Failure to disclose and manage conflicts of interest
3.2 Extent: breaches occur on a spectrum

Breaches of the Code occur on a spectrum, from minor to major. Figure 1 provides some examples of breaches at opposite ends of the spectrum. Major breaches would typically require investigation. Some minor breaches can be addressed at the preliminary assessment stage.

The minor end of the spectrum includes, for example, administrative errors, clerical errors or oversights due to careless practice. At the major end of the spectrum are practices of a more serious nature, such as falsification, fabrication and plagiarism, widely referred to in other codes as ‘research misconduct’. However, there is not one universally agreed definition of research misconduct. Some international research codes refer only to breaches or behaviours that are not in line with good research practice.

Institutions may determine whether to include a definition of research misconduct in their own processes to describe breaches of the Code, or they may prefer to refer only to breaches, consistent with this Guide. This decision will need to be guided by requirements in employment agreements and should be taken in consultation with legal and human resources advice.

Once a breach has been found (Section 3.1), the extent to which a breach represents a departure from accepted practice should be determined. Issues that may be helpful in considering the degree to which a breach represents a departure from the Code are outlined in Box 1. Consideration should also be given to any reasons that may have contributed to the breach, often referred to as mitigating or extenuating circumstances.

Box 1 – Factors to guide the consideration of degree of departure from the Code

In considering the degree of departure from the Code, and without excluding other factors, the following are relevant:

- the extent to which the principles and responsibilities outlined in the Code have been breached
- the extent to which research participants, the wider community, animals and the environment are or may have been affected by the potential breach
- whether the conduct represents a significant departure from accepted standards within the research and scholarly community for proposing, conducting or reporting research

Examples of mitigating or extenuating circumstances

- systematic failures, such as where an institution does not provide appropriate resources or facilities to researchers
- the level of experience of the researcher
- whether there is a pattern of breaches by the researcher
- whether the behaviour was accidental or intentional.

It is expected that institutional processes, investigations, corrective actions and disciplinary actions are appropriate and proportional to the potential breach, and respect the rights of all parties involved (Figure 1). Corrective actions should be commensurate with the breach, and may include for example, corrections to the public record. Similarly, disciplinary actions should be proportionate to the breach, but these will be determined in accordance with the appropriate institutional disciplinary process.
<table>
<thead>
<tr>
<th>Minor breach</th>
<th>Major breach</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to sign a required form due to clerical error</td>
<td>Recruiting human participants into a study with significant risks without ethics approval</td>
</tr>
<tr>
<td>Distortion of visual presentation of data</td>
<td>Fabrication of entire data set</td>
</tr>
<tr>
<td>Including wrong image in publication</td>
<td>Splicing images together to falsely indicate experimental outcomes</td>
</tr>
<tr>
<td>Failing to properly attribute one or two sentences</td>
<td>Plagiarising an entire research proposal</td>
</tr>
<tr>
<td>Incorrect date used in lab book</td>
<td>Failure to maintain any records of research</td>
</tr>
<tr>
<td>Failure to ensure student completes research integrity training course</td>
<td>Directing student to fabricate data</td>
</tr>
<tr>
<td>Failure to distribute communication from editor to all authors</td>
<td>Authorship not given to someone who appropriately contributed to research</td>
</tr>
<tr>
<td>Failure to disclose minor interest that does not present conflict</td>
<td>Failure to disclose financial interests in company sponsoring or benefiting from research</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Consideration of other factors and mitigating or extenuating circumstances</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Accidental or unintentional breach</td>
<td>Deliberate breach</td>
</tr>
<tr>
<td>First offence</td>
<td>Repeated behaviour or previous corrective actions</td>
</tr>
<tr>
<td>Poor support from institution or supervisor</td>
<td>Excellent support from institution</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Composition of investigation panel</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Small panel</td>
<td>large (e.g., &gt;3) panel</td>
</tr>
<tr>
<td>Internal members</td>
<td>Some external members</td>
</tr>
<tr>
<td>No legal assistance</td>
<td>Counsel-assisting</td>
</tr>
<tr>
<td>Panel may have previous experience</td>
<td>Panel must have previous experience</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Corrective action taken (correction of research record)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No action required</td>
<td>Erratum of paper</td>
</tr>
<tr>
<td>Erratum of paper</td>
<td>Retraction of paper</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disciplinary action taken (employment related)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Counselling or training</td>
<td>Suspension of permission to undertake research</td>
</tr>
<tr>
<td>Suspension of permission to undertake research</td>
<td>Demotion, suspension or termination</td>
</tr>
</tbody>
</table>

Figure 1: Breaches, investigations, and corrective and disciplinary actions fall on a spectrum. The dotted line indicates that determination and implementation of disciplinary (i.e., employment related) actions is taken according to other institutional processes.
4 Overview of process for investigating and managing potential breaches of the Code

4.1 The model process

The model process for investigating and managing a potential breach of the Code is shown in Figure 2.

4.2 Principles of procedural fairness

The principles of procedural fairness, also referred to as natural justice, apply to all stages of investigating and managing breaches of the Code. These principles encapsulate the hearing rule (a right to be heard), the rule against bias (decision-makers do not have a personal interest in the outcome) and the evidence rule (decisions are based on evidence).

It is expected that an institution's process for investigating and managing concerns and complaints about potential breaches of the Code is:

(i) Proportional
Investigations into allegations and subsequent actions need to be proportional to the extent of the potential breach of the Code.

(ii) Fair
Investigations should afford procedural fairness at all stages in the process to respondents and, where appropriate, complainants and others who may potentially be adversely affected by any investigation.

(iii) Impartial
Investigators and decision-makers are to be impartial and any conflicts of interest that do, may, or may be perceived to jeopardise their impartiality should be disclosed and managed.

(iv) Timely
Investigations into allegations should be conducted in a timely manner to avoid undue delays and the damaging effects on those involved that can result from drawn-out and unresolved investigations and decision-making.

(v) Transparent
Institutional processes should be readily available and/or provided to respondents, complainants, all employees and students engaged in research.

Institutions need to ensure accurate records are maintained for all parts of the process, with records held centrally and in accordance with the relevant legislation.

(vi) Confidential
Information should not be shared unless required.
Figure 2: Overview of the process for investigating and managing potential breaches of the Code.
The initial receipt of the concern or complaint is discussed in Section 5. If it is decided that the concern or complaint relates to a potential breach of the Code, a preliminary assessment (Section 6) and investigation (Section 7) may ensue. The institutional roles involved in the preliminary assessment and investigation are summarised in Tables 2 and 3.
4.3 Institutional roles

Institutions need to identify and clearly document the roles and responsibilities of those involved in the management and investigation of breaches of the Code and indemnify individuals involved in the investigation process appropriately.

Table 1 sets out the key roles recommended for the investigation and management of potential breaches of the Code. Institutions may need to adapt these functions to their particular circumstances and may delegate these roles or use different titles.

The processes that the Responsible Executive Officer (REO), Designated Officer (DO) and Assessment Officer (AO) should follow to investigate and manage a potential breach of the Code are discussed in Sections 5–7. The roles of the Research Integrity Advisors (RIAs) and Research Integrity Office (RIO) are discussed below.

Table 1: Terms used in this BPG for the recommended individuals involved in the process of investigating and managing potential breaches of the Code. Different individuals should act as the REO, DO and AO in any one matter.

<table>
<thead>
<tr>
<th>Term in this Guide</th>
<th>Recommended individuals</th>
<th>Definition (Section 9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Executive Officer (REO)</td>
<td>Chief Executive Officer or Vice-Chancellor, Deputy Vice-Chancellor or otherwise as determined by the institutional governing body</td>
<td>The senior officer in an institution who has final responsibility for receiving reports of the outcomes of processes of assessment or investigation of potential or actual breaches of the code and deciding on actions to be taken.</td>
</tr>
<tr>
<td>Designated Officer (DO)</td>
<td>Deputy Vice-Chancellor, Pro Vice-Chancellor, Director/Manager of the Research Integrity Office (RIO), or nominated equivalent</td>
<td>A senior professional or academic institutional officer appointed to receive complaints or concerns about the conduct of research or allegations of breaches of the code and to oversee their management and, where necessary investigation.</td>
</tr>
<tr>
<td>Assessment Officer (AO)</td>
<td>RIO staff, senior staff member or nominated equivalent</td>
<td>A person who conducts a preliminary assessment of a complaint or concern about research.</td>
</tr>
<tr>
<td>Research Integrity Advisor (RIA)</td>
<td>Person(s) nominated by the institution.</td>
<td>Person(s) with knowledge of the Code and relevant institutional processes.</td>
</tr>
<tr>
<td>Research Integrity Office (RIO)</td>
<td>RIO staff or nominated equivalent</td>
<td>Staff with responsibility for management of research integrity at an institution.</td>
</tr>
</tbody>
</table>

4.3.1 Research integrity advisors (RIAs)

It is recommended that institutions nominate a RIA (or network of RIAs) to assist in complying with the principles and responsibilities of the Code.

One role of the RIA is to inform someone with concerns about research conduct about the relevant institutional processes and available options, including how to raise a concern or make a complaint. Outcomes of the discussion between the RIA and the complainant may include:

- not proceeding if the concern or complaint is clearly not related to a breach of the Code
- proceeding under other institutional processes
- making a complaint about a potential breach of the Code in writing to the DO.
RIAs are people with research experience, analytical skills, empathy, good communication skills, knowledge of the institution's processes and the Code, and familiarity with the accepted practices in research. Institutions should offer regular training to RIAs to maintain their skills and knowledge base.

An RIA is not to advise on matters where there is a conflict of interest.

The RIA's role does not extend to investigation or assessment of the complaint, including contacting the person who is the subject of that complaint or being involved in any subsequent investigation other than as witness or to provide testimony.

In some cases, the respondent to a complaint may seek advice from an RIA, who has not been involved in the complaint.

4.3.2 Research integrity office (RIO)

Provision of, or access to, an RIO function can promote a consistent and robust approach to investigating and managing potential breaches of the Code. It demonstrates that an institution is committed to promoting the principles and responsibilities of the Code.

4.4 Corrupt conduct and/or criminal behaviour

Some matters may involve corrupt conduct and/or criminal behaviour. These matters will trigger other institutional responsibilities and processes and require referral to an appropriate agency, depending on local or state regulations, for example, a crime commission and/or the police. Institutions should have processes that encourage early identification of these matters.

Where an external agency chooses to investigate, the institution should seek advice on whether internal processing of the complaint as a breach of the Code can continue and, if so, with what authority and parameters, if any.

Following completion of an external investigation, an institution may need to consider if there are outstanding matters, relevant to the Code, to be addressed internally, and may decide to initiate further internal processing.
5 Consideration and management of complaints

5.1 Overview of receiving and considering complaints

A concern or complaint about a potential breach of the Code arises when there is a suspicion that one or more researchers have conducted research that is not in accordance with the principles and responsibilities of the Code.

Well-defined processes for receiving and managing complaints and communicating with the complainant are essential and these processes should be accessible on an institution’s website. The key considerations for these processes are described below.

Complaints may be dismissed at any stage of the process for a variety of reasons, including if the complaint appears to have been made in bad faith.

It is important to document all decisions and reasons for those decisions. These decisions include, but are not limited to, whether to proceed to a preliminary assessment, whether to investigate a complaint, or whether to cease investigating a complaint.

5.2 Initial receipt of complaints

As complaints may arise from a range of sources, the processes for submitting and receiving a complaint about a potential breach of the Code should address:

• where to lodge a complaint
• whether complaints should be submitted in writing, or whether verbal complaints are acceptable
• the limitations of submitting anonymous complaints and/or complaints lodged by a third party
• what information should be provided, and in what form, to enable a preliminary assessment.

The process of making a complaint should not be onerous. The institution may need to work with the complainant to construct a complaint that is as complete and thorough as possible. It is not the responsibility of the complainant to provide all of the necessary material to reach a conclusion, nor is the complainant responsible for identifying parts of the Code or relevant policy that may have been breached.

5.3 Managing complaints about potential breaches of the Code

After the complaint is received, the DO determines whether the complaint represents a potential breach of the Code, and if it does, the matter proceeds to preliminary assessment.

While anonymous complaints may make subsequent processes more challenging, they may still identify significant breaches of the Code and therefore should still be considered, based on the information provided.

To avoid compromising the assessment, anyone involved in managing a complaint should not share information unless required.
Institutional processes should outline protections available to the complainant. Depending on the nature of the complaint, relevant legislation may protect the complainant, for example, ‘whistle-blower’ or ‘public interest disclosure’ legislation. Ultimately, however, the institution is responsible for ensuring the complainant is protected.

Institutions should be aware of circumstances where a power imbalance exists, such as complaints brought by students and/or staff in a more junior position.

Threatening and/or taking retaliatory action must not be tolerated by the institution. The respondent should be advised that any retaliatory action against the complainant would trigger other processes related to general misconduct.

Consideration should also be given to referring the complainant to appropriate support services.

5.4 Communicating with the complainant

Institutions should consider how they will explain institutional processes to the complainant. Regular and timely communication with the complainant is required at all stages of a preliminary assessment and/or investigation. It is expected that a complainant is informed of any decisions, and the reasons for any decisions, that are made.

5.5 Summary

Upon receipt of a concern or complaint, the DO decides how to proceed. If the complaint represents an apparent breach of the Code, then the process continues to preliminary assessment. If the complaint does not represent an apparent breach of the Code, then it may be dismissed or referred to an alternate process.

Throughout the investigation or management of a complaint, the welfare of the complainant and respondent is a key concern for the institution and support should be offered where available.
6 Preliminary assessment stage

6.1 Purpose of the preliminary assessment

The purpose of the preliminary assessment is to gather and evaluate the evidence to establish whether or not the potential breach of the Code warrants further investigation (Figure 2, blue stage). The preliminary assessment is expected to be thorough and robust and the principles of procedural fairness applied.

A structured approach and careful collection and recording of evidence are essential to conducting a preliminary assessment and minimising challenges to the outcome.

6.2 Conduct of the preliminary assessment

The DO determines the scope of the preliminary assessment and assigns the complaint to a suitable AO.

The AO is responsible for the conduct of the preliminary assessment, ensures timeliness and consults with the DO, as required. The AO should ensure records of the preliminary assessment are prepared and retained, and that appropriate processes are followed.

Expertise may be required from other sources, such as researchers from the same or aligned disciplines, especially where the complaint relates to specific disciplinary practice (for example, authorship).

During the preliminary assessment, the AO identifies, collects, inventories and secures evidence. The correct collecting and securing of evidence at the preliminary assessment stage is important as it can have implications for the management and resolution of the complaint, particularly if the matter progresses to an investigation. The AO also considers whether an expert needs to be engaged to provide specific and/or independent advice about the collection and storage of evidence.

Where it is considered necessary to interview a respondent during the preliminary assessment, the AO notifies the respondent and provides:

- sufficient detail for the respondent to understand the nature of the complaint
- an opportunity to respond in writing within a nominated timeframe. This may include an invitation to attend an interview with the option to bring a support person.

Where interviews are conducted, they should be documented (for example, by recording or through written notes) and the interviewee offered a copy.

The AO should consider:

- consultation with others in the institution
- the involvement of those in supervisory roles in the potential breach
- the need to involve other institutions in the matter (Section 8).
6.3 Outcomes from the preliminary assessment

On completion of the preliminary assessment, the AO provides a written report to the DO in a timely manner. The report is to include:

• a summary of the process that was undertaken
• an inventory of the evidence that was gathered and analysed
• evaluation of evidence
• whether the respondent admitted to a breach of the Code
• how the potential breach relates to the principles and responsibilities of the Code and/or institutional processes
• recommendations for further action.

The preliminary assessment report will be considered by the DO who determines, on the basis of the evidence presented, whether the matter should be:

• dismissed
• resolved locally with or without corrective actions taken
• referred for investigation
• referred to other institutional processes.

An admission by the respondent of a breach of the Code should not be seen as an end point. It may still be necessary to conduct an investigation to identify appropriate corrective actions or other necessary steps. Where a respondent contests a finding that there is evidence to support a breach of the Code, an investigation is required.

Resignation of the respondent should also not be seen as an end point. In cases where a respondent resigns following a concern or complaint, the institution has an obligation to address the concern or complaint, including taking corrective actions.

The institution should provide the outcomes to the complainant and respondent at the conclusion of a preliminary assessment in a timely manner.

6.4 No evidence to support a breach of the Code

Where the outcome of the preliminary assessment is that there is no evidence of a breach of the Code, the following actions should be considered:

• if the complaint has no basis in fact (for example, due to a misunderstanding or because the complaint is frivolous or vexatious), then efforts, if required, should be taken to restore the reputation of any affected researchers.
• if a complaint is considered to have been made in bad faith, efforts to address this with the complainant should be taken under appropriate institutional processes.
6.5 Summary

The preliminary assessment is critical and should be handled with due care and attention. It serves as a filter to allow identification of matters that require further investigation and those that can be appropriately handled through other processes. Obligations to demonstrate the principles of procedural fairness (Section 4.2) apply as strongly to the preliminary assessment as to the investigation itself.

The roles of the DO and AO during the preliminary assessment are summarised in Table 2.

Table 2: Roles and functions of officers involved in the preliminary assessment. Note: Officers must adhere to the principles of procedural fairness (Section 4.2).

<table>
<thead>
<tr>
<th>Role</th>
<th>Functions</th>
</tr>
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</table>
| Preliminary assessment DO | • Establishes the scope of the preliminary assessment  
• Assigns a suitably qualified AO  
• Oversees the preliminary assessment  
• Provides advice to the AO  
• Decides whether a complaint is referred to an investigation, resolved without need for investigation, referred to other institutional processes (including local resolution), or dismissed |
| Preliminary assessment AO/RIO | • Conducts a preliminary assessment  
• Consults with DO, others in the institution and external experts where necessary  
• Liaises with the respondent and relevant parties  
• Secures evidence  
• Manages records  
• Provides a report to DO |
7 Investigation stage

7.1 Purpose of the investigation

The purpose of the investigation is to provide information, evidence and advice to allow the REO to determine whether a breach of the Code has occurred, the extent of the breach and the recommended actions.

The principles of procedural fairness must always be applied when undertaking the investigation. Investigations are to be thorough, robust and free from bias.

7.2 Preparing for the investigation

After the DO determines an investigation is required, the following steps should be taken:

- preparation of a clear statement of allegations
- development of the terms of reference for the investigation panel (the Panel; a sample checklist is at Appendix 1)
- nomination of the Panel and Chair
- notification to those required to attend the investigation
- provision to the respondent of sufficient detail about the allegation to enable a response.

The RIO (or equivalent) may assist the DO in these functions.

The DO should consider and determine the appropriate number of members of a Panel and the skills and expertise required. This will require consideration of:

- the need for an appropriate level of experience and expertise in the relevant discipline(s)
- whether Panel members who are external to the institution are required (for example, if the respondent is a senior or prominent researcher, or if the matter involves other institutions)
- the need for a person with prior experience of an investigation
- whether any conflicts of interest preclude some members from serving on the Panel
- gender/diversity of Panel members.

Once a Panel is established, it should be provided with all relevant information and documentation. An example checklist is at Appendix 2.

It is expected that all Panel members are provided with written appointments and external members are provided with assurance and conditions of indemnity.

The members of the Panel should agree to:

- work within the institution’s processes
- follow the procedures of the investigation
- follow the procedure established for the Panel
- work within the terms of reference for the Panel
• respect the confidentiality of the proceedings
• adhere to the principles of procedural fairness
• complete the investigation in a timely manner
• provide a written report.

Appropriate resources are to be provided to the Panel including secretariat support (for example, RIO staff). The secretariat maintains the record of evidence.

7.3 Conduct of the investigation

During the initial meeting of the Panel, members should:

• disclose relevant interests
• review the case and investigative processes
• develop an investigation plan (described within Appendix 2).

The respondent should be provided with an opportunity to respond in writing to the allegation and have access to all evidence upon which the Panel may rely. If the respondent chooses not to respond to, or appear before, the Panel, the investigation continues in their absence.

All those asked to give evidence are to be provided with relevant, and if necessary de-identified, information including:

• the schedule of meetings they are asked to attend
• the relevant parts of the terms of reference for the investigation, if appropriate
• advice as to how the Panel intends to conduct interviews
• whether they may be accompanied by a support person
• advice about whether the interviews will be recorded
• whether an opportunity will be provided to comment on matters raised in the interview
• the need to disclose interests
• the need for confidentiality
• information about the Panel’s procedures.

Legal counsel may be engaged to assist the Panel on matters of process only but would not be present during interviews with the respondent, complainant or others who appear before the panel. Legal counsel should not be engaged to represent any of the parties involved in the investigation.

The support person is solely present to provide personal support to the respondent and/or complainant and not to represent or speak on the other person’s behalf. The support person should not be a practising solicitor or barrister.

The Panel is to determine whether, having regard to evidence and on the balance of probabilities, the respondent has breached the Code. To do this, the Panel:

• assesses the evidence and considers if more may be required
• may request expert advice to assist the investigation
• arrives at findings of fact about the allegation
• identifies whether the principles and responsibilities of the Code and/or institutional processes have been breached and if so, document these breaches
• makes recommendations as appropriate regarding further actions.
If a Panel finds during the investigation that the scope and/or the terms of reference are too limiting, it should refer the matter to the DO. The DO may decide to amend the scope of the investigation and the terms of reference. Should this occur, the respondent and relevant others are to be advised, and the respondent given the opportunity to respond to any new material arising from the increased scope.

7.4 Outcomes from the investigation

On completion of the investigation, the Panel prepares a draft written report of the investigation. Given that the report will be relied on by the REO to make a decision about whether a breach of the Code has occurred, it is essential that the report is detailed, accurate and cogent, and fully addresses the terms of reference. It is expected that the institution provides secretariat support (for example, RIO) to assist in the preparation of the draft report.

The draft report should contain findings of fact and any recommendations (see Appendix 3 for a sample checklist for the report of the investigation findings). The draft report should be provided to the respondent for comments on factual inaccuracies with a prescribed timeframe to respond.

The report is provided to the DO who will consider the findings of fact, evidence presented and any recommendations made by the Panel. The DO will also consider the extent of the breach, the appropriate corrective actions and if referral to disciplinary procedures is required, having regard to the factors and mitigating circumstances outlined in Section 3.2. The DO will provide the final report to the REO with advice and recommendations.

The REO will decide the outcome as outlined below.

7.4.1 No evidence to support a breach of the Code

If the REO decides that there has been no breach, the following will need to be considered:

• if the allegation has no basis in fact then efforts should be taken to restore the reputation of those alleged to have engaged in improper conduct
• if an allegation is considered to have been frivolous or vexatious, action to address this with the complainant should be taken under appropriate institutional processes
• the mechanism for communication with, and support for, the respondent and complainant.

7.4.2 Insufficient evidence for Panel to make recommendation

The Panel may be unable to make findings about a potential of the Code with sufficient confidence, or to reach a conclusion. The REO should consider whether a further investigation is required. This may be with a different Panel, different terms of reference and/or additional resources.

7.4.3 Evidence to support a breach of the Code

Where the REO accepts that a breach of the Code has been found, the REO decides the institution’s response and actions, taking into account the extent of the breach (Section 3.2) and whether other institutions should be advised.

In the case of joint, adjunct and/or honorary appointments of the respondent, institutions should follow their own processes relating to these appointments and seek legal advice in relation to the management of these appointments with other institutions.
The public record of the research, including publications, should be corrected if a breach of the Code has affected the accuracy or trustworthiness of research findings and their dissemination. The institution is responsible for ensuring the public record is corrected.

7.5 Communicating the findings

When the REO has considered the Panel’s report, any decisions or actions are to be communicated to the respondent and the complainant. Subsequent actions may include informing relevant parties (such as funding bodies, other relevant authorities, or other institutions) of the outcome.

In cases where a respondent resigns, the institution still has an obligation to address the findings of the investigation. The matter may also need to be referred to the new employing institution. In this case, institutions should consider seeking legal advice to ensure that any information exchange is done appropriately and lawfully.

The REO should consider whether a de-identified public statement should be made to communicate the outcome of an investigation.

7.6 Mechanisms for review of an investigation

Institutions should have processes for considering appeals about the way an investigation into a breach of the Code was conducted. Information about these processes is to be provided to the complainant and respondent. Requests to review the conduct of an investigation into a breach of the Code may only be made on the grounds of procedural fairness.

The Australian Research Integrity Committee (ARIC) provides a review system of institutional processes responding to allegations of breaches of the Code for institutions that are in receipt of funding from the National Health and Medical Research Council (NHMRC) or the Australian Research Council (ARC). Following a review, ARIC advises the Chief Executive Officer of NHMRC or ARC of the outcome of the review and recommendations for further action.

Given that confirmed breaches of the Code can lead to serious penalties, people who are the subject of such complaints may have an entitlement to appeal to a higher authority, such as the courts.
7.7 Summary

The roles of the DO, Panel, REO and RIO during the investigation are summarised in Table 3.

Table 3: Roles and functions of officers involved in the investigation.
Note: Officers must adhere to the principles of procedural fairness (Section 4.2).

<table>
<thead>
<tr>
<th>Role</th>
<th>Functions</th>
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<tbody>
<tr>
<td>DO</td>
<td>• Prepares statement of allegation</td>
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<td></td>
<td>• Establishes terms of reference</td>
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<td></td>
<td>• Nominates Panel (including a Chair)</td>
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<td></td>
<td>• Receives the investigation report and may make recommendations to REO</td>
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<tr>
<td>RIO</td>
<td>• Notifies all those required to attend or participate in the investigation, in particular the respondent</td>
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<tr>
<td></td>
<td>• Provides Panel with all relevant documentation</td>
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<td></td>
<td>• Ensures the Panel works within the institution’s processes and this Guide</td>
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<td></td>
<td>• Schedules meetings and record interviews if necessary</td>
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<tr>
<td></td>
<td>• Provides relevant written information to respondent and relevant others</td>
</tr>
<tr>
<td></td>
<td>• Assists the Panel</td>
</tr>
<tr>
<td>Panel</td>
<td>• Completes an investigation into a potential breach of the Code</td>
</tr>
<tr>
<td></td>
<td>• Produces a report on the findings of facts on the balance of probabilities</td>
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<tr>
<td>REO</td>
<td>• Determines whether a breach of the Code has occurred</td>
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<tr>
<td></td>
<td>• Decides on the extent of a breach</td>
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<tr>
<td></td>
<td>• Decides on corrective and/or disciplinary actions</td>
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</tbody>
</table>
8 Investigating and managing potential breaches that involve collaborative research across multiple institutions

Research is increasingly an inter-disciplinary, multi-institutional and a multi-national endeavour. This involves all aspects of research, including the initial collaboration, peer review, data management and dissemination of research output.

Institutions should consider how investigations into potential breaches of the Code are to be conducted for multi-institutional collaborations on a case-by-case basis. Institutions should cooperate if there is a potential breach of the Code to ensure that only one investigation is conducted. There should be clear communication between all parties throughout the investigation.

Special consideration needs to be given to international collaborations since research practices and guidelines about investigating poor research conduct differ between countries.
## 9 Definitions of terms used in this Guide

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td><strong>Allegation</strong></td>
<td>A claim or assertion that is put to a respondent following a finding of a preliminary assessment that there are reasonable grounds to believe a breach of the Code has occurred. May refer to a single allegation or multiple allegations.</td>
</tr>
<tr>
<td><strong>Assessment Officer (AO)</strong></td>
<td>A person or persons appointed by an institution to conduct a preliminary assessment of a concern or complaint about research.</td>
</tr>
<tr>
<td><strong>Balance of probabilities</strong></td>
<td>The standard of proof required to determine whether there is sufficient evidence that it is more probable than not that the breach occurred.</td>
</tr>
<tr>
<td><strong>The Guide</strong></td>
<td>This Guide describes model processes for investigating, managing and resolving concerns about the conduct of research. Institutions should use this Guide as a framework for developing processes for responding to potential breaches of the Code.</td>
</tr>
<tr>
<td><strong>Breach</strong></td>
<td>Behaviour that fails to meet the principles or responsibilities of the Code, or fails to comply with relevant policies or legislation. May refer to a single breach or multiple breaches.</td>
</tr>
<tr>
<td><strong>Code</strong></td>
<td>The Australian Code for the Responsible Conduct of Research (date to be included).</td>
</tr>
<tr>
<td><strong>Complainant</strong></td>
<td>A person or persons who has made a complaint about the conduct of research.</td>
</tr>
<tr>
<td><strong>Conflict of interest</strong></td>
<td>A conflict of interest in the context of research exists where either:</td>
</tr>
<tr>
<td></td>
<td>1. a person’s individual interests or responsibilities have the potential to influence the carrying out of his or her institutional role or professional obligations in research.</td>
</tr>
<tr>
<td></td>
<td>2. an institution’s interests or responsibilities have the potential to influence the carrying out of its research obligations.</td>
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<tr>
<td></td>
<td>A conflict may relate to financial interests or other private, professional or institutional benefits or advantages that depend significantly on the research outcomes.</td>
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<tr>
<td></td>
<td>A conflict of interest may compromise the research process itself and/or the institutional processes governing research, and may lead researchers or institutions to base decisions about the research on factors outside the research requirements.</td>
</tr>
<tr>
<td></td>
<td>A perception that a conflict of interest exists can be as serious as an actual conflict, raising concerns about an individual’s integrity or an institution’s management practices.</td>
</tr>
<tr>
<td><strong>Designated Officer (DO)</strong></td>
<td>A senior professional or academic institutional officer or officers appointed to receive concerns or complaints about the conduct of research or allegations of breaches of the code and to oversee their management and investigation where required.</td>
</tr>
<tr>
<td><strong>Evidence</strong></td>
<td>Any document (hard copy or electronic, including e-mail, images and data), information, tangible item (for example, biological samples) or testimony offered or obtained that may be considered during the process of investigating and managing a potential breach of the Code.</td>
</tr>
<tr>
<td><strong>Institution</strong></td>
<td>Includes universities, independent research institutes, hospitals or any other organisation that conducts research.</td>
</tr>
<tr>
<td><strong>Investigation</strong></td>
<td>In this Guide, the term ‘investigation’ is used to describe the action of investigating an allegation of a breach of the Code by a Panel, following the preliminary assessment. The purpose of the investigation is to determine whether a breach of the Code has occurred, and if so, the extent of that breach, and to make recommendations about further actions.</td>
</tr>
<tr>
<td><strong>Panel</strong></td>
<td>Refers to the person or persons appointed by an institution to investigate a potential breach of the Code.</td>
</tr>
<tr>
<td><strong>Preliminary assessment</strong></td>
<td>The purpose of the preliminary assessment is to gather and evaluate the evidence to establish whether or not the potential breach of the Code warrants further investigation.</td>
</tr>
<tr>
<td><strong>Procedural fairness</strong></td>
<td>That a fair and proper procedure is used when making a decision.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<td>-----------------------------------</td>
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<tr>
<td>Processes</td>
<td>This includes reference to policies, procedures, Guidelines and standards.</td>
</tr>
<tr>
<td>Research</td>
<td>The creation of new knowledge and/or the use of existing knowledge in a new and creative way so as to generate new concepts, methodologies, inventions and understandings. This could include synthesis and analysis of previous research to the extent that it is new and creative.</td>
</tr>
<tr>
<td>Research data</td>
<td>Any data collected during research that could be used to validate the research findings and/or facilitate the reproduction of the research.</td>
</tr>
<tr>
<td>Research Integrity Advisor (RIA)</td>
<td>Person or persons with knowledge of the Code and institutional process nominated by an institution to promote the responsible conduct of research.</td>
</tr>
<tr>
<td>Research Integrity Office (RIO)</td>
<td>Unit with responsibilities that include the management of responses to breaches of the Code at an institution.</td>
</tr>
<tr>
<td>Researcher</td>
<td>Person or persons who conducts research, including academics, research trainees, Honours and Higher Degree Research students and professional staff.</td>
</tr>
<tr>
<td>Respondent</td>
<td>Person or persons asked to respond to a concern or complaint about a potential breach of the Code.</td>
</tr>
<tr>
<td>Responsible Executive Officer (REO)</td>
<td>The senior officer in an institution who has final responsibility for receiving reports of the outcomes of processes of assessment or investigation of potential or actual breaches of the code and deciding on actions to be taken.</td>
</tr>
<tr>
<td>Retaliatory Action</td>
<td>To do something adverse in response to an action done to oneself.</td>
</tr>
<tr>
<td>Support person</td>
<td>A person who accompanies a respondent or complainant to an interview.</td>
</tr>
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</table>
Appendix 1: Sample checklist for the terms of reference for the Panel

The terms of reference for a Panel may include the following:

☐ The date the complaint was received, the name of the complainant (where appropriate), a brief description of the matter

☐ The name of the respondent and a list of the specific allegations

☐ A statement that the Panel is constituted in accordance with the Code and the institution's processes

☐ List of the Panel members

☐ A detailed outline of the scope and purpose of the Panel, which may include the following:
  • to investigate the matter
  • to ensure that procedural fairness is afforded at all stages in the process to all involved
  • where possible, to maintain the confidentiality of all persons involved
  • to consider the protection of all involved
  • to review the allegation
  • to review the responses to the allegations provided by the respondent
  • to review the preliminary assessment report (including any external expert advice)
  • to identify and gather any other relevant evidence
  • to meet with the relevant parties
  • to consider the evidence in the context of the principles and responsibilities of the Code
  • to make findings in accordance with guidance provided in Investigating and managing potential breaches of the Australian Code for the Responsible Conduct of Research: Guide
  • to provide a report to the DO in a timely manner.

☐ A statement about the secretariat support to be provided by the institution (for example, RIO)

☐ An indicative timetable for the conduct of the investigation
Appendix 2: Checklist for the investigation procedure

- Develop terms of reference and scope for a Panel that are appropriate and proportionate to the nature of the allegation (see Appendix 1)
- Determine size and composition of the Panel.
- Establish provision of secretariat support
- Where the allegation involves outside parties determine whether the involvement of other institutions, or of their staff, is necessary and if so, whether an agreement needs to be established setting out the scope of their involvement
- Inform the relevant institutional office (for example, Executive, Human Resources, Higher Degree Research or equivalent) of the investigation as required
- Provide the respondent with an opportunity to comment on the composition of the Panel
- Appoint the Panel
- Provide the Panel with an opportunity to comment on the terms of reference and scope of the investigation
- Provide guidance on the appropriate procedures for the investigation to the Panel, such as this Guide, the Code and any relevant government or institutional processes. This may also include definitions of a breach of the Code and, if relevant, research misconduct (according to the institution’s processes).
- Provide the Panel with all available information that will inform the investigation, which may include:
  - the initial concern or complaint
  - all relevant information assembled by the AO
  - records of the conduct of the preliminary assessment
  - the report of the preliminary assessment
  - records of any communications on the matter involving the DO, the AO, the complainant and/or the respondent
- Ensure that the Panel has the authority to access all relevant information and documentation
- Support the Panel to develop an investigation plan that includes the following:
  - identification of the avenues of inquiry, including interviewing people who the Panel considers relevant to the matter
  - the frequency of Panel meetings
  - the timeline for conducting interviews
  - the timeframe for submitting draft report to respondent
  - the timeframe for submitting the report to the DO
- Inform the Panel of the reporting requirements (Appendix 3)
Appendix 3: Checklist for reporting the findings of the investigation

A Panel should formulate a comprehensive report that includes the following:

- The names and affiliations of the Panel members
- The name of the respondent
- A summary of all relevant research projects, including project summary, duration and funding
- The specific allegations considered
- The terms of reference of the Panel
- A description of the processes that were followed
- A description of the evidence considered, including the documents and other information and the names of all persons interviewed
- Summaries of the interviews conducted (with transcripts attached)
- The findings of fact that have been reached
- A conclusion as to whether or not a breach of the Code occurred and whether or not the respondent is responsible for the breach
- Any recommendations (for example, for corrective action), where appropriate and consistent with the terms of reference
- Any recommendations about other institutions/organisations that should be advised of the outcome (for example, funders, external stakeholders)
Appendix 4: Development of this Guide

This Guide has been jointly developed by the National Health and Medical Research Council (NHMRC), Australian Research Council (ARC) and Universities Australia (UA) in accordance with the National Health and Medical Research Council Act 1992. The development of this Guide has been overseen by expert working committees as follows:

Better Practice Guides Working Group

<table>
<thead>
<tr>
<th>Member</th>
<th>Position</th>
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<tbody>
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</tr>
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<td>Research Support Manager, Baker IDI Heart &amp; Diabetes Institute</td>
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<tr>
<td>Dr Catherine Gangell</td>
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<td>Professor Matthew Gillespie</td>
<td>Associate Dean (Research Strategy), Faculty of Medicine, Nursing and Health Sciences, Monash University</td>
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<td>Dr Jane Jacobs</td>
<td>Director, Office of Research Ethics and Integrity, Queensland University of Technology</td>
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<td>Dr Susan O’Brien</td>
<td>Research Integrity Manager, University of Queensland</td>
</tr>
<tr>
<td>Jeannie Rea</td>
<td>National President, National Tertiary Education Union</td>
</tr>
</tbody>
</table>

Code Review Committee

<table>
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<tr>
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<th>Position</th>
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<tbody>
<tr>
<td>Professor Mike Calford (Chair)</td>
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<td>Deputy Vice-Chancellor Research, University of Adelaide</td>
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<td>Professor Andrew Davidson</td>
<td>Medical Director, Melbourne Children's Trials Centre, Murdoch Childrens Research Institute</td>
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<tr>
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<td>Former Dean, College of Arts and Social Sciences, Australian National University</td>
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<td>Professor Philip Mitchell</td>
<td>Head of the School of Psychiatry, University of New South Wales</td>
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<td>Emeritus Professor Janice Reid</td>
<td>Former Vice-Chancellor and President, Western Sydney University</td>
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<td>Dr Paul Taylor</td>
<td>Director, Research Integrity, Governance and Systems, RMIT University</td>
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<td>Professor Mandy Thomas</td>
<td>Executive Dean, Creative Industries Faculty, Queensland University of Technology</td>
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