Explanatory material

What is the scope of the proposed changes?

The current Code has been significantly revised and streamlined in order to provide clear, practical, relevant and contemporary guidance that can be applied to a range of different research contexts. The draft Code consists of a six-page principles-based document which clearly sets out expectations and obligations for both institutions and researchers in order to ensure the integrity of the Australian research effort is maintained. It contains eight principles and 28 responsibilities for institutions and researchers and no longer follows the current structure of a Part A and Part B.

As a companion to the six-page principles-based document, guidance on specific topics will be provided in supporting documents. The first guide is on investigating and managing potential breaches of the Code and essentially replaces Part B of the Code. Subsequent guides will be developed based in part on advice received during public consultation and on relevant areas of Part A of the existing Code.

The scope of the Code has expanded from being written for universities and other public sector research institutions in receipt of NHMRC and ARC funding to being relevant and applicable to all institutions and researchers.

The key specific changes are listed in the table below.

What is the rationale for the proposed changes?

NHMRC, ARC and UA recognise that the research landscape (both nationally and internationally) has evolved considerably since 2007. As a result, the type of guidance that institutions and researchers require has also changed. Targeted consultation with the research sector in 2015 revealed that the requirements of institutions for advice about implementing and applying the Code are heterogeneous. Since the implementation of the existing Code in 2007, the NHMRC and ARC have gained useful insights into the way that institutions conduct research misconduct investigations, and have observed that the advice provided in Part B of the current Code can be inadequately or inconsistently applied.

It has also been recognised that overly prescriptive advice, including a rigid definition of research misconduct, can be incompatible with existing institutional policies such as enterprise agreements and current approaches to the management of behaviours that may require corrective action. A rigid definition has also hindered the identification and investigation of inappropriate research behaviour.

The principles-based approach to the Code and the proposal to develop supporting guides were recommended by the Code Review Committee to address these concerns. The development of these draft documents was informed by engaging with the Australian research community and related organisations to ensure the principles-based Code and supporting guides are relevant and can be implemented across the broad range of research institutions.

The tone of the revised Code is more aspirational than the previous version, in order to support the model of self-regulation in the research sector and to achieve a balance between rules-based and principles-based guides, but still seeks to set out clearly the obligations to undertake the responsible conduct of research.

In summary, the draft principles-based Code and first draft Guide are intended to:

- provide clear, practical and relevant guidance
- be applied to a range of different research contexts
- enable investigations into breaches of the Code to be separated from other misconduct investigations and avoids overlap between the Code and institutional polices such as enterprise agreements
- encourage more transparent and consistent reporting of breaches of the Code as a result of not using the term ‘research misconduct,’ which is pejorative and difficult to define.
Comparison of current and new approach to the Code

### SPECIFIC CHANGES (Part A vs draft Code)

<table>
<thead>
<tr>
<th>Current Code (Part A)</th>
<th>Revised approach in the draft Code</th>
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<tbody>
<tr>
<td>Key guidelines to be read in conjunction with Code are listed at Appendix 3.</td>
<td>Key laws, regulations and guidelines are not listed. Instead, those responsible for the conduct of research are expected to be aware of and comply with the different laws and codes that apply to the conduct of that research.</td>
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<td>The meaning of research is ‘original investigation undertaken to gain knowledge, understanding and insight’ and a boxed reference to the definition of research used in the United Kingdom Research Assessment Exercise (2008) is provided.</td>
<td>Definition of research has been updated to: ‘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>
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<td>States that there must be a process for regular monitoring of the institution’s performance with regard to the Code.</td>
<td>Institutions are expected to ‘promote a research culture and environment that supports researchers in the responsible and ethical conduct of research’. A specific requirement for regular monitoring is not stated.</td>
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<td>Specific sections on Aboriginal and Torres Strait Islander peoples (1.12) and Consumer and community participation in research (1.13) included.</td>
<td>These sections are addressed in the principles of the Code (P5 and P6).</td>
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<tr>
<td>No reference to Research Integrity Advisors in Part A.</td>
<td>The important role of Research Integrity Advisors in promoting the Code has been recognised in the institutional responsibilities.</td>
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### SPECIFIC CHANGES (Part B vs draft Guide)

<table>
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<tr>
<th>Current Code (Part B)</th>
<th>Revised approach in the draft Guide</th>
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| Research misconduct is defined as ‘more serious or deliberate deviations that involves all of the following:  
- an alleged breach of the Code  
- intent and deliberation, recklessness or gross and persistent negligence  
- serious consequences, such as false information on the public record, or adverse effects on research participants, animals or the environment.  
A number of examples of research misconduct are provided and it is specified that honest differences in judgement or minor/unintentional honest errors are not defined as research misconduct.  
Research misconduct is described as ‘Serious breaches of the Code that are sufficiently substantial to warrant formal allegation, investigation, and denial or admission. If proven, such misconduct would be expected to lead to disciplinary action by the institution in accordance with its instruments of employment’. | No definition of research misconduct.  
Definition of breach is provided, as well as guidance about how to determine the degree to which behaviour is a departure from the Code.  
Institutions can use the term research misconduct at their own discretion. |
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<th>Breach is defined as ‘less serious deviations from the Code that are appropriately remedied within the institution’.</th>
<th>Breach includes both minor and major departures, and is defined as ‘behaviour that fails to meet the principles or responsibilities of the Code, or fails to comply with relevant policies or legislation’.</th>
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<tr>
<td>‘Deviation’ is a term used to describe a breach/research misconduct.</td>
<td>‘Deviation’ is not used.</td>
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| Three categories of allegations/complaints defined, namely:  
  • failure to implement the Code  
  • breaches of the Code  
  • research misconduct | Concerns/complaints are only about breaches of the Code. |
| The current Code refers to ‘prima facie’ cases:  
  ‘The role of the designated person is to advise the CEO or their delegated officer whether allegations appear to be justified and whether a prima facie case exists. The designated person should be a senior member of the institution’s management structure who is experienced in research and research management’. | No reference to prima facie cases.  
  The role 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’. |
| Distinction made between internal institutional research misconduct inquiries and independent external research misconduct inquiries.  
  Institutions required to establish independent external research misconduct inquiries to evaluate serious allegations.  
  Prescriptive advice given about composition of panel and whether or not inquiries should be made public. | Less prescriptive advice given about the nature of the inquiry panel; rather, general considerations for establishment of the panel are provided and an emphasis placed on the need for panels to be proportionate to the seriousness of the breach.  
  No advice given about whether an investigation should be made public. |
| States that ‘the person facing the allegations should be entitled to legal representation’. | Guidance discourages legal representation, and recommends that legal counsel should be engaged to assist the Panel on matters of process only. |
| Uses the terms:  
  • Chief Executive Officer  
  • Designated Person  
  • Adviser in research integrity  
  • Preliminary investigation  
  • Research misconduct inquiry  
  • Inquiry Panel | Terms now used are:  
  • Responsible Executive Officer  
  • Designated Officer  
  • Research Integrity Advisor  
  • Preliminary assessment  
  • Investigation  
  • Investigation Panel (the Panel)  
  • Assessment Officer (new) |
<p>| Use of the terms complaint and allegation. | Language around complaints/allegations subtly changed, to reflect that an institution does not ‘receive’ an allegation, it receives complaints/concerns. Complaint/concern only becomes an allegation after the preliminary assessment stage. |</p>
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<tr>
<th>The role of the Designated Person stops after the findings from the preliminary investigation given to CEO.</th>
<th>The Designated Officer is involved at both the Preliminary Assessment and Investigation stages, and in particular provides a draft report from the Panel with his/her recommendations to the Responsible Executive Officer.</th>
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<td>The role of the adviser in research integrity includes explaining the options open to the person considering, making, or having made an allegation. These options included:</td>
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<td>• referring the matter directly to the person against whom the allegation is being made</td>
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<td>• referring the allegation to a person in a supervisory capacity for resolution at the local or departmental level.</td>
<td>These options are not included as they are no longer considered best practice.</td>
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<td>Encourages breaches/research misconduct to be handled at the departmental level.</td>
<td>Is less prescriptive about this, encourages a more centralised approach, recognises the role of the Research Integrity Office and that not all institutions have departments.</td>
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<td>States that ‘institutions must ensure that employment agreements and contracts…address how research misconduct will be handled in accordance with this Code’ and that ‘there should be defined penalties for people found guilty of research misconduct’.</td>
<td>Recognises the difficulty of the nexus with misconduct under enterprise agreements, only refers to breaches of the Code.</td>
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<td>Limited practical advice provided about implementation of Part B of the Code.</td>
<td>Checklists provides in Appendices to provide guidance about terms of the reference for the Panel, investigation procedure and Panel’s report.</td>
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