

# Research Breach Investigation Procedure

## Section 1 - Introduction

(1) This Procedure provides mechanisms for identifying and responding to potential breaches of the [Australian Code for the Responsible Conduct of Research](#), including:

- a. a single point of entry for raising potential breaches;
- b. mechanisms for assessing and investigating potential breaches; and
- c. an approved pathway for managing and resolving potential breaches.

(2) When an individual has concerns about possible deviations from [Australian Code for the Responsible Conduct of Research](#) ("the Code"), the supervisor or head of a research area should be the first point of contact. Please refer to the "[Managing Concerns About Research](#)" webpage for further information.

(3) This Procedure seeks to ensure that where potential breaches are reported, the situation is addressed promptly and effectively, the affected parties are treated fairly, and steps are taken to maintain public confidence in the University's research endeavours.

(4) This Procedure is based on the [Guide to Managing and Investigating Potential Breaches of the Australian Code for the Responsible Conduct of Research](#) ("the Guide") and should be read in conjunction with the following associated documents:

- a. [Australian Code for the Responsible Conduct of Research](#).
- b. University of Newcastle's (University) [Responsible Conduct of Research Policy](#), [Privacy Management Plan](#), [Honorary Academic Titles Policy](#), [Records and Information Management Policy](#) and [Enterprise Agreements](#).

## Section 2 - Scope

(5) This Procedure applies to potential breaches of the Code, as outlined in the [Guide](#), by:

- a. academic, teaching and professional staff of the University; or
- b. those with an honorary academic title (conjoint or visiting appointment) conferred by the University through the [Honorary Academic Titles Policy](#), regardless of the employment status of the person at the time the potential breach is raised.

(6) The University will investigate all potential breaches raised, regardless of whether the matter is raised anonymously or if the Complainant withdraws the matter at any point during this procedure.

(7) The [Student Conduct Rule](#) provisions apply where a University staff member or holder of an honorary academic title is also a Higher Degree by Research Candidate and is alleged to have breached the University's [Responsible Conduct of Research policy](#) as part of their candidature.

## Section 3 - Responsibilities

- (8) The Assessment Officer (AO) responsibilities outlined in this procedure will be undertaken by the Manager, Research Compliance, Integrity and Policy, or a nominee appointed by the Designated Officer (DO).
- (9) The Designated Officer (DO) responsibilities outlined in this procedure will be undertaken by the Pro Vice-Chancellor Research and Innovation, or a nominee appointed by the Responsible Executive Officer (REO).
- (10) The Responsible Executive Officer (REO) responsibilities outlined in this procedure will be undertaken by the Deputy Vice-Chancellor (Research and Innovation), or a nominee appointed by the Vice-Chancellor.
- (11) A nominee must be appointed where the responsible person has a direct or perceived conflict of interest in the matter.
- (12) A nominee performing the responsibilities of REO cannot be the AO or DO.
- (13) Throughout this process, the DO, AO or REO is responsible for identifying whether the Complainant, Respondent, or other parties require protection from potential adverse consequences to ensure support measures are in place, where available. This includes circumstances where a power imbalance may be evident, for example, where the matter is raised by a student or staff member in a junior position.
- (14) Researchers have a responsibility to act in accordance with the University's [Code of Conduct](#) and not undertake any form of reprisal or threatening behaviour should a potential breach of the [Australian Code for the Responsible Conduct of Research](#) relevant to their research be raised.
- (15) Investigation Panel members (appointed as per this Procedure) will ensure they:
- Declare all conflicts of interest prior to commencement of an investigation;
  - Work within the University's processes;
  - Work within the terms of reference for the Panel;
  - Maintain confidentiality;
  - Complete the investigation within 60 business days; and
  - Adhere to the [Guide](#).

## Section 4 - Document specific definitions

- (16) Balance of probabilities means the civil standard of proof, which requires that, on the weight of evidence, it is more probable than not that a breach has occurred.
- (17) Breach means a failure to meet the principles and responsibilities of the [Code](#), and may refer to a single breach or multiple breaches.
- (18) Complainant means a person who raises a matter relating to a potential breach of the [Code](#).
- (19) Respondent means a person who is the subject of a matter relating to a potential breach of the [Code](#).
- (20) Uncontested breach means a breach that has occurred and where the Respondent has accepted responsibility for the breach.

# Section 5 - Procedure

## Potential Breaches

### Raising a Potential Breach

(21) Potential breaches of the [Code](#) must be raised in a manner that identifies specific details and includes sufficient evidence to enable the potential breach to be assessed. Potential breaches are to be submitted to the DO in writing via the web page "[Managing Concerns About Research](#)".

### Receiving a Potential Breach

(22) Upon receipt of information that raises a potential breach, the DO will perform a risk assessment to determine the seriousness of the matter, using the Potential Breach Coversheet (available from the Research Integrity Unit). The Coversheet provides clear instruction for the DO to undertake immediate actions should the potential breach identify:

- a. immediate risk to humans or animals;
- b. immediate risk to the environment; or
- c. criminal or corrupt behaviour.

(23) Within 7 working days of receipt of information that raises a potential breach, the DO will convene an Advisory Group consisting of the DO, a nominated AO, the Director, Research and Innovation Services, and the Executive Officer to the Deputy Vice-Chancellor (Research and Innovation) to review the matter. Where the Director, Research and Innovation Services or the Executive Officer to the Deputy Vice-Chancellor (Research and Innovation) may not be available the REO may nominate alternative University officers to form the advisory group, with a minimum of 3 group participants at any time.

(24) In reviewing the matter, the Advisory Group will assist the DO in making one of four determinations as outlined in Table 1. The reasons for the decision made by the Advisory Group are to be documented on the Potential Breach Coversheet.

(25) The actions associated with the determination must be completed within 10 working days of receipt of the matter.

**Table 1 - Determinations and Actions Following Receipt of a Potential Breach**

	Determination	Action/s
1.	The matter is not specific or does not include sufficient evidence, and further clarification should be sought from the Complainant before proceeding.	1. DO to contact Complainant and seek further information. 2. Upon receipt of further information the DO is to recommence this procedure from Clause 22.
2.	The matter is not related to a breach of the <a href="#">Code</a> , and should be dismissed.	1. DO to formally communicate determination to the Complainant. 2. DO to notify REO of determination. 3. DO to notify the Respondent at own discretion, dependent upon nature of the matter.
3.	The matter is not related to a breach of the <a href="#">Code</a> , but may be dealt with via other University processes (for example, the matter is considered a breach of the University's <a href="#">Code of Conduct</a> , or is vexatious).	1. DO to formally communicate determination to the Complainant. 2. DO to refer the matter to an appropriate University unit. 3. DO to notify REO of determination.

	Determination	Action/s
4.	The matter relates to a potential breach of the <a href="#">Code</a> , and the nominated AO is advised to commence a Preliminary Assessment as per Clauses 27 – 34.	<ol style="list-style-type: none"> <li>1. DO to formally communicate determination to the Complainant.</li> <li>2. DO to formally communicate receipt of the matter and determination to the Respondent.</li> <li>3. DO to formally refer the matter to AO for a Preliminary Assessment.</li> <li>4. DO to notify REO of determination within 10 working days of receipt of matter.</li> </ol>

(26) In addition to the actions outlined in Table 1, the DO will maintain a record of all decisions relating to the matter including the reasons for those decisions.

(27) Where the Complainant is dissatisfied with the outcome of a Preliminary Assessment they should be directed to the University's [Complaint and Grievance Policy](#).

## Preliminary Assessment

(28) In referring the matter to an AO to commence a Preliminary Assessment, the DO and Advisory Group will provide the AO with guidance as to the scope of the assessment.

### Conducting the Preliminary Assessment

(29) The nominated AO will conduct the Preliminary Assessment within 30 working days of the receipt of a matter by the DO.

(30) The AO has the authority to secure all documents and evidence necessary to undertake the Preliminary Assessment.

(31) During the Preliminary Assessment, the AO will:

- a. Prepare and retain records of the preliminary assessment, using the Potential Breach Coversheet.
- b. Obtain information provided by the Complainant from the DO.
- c. Gather and secure facts and information, including engaging expert/s for specific or independent advice as required.
- d. Obtain facts, information and/or advice from across the University if required, including from Research Supervisors.
- e. Clarify facts and/or information with the Respondent if appropriate. If the AO determines an interview with the Respondent is necessary, the AO will notify the Respondent and provide:
  - i. sufficient detail for the Respondent to understand the nature of the matter;
  - ii. an opportunity to respond in writing within a nominated timeframe; and
  - iii. an invitation to meet with the AO, with the option to bring a support person who must not be related to the matter. (Meetings should be recorded, with the consent of all parties present, and a copy of the recording provided to the Respondent).
- f. Determine if and how other institutions need to be involved in the matter.
- g. Maintain open consultation with the DO, as required.
- h. Maintain confidentiality of information regarding the potential breach, Complainant and Respondent.

(32) Once the Preliminary Assessment has been completed the DO will re-convene the Advisory Group within 5 working days to consider the findings. In preparation for this meeting, the AO will provide a report to the DO and Advisory Group which includes:

- a. a summary of the process that was undertaken;
- b. an inventory of the facts and information that were gathered and analysed;
- c. an evaluation of facts and information;
- d. how the potential breach relates to the principles and responsibilities of the [Code](#) and if it may be a consequence (in full or in part) of systemic or institutional issues; and
- e. the recommended actions, including any corrective actions if appropriate at this point.

(33) Any admission of a breach of the [Code](#) by the Respondent;

- a. will be considered by the DO in determining the outcome of the Preliminary Assessment;
- b. does not preclude a matter being referred for Investigation; and
- c. may be referred to the REO to be resolved without an Investigation.

### **Preliminary Assessment Outcome(s)**

(34) The DO and Advisory Group will consider the written advice and recommended action provided by the AO, and reach consensus as to one of the six determinations outlined in Table 2. The actions associated with the determination should be completed within 5 working days of the determination being made.

**Table 2 - Determination and Actions Following a Preliminary Assessment**

	<b>Determination</b>	<b>Action/s</b>
1.	The matter is not related to a breach of the <a href="#">Code</a> , and should be dismissed.	If required, the DO will ensure efforts are made to restore the reputation(s) of the Respondent(s).
2.	The matter is not related to a breach of the <a href="#">Code</a> , but may be referred to other University processes (for example, the matter is considered a breach of the University's <a href="#">Code of Conduct</a> , or is vexatious).	DO to refer matter to another University unit for further action.
3	The matter is a breach of the <a href="#">Code</a> of a minor nature and can be resolved locally, with or without corrective action/s.	DO to refer matter to appropriate local Manager for resolution. The local Manager is then required to implement corrective actions, if applicable.
4.	The matter is an uncontested breach of the <a href="#">Code</a> and can be resolved with or without corrective action/s.	DO to refer matter to REO for resolution, which may include referral to the applicable University process.
5.	The matter is a potential breach of the <a href="#">Code</a> (contested or uncontested) that occurred under the auspices of the University and must be referred for investigation.	DO refers the matter for investigation as per Clauses 36 to 54.
6.	The matter is a potential breach of the <a href="#">Code</a> that occurred under the auspices of an external organisation and must be referred to that external organisation.	DO to refer matter to the applicable external organisation.

(35) In addition to the above actions:

- a. The DO will maintain a record of all determinations relating to a Preliminary Assessment including the reasons for those decisions on the Potential Breach Coversheet, and provide the record to the REO within 10 working days of the determination being made.
- b. The DO will communicate the outcome of the Preliminary Assessment to the Complainant, Respondent, and other relevant parties. Funding bodies should be advised when appropriate.
- c. Where the determination is that the matter is referred for investigation, the DO will advise the respondent that

the investigation panel findings may form the basis of the actions outlined in the Research Code Breach provisions of the applicable enterprise agreement or terms of employment.

- d. The DO must ensure that any systemic issues that may have contributed to the matter are escalated to the appropriate University unit or role for corrective action.

## **Investigating a Potential Breach**

(36) The purpose of an Investigation is to make findings of fact which allow the REO to determine if a breach of the [Code](#) has occurred, the extent of the breach, and any recommended actions.

(37) Once the DO refers a matter for Investigation, the matter is considered to be an allegation and the DO will:

- a. Prepare a statement of allegation/s;
- b. Develop the terms of reference for the Investigation in accordance with the Investigation Panel Terms of Reference Checklist (available from the Research Integrity Unit at [researchintegrity@newcastle.edu.au](mailto:researchintegrity@newcastle.edu.au));
- c. Nominate an Investigation Panel in accordance with clause 38 and 39, and Panel Chair where appropriate; and
- d. Seek legal advice on matters of process if required.

## **The Investigation Panel**

(38) In determining the composition of the Investigation Panel ("Panel"), the DO will take into consideration the potential consequences for the affected parties, the seniority of those involved, and the need to maintain public confidence in research. These factors will affect the level of independence that is required of members; there may be instances where some or all Panel members should be external to the University.

(39) In selecting Panel members, the DO will ensure:

- a. A suitable level of expertise, experience and skills, including experience on similar panels, and knowledge and an understanding of the responsible conduct of research;
- b. An appropriate number of members;
- c. That members are free from direct or perceived conflicts of interest and bias;
- d. Diversity in membership; and
- e. Where required, a suitably qualified Panel Chair.

(40) Once selected, the DO will advise the Respondent of the proposed Panel and provide an opportunity for the Respondent to raise concerns regarding the panel composition within 10 working days of receiving such advice.

(41) In consideration of any concerns raised regarding panel composition, the DO will confirm the appointment of Panel members in writing to the Panel members, including an acknowledgement of indemnification for external members and a copy of or link to this procedure.

(42) Once the Panel is established, the DO will:

- a. Provide the Panel with all available information that will inform the investigation, which may include:
  - i. details of the initial matter raised;
  - ii. all relevant information assembled by the AO;
  - iii. the Panel terms of reference developed as per Clause 37;
  - iv. records of the Preliminary Assessment;
  - v. the report of the Preliminary Assessment; and
  - vi. records of any communications on the matter involving the DO, AO, Complainant and/or Respondent.

- b. Provide the Panel with an opportunity to comment on the terms of reference.
- c. Ensure that the Panel has the authority to access any other relevant information and documentation.
- d. Inform the Panel of the reporting requirements.

## **Investigation Plan**

(43) The Panel, with secretariat support from the Office of the DO, will:

- a. Develop an Investigation Plan (template available from the Research Integrity Unit) at the first panel meeting that includes:
  - i. identification of the avenues of inquiry, including interviewing people who the Panel considers relevant to the matter;
  - ii. the frequency of Panel meetings;
  - iii. the timeline for conducting interviews; and
  - iv. the timeframe for completing stages of the investigation.
- b. Provide the Respondent with an opportunity to respond to the allegation and inform them about the process of the Investigation, including the role of a support person as described in Clause 31 (e) iii, and requesting notification if the Respondent intends to engage legal representation.
- c. Notify those required to attend the Investigation using an Investigation Panel attendee invitation (available from the Research Integrity Unit) and ensure adequate notice (maximum of 10 working days) is provided. (Where a respondent intends to engage legal representation a University Legal representative may be requested to attend).

## **Conducting The Investigation**

(44) The Panel is to investigate whether, having regard to evidence and on the balance of probabilities, the Respondent has breached the [Code](#). To do this, the Panel:

- a. Will assess the evidence (including its veracity) and consider if more evidence may be required;
- b. May request expert advice to assist the investigation;
- c. Will arrive at findings of fact about the allegation;
- d. Will identify whether the principles and responsibilities of the [Code](#) have been breached;
- e. Will consider the seriousness of any breach; and
- f. Will make recommendations as appropriate, including recommendations for corrective actions.

(45) Where a conflict of interest arises during the Investigation, Panel members must ensure the conflict of interest is disclosed and managed. Where a conflict of interest cannot be managed, the affected Panel member/s must be recused to avoid any actual or perceived influence on the impartiality of the Panel. Where the Panel is subsequently unable to meet the requirements of Clause 39, an additional Panel member(s) must be appointed by the DO in accordance with Clauses 38 and 40.

(46) If the 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. If this occurs, the Respondent and relevant other parties are to be advised and the Respondent be given the opportunity to respond to any new material arising from the increased scope.

(47) Panel members are encouraged to reach a consensus. Where there are dissenting views, the views should be included in the Investigation Report.



## The Investigation Report

(48) On completion of the Investigation, the Panel will, with secretariat support from the office of the DO, develop and provide an Investigation Report (template available from the Research Integrity Unit) to the DO consistent with its terms of reference. The DO will then provide the Investigation Report to the Respondent for a response, with Respondent comments to be submitted to the DO within 15 working days from receipt.

(49) The DO will then consider:

- a. the findings of fact;
- b. evidence presented;
- c. any draft recommendations by the Panel in the Investigation Report; and
- d. the extent and seriousness of the breach, and possible corrective actions.

(50) The DO will finalise recommendations in the Investigation Report and provide the report to the REO.

## Investigation Outcome(s)

(51) After considering the Investigation Report and recommendations, the REO will:

- a. make one of the two determinations outlined in Table 3; and
- b. determine the appropriate communication mechanisms, including if and when the investigation report is disclosed.

(52) The actions associated with the determination should be completed within 15 working days of the determination being made.

**Table 3 - Determination and Actions Following Investigation of an Allegation**

	Determination	Action/s
1.	No breach of the <a href="#">Code</a> has occurred; the allegation has no basis in fact.	1. If required, the REO will ensure efforts are made to restore the reputation(s) of the Respondent(s). 2. The REO may refer frivolous or vexatious allegations to the applicable University process.
2.	A breach of the <a href="#">Code</a> has occurred	1. The REO will take into account the extent and seriousness of the breach when determining the response, which may include: a. determining and assigning corrective actions; b. referring the breach to the applicable University process; or c. referring Honorary appointments to the review provision of the <a href="#">Honorary Academic Titles Policy</a> . 2. The REO will ensure that: a. efforts are taken to correct the public record of the research, including publications if the breach has affected the accuracy of research findings; and b. any systemic issues identified as leading to the breach are escalated to the appropriate University unit or role for corrective action

(53) The REO will communicate all decisions and actions to the Respondent and Complainant, ensuring that both parties are notified of the means by which they can request a review. The REO may also inform other relevant parties, such as funding bodies, relevant authorities or other institutions. If appropriate the REO may arrange for a public statement to be made by a person who has delegated authority in accordance with the [Delegation of Authority Policy](#).



## Section 6 - Requests for Review of an Investigation

(54) Requests for a review of an Investigation will only be considered on the grounds that this Procedure has not been properly followed, and will be in accordance with the [Complaint and Grievance Policy](#).

## Section 7 - Record Management

(55) All records relating to allegations of research breaches are to be handled in accordance with the University's policies, including [Privacy Management Plan](#) and [Records and Information Management Policy](#).

## Status and Details

<b>Status</b>	Historic
<b>Effective Date</b>	4th December 2018
<b>Review Date</b>	4th December 2021
<b>Approval Authority</b>	Senior Deputy Vice-Chancellor (Research and Innovation)
<b>Approval Date</b>	15th November 2018
<b>Expiry Date</b>	31st March 2021
<b>Responsible Executive</b>	Warwick Dawson Deputy Vice-Chancellor (Research and Innovation)
<b>Enquiries Contact</b>	Jodie Marquez Director, Research Ethics & Integrity <hr/> Research Ethics and Integrity Unit

## Glossary Terms and Definitions

**"University"** - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

**"Working day"** - Any day other than Saturday, Sunday, or a public holiday in Newcastle, on which business may be conducted.

**"Candidature"** - The period of time between acceptance of offer and termination, withdrawal from, or completion of a higher degree by research program, including periods when a candidate is not enrolled.

**"Student"** - A person formally enrolled in a course or active in a program offered by the University or affiliated entity.

**"Candidate"** - With regard to Higher Degree by Research it has the same meaning as student. For all other instances it is a person considered for appointment to a position.

**"Staff"** - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.