

# 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) The “[Managing Concerns About Research](#)” webpage includes information on how to raise concerns relating to potential breaches of the [Australian Code for the Responsible Conduct of Research](#) (“the Code”).

(3) In accordance with Responsibilities 10 and 11 of the [Code](#), this Procedure seeks to ensure that:

- a. there is a reporting mechanism for receiving concerns and complaints for potential breaches of the Code;
- b. all concerns or complaints are addressed promptly and effectively;
- c. affected parties are treated fairly; the principles of procedural fairness are applied to the process of assessment; and
- d. 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:

### National Codes

- a. [Australian Code for the Responsible Conduct of Research](#);
- b. [Guide to Managing and Investigating Potential Breaches of the Australian Code for the Responsible Conduct of Research](#);
- c. [Australian code for the care and use of animals for scientific purposes](#);
- d. [National Statement on Ethical Conduct in Human Research](#);

### University policies and agreements

- a. [Responsible Conduct of Research Policy](#);
- b. [Privacy Management Plan](#);
- c. [Honorary Academic Titles Policy](#);
- d. [Records and Information Management Policy](#); and
- e. [Enterprise Agreements](#).

## Section 2 - Scope

(5) This Procedure applies to all potential breaches of [the Code](#) and applies to:

- 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 complaint is raised anonymously or if the Complainant withdraws the complaint 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 - Roles and Responsibilities

(8) In accordance with [the Code](#) Responsibility 10, the University is responsible for providing mechanisms to receive concerns and complaints relating to potential breaches of [the Code](#), and investigating and resolving potential breaches.

### Nominated Roles

(9) The role of Responsible Executive Officer (REO) will be undertaken by the Deputy Vice-Chancellor (Research and Innovation), or a nominee appointed by the Vice-Chancellor.

(10) The role of Designated Officer (DO) will be undertaken by the Pro Vice-Chancellor Research and Innovation, or a nominee appointed by the REO.

(11) The role of Assessment Officer (AO) will be undertaken by a nominee appointed by the DO.

(12) A nominee must be appointed where a responsible person has a direct or perceived conflict of interest in the complaint.

(13) A nominee performing the responsibilities of REO cannot also be the DO or AO.

(14) Throughout this process, the REO, DO or AO is responsible for identifying whether the Complainant, Respondent, or other parties require protection from potential adverse consequences and ensuring support measures are in place, where available. This includes circumstances where a power imbalance may be evident, for example, where the complaint is raised by a student or staff member in a junior position.

### Researchers

(15) 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.

### Investigation Panel members

(16) Investigation Panel members (appointed as per this Procedure) will ensure they:

- a. declare all conflicts of interest prior to commencement of an investigation;
- b. work in accordance with University processes;
- c. work within the Terms of Reference for the Panel;
- d. maintain confidentiality;
- e. complete the Investigation in a timely manner; and
- f. contribute to the preparation of a written report.

## Section 4 - Definitions

(17) In the context of this Procedure:

- a. allegation means a claim or assertion arising from a preliminary assessment that there are reasonable grounds to believe a breach of the Code has occurred, as defined in [the Guide](#);
- b. 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;
- c. breach means a failure to meet the principles and responsibilities of the [Code](#), and may refer to a single breach or multiple breaches;
- d. complainant means a person who raises a complaint relating to a potential breach of the [Code](#);
- e. corrective action is as defined in clause 9.1 (v) of the University of Newcastle Academic Staff and Teachers Enterprise Agreement 2018;
- f. evidence means any document (hard copy or electronic, including e-mail, images and data), information, tangible item or testimony offered or obtained that may be considered during this Procedure;
- g. procedural fairness means that a fair and proper procedure is used when making a decision;
- h. respondent means a person who is the subject of a complaint relating to a potential breach of the [Code](#); and
- i. support person means a person who accompanies a respondent and/or complainant to an interview to provide personal support, within reasonable limits. Their role is not to advocate, represent or speak on the other person's behalf. The support person should not be related to the complaint.

## Section 5 - Procedure

### Potential Breaches

#### Raising a Potential Breach

(18) Complaints and concerns relating to potential breaches of the [Code](#) should be raised in a manner that includes sufficient details to enable the potential breach to be assessed. Potential breaches are to be submitted to the DO in writing via [researchintegrity@newcastle.edu.au](mailto:researchintegrity@newcastle.edu.au). The complainant can be requested to provide additional information if required.

#### Receiving a Potential Breach

(19) Upon receipt of a complaint or concern relating to a potential breach, the DO will make an initial assessment of the seriousness of the complaint and 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.

(20) The DO will make one of three determinations as outlined in Table 1 within 15 working days of receipt of the complaint.

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

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

	<b>Determination</b>	<b>Action/s</b>
1.	The complaint is not related to a breach of the <a href="#">Code</a> or is a duplication of a previously reviewed complaint, and should be dismissed.	1. DO to formally communicate the determination to the Complainant. 2. DO may notify the Respondent (at their own discretion, dependent upon nature of the complaint).
2.	The complaint may be dealt with via other University processes (for example, the complaint is considered a breach of the University's <a href="#">Code of Conduct</a> , is vexatious, or relates to minor research administration issues such as initial unintentional administrative errors, clerical errors or oversights).	1. DO to formally communicate the determination to the Complainant. 2. DO to refer the complaint to an appropriate University unit or local Manager for resolution.
3.	The complaint relates to a potential breach of the <a href="#">Code</a> , and a nominated AO will be advised to commence a Preliminary Assessment.	1. DO to formally communicate the determination to the Complainant. 2. DO to formally communicate receipt of the complaint and determination to the Respondent. 3. DO to formally refer the complaint to an AO for a Preliminary Assessment.

(22) In addition to the actions outlined in Table 1, the DO:

- a. will maintain a record of all decisions relating to the complaint, and document the reasons for those decisions; and
- b. will notify the Head of Schools or other line managers as needed regarding the complaint, process updates and any outcomes, unless there is a conflict of interest.

## **Preliminary Assessment**

(23) In referring the complaint to an AO to commence a Preliminary Assessment, the DO will provide the AO with guidance as to the scope of the assessment. The scope may be amended if evidence or conduct is revealed during the Preliminary Assessment that relates to other potential breaches of the [Code](#).

## **Conducting the Preliminary Assessment**

(24) The nominated AO will conduct the Preliminary Assessment within 40 working days of the receipt of the complaint by the DO, unless there are circumstances that impede this timeframe.

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

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

- a. prepare and retain records and correspondence of the preliminary assessment;
- b. obtain information provided by the Complainant from the DO;
- c. gather, log and secure facts and information;
- d. engage content expert/s for specific or independent advice as required, including external experts in accordance with clauses 48-49;

- e. obtain facts, information and/or advice from across the University if required, including from Research Supervisors;
- f. clarify facts and/or information with the Respondent, unless it is not appropriate. If the AO determines an interview with the Respondent is necessary, the AO will notify the Respondent in writing and provide:
  - i. sufficient detail for the Respondent to understand the nature of the complaint;
  - ii. an opportunity to respond in writing within a nominated timeframe; and
  - iii. a request to meet with the AO, with the option to bring a support person. Meetings should be recorded, with the consent of all parties present, and a copy of the recording provided to the Respondent;
- g. determine if and how other institutions need to be involved in the complaint;
- h. maintain open consultation with the DO as required and advise the DO immediately should additional concerns or potential additional Respondents be identified; and
- i. maintain confidentiality of information regarding the potential breach, Complainant and Respondent.

(27) Once the Preliminary Assessment has been completed, the AO will provide a Preliminary Assessment Report to the DO that includes:

- a. a summary of the process that was undertaken;
- b. an inventory of the facts and information that were gathered and analysed;
- c. the analysis methods used;
- d. a systematic description of the evaluation of facts, information and findings;
- e. how the potential breach/es relate to the principles and responsibilities of the [Code](#), and if it may be a consequence (in full or in part) of systemic or other failures of institutional processes;
- f. a determination of the seriousness of the potential breach/es; and
- g. the recommended actions, including any corrective actions if appropriate at this point.

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

(28) The DO will consider the Preliminary Assessment report and recommended action/s provided by the AO, and make a determination as outlined in Table 2 based on the response, evidence and complexity of the complaint.

(29) The actions associated with the determination should be completed within 10 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 complaint 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 complaint relates to less than serious breach/es of the <a href="#">Code</a> and can be resolved locally, with or without corrective action/s.	DO to refer the complaint to the appropriate local Manager for resolution. The local Manager is then required to implement corrective actions, if applicable.
3.	The complaint relates to serious potential breach/es of the <a href="#">Code</a> that occurred under the auspices of the University and must be referred for investigation.	DO to refer the complaint for investigation, as described in clauses 31 – 47.
4.	The complaint is not related to a breach of <a href="#">the Code</a> , but may be referred to other University processes (for example, the complaint is considered a breach of the University's <a href="#">Code of Conduct</a> , or is vexatious).	DO to refer the complaint to the appropriate University unit/s for further action.

(30) In addition to the above actions:

- a. The DO will maintain records of the Preliminary Assessment and communicate the outcome to all relevant parties. The DO will determine if the Preliminary Assessment Report or a summary is to be provided to any parties, in accordance with the [Guide](#). Funding bodies will be advised when required under funding agreements, research contracts or other obligations.
- b. Where the determination is that the complaint is referred for investigation, the DO will advise the Respondent that Investigation Panel findings will be considered under the Research Code Breach provisions of the applicable enterprise agreement or terms of employment.
- c. The DO must ensure that systemic issues that were identified in the Preliminary Assessment Report and may have contributed to the complaint are escalated to the appropriate University unit or role for action.

## **Investigating a Potential Breach**

(31) The purpose of an Investigation is to make findings of fact to allow the REO to assess whether a breach of the [Code](#) has occurred, the extent of the breach, and the recommended actions.

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

- a. prepare a clear statement of the allegation/s;
- b. develop the Terms of Reference for the Investigation Panel;
- c. nominate an Investigation Panel and Panel Chair; and
- d. seek legal advice on matters of process if required.

## **The Investigation Panel**

(33) 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.

(34) In selecting members for the Panel, the DO must also consider:

- a. the expertise and skills required:
  - i. the selection of a person appropriately qualified as Chair, in accordance with clause 9.12 of the University of Newcastle Academic Staff and Teachers Enterprise Agreement 2018 where appropriate;
  - ii. an appropriate level of experience and expertise in the relevant discipline(s);
  - iii. the need for a person with prior experience in similar investigation panels or relevant experience;
  - iv. knowledge and understanding of the responsible conduct of research;
- b. the appropriate number of members;
- c. the need for members to be free from conflicts of interest or bias; and
- d. gender/diversity of members.

(35) 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 5 working days of receiving such advice.

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

(37) 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 complaint raised;
  - ii. all relevant information assembled by the AO;
  - iii. the Panel Terms of Reference developed as per Clause 32;
  - iv. records of the Preliminary Assessment;
  - v. the Preliminary Assessment Report; and
  - vi. records of any communications regarding the complaint 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; and
  - e. provide the Panel with secretariat support.

## **Conducting The Investigation**

(38) Where a conflict of interest arises before or during the Investigation, Panel members must ensure the conflict of interest is disclosed and managed in accordance with the [Conflict of Interest Policy](#) and [Conflict of Interest Procedure](#). 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 Panel composition requirements, an additional Panel member(s) must be appointed by the DO.

(39) 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 and consider if more evidence may be required;
- b. may request expert advice to assist the Panel in its Investigation, including external advice in accordance with clauses 48-49;
- c. may seek legal advice from the University's Legal & Compliance unit when required;
- d. will arrive at findings of fact about the allegation/s;
- e. will identify whether the principles and responsibilities of the [Code](#) have been breached;
- f. will consider the seriousness of any breach; and
- g. will provide an Investigation Report, including recommendations as appropriate.

(40) The Panel should seek advice from the DO if it considers that the scope and/or the Terms of Reference are too limiting. The DO may consider an amendment to 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 must be given the opportunity to respond to any new material arising from the change in scope.

(41) Panel members are encouraged to reach a consensus regarding findings of fact and recommendations. Where there are dissenting views, the dissenting views should be included in the Investigation Report.

## **The Investigation Report**

(42) On completion of the Investigation, the Panel will develop and provide an Investigation Report within the scope of the Terms of Reference. The Panel will then provide the Investigation Report to the Respondent for a response, with the Respondent comments to be submitted within 15 working days from receipt of the Investigation Report.

(43) The Panel will then consider the Respondent comments and provide the Investigation Report and Respondent comments to the DO.

(44) The DO will:

- a. consider:
  - i. the findings of fact;
  - ii. the evidence presented;
  - iii. any recommendations by the Panel in the Investigation Report;
  - iv. responses to the Investigation Report from the Respondent; and
  - v. the extent and seriousness of the breach/es, and possible corrective actions;
- b. finalise the Investigation Report, adding further recommendations where appropriate; and
- c. provide the report to the REO.

**Investigation Outcome(s)**

(45) 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.

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

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

	<b>Determination</b>	<b>Action/s</b>
1.	No breach of the <a href="#">Code</a> has occurred; the allegation/s 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 Unit.
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/es when determining the response, which may include: <ul style="list-style-type: none"> <li>a. determining and assigning corrective actions;</li> <li>b. referring the breach to the applicable University process; or</li> <li>c. referring Honorary appointments to the review provision of the <a href="#">Honorary Academic Titles Policy</a>.</li> </ul> 2. The REO will ensure that: <ul style="list-style-type: none"> <li>a. efforts are taken to correct the public record of the research, including publications if the breach/es have affected the accuracy of research findings; and</li> <li>b. any systemic issues identified as leading to the breach/es are escalated to the appropriate University unit or role for corrective action.</li> </ul>

(47) 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 will 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 delegated authority.

**Advice**

(48) The DO, AO or Panel may seek advice or review from external experts at any stage. All external parties will be:

- a. subject to confidentiality requirements; and
- b. required to declare conflicts of interest in accordance with the [Conflict of Interest Policy](#).

(49) During an Investigation, the details of any proposed external expert will be disclosed to the Respondent with a request that any related conflicts of interest be disclosed.



## **Section 6 - Relaxing Provision**

(50) With due consideration to the principles of procedural fairness, the Deputy Vice-Chancellor (Academic) and Vice President may relax any provision of this Procedure to provide for exceptional circumstances arising in any particular matter.

## **Section 7 - Requests for Review**

(51) Where a Complainant or Respondent is dissatisfied with the outcomes of an Investigation Panel, they should be directed to the University's [Complaint Management Policy](#).

(52) Requests for a review of an Investigation outcome will only be considered on the grounds of procedural fairness, and will be reviewed in accordance with the [Complaint Management Policy](#).

## **Section 8 - Record Management**

(53) 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>	Current
<b>Effective Date</b>	1st April 2021
<b>Review Date</b>	1st April 2024
<b>Approval Authority</b>	Pro Vice-Chancellor Research and Innovation
<b>Approval Date</b>	31st March 2021
<b>Expiry Date</b>	Not Applicable
<b>Responsible Executive</b>	Brian Kelly Pro Vice-Chancellor (Research) brian.kelly@newcastle.edu.au
<b>Enquiries Contact</b>	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.

**"Risk"** - Effect of uncertainty on objectives. Note: An effect is a deviation from the expected, whether it is positive and/or negative.

**"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.

**"Research"** - As defined in the Australian Code for the Responsible Conduct of Research, or any replacing Code or document.

**"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.