

Procedure:

Managing and Investigating Breaches of the *Code of Conduct: Research*

Effective: 24 May 2023

Audience: Staff and Students

Policy Category: Academic
Policy Sub-category: Research

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Procedure Owner:	Pro Vice Chancellor, Research
Responsible Officer:	Director, Research Office
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1 PURPOSE

- 1.1** This Procedure sets out the processes for managing and investigating potential breaches of the *Code of Conduct: Research*.

2 RELATED DOCUMENTS

- 2.1** This Procedure should be read in conjunction with the following documents:
- 2.1.1 *Code of Conduct: Research*
 - 2.1.2 *NHMRC The Australian Code for the Responsible Conduct of Research 2018*
 - 2.1.3 *AIATSIS Code of ethics for Aboriginal and Torres Strait Islander Research 2020*
 - 2.1.4 *NHMRC Peer Review: A guide supporting the Australian Code for the Responsible Conduct of Research 2019*
 - 2.1.5 *NHMRC Guide to Managing and Investigating Potential Breaches of the Australian Code for the Responsible Conduct of Research 2018*
 - 2.1.6 *NHMRC Research Integrity Advisors Guide 2022*
 - 2.1.7 *General Regulations*
 - 2.1.8 *Staff Enterprise Agreement 2018-2021*
 - 2.1.9 *Policy: Research Data Management*
 - 2.1.10 *Procedure: External Research Funding Application and Management*
 - 2.1.11 *Policy: External Research Funding Application and Management*
 - 2.1.12 *Policy: Higher Degree by Research Supervision*
 - 2.1.13 *Policy: Privacy*
 - 2.1.14 *Policy: Intellectual Property*
 - 2.1.15 *Policy: Ethics Approval for Research Involving Human Participants*
 - 2.1.16 *Policy: Academic Integrity*
 - 2.1.17 *Statement: Academic Freedom*
 - 2.1.18 *Policy: Protecting Academic Freedom and Freedom of Speech*
 - 2.1.19 *Procedure: Academic Integrity*
 - 2.1.20 *Procedure: Research Data Management*
 - 2.1.21 *Procedure: Higher Degree by Research Supervision and Candidature*
 - 2.1.22 *Guideline: Authorship, Peer Review and Dissemination of Research*

3 SCOPE

- 3.1** This Procedure is applicable to all persons who conduct, assist in conducting, or are involved in supervising, research on behalf of, or under the auspices of, the University or as part of his or her role or studies with the University.
- 3.2** This Procedure does not apply to allegations of Breaches of academic integrity by a Researcher who is wholly or substantially unconnected with the conduct of research. Such allegations should be addressed in accordance with the *Policy: Academic Integrity* and the *Procedure: Academic Integrity*.

4 PROCEDURE FOR INVESTIGATING POTENTIAL BREACHES

4.1 Stage 1: Advice from Research Integrity Advisor

- 4.1.1 Prior to initiating a complaint, a person who believes they may have a complaint against a Researcher about a potential breach of the *Code of Conduct: Research* should seek advice from a Research Integrity Advisor (RIA).

4.2 Stage 2: Preliminary Assessment

- 4.2.1 Complaints against a Researcher that an alleged breach of the *Code of Conduct: Research* has occurred can be made in writing to:
- (a) the National Head of School, where complaints involve a researcher who is a student or former student enrolled in the school or involve a staff member of the School;
 - (b) the Director, where complaints involve a staff member of the Research Institute; or
 - (c) to the Executive Dean, where complaints involve a Researcher who is a Director, Research Institute, National Head of School, or a person who holds an honorary adjunct, clinical academic, visiting appointment with the University.
 - (d) to the Pro Vice-Chancellor (PVC), Research, where complaints involve a researcher who is an Executive Dean of a faculty.
- 4.2.2 Complaints should include all information relevant to the alleged breach and any available evidence to support the complaint.
- 4.2.3 Anonymous complaints or complaints lodged by a third party will be accepted and considered, although progression of an assessment in accordance with clauses 4.3 and 4.4 will depend on the nature of the complaint and the evidence presented.
- 4.2.4 The National Head of School, Director or Executive Dean will consider whether it is appropriate or reasonable to disclose the identity of the Complainant to the Respondent at this stage, taking into account the need to protect the Complainant and the Respondent's right to procedural fairness.
- 4.2.5 The National Head of School, Director or Executive Dean will consider the information provided and make a preliminary assessment on whether the complaint, if established, could constitute a breach of the *Code of Conduct: Research*. If so, the National Head of School, Director or Executive Dean will:
- (a) advise the Respondent that the complaint has been made, outline the complaint in writing and provide a copy of the complaint, if appropriate.
 - (b) advise the Respondent of the process to be followed and a copy of the *Code of Conduct: Research*, relevant policies, this *Procedure* and *The Australian Code for the Responsible Conduct of Research 2018 (the Australian Code)*; and
 - (c) arrange a meeting with the Respondent to discuss the complaint, at which the Respondent may bring a support person, and allow/advise the Respondent to submit a written response to the complaint.
- 4.2.6 If, following the meeting in 4.2.5 (c), the National Head of School, Director or Executive Dean forms the view that the complaint does not constitute a breach of the Code of Conduct or Research Misconduct he or she will deal with the complaint at a local level and provide confirmation of the outcome to both the Complainant and the Respondent.
- 4.2.7 If, following the meeting in 4.2.5 (c), the National Head of School, Director or Executive Dean forms the view that the complaint is vexatious or frivolous, it may be investigated

as a potential breach of the Code of Conduct: Staff.

- 4.2.8 Where the National Head of School, Director or Executive Dean forms the view that the complaint, if proven, would constitute a breach of the *Code of Conduct: Research* or research misconduct he or she will refer the allegation to the Pro Vice Chancellor (PVC), Research for formal investigation. The seriousness of potential breaches can range from minor to major, and in accordance with clause 5.4.2 of the *Code of Conduct: Research*, the manner of investigation will be proportional to the extent of the potential breach.
- 4.2.9 The National Head of School, Director or Executive Dean will advise the Respondent in writing within five working days of the meeting in 4.2.5 (c) that the matter has been referred to formal investigation.
- 4.2.10 If the Respondent is a staff member, the preliminary assessment will be deemed to meet the requirements of the local level management process for managing misconduct under clauses 24.3.2 to 24.3.5 of the University's *Staff Enterprise Agreement 2018-2021*.

4.3 Stage 3: Formal Investigation

- 4.3.1 Where the complaint is referred to the PVC, Research and relates to a student, the PVC, Research will refer the allegation to an Investigating Officer to formally investigate the allegation in accordance with clause 8.8 of the University's *General Regulations*. The Investigating Officer will be the Chair of the University Disciplinary Committee). The process will follow the procedure below but shall be deemed to have met the requirements of the University Disciplinary Committee under section 8.8 of the *General Regulations*.
- 4.3.2 Where the complaint is referred to the PVC, Research and relates to a staff member, the PVC, Research will refer the allegation to the Vice Chancellor who will appoint an Investigating Officer to formally investigate the allegation in accordance with clause 24.3.7 of the University's *Staff Enterprise Agreement 2018-2021*.
- 4.3.3 In managing the formal investigation (in relation to both a staff member and student) the Investigating Officer will:
- (a) prepare a clear statement of allegations;
 - (b) develop the terms of Reference for the investigation, taking into account the checklist at Appendix 2 of the *Guide to Managing and Investigating Potential Breaches of the Australian Code for the Responsible Conduct of Research (the Investigation Guide)*;
 - (c) determine whether the investigation requires an Investigation Panel in accordance with section 4.5.2.3; and
 - (d) seek legal advice on matters of process where necessary.
- 4.3.4 The Investigation Panel will comprise:
- (a) the Investigating Officer (as Chair), nominated by PVC, Research;
 - (b) any other person(s) that the Chair considers to be appropriate, whether a staff member or not.
- 4.3.5 In nominating a member of the Investigation Panel, the Chair must consider:
- (a) the expertise, skills and appropriate numbers of members required;
 - (b) actual or perceived conflict of interest or bias of proposed members;
 - (c) the gender/diversity of members;

- (d) knowledge and understanding of the Australian Code and of the *Code of Conduct: Research*; and
 - (e) any actual or perceived conflict of interest of the potential panel member.
- 4.3.6 The Investigating Officer must inform the Respondent in writing of the terms of the allegation(s), the decision to undertake an investigation, and, if required, details of the Investigation Panel appointed to undertake the investigation.
- 4.3.7 The Respondent must be given an opportunity to raise any valid concerns with the Panel composition in writing within five (5) working days of notification.
- 4.3.8 Panel members who are not staff members of the University will be provided with written appointments, and any external members must sign a Deed of Indemnity.
- 4.3.9 Prior to commencing the investigation, the Investigating Officer must give due consideration to any additional considerations such as:
- (a) whether the potential Breach relates to a collaborative research project and whether it will be necessary to involve or advise parties across multiple institutions and jurisdictions; and
 - (b) whether the allegation relates to allegations of corrupt and/or criminal behaviour, the reporting obligations to external bodies and authorities, and the effect of this on the internal management of the allegation; and
 - (c) whether the alleged conduct raises any immediate safety issues for the Complainant, fellow researchers, research participants or the environment.
- 4.3.10 The Investigating Officer is responsible for implementing and managing the necessary action to address any of the considerations in 4.3.9 and will have a deliberative vote and a casting vote in the event of a deadlock.

4.4 Stage 4: Investigation Process

- 4.4.1 The Investigating Officer and Panel members must investigate the allegation by gathering all available information in relation to the alleged breach or research misconduct, including interviewing any person involved. In gathering information, the Investigating Officer and Panel members are not bound by rules of evidence, but must ensure that they act fairly having regards to the requirements of procedural fairness, including:
- (a) providing the Respondent with the specific details of the allegation, and any information provided to the Panel to allow the Respondent to respond to the allegations;
 - (b) allowing the Respondent the opportunity to respond in writing and orally;
 - (c) considering the allegation(s) on the facts before them and not taking into account irrelevant matters;
 - (d) obtaining the permission of the Respondent prior to any audio recording of the hearing being made; and
 - (e) giving the Respondent an opportunity to respond to any new material arising which the Investigating Officer or Panel intends to take into account.
- 4.4.2 When determining the seriousness of the Breach, the following factors will be considered:
- (a) the extent of the departure from accepted practice;
 - (b) the extent to which research participants, the wider community, animals and the

- environment are, or have been, affected by the breach;
 - (c) the extent to which it affects the trustworthiness of research;
 - (d) the level of expertise of the Respondent as a researcher;
 - (e) whether there are repeated breaches by the Respondent;
 - (f) whether institutional failures have contributed to the breach; and
 - (g) any other mitigating or aggravating circumstances.
- 4.4.3 The Respondent must be given at least seven (7) working days' notice of the time and place of any hearing to hear and determine the complaint. The Investigating Officer and the Respondent may agree to shorten or extend the time limits for any hearing.
- 4.4.4 The Respondent will be allowed to be accompanied by a support person, who may be a Union representative, at any hearing held, provided that:
- (a) the support person must not have any association with the allegations or be a qualified legal practitioner unless permission is granted by the Investigating Officer;
 - (b) the support person has no right to be heard at the hearing, except with the permission of the Investigating Officer, and may be excluded by the Investigating Officer if they disrupt the hearing; and if the Investigating Officer permits the Complainant and/or Respondent to have legal representation, normally only in exceptional circumstances, the Investigating Officer also has the right to engage a similar level of legal representation.
- 4.4.5 The Complainant may be given the opportunity to see relevant evidence used in the investigation, where appropriate, for example in cases where they are directly affected by the investigation.
- 4.4.6 Any persons asked to give evidence to the Panel will be provided with relevant, and if necessary, de-identified, information, including:
- (a) schedule of meetings and/or hearings they are asked to attend;
 - (b) relevant parts of the Terms of Reference for the investigation, if appropriate;
 - (c) advice as to how the Panel intends to conduct interviews;
 - (d) advice about whether the interviews will be recorded;
 - (e) information about a support person;
 - (f) whether an opportunity will be provided to comment on matters raised in the interview;
 - (g) disclosing interests;
 - (h) confidentiality requirements; and
 - (i) the Panel's procedures.
- 4.4.7 If a Respondent chooses not to reply or appear before the Panel, the investigation will continue in their absence, but the Chair of the Panel must provide the Respondent with a further opportunity to respond to any adverse findings it proposes to make in writing prior to making a determination.
- 4.4.8 The Investigating Officer, as Chair of the Panel, will have a deliberative vote and a casting vote in the event of any deadlock.
- 4.4.9 Upon completion of the investigation, the Investigating Officer will provide a draft written report to the Respondent and the PVC, Research and will provide five (5)

working days to provide comment on the report.

- 4.4.10 The Investigating Officer will take into account any comments received and provide a final written report to the Respondent, the PVC, Research and, where the Respondent is a staff member, the Vice Chancellor. The Report must:
- (a) address the Terms of Reference of the investigation;
 - (b) state findings of fact concerning the allegations;
 - (c) state the basis of those findings of fact;
 - (d) state whether or not, in the view of the Investigating Officer and the Panel, the allegation of a Breach of the *Code of Conduct: Research* and/or research misconduct has occurred; the extent and/or seriousness of the breach;
 - (e) any mitigating circumstances arising out of the investigation;
 - (f) any other matter the Panel or Investigating Officer considers necessary to assist the Vice Chancellor or PVC, Research in forming a determination;
 - (g) a recommendation on what disciplinary action, if any, will be taken against the Respondent. This recommendation will be proportionate to the seriousness of the Breach. Where the Respondent is a staff member, any recommendation in relation to staff must comply with clause 24.3.20 of the University's *Staff Enterprise Agreement 2018-2021*.

4.5 Stage 5: Outcomes

4.5.1 Respondent is a staff member

- 4.5.1.1 The Investigating Officer will advise the Respondent that he or she has a right to appeal the findings and/or recommendations of the Panel and that the Respondent must lodge an appeal with the Vice Chancellor, in writing, within five (5) working days of receipt of the Panel's report.
- 4.5.1.2 If the Respondent does not lodge an appeal under clause 4.5.1.1 above the Vice Chancellor may make a decision on the basis of the report as to any disciplinary action to be taken and that decision will be the final decision of the University. Where appropriate the Complainant will be notified of the outcome.

4.5.2 Respondent is a student

- 4.5.2.1 Where the Respondent is a student and the Panel determines that a breach of the *Code of Conduct* has occurred the PVC, Research will make a determination as to what disciplinary action, if any, should be taken against the student, taking into account the Panel's final report and recommendations and the penalties prescribed in Section 8 of the *General Regulations*. For international students, the PVC, Research will consult with the PVC, International to identify any potential implications for reporting to relevant government departments and/or on a student's visa.
- 4.5.2.2 The PVC, Research will advise the Respondent of the outcome and the disciplinary action, if any, to be taken.
- 4.5.2.3 Where the Panel has identified systemic issues as a contributing factor to any breach, these will be referred to the appropriate committee or staff member to be addressed.

4.6 Stage 6: Appeal Process

- 4.6.1 In the event a Respondent who is a staff member lodges an appeal of the findings or

recommendations as to the disciplinary action of the Panel in accordance with 4.5.1.1, the Vice Chancellor will refer the matter to a Staff Review Committee who will undertake a review for the Vice Chancellor in accordance with clause 24.4 of the University's *Staff Enterprise Agreement*.

A Respondent who is a student may lodge an appeal against the findings of the Investigation Panel in accordance with Regulation 8.14.3 of the *General Regulation*.

4.7 Stage 7: Reporting Outcomes

- 4.7.1 The PVC, Research will ensure that the Complainant receives written notification of the outcomes of the investigation.
- 4.7.2 Findings of research misconduct will be reported to any relevant parties such as funding agencies supporting research where the misconduct has occurred, or journals and other media through which the research in question has been reported.
- 4.7.3 Every effort will be taken to correct any public record of the research if a breach has affected the accuracy or trustworthiness of research findings and their dissemination.
- 4.7.4 Where no adverse findings are made the PVC, Research may take the steps considered appropriate to restore the staff member or student's reputation.
- 4.7.5 The Vice Chancellor, on recommendation of the PVC, Research, will determine if a public statement is necessary and appropriate to communicate the findings of the Investigation.
- 4.7.6 If a Respondent ceases to be an employee or student of the University, the matter may be referred to the Respondent's new employing institution at the discretion of the Vice Chancellor, following appropriate legal advice.
- 4.7.7 An external review of the Investigation process by the Australian Research Integrity Committee may be requested in cases where funding from the National Health and Medical Research Council (NHMRC) or Australian Research Council (ARC) has been used.

4.8 Maintaining records and reporting for potential research integrity breaches

- 4.8.1 The Research Office will maintain a central record of the processes followed and the outcomes for investigations into potential breaches of the *Code of Conduct: Research*.
- 4.8.2 Summary information relating to investigations into potential breaches of the *Code of Conduct: Research* will be included in the annual research integrity reports provided by the PVC Research to Academic Council, in accordance with clause 6.8.7 of the *Code of Conduct: Research*.

5 DEFINITIONS

5.1 For the purpose of this Procedure, the definitions outlined in the *Code of Conduct: Research* apply.

5.2 In addition, the following definitions apply to this Procedure:

Australian Code means the Australian Government's *Code for the Responsible Conduct of Research 2018*.

Breach means a failure to meet the principles and responsibilities outlined in the University's *Code of Conduct: Research*. The term may refer to a single or multiple breaches. Examples of breaches include, but are not limited to:

- (a) not meeting required research standards, such as conducting Research without

- requisite ethics approval, misuse of research funds, or concealing or facilitating breach of the Code by others;
- (b) fabrication, falsification or misrepresentation of research data or source material;
 - (c) plagiarism;
 - (d) inappropriate research data management, such as failure to maintain research records; inappropriate destruction of or disclosure of research records, source material and/or research data;
 - (e) inadequate supervision, such as failing to provide adequate guidance or mentorship on responsible research conduct to researchers or research trainees under supervision; authorship, such as failing to acknowledge the contributions of others fairly, or misleading ascription of authorship;
 - (f) failing to disclose and manage Conflicts of Interest; and
 - (g) failing to conduct peer review responsibly.

Code or Code of Conduct means the University's *Code of Conduct: Research*.

Complainant means the person(s) bringing the potential breach to attention.

Director means Director of Research Institute.

Guide or Investigation Guide means the *Guide to Managing and Investigating Potential Breaches of the Australian Code for the Responsible Conduct of Research* published by the NHMRC, ARC and Universities Australia.

Investigating Officer means the person appointed by the PVC, Research to undertake a formal investigation of a potential breach of the *Code of Conduct: Research* with responsibility for appointing and chairing an Investigation Panel.

Investigation Panel, or Panel means the person(s) appointed by the Investigating Officer to undertake the formal investigation of a potential breach of the *Code of Conduct: Research*, chaired by the Investigating Officer.

Research Integrity Advisor or RIA is a nominated staff member with knowledge of the *Code of Conduct: Research*, the Australian Government's *Code for the Responsible Conduct of Research 2018*, and the Australian Government's *Guide to Managing and Investigating Potential Breaches of the Australian Code for the Responsible Conduct of Research*. The RIA is responsible for promoting the principles of these policies and regulations and providing advice regarding potential Breaches.

Research Misconduct means a major, serious breach of the University's *Code of Conduct: Research*, which is also intentional, reckless, or negligent.

Respondent means the person(s) against whom the allegation of a breach is made.

Support Person means an independent person who can provide support and guidance to a Respondent or help in presenting a case in relation to alleged breaches of the *Code of Conduct: Research*. A support person should not be a qualified legal practitioner unless express approval has been granted by the Chair of the Investigation Panel.

University means The University of Notre Dame Australia.

<p>Formal Investigation</p> <ul style="list-style-type: none"> • Refer the complaint to an Investigating Officer (this will be the Chair of the University Disciplinary Committee) to investigate the allegation in cases where the complaint relates to a student. • Refer the complaint to the Vice Chancellor for appointment of an Investigating Officer where the complaint relates to a staff member. • Prepare statement of allegations, Terms of Reference and nominate Investigation Panel in accordance with clauses 4.3.3 to 4.3.5 inclusive. • Respondent provided with a written statement outlining the decision to undertake a formal investigation and appointments to the Panel, with the opportunity for the Respondent to raise valid concerns with the Panel composition within five days of notification. • Prior to commencing the investigation, due consideration given to any additional considerations outlined in clause 4.3.9 and addressed as required. 	<p>PVC, Research</p> <p>PVC, Research Vice Chancellor</p> <p>Investigating Officer</p> <p>Investigating Officer</p> <p>Investigating Officer</p>
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<p>Investigation Process</p> <ul style="list-style-type: none"> • Investigation of allegation undertaken as per clauses 4.4.1 and 4.4.2, ensuring the Respondent is given at least seven working days' notice of the time and place of any hearing and provided further opportunities to respond. • Relevant evidence provided to the Complainant if deemed necessary. • Provided information outlined in clause 4.4.6 to any persons required to give evidence to the Panel. • Draft written report of findings provided to the Respondent and the PVC, Research addressing whether a Breach of the Code of Conduct: Research has occurred, with the opportunity for the Respondent to provide comment within five days of receipt. • Comments from the Respondent are incorporated and final recommendations are provided to the Respondent and PVC, Research (and to the VC if the Respondent is a staff member). 	<p>Investigating Officer and Panel</p> <p>Investigating Officer</p> <p>Investigating Officer</p> <p>Investigating Officer</p> <p>Investigating Officer</p>
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<p>Outcomes</p> <ul style="list-style-type: none"> • If it is recommended that a breach involving a staff member has occurred: <ul style="list-style-type: none"> ▪ the staff member is informed they may lodge an appeal against the finding to the Vice Chancellor within five working days of receipt of the report, in accordance with clause 4.6.1; ▪ The final decision is made; ▪ The Complainant is notified of the decision if appropriate. • If it is recommended that a breach involving a student has occurred, disciplinary action is determined, and the Respondent is notified. • Refer any contributing systemic issues identified in the final report to the appropriate committee or staff member to be addressed. 	<p>Investigating Officer</p> <p>Vice Chancellor</p> <p>PVC, Research</p> <p>PVC, Research</p>
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<p>Appeals</p> <ul style="list-style-type: none"> • If a staff member lodges an appeal of the findings or recommendations, the matter is referred to the Staff Review Committee as per clause 4.6.1. • If a student wishes to appeal the finding, it may be lodged in accordance with Regulation 8.14.3 of the General Regulations. 	<p>Vice Chancellor</p> <p>Respondent</p>
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<p>Reporting outcomes</p> <ul style="list-style-type: none"> • Provide written notification of the outcome to the Complainant. • Findings of research misconduct are reported to relevant external parties as per clause 4.7.2. • In the case where no adverse findings were made, take appropriate steps to restore the reputation of the staff member or student. • Determine whether a public statement is necessary and appropriate to communicate the findings of the investigation. 	<p>PVC, Research</p> <p>PVC, Research</p> <p>PVC, Research</p> <p>Vice Chancellor</p>
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