



University of Sydney submission to the revision of the Australian Code for Responsible Conduct of Research

10 November 2017

1. Will your organisation (or the organisations you represent) be able to implement the revised Code?

Yes, with some challenges

2. Please outline any major issue that would preclude your organisation (or the organisations you represent) from implementing the Code.

1. Definition of research data has changed

The definition of research data provided on page 8 of the draft Code is limited to methodology and does not appear to include research findings or results. *We recommend that the definition is amended to include research findings or results.*

We believe that although this definition encompasses all types of research, it should be expanded to specifically define physical research objects too. The term 'data' does imply digital or numeric research output – physical samples such as archaeological specimens or blood samples are not commonly viewed as 'data', although information about them is. *We recommend that the definition is amended to make it clear that it includes physical research objects.*

2. Definition of researcher is too broad

The definition of researcher currently includes people who assist with the conduct of research. This means that the definition will now include technical and professional staff (e.g. lab technicians, people working in pathology labs testing samples, anaesthetists etc.). These individuals are professionals providing a service and are often not involved with or aware of the research. *We recommend that the definition is adjusted to exclude professional and technical staff including individuals contracted to perform specific tasks.*

3. Research data management guidelines are absent

The current Code (2007) specifies responsibilities of researchers and institutions, and provides instruction on management and retention of research data (including physical objects and research records). This information is absent from the New Code and no timeline has been given for the development and release of a guideline on data management. We recommend that action is taken to ensure that researchers have access to appropriate guidance about data management before the 2007 code is superseded.

3. The co-authors have been cognisant of the need to provide flexibility in the conduct of investigations under the Code in recognition of the fact that some institutions conduct the Code investigation separately from other institutional processes (such as those to investigate general misconduct) whilst others will integrate these processes.

Will your organisation (or the organisations you represent) be able to follow the processes outlined in the Guide to conduct investigations?

No

4. Please outline any major issue that would preclude your organisation (or the organisations you represent) from implementing the Guide. [1200 word limit]

1. The BPG preferences the needs or wants of the complainant over those of the respondent, whether or not the complaint is proven

In the interests of procedural fairness, it is important that equal weighting and consideration is given to both parties in a preliminary assessment or investigation. *We recommend that the BPG is amended to ensure that this is the case.*

In particular, in section 5.4 the BPG requires institutes to communicate with complainants to provide them with confidence that their complaint has been considered appropriately and that complainants who are directly affected should be provided with “.....as much detail as possible about the outcome.....”. Likewise, in section 7.6 the BPG indicates that the draft report may need to be shared with the complainant if they will be affected by the outcome. Complainants are often external to the University and there is consequently no effective means of enforcing confidentiality obligations. Breaches of confidentiality can cause significant and irreparable harm to a respondent – whether or not a complaint is proven. There are also situations where there are further matters to be investigated or related disciplinary proceedings which could be prejudiced by disclosing particular information to a complainant. *We recommend that the text in this section is adjusted to clarify that engagement with complainants should be consistent with the institution’s obligations in relation to privacy, confidentiality and any other relevant considerations such as related investigations.*

2. The BPG provides only very limited provision for matters to be dealt with locally

The BPG provides only very limited provision for matters to be dealt with locally e.g. ethics breaches dealt with by ethics committees. It will not be possible to implement the BPG if all ethics breaches must come through an initial assessment. *We recommend that the wording in sections 2.2 and 5.5 is adjusted to clarify that ethics breaches at the less serious end of the scale can be managed by ethics committees when appropriate, and other less serious matters can also be dealt with locally.*

3. The BPG recommends that research related investigations are managed separately from and prior to other institutional processes.

In some situations, the best results can be achieved by running a single combined process. Running multiple processes can be lengthy, results in duplication of effort including interviews and other evidence collection processes. It also increases stress for both the complainant and the respondent.

Furthermore, it is not always possible to cleanly separate the issues. A research related complaint may include allegations about workplace behaviour. Institutions need to be able to manage these issues pragmatically and effectively (i.e. to communicate that the behaviour does not meet the acceptable

standard as an outcome of the research related investigation, without opening a separate HR investigation).

In addition, the suggestion that the processes should be run sequentially would extend the duration of the overall process, with significant negative impacts on the complainant, the respondent and the institution. *We recommend that this statement should be qualified to allow institutions to follow the most appropriate arrangements on a case-by-case basis.*

4. Additional roles have been created for involvement in the complaint management process, roles have been expanded and a new requirement for internal review has been created.

These steps will add to the complexity of the process and the cost of managing complaints. In particular, we disagree with the proposal to create of a new role (described in section 7.8) described as “a more senior person than the DO. ” given that the role of this person is described as reviewing a process only on grounds of procedural fairness. *We recommend that the wording is adjusted simply to recommend that institutions consider appointing an external person with appropriate skills and expertise.*

5. Several points within the BPG require further clarification in order to be implemented

- a) The BPG mentions the importance of confidentiality in a number of places and specifies that sharing of data should be limited. There is a risk that these statements are interpreted in an unreasonably narrow way by some institutions with the effect that information which should be shared (for example between an administering institution, an affiliated institution and/or the relevant employing institution) is not disclosed at all or not disclosed in a timely manner. *We recommend that these statements are qualified.*
- b) In section 1.2 the BPG states that institutions are required to “consider referring the outcome.....to another institution”. As presently drafted, the meaning of this requirement is unclear. *We recommend that the Code should clarify the kinds of circumstances in which referral to another institution might be needed.*
- c) In section 2.1 the BPG states that “*Inappropriate access to research records, research data and/or source material*” constitutes a breach. We believe that this wording is ambiguous. *We recommend that the wording is modified to “Inappropriate disclosure of or access to research records, research data and/or source material.*
- d) Section 8.3 should provide for action to be taken to minimise risk of harm at any time after receipt of a complaint or a matter involving possible harm comes to the attention of the DO or RIO, not restricted to “any time during a preliminary assessment or investigation” *We recommend that this is amended to provide for action to be taken to minimise risk of harm at any time after receipt of a complaint or a matter involving possible harm comes to the attention of the DO or RIO*

6. A number of recommendations within the BPG do not reflect our understanding of current best practice

- a) Section 6.2 recommends that meetings of the panel be recorded. We disagree that it is best practice to record all meetings. *We recommend that key points from meetings are recorded or noted and the panel determines whether recording is appropriate.*
- b) Section 7.3 states that the respondent should be notified of the composition of the panel. The complainant should also be notified as they may wish to raise issues such as possible conflicts of interest. *We recommend that this section is amended to provide for the complainant to be notified of the composition of the panel.*

c) In section 7.8, the BPG states that the review outcome will replace the original outcome. The view of one person should not automatically replace determination of panel and decision of REO. *We recommend that the RO should provide advice to the REO, with the REO being the final decision maker.*

7. Some recommendations are likely to be difficult to implement in practice

- a) In section 1.2 the BPG specifies that institutions should “avoid adverse consequences for the individual”. This is sometimes not possible. *We recommend that this statement is qualified to state that institutions should “endeavour to” do this.*
- b) In sections 5.3 and 6.2, the BPG requires the DO to receive complaints and determine whether they relate to a potential breach of the Code (5.3) and assign them for preliminary assessment (6.2). It is preferable to provide for initial receipt by RIO staff. It would be an unreasonable use of senior level resources for DO to have to examine all complaints. *We recommend that these sections are amended to provide for institutions to determine arrangements for receipt and initial consideration of complaints.*

5. The Code and the Guide now include a definition of 'research misconduct' in response to feedback from public consultation. The Guide states that an institution needs to consider whether and how to use the term 'research misconduct' for serious breaches of the Code, and provides guidance on the use of the term.

Is the recommended definition of 'research misconduct' clear?

No

6. Please provide general comments on the approach taken in the draft Guide to the recommended definition and use of the term 'research misconduct'. [1200 word limit]

Our preference would be for a definition of serious breach to be included in the Code and BPG. The current description is unclear and subjective and is likely to lead to differences in interpretation between institutions.

This may create complications in situations where more than one institution is involved in a preliminary assessment or investigation, for example where the complaint relates to joint/adjunct/honorary appointments or to collaborative research projects.

It may also lead to concerns for complainants and funding bodies regarding the lack of consistency between institutions in their response to complaints. It allows institutions to set unreasonably stringent requirements for a complaint to be classified as a serious breach, in order to minimise the impact on their institution. Providing more clarity around the definition of a "serious breach" will also help complainants to better understand how their complaint will be assessed.

In addition, the ARC and NHMRC Policies/processes are yet to be developed and they will presumably refer to various trigger points or actions arising from investigations into possible breaches of the Code. Unless there is uniformity in defining these points of intersection, we could have institutions disadvantaging their cohorts of researchers by virtue of how they construct their processes.

We also recommend that the definition of research misconduct is amended to read "A serious breach of the Code which is also intentional, reckless or grossly negligent". A finding of research misconduct is a very serious matter for a researcher, and negligence or carelessness at the lower end of the scale should not provide a basis for such a finding.