

AUSTRALIAN CODE FOR THE RESPONSIBLE CONDUCT OF RESEARCH 2007

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Origin of the Code

- This Code replaces the 1997 NHMRC/AVCC Joint Statement on Research Practice
- Joint Working Group appointed in 2003 - NHMRC, ARC & AVCC reps
- Public consultation by JWG concluded in May 2006 following release of 2nd draft Code

Part A of the Code

- Principles and practices for encouraging the responsible conduct of research
- Institutions have responsibilities
- Researchers have responsibilities

Policy Requirements

- Must have a documented Research Governance Framework – quality, safety, privacy, risk mgt, financial mgt, ethical responsibility – roles and responsibilities
- Must have a well-defined process for receiving and managing allegations of “Research Misconduct” [RM]

Data, Trainees

- Management of research data – retention, storage, record-keeping, ownership ID, security & confidentiality
- Supervision of Research Trainees – supervision, mentoring, induction, ensuring validity, attribution

Publication

- Publication/dissemination of research findings – sponsors, confidentiality agreements, IP protection, the media ...
- Numerous responsibilities of researchers listed (to be reflected in Uni policies?)

Authorship

- Authorship – policy on criteria for authorship is required - “significant scholarly contribution / intellectual involvement”, listing or exclusion by permission, editors, ...
- Collaborating researchers to agree on authorship, signed acknowledgements to be retained

Peer Review

- Peer review – to be encouraged and supported, needs to be conducted responsibly (requirements to be set out in Uni policies?)
- Researchers must not seek to influence the process or outcomes of the peer review

Conflicts, Collaboration

- “Institutions must have a policy for managing conflicts of interest”, conflicts are unavoidable, disclosure
- “There must be a clear policy on collaborative research projects” – up-front agrt - financing, IP, ethics, authorship, publication, reporting ...

Part B of the Code

- Origin of Part B / “Hard cases make bad law” - the Hall affair (UNSW), starting 2001
- 18 September 2008 – RM Workshop convened at Parl House by IISR Minister Carr

“Research Misconduct”

- More than a mere non-serious breach of the Code (unless repetition or continuation)
- If non-serious – will normally be dealt with by Head of Department
- Research Misconduct (examples specified): breach + wilfulness ... + serious consequences

Part B investigations

- “The Inquiry”:
 - investigate the allegations
 - determine *findings of fact*
 - determine whether RM has occurred
- These are “additional processes”
- “The RM framework does not address disciplinary issues” (!!)

The players

- Supervisors and Heads of Dept – “who should be the 1st point of contact when concerns arise”
- The complainant (who may be a whistle-blower)
- Advisers in Research Integrity – trained senior staff

The DVCR

- The designated Receiver of Allegations (normally the DVCR)
 - receives complaint from complainant or referred on by Head of Dept
 - advises the VC (or delegate) whether a prima facie case of RM exists

The VC

- If warranted, the VC (or delegate) is to establish a RM Inquiry (either “internal” or “external”)
- If the alleged RM has potentially serious consequences, the VC (or delegate) must establish an “independent external RM inquiry”

Mini Royal Commission

- “Independent External RM Inquiry”
- Panel – minimum of 3 members
- Cannot include a person employed by or connected with the Institution
- Chair to be a lawyer or equivalent
- Panel to have legally-qualified “Counsel assisting” (prosecutor)
- “Defendant” has legal representation

Mini Royal Commission

- Evidence to be put via witnesses
- Panel members' relevant expert knowledge to be put to Defendant
- Panel is to determine whether hearing is to be open to the public or conducted in private
- Findings to be made available to the public

Institutional RM Inquiry

- Inquiry Panel – 3 members?
- Legal representation of “parties” [not defined] should not be allowed
- “...but a person appearing before the RM Inquiry may be accompanied by a support person”

Interaction with EAs

- 2007: “The processes of resolving RM should be progressively incorporated into the institution’s [EAs] when these are next negotiated”
- The institution then, subsequently, makes a decision on sanction after applying its disciplinary procedures

Appeals (& when)?

- 10.1: "[Defendants to serious RM complaints] must be entitled to *appeal* to a higher body through institutional disciplinary processes"
- 12.3: "When conducting [an External Inquiry] the [Defendant] may have an entitlement to *appeal* to a higher authority, most usually the courts"

EA provisions

- 2 standard models – both providing procedural fairness/natural justice
- Model A – “Bryant procedures”
- Model B – Independent Investigator
- Both models – written allegations, response considered, investigation, *findings of fact*, report to VC

La Trobe – Model A

- La Trobe University Collective Agreement 2009: Clauses 72 & 74
- Clause 72 – Disciplinary Procedures
 - particularised written allegations
 - 10 days to respond
 - 3 member MIC is established
 - In camera MIC proceedings, with no legal representation allowed

La Trobe Clause 74

- Clause 74: RM variations to Clause 72
 - Chair not to be an employee, and shall have tribunal experience
 - MIC can be augmented by up to 2 others with credentials as set out in the Code's "External Inquiry" requirements
 - joint investigation possible if another Institution is also involved

Creation of ARIC

- 12 April 2010 – announcement by Minister Carr: ARIC established
- 11 January 2011 – Chair and other members of ARIC announced
- February 2011 – ARIC Framework announced, ARIC open for business

ARIC Framework

- Australian Research Integrity Committee Framework, Feb 2011 (ref NHMRC website)
- “It is a condition of [Aust Govt funding] that institutions ensure research is conducted according to the [Australian Research Code]”

ARIC's role

- “The ARIC provides a review system of institutional processes to respond to allegations of RM. This system is intended to ensure that institutions investigate such allegations and observe proper process in doing so”
- Ombudsman-type function

ARIC's ToR

- “The ARIC panel will ... conduct an independent review, considering whether the institutional process followed by a nominated institution in the relevant case of alleged RM was conducted in accordance with the process outlined in the Code (as amended from time to time) and with relevant institutional policy and procedures”

ARIC's ToR

- "The ARIC will at all times respect the legal status of instruments, including [EAs], regulating employment conditions"
- Q. Who can seek a review by ARIC?
A. "A person, group or organisation" can, including anonymous complainants, and a Defendant to RM allegations

ARIC's jurisdiction

- Grounds for review by ARIC:
 - alleged breach of procedural fairness (including fairness being compromised by the process being “carried out in an untimely manner”)
 - deviation “from the processes defined in the Code and/or from the nominated institution’s documented processes”

Discussion time

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