



4 May 2006

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Dear Rhonda,

## **AUSTRALIAN CODE FOR THE RESPONSIBLE CONDUCT OF RESEARCH**

The University of New South Wales welcomes the opportunity to comment on the joint NHMRC/ARC/AVCC “*Australian Code for the Responsible Conduct of Research: second consultation draft*” which will replace the “*Joint NHMRC/AVCC Statement and Guidelines on Research Practice*”.

The comments below are in response to the: (i) general principles of responsible research; (ii) the practices for encouraging responsible research conduct; and of most concern (iii) the responsibilities of institutions and researchers in handling allegations of research misconduct.

UNSW is aware of, and supports, the letter sent to Professor Anderson from Virginia Walsh on behalf of the Group of Eight dated 6 April 2006. UNSW is generally pleased with the changes made from the first consultation draft and broadly supports Chapters 1-9. ***UNSW has very serious concerns about Chapter 10 on “Handling allegations of research misconduct” and as such does not support what is proposed in the draft Code.***

Since Chapters 1-9 have broad support and Chapter 10 is clearly contentious, it may well be wise to progress this in two stages so that most of the proposal can be incorporated into practice as quickly as possible yet recognising that there is still further work to get the important content of Chapter 10 right.

## **PART A – INTRODUCTION**

UNSW is committed to the responsible practice of research and the Deputy Vice-Chancellor (Research) is responsible for educating the UNSW community on research integrity and the prevention of misconduct relevant to research. UNSW fosters a culture of research integrity through the promotion of the responsible practice of research which included a dedicated UNSW website<sup>1</sup>.

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<sup>1</sup> <http://www.dvcresearch.unsw.edu.au/integrity.html>

Issues surrounding research integrity at UNSW are primarily addressed in the *UNSW Code of Conduct for the Responsible Practice of Research*<sup>2</sup> which incorporates the guidelines for dealing with allegations of research misconduct. This Code was updated in 2004 in response to recommendations made by the St James Ethics Centre following a comprehensive review of UNSW research integrity policies and processes.

### **Section 2 – General principles of responsible research**

UNSW takes exception to the use of the term “*Research Trainee*” (first mentioned [Section 2.3 – Train Staff, Page 12](#) and referred to throughout the draft Code, particularly [Section 4, Page 21](#)). “*Research trainee*” in the context used is more appropriately and more commonly referred to throughout the international higher education sector as “*Early Career Researcher*”. **UNSW would like to see all “*Research Trainee*” references in the document replaced with “*Early Career Researcher*”.**

Further, in relation to joint arrangements for induction and training, it is curious to UNSW as to why the draft Code suggests that “*smaller institutions may make joint arrangements...*” ([Section 2.3, page 12](#)). UNSW recommends that the term “*smaller*” should be deleted. **UNSW believes that any institution, regardless of size, should be encouraged to enter into joint training and induction arrangements with any other institution.**

The obligations in relation to “suspected” misconduct as set out in [Section 2.11, Page 14](#) on reporting research misconduct are very wide and appear to be contrary to the procedural framework set out for handling misconduct allegations in [Section 10](#). This obligation, which is onerous and vague, is itself capable of founding an allegation of research misconduct, *ie* a person may be guilty of research misconduct for *not* reporting a suspicion of research misconduct. This would have the effect of widening considerably the usual definition of research misconduct as set out in the draft Code itself ([Section 10](#)). The vagueness of the proposed formulation of the duty is significantly more onerous.

## **PART B – PRACTICES FOR ENCOURAGING RESPONSIBLE RESEARCH CONDUCT**

### **Section 3 – Research data and records management**

UNSW has had a recent case where requests were made for data which was highly sensitive politically and also highly confidential. This matter is particularly acute when it involves health information, but it may also be important where information is provided which is commercially sensitive and valuable. While the draft Code addresses the issue of confidentiality in [Section 3.4 \(Page 18\)](#) and [Section 3.7 \(Page 20\)](#), it would benefit from further strengthening and consideration because requests for such data can be made under Freedom of Information (FoI) legislation. If the Code does not support confidentiality sufficiently strongly, then it is difficult to refuse

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<sup>2</sup> [http://www.secretariat.unsw.edu.au/acboard/approved\\_policy/Code\\_of\\_Conduct\\_Research.pdf](http://www.secretariat.unsw.edu.au/acboard/approved_policy/Code_of_Conduct_Research.pdf)

access to confidential information under Fol. This means that the information is not necessarily limited to researchers and so can be accessed and used by persons who do not have the ethical responsibilities of researchers or institutions under this Code.

The issue of responsibility for “*original material*” is not adequately addressed in [Section 3.4.1 \(Page 18\)](#). UNSW would like to see specific references to who is responsible for “*original material*”, especially when it is material which is often contentious and highly confidential material.

There appears to be some confusion with respect to the terminology used in this section. The draft makes a distinction between “*data*” and “*records*”. While this is a helpful distinction and may be helpful in relation to the issues of confidentiality, UNSW believes that the distinction is somewhat blurred and diminished by the lack of consistency in the drafting of the whole section. [Section 3.6.3 \(Page 20\)](#) refers to an apparently separate category of “*primary research records*”. UNSW suggests that this category be defined clearly in the introduction for greater clarity. It would be helpful to have a clear statement about who owns “*primary research records*” and who is entitled to have them and have access to them. It would also be helpful to have a statement that researchers should be prepared to provide the records to any investigation of allegation of research misconduct which requires them.

#### **Section 4 - Supervision of Students and Research Trainees**

The wording of [Section 4.2.2 \(Page 22\)](#) - “*make formal induction and training...*” is a change from the previous Code. The Code must recognise that the training of supervisors and research trainees is discipline specific and UNSW would question whether all students would need a formal induction to every area listed. Without the Code specifying what is meant by “*formal induction*”, UNSW would recommend removal of the word “*formal*” and just have “*make available induction and training...*”.

Further, UNSW believes that much of the matters raised in [Section 4.2.1 \(Page 21\)](#) and [Section 4.2.2 \(Page 22\)](#) are best left to the proper processes and procedures set up in institutions to deal with these matters. There is little value in setting up another layer of processes and procedures and additional duties when they are already covered adequately and appropriately by other processes – in the case of OH&S matters this is obviously unnecessary because there is already a comprehensive legislative regime in place.

#### **Section 5 - Publication and Dissemination of Research Findings**

[Section 5.6 \(Page 26\)](#) of the Code needs to recognise that it is quite acceptable to publish more or less the same text in different places in certain circumstances, if for example the article appears translated into different languages, or if an author publishes an anthology of his or her previously-published articles. This is in addition to the “*review articles*” exception stated in the draft Code.

While UNSW agrees with [Section 5.7 \(Page 27\)](#) that “*researchers should make every effort to obtain permission from the original publisher before republishing research findings*”, UNSW has had problems in the past where people and publishers disappear. UNSW would like to see added to this paragraph “*...unless,*

*after all reasonable inquiries have been made, it is not reasonably possible to locate a publisher and there are no grounds to believe that the original publisher will object or has any grounds to object to the re-publication.”*

### **Section 6 - Authorship**

The criteria for authorship are not universally defined, and as such disputes often arise. While it is important to be clear about the principles for valid authorship, UNSW is concerned about the proposed relaxation of the authorship criteria stated in the [Section 6 Introduction \(Page 29\)](#) from needing to meet **all** of the three recognised criteria to one being based on **any or a combination** of the three recognised criteria.

This will put Australia at variance with some international Guidelines such as the *Uniform Guidelines of the International Committee of Medical Journal Editors*, which requires that contributions be made under all three criteria for authorship to be warranted:

*“Authorship credit should be based on 1) substantial contributions to conception and design, or acquisition of data, or analysis and interpretation of data; 2) drafting the article or revising it critically for important intellectual content; and 3) final approval of the version to be published. Authors should meet conditions 1, 2, and 3.”<sup>3</sup>*

The existing NHMRC/AVCC Code adopted the above definition which is also known as the *Vancouver Protocol*<sup>4</sup>, and the rationale for relaxing the criteria in the revised draft Code is not clear. UNSW is concerned that this relaxation will lay the seed of many future disputes on authorship and result in a ridiculous explosion of authorship claims. This will only benefit non-participatory researchers in achieving authorship without significant contribution to the body of work.

UNSW has had cases where authors disappear (or even die). Without amending [Section 6.2 \(Page 29\)](#) and [Section 6.3 \(Page 30\)](#), this can prevent publication and unfairly affect other authors. UNSW recommend that these sections include a statement to the effect “...unless, after all reasonable inquiries have been made, it is not reasonably possible to locate an author and there are no grounds to believe that the author will object or has any grounds to object to the publication.”

### **Section 7 – Peer review**

The obligation stated in [Section 7.4 \(Page 34\)](#) is vague and onerous and has the effect of making this a ground of misconduct. UNSW suggests rewording this section along the lines of “Researchers should be willing to participate in and contribute to the process of peer review,...”

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<sup>3</sup> <http://www.icmje.org/#author>

<sup>4</sup> <http://annals.org/cgi/content/full/126/1/36?ck=nck>

## **Section 8 – Conflicts of interest**

UNSW suggests that the [Introduction \(Page 35\)](#) and other parts of this section generally refer more, and give more weight, to conflicts which involve not just the researcher directly, but also conflicts which are attracted by the researcher through relationships with others. UNSW's Conflict of Interest Policy<sup>5</sup> addresses three types of conflicts of interest: “*real*”, “*perceived*” and “*potential*”. The draft Code could benefit from such a clear distinction.

While institutions should ensure that they disclose and deal appropriately with conflicts of interest which arise out of their involvement as an institution in research, it is not possible for such conflicts to be always identified or known. More thought needs to be given to [Section 8.1 \(Page 35\)](#) and [Section 8.2 \(Page 36\)](#) which recognises this. One suggestion is to include the words “...and which is known or ought in all the circumstances, to be known to the researcher or institution.”

## **PART C - RESEARCH MISCONDUCT: RESPONSIBILITIES OF INSTITUTIONS AND RESEARCHERS**

UNSW is extremely concerned by [Section 10](#) of the draft Code. This is a very dangerous proposal insofar as it creates a quasi-judicial, and we believe unworkable, set of processes and procedures that take any control of handling matters outside the control of the employer (the University).

The [Introduction \(Page 41\)](#) refers to “*natural justice*”. This term has a narrow legal meaning and should be replaced with the wider term “*procedural fairness*”.

The procedures described in [Section 10](#) refer to “*research misconduct*” when they should be making reference to “*possible breaches of the Code for Responsible Conduct of Research*”. The term “*research misconduct*” is too potentially fraught with being confused with common law definitions of misconduct.

The document talks about institutions developing their own policy and processes but then dictates in an overly prescriptive way what those processes should be. It is overly prescriptive in a number of areas which will create problems by imposing a “one size fits all” approach which seems to be based on trying to deal with past issues.

The “*abusive supervisor*” example of research misconduct provided in [Box 10.1 \(Page 42\)](#) is inappropriate and should be removed. Abusive behaviour is workplace behaviour and should be dealt with in accordance with those processes and procedures. The inclusion of this example is also internally inconsistent with [Section 10.1.2 \(Page 43\)](#) which links research misconduct to the institution's procedures for dealing with other misconduct.

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<sup>5</sup> <http://www.hr.unsw.edu.au/employee/conflict.html>

[Section 10.1.1 \(Page 42\)](#) makes reference to any deviation from the Code research misconduct. This will include any minor deviation which is done without intent, without knowledge and with no impact on the research. For the Code to be workable, at the very least, there should be an exception for matters which are trivial.

While UNSW agrees that “...each situation must be evaluated carefully...”, it is not clear why the degree of “*harm involved*” is the critical factor in [Section 10.1.1 \(Page 43\)](#). It is not clear what the meaning of “*harm*” is in this context and this term needs to be carefully defined. “Harm” would normally mean loss or damage but it is possible that a serious breach of the Code may not lead to harm or damage. It would be preferable to include “*eg criteria which refers to the degree to which the behaviour deviates from the Code; whether the behaviour is systemic or an isolated incident etc*”.

It is not clear what is intended by the requirement to consider the “*potential consequences for the researcher...*” in [Section 10.1.1 \(Page 43\)](#). If it is intended to affect the issue of whether or not the matter is dealt with internally or by independent inquiry, this seems incongruent. Likewise, UNSW questions to requirement to provide for “*proper representation*”. This will add to the cost, complexity and time taken for proceedings to be completed and is overly prescriptive.

UNSW currently includes the definition of research misconduct and the institution’s processes for handling allegations in all induction and training materials for new researchers and for new employees undertaking research, as required in [Section 10.1.1 \(Page 43\)](#). UNSW would challenge however the assertion that “*Natural justice demands that any person against whom research misconduct is alleged has been provided with sufficient information...*”. This is vague and may be difficult to prove. As presently formulated, the Code may be read to say that, unless the information is provided, the researcher cannot be guilty of research misconduct. It would be more sensible for the Code to say “*researchers should be provided with sufficient information...*”

[Section 10.2.1 \(Page 43\)](#) suggests that institutional Departments can handle researchers who have inadvertently breached the Code “so long as such alleged transgressions are not deemed to have resulted in harm...”. UNSW repeats the earlier comments regarding the use of the concept of “harm”. This is inconsistent with the paragraph following this on [Page 44](#) which refers not only to “harm” but also to repeated or multiple breaches and disciplinary action. “Disciplinary action” is a wide term which encompasses warnings, reprimands *etc*. It is possible that matters dealt with internally may also fall within the characterisation of being dealt with by disciplinary action. This needs to be taken into account in the draft Code.

The requirement in [Section 10.2.2 \(Page 45\)](#) that complainants be treated “*fairly*” is too vague. The Code should define what is actually required. There is no body of law which defines what “fair” treatment for a complainant is. “Whistleblower” legislation is State legislation and varies from state to state. It does not apply to all persons *eg* students. It would be preferable not to include this legislation into the Code by reference, but, as stated above, define what is actually required for

complainants. Otherwise Institutions may be put in an impossibly cumbersome and unworkable situation.

The requirement in [Section 10.2.2 \(Page 45\)](#) that *“where necessary, the designated person should also ensure that arrangements in the local workplace are fair to all parties until the allegations are resolved”* taken literally, is a demanding requirement. UNSW considers that at most, the designated person can only do what is practicable to ensure that arrangements in the workplace are *“fair to all parties”*. Notions of what is *“fair”* will differ significantly. There is no general requirement that workplaces be *“fair”*. Institutions will be subject to competing and probably validly competing claims with respect to what is *“fair”*. This requirement oversteps the bounds of research misconduct processes and these issues are best left to workplace processes and procedures and it should be removed from the Code.

With respect to the role of an advisor in research integrity in [Section 10.2.2 \(Page 45\)](#), UNSW questions whether this a serious suggestion that the institution should provide advice and support to a researcher the subject of an inquiry as to how he/she should respond to allegations in writing, advise them on what to do *etc?* This puts the institution into an impossibly compromised position and jeopardises the process if the researcher were to assert that he/she had been wrongly or improperly advised. It would be impossible for an adviser to have no conflict of interest unless the institution paid someone external to do this and this would be an uncontrolled and unreasonable further burden on the institution.

The involvement of the CEO at an early stage in accordance with [Section 10.3.1 \(Page 46\)](#) will effectively create a conflict of interest for them if they need to subsequently deal with the matter through the disciplinary procedures of the Enterprise Agreement. This must be reconsidered.

[Section 10.3.2 \(Page 46\)](#) states that *“an institutional inquiry should not be used if the allegations involve significant deviations from this code, repeated deviations, or deviations in multiple areas of this code.”* This is preferable to, but inconsistent with, [Section 10.1.1](#) (see above).

[Section 10.3.3 \(Page 47\)](#) states that *“An independent inquiry...must be used for allegations of research misconduct that...may represent significant or repeated deviations from this code, if proven by the inquiry.”* This is yet again inconsistent with [Section 10.1.1](#) and with [Section 10.3.2](#).

Institutions are not able to provide anybody with the power to call witnesses or “call for evidence” in the sense that witnesses cannot be compelled to attend or produce material as described in [Section 10.3.3 \(Page 48\)](#). Institutions can only give an independent inquiry the power to hear witnesses.

It is not appropriate to attempt to conduct public hearings of some kind, especially if they are to be part of a disciplinary process. This condition should be removed from [Section 10.3.3 \(Page 48\)](#).

UNSW has serious concerns regarding the condition in [Section 10.3.3 \(Page 48\)](#) that *“the CEO must inform all relevant parties of the findings of the panel or tribunal...”*. This condition raises a considerable risk of defamation to the institution and to the members of any Inquiry. Furthermore there is no ability for the institution to provide protection from defamation. UNSW suggests that this condition should be amended to state that publication should be required only when practicable. Likewise, the findings of any external inquiry should only be made available to the public when practicable.

[Section 10.4 \(Page 49\)](#) contemplates the taking of disciplinary action without having followed procedures contained in the institutions Enterprise Agreement. It prescribes a judicial role for panels/tribunals when their sole role should be to assist the institution understand the facts of the situation, thereby creating an unlimited financial liability to the University.

Based on lessons learnt from past examples, UNSW's guidelines for dealing with allegations of research misconduct, are now considered best practice and

- include a definition and examples of research misconduct that can be updated consistent with proposed procedures;
- are not overly prescriptive allowing flexibility in how different issues are dealt with;
- enable an inquiry (including by independent experts) if appropriate;
- retain a role for the academic supervisor consistent with the Enterprise Agreement;
- keep the CEO away from the matter to prevent any potential conflict of interest arising in the future permit him/her to adjudicate on the matter at a later time should this be necessary;
- do not provide for disciplinary action to be taken except in accordance with the Enterprise Agreement; and
- include an advisory component to assist as appropriate.

Regards,

A handwritten signature in black ink, appearing to read 'L. Field', written in a cursive style.

Professor Les Field  
Deputy Vice-Chancellor (Research)