

Go8 guiding principles for
implementing Part B of the
*Australian Code for the
Responsible Conduct of Research*

Go8 Consultation Paper

September 2008

Preface

Group of Eight (Go8) universities are committed to the pursuit of the highest quality research, research training and teaching.

We recognise that unless research is seen publicly to be conducted in accordance with the highest standards of integrity and ethics, then the endeavour of research itself is threatened, and public confidence eroded.

Go8 universities recognise that they have responsibilities not only to train and mentor staff and students about sound research practice, but to monitor and report research practice, and to make it clear to staff, students and collaborators that poor research practice is a serious matter that will not be tolerated.

All Go8 universities are committed to having in place broadly consistent, transparent, fair and robust mechanisms for receiving and investigating allegations of research misconduct, and for reporting and punishing cases where research misconduct is found to have occurred.

The release of the *Australian Code for the Responsible Conduct of Research* (the Code) has been a valuable exercise. It has encouraged Australian universities to look closely at how they promote and assure sound practice among their staff and students, and in particular at how to strengthen their processes for handling allegations of research misconduct made against employed staff.

The development of this consultation paper has been overseen by Go8 Deputy-Vice Chancellors (Research).

The paper was prepared with input from an expert working party comprising:

David Cookson, Vice-Principal, Research,
The University of Melbourne

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The Go8 is grateful for the time and advice contributed to this project by all working group members.

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Introduction

The release of the *Australian Code for the Responsible Conduct of Research 2007* by the Australian Government in 2007 was welcomed by Go8 institutions, particularly in relation to the improvements and broader scope of the matters covered by Part A of that Code. However, as foreshadowed by the Go8 during the consultation phase of the preparation of the Code, significant risks to researchers and institutions arise from Part B of the Code, especially as a result of the unavoidable confluence of considerations relating to allegations of research misconduct and the terms of employment of university staff. The Go8 has engaged in a very constructive dialogue with the National Health and Medical Research Council (NHMRC) about these issues.

This consultation paper has been prepared in response to the NHMRC's written confirmation of January 2008 that Part B of the Code is intended as:

1. 'a guide to good practice' only; and
2. 'a principles-based approach, rather than being prescriptive'.¹

Therefore, in their approaches to implementing the Code, and specifically Part B which deals with processes for handling allegations of research misconduct, Go8 institutions have proceeded on the basis that they are required to ensure that their research is conducted in 'accordance with the principles outlined in the Code'—not every specific requirement set out in it.

In particular, Go8 institutions have proceeded on the basis that the NHMRC accepts that in implementing the Code institutions will not be required to put in place processes for handling allegations of research misconduct made against their employees that would bring them into conflict with legal obligations under, for example, employment, privacy, defamation, and whistleblower laws.

Further, Go8 institutions have proceeded with the development of the principles set out in this consultation paper to further dialogue with the NHMRC and other parties over the implementation of Part B.

Purpose and next steps

The purpose of this consultation paper is to set out the principles upon which Go8 responses to the Code will be based. Once these principles have been agreed by Go8 institutions this paper will be provided to the NHMRC. It is hoped that the NHMRC's endorsement of the proposed approach will be forthcoming—allowing institutions to move to implementation of the Code and participation in enterprise bargaining processes with certainty.

Through adoption of such guiding principles, the expectation is that Go8 universities will eventually have in place arrangements for handling allegations of research misconduct, which while responsive to particular requirements of each institution and State, will be broadly consistent and readily understood by university staff, students, government agencies and the wider community.

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Go8 principles for implementing Part B of the Code.

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(Appendix B) Go8 & NHMRC correspondence over the Code.

¹ Dr Timothy Dyke, Executive Director, Quality and Regulation, NHMRC, Letter to the Group of Eight, 3 January 2008, in response to Go8 letter of 3 December 2007 (Appendix B)

Section 1

Go8 principles for implementing the *Australian Code for the Responsible Conduct of Research 2007*

The following principles are designed as a guide to assist Go8 institutions with implementing Part B of the Code. It is anticipated that institutions will draw on these principles progressively as they seek to ensure that their research misconduct policies and procedures, whether contained in their enterprise agreements with staff or elsewhere in policy, comply with the principles of the Code.

1. Policies and procedures

Each Go8 university will ensure:

- that the intent of Part A of the Code—to assure, foster and promote responsible research practice—is entrenched in its policies, practices and procedures; and
- that the principles for handling allegations of research misconduct contained in Part B of the Code are entrenched in its policies, practices and procedures.

Part A Code ‘Breaches’

Each Go8 university will establish and promote procedures to deal with alleged breaches of Part A of the Code that if proven do not constitute ‘research misconduct’.

Part B Code ‘Research Misconduct’

Each Go8 university will ensure that it has in place policies and procedures including where applicable, industrial instruments, defined in these principles as ‘employment processes’ to deal with allegations of research misconduct in accordance with the principles underpinning Part B of the Code. Under these principles a university may tailor the definition of research misconduct suggested in the Code to ensure it is appropriate and compatible with its employment processes and policies.

A complaint or allegation will be dealt with in accordance with the principles of Part B of the Code if it involves all of the following:

- a breach of the code;
- intent and deliberation; and
- recklessness or negligence of a gross and persistent kind.

If the complaint or allegation does not satisfy each of these elements, then the conduct is not research misconduct. The allegation will be dealt with at the departmental level, or through another relevant process established to accommodate breaches of Part A of the Code.

Research misconduct does not include honest differences in judgement in the management of research, or honest errors that are minor or unintentional. Breaches of the Code of this type will require specific action by supervisors and responsible officers of the institution.

2. Advisers in Research Integrity

Each Go8 university will ensure that it has appointed at least two senior researchers as ‘Advisers in Research Integrity’—to guide research staff and students in relation to the proper conduct of research, the making of an allegation of research misconduct and the processes that must be followed if such an allegation is formally made.

These policies and procedures will be publicly available and promoted through appropriate mechanisms.

3. Designated Person (DP)

3.1 Appointee and Role

- A. A senior executive person at the Deputy Vice-Chancellor or Pro Vice-Chancellor level.
- B. The DP will receive written complaints or allegations of research misconduct.
- C. The DP can delegate his or her functions, for example, to an experienced senior officer.

3.2 Preliminary actions

- A. Once a complaint or allegation of research misconduct has been made, the DP makes enquiries, secures the relevant evidence including experimental material, IT records, other documents, names of witnesses, as necessary.
- B. The DP considers the circumstances of staff in the relevant workplace where a complaint of misconduct has been made including 'whistleblower' protections, arrangements to defuse workplace tensions, protect non-involved researchers, and generally ensure that people are treated fairly.
- C. The DP considers the allegations to see if:
 - i. the substance of the allegations, if proven, would amount to research misconduct; and then
 - ii. whether a *prima facie* case of research misconduct exists.If both (i) and (ii) above are not satisfied the DP either dismisses the allegations or refers the allegations to another relevant process.
- D. If the allegations are not dismissed or referred elsewhere, then, except where precluded by law, or where the DP deems it otherwise inappropriate to do so because of the circumstance of the case, the DP must inform the employee who is the subject of the allegations of the nature of the allegations, the identity of the person(s) making them, and the steps the institution will be taking as a result of the allegations.
- E. The DP must at this point do one of the following:
 - i. if there is sufficient information provided to substantiate the allegations, formulate charges of misconduct and proceed to point 3.3 below; or
 - ii. if there is insufficient information to formulate misconduct charges, conduct enquiries (either him/herself or through an investigating officer) to gather relevant material. The DP, for example:
 - a. compiles documents and materials
 - b. secures electronic records, emails, research results

- c. collects witnesses' names and statements, and
- d. where relevant, gathers material about the proper research practice in that discipline.

Once the DP determines that sufficient information has been compiled, or determines that reasonable efforts to gather information have been exhausted, the DP formulates misconduct charges in accordance with 3.3 below or, on the basis of the further material obtained, either dismisses the allegations or refers them to another relevant process.

3.3 Inquiry recommendation

- A. The DP, after considering all of the information available, formulates specific charges of research misconduct to be brought by the university against the staff member, specifying whether the alleged misconduct is research misconduct or serious research misconduct. The charges will be drawn by reference to the relevant employment process.
- B. The DP advises the CEO or delegated university officer with responsibility for employee discipline processes of the charges and preferred inquiry format, taking into account the seriousness of the misconduct alleged. Possible inquiry formats include a mix of internal or external persons and a panel or single member.
- C. The CEO or delegate will determine how to proceed under the relevant employment process, and at an appropriate time will notify in writing the person(s) who made the allegation, the person(s) who is the subject of the allegation, and the DP.
- D. The DP will provide all evidence collected and any investigator's report to the secretary for the inquiry that is established. From that point onwards the DP will play no further role in the inquiry process.

4. Inquiry process

- A. Process
 - i. The CEO or university officer with responsibility for discipline processes determines the constitution of the inquiry—the panel membership, the size of the panel, external or internal members.

- ii. Relevant obligations of procedural fairness (whether set out in an industrial instrument or otherwise applicable) must govern the deliberations and operation of the inquiry.
 - iii. Where the university is obliged to do so without breaching legal requirements, including the right of the subject of the allegation to procedural fairness, the CEO or delegate will advise relevant funding agencies and other relevant parties of the allegations and the proposed nature of the disciplinary proceedings.
- B. Inquiry Panels, whether comprised of one or more members must:
- i. be free of any conflict of interest;
 - ii. have sufficient expertise and understanding of the relevant research environment and the nature of an inquiry process;
 - iii. allow staff associations and/or legal representation as desired by the respondent;
 - iv. have power to gather evidence in addition to that provided by the DP. An inquiry must also have access to all areas of the university, including staff and students, and must be provided with proper facilities and services; and
 - v. have power to determine the allegations and decide if research misconduct has occurred. The inquiry may also have the power (depending upon the relevant employment process) to impose penalties based upon the research misconduct findings or to refer the findings to the relevant delegate for the imposition of a penalty.

One or more officers (legally trained or otherwise) may be appointed to assist the inquiry with gathering of further evidence, questioning of witnesses, obtaining expert opinions and advising on procedural questions.

5. Penalties

- A. Penalties will be imposed by the relevant delegate on the basis of the findings of the inquiry and consideration of the employee's record of performance and conduct. No further hearing will be conducted into the matters that gave rise to the findings, unless the decision is appealed by the duly available appeal processes.

- B. Penalties will reflect the seriousness of the findings in each case.

6. Conduct of hearings, notification of findings and correction of the public record

- A. All inquiry deliberations and findings are private unless:
 - i. the employment processes permit them to be public;
 - ii. privacy consents are obtained, are waived, or are for some reason unnecessary; and
 - iii. defamation indemnities for witnesses, advocates and adjudicators are obtained— noting the views of insurers on these issues.
- B. All adverse findings of research misconduct and actions taken by the university in response to them should normally be communicated by the DP to the relevant funding agencies, journals, collaborating institutions, researchers, professional registration bodies, the general public and other parties as relevant. In some circumstances, non-adverse findings may need to be reported to ensure the reputation of the researcher is restored.

7. Appeals

The findings of the inquiry and penalties imposed will be susceptible to an appeal either within the processes of the university, or to an appropriate court, or other appropriate external authority.

Appeal processes can either be a complete rehearing or an appeal on grounds of procedural error, depending on the relevant processes.

In some jurisdictions an appeal to an Ombudsman or similar figure may be available.

In all cases, Go8 universities will cooperate fully with any duly authorised body that has jurisdiction to hear an appeal or otherwise reviews the decision.

8. External inquiries

- A. Processes must acknowledge the possibility that an inquiry will need to be suspended on procedural fairness grounds, or other grounds, should there be an external criminal or civil or other administrative tribunal inquiry into the same factual matters.

- B. After any such external inquiry is completed the university may then consider and complete the research misconduct inquiry.

9. Collaborative research and research conducted whilst not an employee of the institution

- A. Where legally possible, Go8 universities will cooperate when investigating allegations of research misconduct arising from research collaborations across institutions (including non-university research organisations)—sharing information and limiting duplication.
- B. If the alleged research misconduct occurred when the employee of a Go8 university was a student at or employed by another institution, the other institution will be informed of the allegation. The currently employing university will not be able to deal with such allegations under the processes established to comply with the principles of the Code—as these are designed to deal specifically with matters involving current employees and research conducted by them while employed by the institution in question.

In the case of an allegation involving a researcher when employed elsewhere, the DP of the current employing university may investigate the conduct of the researcher to satisfy the university that there has been no research misconduct while the researcher was employed by it. Go8 universities will cooperate with the previous employing organisation to the full extent that is legally possible, to provide information to assist any inquiry established by it.

If a properly constituted third party inquiry finds an allegation of research misconduct against an employee of a Go8 university whilst employed elsewhere proven, the findings may, to the extent legally possible, be used by the currently employing university to determine penalties (including termination of employment) in accordance with its disciplinary processes.

If an allegation of research misconduct is made against a former employee of a Go8 university, about research conducted while he or she was employed by that university, the DP will investigate the allegation consistently

with 3 above. If a *prima facie* case of research misconduct is found to exist the DP may recommend the establishment of an inquiry outside of its employee misconduct processes.

Section 2

Appendices

Appendix A

Background discussion of the issues arising from Part B of the Code that have informed the Go8's development of the principles-based approach to implementation outlined above

1. What is 'research misconduct'?

In a number of places in Part B of the Code it indicates that a 'breach of the Code', meaning in reality a breach in Part of A of the Code, might be research misconduct. Part A contains some very broad 'aspiration' statements, the breach of which could not be research misconduct. Making the assumption that what is meant by 'breaches of the Code' is breaches of the Code in relation to individual research responsibilities as opposed to institutional responsibilities, consider these few aspirational examples:

- 1.7 'Researchers should ensure that research findings are disseminated responsibly'. This is an aspirational goal, unlikely to be capable of, if 'breached', being considered as 'research misconduct'.
- 1.8 'Researchers must comply with ethical principles of integrity, respect for persons, justice and *beneficence*'. *Beneficence*, in the words of the Macquarie Dictionary, similarly defined in the Shorter Oxford Dictionary, means 'the doing of good; active goodness or kindness; charity'. This is an important principle, but too broad of itself, for any breach to give rise to a charge of research misconduct.
- 3.3 'Supervisors of research trainees should ensure that training starts as soon as possible in the career of a researcher. Training should encompass discipline-based research methods and other relevant skills, *such as the ability to interact with industry and to work with diverse communities*'. How can a breach of this responsibility be research misconduct as opposed to either no misconduct at all, or poor performance at an administrative level?

Many of the requirements of the Code, by their nature, should not be considered, if 'breached', to place upon the relevant researcher the opprobrium of having engaged in research misconduct.

There is also the procedural fairness principle of knowing precisely what the charge is that you are facing. It would be very difficult to found a charge that anyone could properly respond to, that they were not 'beneficent' in the way that they approached their research.

The fuller definition of research misconduct at page 10.1, without too much emphasis on Code 'breaches', would meet most of what universities would already consider 'research misconduct'.

One issue for clarification, the third requirement listed under the Code definition on page 10.1 is: 'Serious consequences, such as false information on the public record, or adverse effects on research participants, animals or the environment'. This additional requirement elevates 'research misconduct' to in all cases, 'serious misconduct'. It obviates the need for an 'internal' inquiry as all cases would meet the defined requirement of 'external' inquiries—a level of confusion that requires resolution.

2. Employees only

The comments in this discussion relate only to the situation of employees. Once processes are defined for employees, other participants in the research effort of the university including students and non-employee visitors can be considered and processes adapted to meet their situation. The Code itself refers only to employees in Part B, with much emphasis on industrial instruments to be altered as a result of the adoption by universities of the principles of the Code.

It is an important issue as it focuses attention on the key legal relationships, which are that of employer and employee. What seems to be lost by the Code (see references to 'other' misconduct at 10.2) is the fact that academics employed, whether in teaching or pure research roles, have in their employment contract a fundamental requirement that they conduct themselves properly when undertaking research. Misconduct when conducting research is of itself a primary breach of their employment contract and not something distinct or separate from that contract. Any process investigating that kind of misconduct is by its nature investigating misconduct in employment.

3. External inquiries and overlaps

No matter what process is adopted, a university cannot control the fact that external inquiries may be launched independently with university processes subordinate to them. For reasons of procedural fairness, or potentially statutory bars, a research misconduct inquiry may need to be suspended as a result of the launching of an external inquiry, by external it is meant for example:

- criminal investigation/charges and trial;
- ICAC/protected disclosure/whistleblower proceedings;
- discrimination allegations investigated by Commissioners or through a tribunal process;
- privacy commissioner inquiries; and
- civil proceedings, for example, defamation, injunctions or actions taken by a funding body for a breach of a funding contract.

The law is not clear as to how procedural fairness is best delivered to a respondent in the context of the types of external inquiries that may be simultaneously launched. It will depend on the facts of the particular case as to whether an internal research misconduct inquiry can continue or be suspended. Any process must contain some reference to suspending inquiries in certain circumstances.

4. 'Public' record and processes versus research not (yet) on public record

There is a lot of focus in the Code on the 'public' record, public processes and notions of public

disquiet about research misconduct. It is interesting to note that the definition of research misconduct used in Part B provides that it is not research misconduct of any degree unless there are 'serious consequences, such as false information on the public record...'

Correcting the public record where there have been findings that research results were tainted by misconduct—and are therefore not to be regarded as valid—can take many forms, and is not necessarily achieved through a press release or a public hearing. Where 'tainted' research has not seen the light of day and there are no funders/ collaborators external to the institution, or no previously published research findings that rely upon the results of the research, there are real questions as to whether there is any ability on the part of a university to make any such findings 'public'. Indeed on one reading of the definition it may not qualify as being a 'serious consequence' if the research has not yet left the lab, a factor discussed above. The findings may lead to the examination of the employment of the relevant academic, and that academic may wish for there to be some form of statement that is agreed concerning the termination of his/her employment, if that is the outcome of the process, but unilateral action by a university to make such a finding 'public' is unlikely to be legally possible.

There has been some mention of broad 'consents' being negotiated in enterprise agreements that would presumably provide for academic employees agreeing to public inquiries into research misconduct, but the likelihood of such provisions being agreed is low and there is a significant downside. If it is known by persons that wish to make a complaint about another person's misconduct that their complaint will be aired publicly (given the media attention that allegations of research misconduct can attract) there is likely to be a significant 'chilling' effect on legitimate complaints and concerns being raised about potential research misconduct.

There is at least, in the Commonwealth Privacy Act, the power on the part of the Privacy Commissioner (s.72 of the Act) to make a determination that 'the public interest in the agency doing the act, or engaging in the practice, outweighs *to a substantial degree* the public interest in adhering to that

Information Privacy Principle'. It is significant that it is only the Privacy Commissioner that can make this kind of ruling and not the agency itself. Hence, a 'tribunal' established by the university having decided that there is a 'public interest' in holding a public hearing, or making research misconduct findings 'public' that would otherwise be private, could not make such a ruling.

5. Investigation versus inquiry

The Code does not properly distinguish between these two very important processes. To use an analogy, at what point does the 'police' investigation end and the actual 'charges' heard by an adjudicatory panel begin? It is a fundamental precept of procedural fairness that a person must know the 'charge' before the trial. An 'allegation' of misconduct made by a person against another person is not a 'charge' laid by the university against one of its employees pursuant to a 'policy' or industrial process.

Isolating these two processes does not mean that an inquiry panel cannot itself seek further evidence when conducting the inquiry, as opposed to what initial evidence may be presented to it by the party which undertook any discreet preliminary investigation. A coronial inquiry is a good example. There is a team of people led by a police officer which investigates a death and gets all the information together. The coroner then convenes an inquiry and reviews the material that has been gathered and has the power to call other witnesses and seek other documentary evidence where that is required. The Code clearly envisages an inquisitorial style of adjudicatory panel and that can be accommodated, but the panel should not be convened when there has not been a reasonably thorough investigation to ensure that there is some substance to the allegations of research misconduct.

6. Bias

The Code has an interesting take on 'bias' focusing upon only one form of potential bias—that of the institution trying to protect its reputation. The Code assumes that a person who is independent of a university has the necessary quality of independence to remove considerations of bias. But researchers are often more loyal to each other than a particular institution. Researchers form alliances

with other researchers with similar views and are often in conflict with other groups of researchers who hold diametrically opposed views. Any process needs to be alive to the notion of bias on the part of 'independent experts', not just institutions—acknowledging the potential for internal 'experts' to be less biased.

7. Cross-institutional collaborations, issues:

A. *An employee of one university accused of research misconduct at a former employer university.*

The current employer is precluded from carrying out an investigation into what occurred at another university. The former university can carry out an investigation but cannot 'compel' the former employee to be involved. The current employer can cooperate with the former university investigation by allowing the employee leave to attend to the issues raised.

Penalties are another difficult issue. The former employer cannot terminate the employment and the current employer may have no grounds for terminating.

B. *Provision of 'experts'*

Universities can agree to permit/encourage their employees to take up expert inquiry panel positions to facilitate inquiries at other universities. Whether this occurs will be largely up to the individual academic expert and factors such as indemnities for defamation or other legal action arising out of their role may need to be considered.

C. *Collaborative research projects*

Multi-party research collaborations are complex. Misconduct by one or more researchers involved will create a series of issues. Each employer is responsible for its employees, one process to sweep up all allegations against each person may not be possible for reasons of privacy although it may be possible for institutions to share investigative materials and coordinate any inquiries that result.

8. Legal assistance, 'counsel assisting' and 'standard of proof'

The Code provides that in relation to the 'internal' inquiry processes 'legal representation... should not be allowed'. For 'external' processes not only are parties legally represented but also a lawyer should be appointed as 'counsel assisting'.

Research misconduct charges, whether at the serious or less serious end are regarded by academic staff and universities as 'serious'. An academic's reputation can be at stake even if the charge is at the less serious end, as any finding of research misconduct has the potential to taint the academic and affect future employment. Hence, legal representation may be desired by an academic even for relatively 'minor' charges and it is vital that the universities structure charges and processes to be fair.

The issue of legal representation and assistance to inquiries should be left to be determined by rules of procedural fairness and subject to regulation by individual university employment processes.

The requisite standard of proof must reflect the realities and limitations of the process. Briginshaw is not the appropriate standard where ordinary civil allegations are being investigated. Where there is a taint of 'criminality', perhaps here fraud, the Briginshaw test might be appropriate, but should not be seen as a 'given' in all cases. Whilst inquiry witnesses may be called and questioned, there are limits to questioning, evidence is not taken on oath and cross-examination is problematic. Setting too high a hurdle for the weight of evidence will hamper the ability of universities to properly deal with misconduct cases, leading to less public confidence in the system.

9. Delegation CEO/DP

It is likely that neither the CEO nor the DP (assuming it is at PVC/DVC level) will have time to be able to 'run' a 'research misconduct' process. At best the DP will find time to oversee such a process. The Code prescribes roles to the CEO and DP that are not able to be practically fulfilled.

Also, the CEO should not have any overt role until the end of the process, as it will be the CEO, being the VC, who is the officer most likely to be involved in or adjudicating upon appeals and final decisions as to termination of employment.

Any agreed process should recognise the practical realities of the administration of large and complex bodies, with the ability to delegate decision making functions and processes like investigations.



3 December 2007

Dr Clive Morris
Chief Knowledge Development Officer
National Health and Medical Research Council
GPO Box 1421
CANBERRA CITY ACT 2601

Dear Clive,

Implementing the Australian Code for the Responsible Conduct of Research

Thank you for meeting with Tim Payne and me on Friday 23 November 2007 to discuss implementation of the Australian Code for the Responsible Conduct of Research.

As we outlined, the Go8 Deputy Vice-Chancellors (Research) have established a working group to provide advice to the Go8 about how to implement the research misconduct requirements set out in Part B of the new Code.

Members of the working group have identified many issues that will need to be addressed if the Part B is to be implemented as proposed. It has become clear that the implementation is not likely to be straightforward. The challenge our institutions face is to accommodate the Code's requirements within pre-existing legal and industrial relations obligations.

The plan is for a Go8 'model' or 'template' response to the Code's research misconduct provisions to be developed. The resulting model will then be adapted by each institution to meet its individual requirements. Through this collaboration the hope is that consistency between institutional approaches will be maximised.

We proposed that the Go8 consult with the NHMRC over the development of the Go8 model and it was agreed that I would write to you setting out how we see this working.

As we discussed, our proposal depends on the NHMRC affirming that the Code is a 'guide' to good practice and that the NMHRC is comfortable with institutions modifying some of the requirements in Part B where compliance would bring them into conflict with existing legal obligations.

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The Go8 would then commit to implementing the model set out in Part B of the Code as far as is possible and would advise the NHMRC of the reasons why the Go8 model departs from any specific requirement. For the sake of clarity in relation to NHMRC funding contracts and other reasons, we would seek the NHMRC's endorsement of the Go8 model prior to it being relied upon by institutions. We would expect the Go8 model to be finalised by March 2008 when the first Go8 enterprise agreements expire.

We also noted that the wording of ARC and NHMRC funding contracts ultimately determines our institutions' legal liability to comply with the Code. At present, the ARC Funding Agreement uses the word "should" in respect of compliance with the Code, while the NHMRC Funding Deed uses the word "must". This difference is significant, and we would hope to have the opportunity to explore the NHMRC's position on the wording in its future Funding Deeds as part of the Go8 model described above.

If this proposal is acceptable to the NHMRC I would be grateful if you could confirm this in writing before the end of the year.

We also discussed briefly the NHMRC's continued interest in moving Australia's framework for investigating allegations of research misconduct closer to that applied in the United States through its Office of Research Integrity. The Go8 has yet to adopt a position on this matter and we are keen to be involved in any consultative mechanisms that may be put in place to consider it.

Yours sincerely,



Professor Lawrence Cram
Deputy Vice-Chancellor
The Australian National University
On behalf of Go8 Deputy Vice-Chancellors (Research)

cc: Professor Warwick Anderson



WORKING TO BUILD A HEALTHY AUSTRALIA
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Professor L Cram
The Group of Eight Limited
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Dear Professor Cram

I am replying to your letter of 3 December 2007 to Dr Morris regarding implementation of the *Australian Code for the Responsible Conduct of Research* (the code).

I confirm that the Code is a guide to good practice, consisting in two parts. Part A describes principles and practices to encourage responsible research for both institutions and researchers. Part B provides a framework for handling and resolving breaches of the Code and allegations of research misconduct.

Institutions that receive NHMRC funding must ensure that funded research is conducted in accordance with the principles outlined in the Code. Please note that our expectation is that this is a principles-based approach, rather than being prescriptive.

Under the *Financial Management and Accountability Act 1997*, the CEO of the NHMRC is accountable for expenditure of Commonwealth government money and must ensure that monies are appropriately spent. This accountability is underpinned by linking the deeds of agreement between the NHMRC and the funded institution with compliance with the Code and other NHMRC guidance material.

The Group of Eight is developing a model or template for management or research misconduct and the NHMRC would be happy to provide comment on the model and the extent to which it is consistent with the principles outlined in Part B of the Code. Further, the NHMRC encourages on-going dialogue with the Group of Eight on applying the principles of the Code and the National Statement to avoid any misunderstanding or conflict with your institutional obligations.

Please note that the NHMRC is currently revising the template for the deed of agreement and developing a framework for ensuring compliance of institutions with the Code and the National Statement. The NHMRC will seek your comment on these two matters.

On another matter raised in your letter, I note the Group of Eight's interest in being consulted regarding the NHMRC's interest in progressing Australia's framework for investigating allegations of research misconduct. The NHMRC will keep you informed on developments in this area and welcomes your feedback.

In my substantive position as Executive Director, Quality and Regulation Branch (phone: 02 6217 9280; timothy.dyke@nhmrc.gov.au), I will be your contact for these matters.

Yours Sincerely



Dr Timothy M. Dyke
Executive Director
Quality & Regulation Branch
~~December 2007~~

3 Jan 2008

