Revisions to the draft Guide proposed by AHEIA
28 February 2017

1. Section 3.2 (para 3): the second sentence should be removed. Reason: the reference to "processes" in the first sentence is wide enough to cover processes that may be specified in enterprise agreements and/or policy documents.

2. Section 3.2 (Figure 1): Composition of investigation panel box: The references to "no legal assistance" and "counsel assisting" need to both be removed. Reason: the panels and parties represented will not be assisted or represented by lawyers in the proceedings. The current reference to Counsel Assisting suggests something more than provision of legal advice on matters of process (as per Section 7.3 fourth para).

3. Section 3.2 (Figure 1): Dotted line between last two boxes, and the subsequent explanation for the dotted line, should be removed. Reason: institutional processes govern matters above and below the dotted line; whether covered by enterprise agreements and/or policy documents.

4. Section 3.2 (Figure 1): expand the example of major breach relating to "authorship" to say: "Authorship not given to someone who appropriately contributed to research, or misleading the contribution made to research"

5. Section 4.2: first sentence should refer to "… managing alleged breaches …"

6. Section 4.2 (v): Should commence with "Information on institutional processes …"

7. Section 5.4: typo in the second sentence. Should say "It is expected that a complainant will be informed …"

8. Section 6.5 (Table 2): 4th last dot point should say "Liaises with the respondent and other relevant parties as may be appropriate".

9. Section 7.2: the third dot point should say: "nomination of the Panel (and Chair, if the Panel comprises more than one person)".

10. Section 7.3: (para 4): the first sentence should say "Legal counsel may be engaged to provide advice to the Panel on matters of process only …"

11. *Section 7.3 (para 6): last dot point should be removed, and be replaced with "will provide a report into its finds of fact consistent with its terms of reference". Reason: the role of Misconduct Investigation Committees under most university enterprise agreements does NOT extend to making recommendations as to disciplinary sanctions that should follow the findings of fact. This narrower approach follows flowed from a decision of the Australian Industrial Relations Commission (a predecessor of the Fair Work Commission) in *Matter 480/1995 [1995] AIRC 633* which removed the pre-existing wider role for misconduct fact-finding committees established under federal awards covering academic employment.

12. *Section 7.4: The written report from the Panel, which contains findings of fact, should NOT be prepared as a draft for comment by any parties to the proceedings. Reason: this approach will inevitably lead to further complexities, argument, and time delays.

13. *Section 7.4.2: This section should be removed. Reason: legal complications will arise if a substitute Panel is put in place, including possible suggestions of "gaming" by the institution. It will always be open for an Institution to put fresh allegations of research misconduct to a Respondent, but it will be very problematic for a second Panel to revisit the same allegations considered by the first Panel.

14. *Section 7.6 (para 1): The suggestion that institutions should have an internal appeal process from the decision arising from the Panel's report should be removed. Reasons: (i) only a small number of universities currently have an internal appeal process, and no university that has 3-member fact-finding investigation committee (which is the vast majority of universities) has such a process; (ii) the Federal Court and Federal Circuit Court have jurisdiction over process matters covered by enterprise agreements, and over the provision of natural justice more generally under administrative law; (iii) the Australian Research Integrity Committee (ARIC) can deal with complaints regarding compliance with institutional processes; and (iv) the Fair Work Commission can deal with disputes over the application of procedures contained in enterprise agreements, and has jurisdiction to entertain claims of unfair dismissal that might arise from a disciplinary process.

15. Section 7.6 (para 3): This paragraph is unnecessary. It is also conceptually inaccurate in that courts do not entertain "appeals" from decisions made by universities. Courts only entertain appeals from courts below them in the court hierarchy.

16. Section 9: Definition of Complainant: should say "A person or persons who has made a complaint or raised a concern about the conduct of research".

17. Section 9: Definition of Respondent: should say "Person or persons asked to respond to a concern or complaint or allegation about a potential breach of the Code".

18. Appendix 2 (Item 6): Delete this item. The Respondent should not be provided with a formal opportunity to comment on the composition of the Panel. Reason: if there are grounds for objection as to composition of the Panel, an objection can be made by any party to the proceedings at an appropriate time.

19. Appendix 2 (Item 8): Delete this item. There is no need to give the Panel a formal opportunity to comment on the terms of reference and the scope of the investigation. Reason: It should not be suggested that it be usual for changes to be made to the terms of reference or scope. The Panel can always raise such issues if it needs to, and words to this effect can be included elsewhere in the Guide.

20. Appendix 2 (Item 10): the first dot-point should be deleted, as it suggests that it will be normal to include the initial complaint document, when it will not necessarily be appropriate to do so. Reason: it is the formal allegation formulated by the institution which the Respondent is responding to and which the Panel is considering, NOT an initial complaint submitted by the Complainant to the institution.

21. Appendix 2 (Item 12): the 4th dot-point should be removed. Reason: there should not be a draft report (see Point 12 above).

22. Appendix 3 (last two items): consistent with Point 14 above, the last two items should commence with the wording: "If within the Panel's terms of reference, any recommendations …".

**denotes matter of substantive significance*