

Researcher Guide to the Management of Potential Breaches of the Australian Code

Approved by	Deputy Vice Chancellor, Research and Development
Contact	Research Integrity Coordinator, Swinburne Research
Related documentation	<ul style="list-style-type: none"> • Australian Code for the Responsible Conduct of Research (2018) • National Statement on Ethical Conduct in Human Research (2001) – updated 2018 • Swinburne Responsible Conduct of Research Guidelines
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Purpose

These Guidelines establish a framework for dealing with allegations of departures from the principles and responsibilities of the Swinburne Responsible Conduct of Research Guidelines and the [Australian Code for the Responsible Conduct of Research \(the Code\)](#). These Guidelines must be read in conjunction with other relevant policies, for example, disciplinary procedures outlined in employment instruments such as the current [Enterprise Agreement](#), and in accordance with the applicable University legislation, policy and procedure including the University's [Student Academic Misconduct Regulations 2012](#) and the [Student General Misconduct Policy 2012](#).

This framework is designed to ensure that all matters are considered in a procedurally fair manner. The process must be proportional, fair, impartial, timely, transparent and confidential.

Scope

These guidelines apply to all researchers and those personnel who assist with the conduct of research at Swinburne University of Technology. It is incumbent upon Swinburne and its researchers to uphold research standards and prevent any recurrence of breaches of the Code so as to maintain public confidence in the research endeavour.

Alleged research breaches by students will be dealt with in accordance with the University's [Student Academic Misconduct Regulations 2012](#) and/or the [Student General Misconduct Policy 2012](#).

Application

All researchers and those personnel that are assisting in the conduct of research conducted under the auspices of the University must familiarise themselves with this guide even when the research is conducted outside Australia.

This guide deals specifically with concerns that involve departures from acceptable research conduct. The processes in the guide are not for the investigation of other forms of misconduct or

misbehaviour, although sometimes research misconduct may be associated with other forms of misconduct such as harassment, bullying or financial misconduct.

Where a researcher is in doubt about the appropriate course of action, they should seek advice in the first instance from a Research Integrity Advisor appointed by the University or from the Research Ethics, Integrity and Biosafety Office.

The processes outlined in this guide provide details of what is likely to happen during the management of a potential research breach. At any time during the process it may be appropriate to refer the matter to an alternate process to those described in this guide. The process may begin again or be referred to another Swinburne process, such as one led by faculty, People and Culture process, Graduate Studies or the University's complaint, review, appeals or misconduct process for students.

Definitions

Word/Term	Definition
ADR	Associate Dean (Research)
Research Integrity Advisors (RIAs)	RIAs are appointed by the DVC(R&D), are available to advise on conformity to and implementation of this guide, including possible breaches or allegations of research breaches. The advisor's role does not extend to, on behalf of any person that they are advising, making formal allegations, investigation or review of the allegation, nor are they involved in any subsequent inquiry.
Appraisal Officer (AO)	Conducts a preliminary review consulting with the DO, others in the institution and external experts where necessary, liaises with the respondent and other relevant parties as appropriate, secures evidence, manages records and provides a report to DO. The RO will ordinarily be the Manager, Ethics, Integrity and Biosafety, however the DO may appoint someone else if appropriate.
Breach	A failure to meet the principles and responsibilities of the Swinburne Responsible Conduct of Research Guidelines and/or the Code.
Code	<i>Australian Code for the Responsible Conduct of Research</i>
Complainant	The person raising the allegation of deviations from the Conduct of Research policy, whether formally or informally.
Conflict of Interest	As defined in the People, Culture and Integrity Policy
Designated Officer (DO)	DVC(R&D)
Panel	A panel of one or more members that considers complaints or concerns about alleged breaches of the Code.
DVC(R&D)	Deputy Vice Chancellor (Research and Development)
Enterprise Agreement	Swinburne University of Technology, Academic & General Staff Enterprise Agreement 2017 or any successor enterprise agreement thereto.
REIB	Research Ethics, Integrity and Biosafety Office
Researcher	Person (or persons) who conducts, or assists with the conduct of, research

Respondent	The person alleged to have deviated from the provisions of the Swinburne Responsible Conduct of Research Guidelines and/or the Code, and who is responsible for responding to the allegations.
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1. Definition of a breach

1.1 Research breach

A breach is defined as a failure to meet the principles and responsibilities of the Code (Table 1), and may refer to a single breach or multiple breaches.

Breaches of the Code occur on a spectrum, from minor (less serious) to major (more serious). Some minor breaches may be addressed at the preliminary review stage, while major breaches would typically require further investigation. There are also some matters that relate to research administration that may be easily rectified at the local level and resolved prior to the need to consider a preliminary review, for example a minor unintentional administrative error or oversight.

Table 1. Examples of the types of breaches that may occur

Breach of the Code		Example
1	Not meeting required research standards	<ul style="list-style-type: none"> • Conducting research without ethics approval as required by the National Statement on Ethical Conduct in Human Research and the Australian Code for the Care and Use of Animals for Scientific Purposes • Failing to conduct research as approved by an appropriate ethics review body • Failing to abide by contract or research agreements • Conducting research without the requisite approvals, permits or licences • Misuse of research funds for example purchasing equipment not permitted according to the research agreement • Concealment or facilitation of breaches (or potential breaches) of the Code
2	Fabrication, falsification, misrepresentation	<ul style="list-style-type: none"> • Fabrication of research data or source material • Falsification of research data or source material • Misrepresentation of research data or source material • Falsification and/or misrepresentation to obtain funding
3	Plagiarism	<ul style="list-style-type: none"> • Plagiarism of someone else's work, including theories, concepts, research data and source material • Duplicate publication (also known as redundant or multiple publication, or self-plagiarism) without acknowledgment
4	Research data management	<ul style="list-style-type: none"> • Failure to appropriately maintain research records • Inappropriate destruction of research records, research data and/or source material • Inappropriate disclosure of, or access to, research records, research data and/or source material
5	Supervision	<ul style="list-style-type: none"> • Failure to provide adequate guidance or mentorship on responsible research conduct to researchers or research trainees
6	Authorship	<ul style="list-style-type: none"> • Failure to acknowledge the contributions of others fairly

		<ul style="list-style-type: none"> • Misleading ascription of authorship including failing to offer authorship to those who qualify or awarding authorship to those who do not meet the requirements
7	Conflicts of interest	<ul style="list-style-type: none"> • Failure to disclose and manage conflicts of interest
8	Peer review	<ul style="list-style-type: none"> • Failure to conduct peer review responsibly

1.2 Research Misconduct

Some major (serious) breaches will amount to Research Misconduct. Research Misconduct is a serious breach of the Code which is also intentional, reckless or negligent, and amounts to Serious Misconduct under the Enterprise Agreement.

If during the preliminary appraisal, or at any time during the process, the breach, could reasonably be considered Research Misconduct if proven, then the matter will be referred to People and Culture for review under the provisions of the Enterprise Agreement.

The factors that may be considered (without excluding other factors) when determining the seriousness of a breach are:

- the extent of departure from accepted practice as determined by discipline norms
- the extent to which research participants, the wider community, animals and the environment are, or may have been, affected by the breach
- the extent to which it affects the trustworthiness of research
- the level of experience of the researcher
- whether there are repeated breaches by the researcher
- whether institutional failures have contributed to the breach
- whether there are any other mitigating or aggravating circumstances.

Research misconduct does not include honest differences in judgement. Errors that are unintentional do not usually constitute Research Misconduct unless they result from behaviour that is reckless or negligent.

2. Research Integrity Advisors

Swinburne has appointed Research Integrity Advisors (RIAs) to promote the responsible conduct of research and provide advice to those with concerns about potential breaches of the Code. The RIAs are people with research experience, knowledge of the institution's processes, the Code, and familiarity with accepted practices in research.

2.1 A person with concerns about research conduct may consult with an RIA. An RIA will be able to provide advice about the relevant Swinburne processes and available options, including how to make a complaint. Outcomes of the discussion between the RIA and the complainant (the person making the complaint) may include:

- not proceeding if the complaint or concern is clearly not related to a breach of the Code
- proceeding under other Swinburne processes
- making a complaint or expressing concern about a potential breach of the Code either verbally or in writing to the Designated Officer (DO).

- 2.2 An RIA cannot advise on matters where they have a potential, perceived or actual conflict of interest.
- 2.3 The RIA's role does not extend to review of the complaint or concern, including contacting the person who is the subject of that complaint or concern, or being involved in any subsequent review other than as witness or to provide testimony.
- 2.4 An RIA may make a complaint or express concern about any possible breach of the Code.

3. Management of Complaints or concerns

Figure 1 provides an overview of the process for managing complaints and concerns.

A complaint or concern about a potential breach of the Code occurs when a concern is raised or identified that one or more researchers have conducted research that is not in accordance with the principles and responsibilities of the Code.

3.1 Receipt of complaints or concerns

- 3.1.1. Complaints or concerns should be made either verbally or in writing to the Research Ethics, Integrity and Biosafety Office (resintegrity@swin.edu.au or go to <https://www.swinburne.edu.au/research/ethics/contact-us/>). Complaints or concerns should include as much information as possible to assist in the review. At a minimum, a description of what transpired, who was involved and where and when the incident or matter occurred should be provided or documented.
- 3.1.2. Anyone (internal or external) can make a complaint or express concern.
- 3.1.3. A complaint or concern may be made anonymously however any inquiries or investigation may be limited if enough information is not provided and the complainant cannot be contacted.
- 3.1.4. If the complaint or concern does not relate to a Swinburne researcher, the matter will be referred to the relevant institution as appropriate. However, if the conduct occurred while the researcher was a Swinburne researcher then the complaint will be accepted.
- 3.1.5. If the complaint or concern relates to potential student breach of code or misconduct then the matter may be referred to the University's complaint, review, appeals or misconduct process for students.
- 3.1.6. If invoked and applicable, a person raising an allegation (the complainant) in relation to a research conduct issue must be treated in accordance with the University's section of the People, Culture and Integrity Policy that deals with protected disclosures (whistle blower).
- 3.1.7. Persons making unwarranted allegations may be subject to action by the University.
- 3.1.8. Where a complainant chooses not to proceed with a complaint, then Swinburne may still assess the nature of the complaint and proceed to a preliminary appraisal.

3.2 Preliminary appraisal

- 3.2.1. After receiving a complaint or concern, the Designated Officer (DO) will assign the matter to a suitable Appraisal Officer (AO) for a preliminary appraisal.
- 3.2.2. The purpose of the preliminary appraisal is to consider whether the complaint or concern, if proven, would amount to a breach of the Code and, if so, whether that breach would amount to Research Misconduct. If the matter could amount to Research

Misconduct if proven, then the matter will be referred to People and Culture for review under their processes.

- 3.2.3. To conduct the preliminary appraisal, facts and information regarding the complaint or concern will be collected to inform how the potential breach relates to the principles and responsibilities of the Code and/or Swinburne processes.
- 3.2.4. Information will not be shared with anyone external to the Research Integrity office unless required.
- 3.2.5. It may be necessary (but not always) for the AO to discuss the matter with the person alleged to have breached the Code (the respondent) during a preliminary appraisal to clarify the facts and/or information. In this case, the respondent will be notified and provided with:
 - Sufficient detail for the respondent to understand the nature of the complaint or concern
 - An opportunity to respond in writing within a nominated timeframe. This may include an invitation to meet with the option to bring a support person. The support person cannot be a currently practising solicitor or barrister.
- 3.2.6. The preliminary appraisal summary may include:
 - a summary of the process that was undertaken
 - a record of the facts and information that was gathered
 - an evaluation of facts and information
 - how the potential breach relates to the principles and responsibilities of the Code and/or Swinburne processes
 - recommendations for further action.
- 3.2.7. The preliminary appraisal summary will be provided to the DO and will be used by the DO to determine if the complaint or concern should be:
 - Dismissed
 - Resolved locally (for example, referred to the relevant Faculty Associate Dean of Research)
 - Referred to People and Culture for consideration as alleged Research Misconduct under the Enterprise Agreement
 - Referred for further appraisal by a panel as an alleged breach of the Code (other than Research Misconduct)
 - Referred to another Swinburne process (for example to be dealt with by People and Culture if the complaint or concern relates to unsatisfactory performance or conduct in employment).
- 3.2.8. Where a preliminary appraisal does not support a referral of an allegation of a breach of the Code for further enquiry, the following actions should be considered:
 - if the complaint or concern has no basis in fact (for example, due to a misunderstanding or because the complaint is frivolous or vexatious), then efforts, if required, must be made to restore the reputation of any affected parties
 - if a complaint or concern is considered to have been made in bad faith or is vexatious, efforts to address this with the complainant should be taken under appropriate institutional processes
 - addressing any systemic issues that have been identified.

- referring the complaint to another Swinburne process (for example to be dealt with by People and Culture if the complaint or concern relates to unsatisfactory performance or conduct in employment).
- 3.2.9. If a respondent has left Swinburne following a complaint or concern being made, Swinburne has a continuing obligation to address the complaint or concern. If the researcher has left Swinburne then the matter will not be referred to People and Culture.
- 3.2.10. The respondent, and, if appropriate, the complainant, will be informed of the outcome of the preliminary review.

3.3. Panel Enquiry

A Panel will be convened if the DO determines that the complaint or concern should be referred for further appraisal by a panel as an alleged breach of the Code (Section 3.2.7). The panel may have one or more members. If there is more than one member then a Chair may be appointed. The DO will decide the size and composition of the panel. Factors considered will include the seniority of those involved, the potential consequences for those involved, and the need to maintain public confidence in research. Some or all members may be external to Swinburne if the circumstances call for it.

- 3.3.1. In selecting members for the Panel, the DO will consider:
- the expertise and skills required selection of a person appropriately qualified as Chair
 - appropriate level of experience and expertise in the relevant discipline(s)
 - the need for a person with prior experience of similar panels or relevant experience
 - knowledge and understanding of the responsible conduct of research
 - appropriate number of members
 - the need for members to be free from conflicts of interest or bias
 - gender/diversity of members.
- 3.3.2. Once potential panel members have been selected, the respondent will be advised of the panel's composition and provide an opportunity for the respondent to any raise concerns.
- 3.3.3. Members of the panel are expected to:
- work within Swinburne's processes
 - follow the procedure established and work within the terms of reference for the Panel
 - respect confidentiality
 - adhere to the principles of procedural fairness
 - complete the enquiry in a timely manner; and
 - prepare a written report.
- 3.3.4. All those required to give evidence to the panel will be given adequate notification.
- 3.3.5. Those required to give evidence to the Panel may bring along a support person. The role of the support person is to provide personal support, within reasonable limits, to

- the respondent and/or complainant. The support person cannot be a currently practising solicitor or barrister.
- 3.3.6. The respondent will be provided with an opportunity to respond to the allegation and relevant evidence, and to provide additional evidence upon which the panel may rely. If the respondent does not respond or appear before the panel when requested, the enquiry continues in their absence. If this is the case the complainant may also be given the opportunity to see relevant evidence used in the review.
- 3.3.7. If the panel decides that the matter if proven could amount to Research Misconduct, it will be referred to People and Culture at any stage in the process.
- 3.3.8. A panel enquiry may be suspended at any stage in the process if the panel decides that the matter should be dealt with in another Swinburne process or there is insufficient evidence or information.
- 3.3.9. All those asked to give evidence to the panel will be provided with the following information, if relevant, including:
- schedule of meetings and/or hearings they are asked to attend
 - relevant parts of the terms of reference for the review, if appropriate
 - advice as to how the Panel intends to conduct interviews
 - that they may be accompanied by a support person
 - advice about whether the interviews will be recorded
 - whether an opportunity will be provided to comment on matters raised in the interview
 - disclosing interests
 - confidentiality requirements
 - panel's procedures.
- 3.3.10. The panel will make a determination as to whether the respondent has breached the Code. The panel:
- will assess the evidence and consider if more may be required
 - may request expert advice
 - must arrive at findings of fact about the allegation
 - must identify whether the principles and responsibilities of the Code have been breached
 - must consider the seriousness of any breach
 - will provide a report into its findings of fact consistent with its terms of reference
 - will make recommendations as appropriate.
- 3.3.11. On completion of the enquiry, the panel will prepare a draft written report of the enquiry.
- 3.3.12. The draft report will be provided to the respondent with a reasonable timeframe to comment. The draft report may also be provided to the complainant.
- 3.3.13. The AO will consider the report, the appropriate corrective actions and whether referral to People and Culture is required. The final report will be provided to the DO with recommendations.
- 3.3.14. After the DO has considered the Panel's report, any decisions or actions are to be communicated to the respondent and the complainant. Subsequent actions may

include informing relevant parties (such as funding bodies, other relevant authorities or other institutions) of the outcome.

3.4. Outcomes if no breach

- 3.4.1. If it has been found that there has been no breach, the following will be considered:
- if the allegation has no basis in fact then efforts must be taken to restore the reputations of those alleged to have engaged in improper conduct
 - if an allegation is considered to have been frivolous or vexatious, action to address this with the complainant should be taken under appropriate institutional processes
 - All efforts will be taken to correct the public record of the research, including publications if a breach of the Code has affected the accuracy or trustworthiness of research findings and their dissemination.

3.5. Monitoring of Investigation Outcomes

Where corrective actions have been applied, ongoing compliance to these actions will be monitored by the Research Integrity Office. If there are any concerns regarding compliance the DVC(R&D) may, after consultation with the Research Integrity Office, refer the matter back to the Panel for consideration or for consideration under a different Swinburne process (such as under the current Enterprise Agreement).

Persistent non-compliance with corrective actions will result in a review of the matter and could result in a finding of a more serious research breach and thus more serious penalties applied.

3.6. Review of a Panel Enquiry

Only requests for a review of a panel enquiry on the grounds of procedural fairness will be considered. The aim of a review is to affirm or not the outcome of the panel enquiry. If new information comes to light, the DO and AO will consider if a new review will be necessary. If a review is required then the information and report from the initial enquiry may be taken into account. The panel members of the initial enquiry should be appointed to the new panel where practicable.

- 3.6.1. A request for a review should be made in writing to the Manager, REIB.
- 3.6.2. A decision to proceed with a review will be made by consultation with the DVC (R&D) and, if required, the Vice Chancellor. A review may necessitate a referral back to the Panel or to another Swinburne process such as People and Culture or Graduate Studies.
- 3.6.3. The outcome of the review will be communicated to the respondent, and possibly the complainant if they are directly affected.

A review in relation to a panel process conducted in accordance with the Enterprise Agreement will be conducted in accordance with the relevant provisions of the Enterprise Agreement.

Relevant Codes, Policies and Legislation

Type	Name and hyperlink
Code	Australian Code for the Responsible Conduct of Research (2018)
Code	National Statement on Ethical Conduct in Human Research (2007) – updated 2018

Code	Australian Code of Practice for the Care and Use of Animals for Scientific Purposes (8th Edition, 2013)
Policy	Swinburne People, Culture and Integrity Policy
Policy	Research Training Policy
Regulation	Research Training Regulations 2015
Regulation	Student Academic Misconduct Regulations 2012
Regulation	Student General Misconduct Regulations 2012
Act	Commonwealth Privacy Act 1988
Act	Victorian Information Privacy Act 2000
Act	Swinburne University of Technology Act 2010
Act	Prevention of Cruelty to Animals Act 1986
Act	Victorian Protected Disclosures Act 2012

Version control and change history

Version Number	Approval Date	Approved by	Amendment
1	June 2019	DVC(R&D)	New document

Complaint/concern received and appears to relate to a breach of the Code

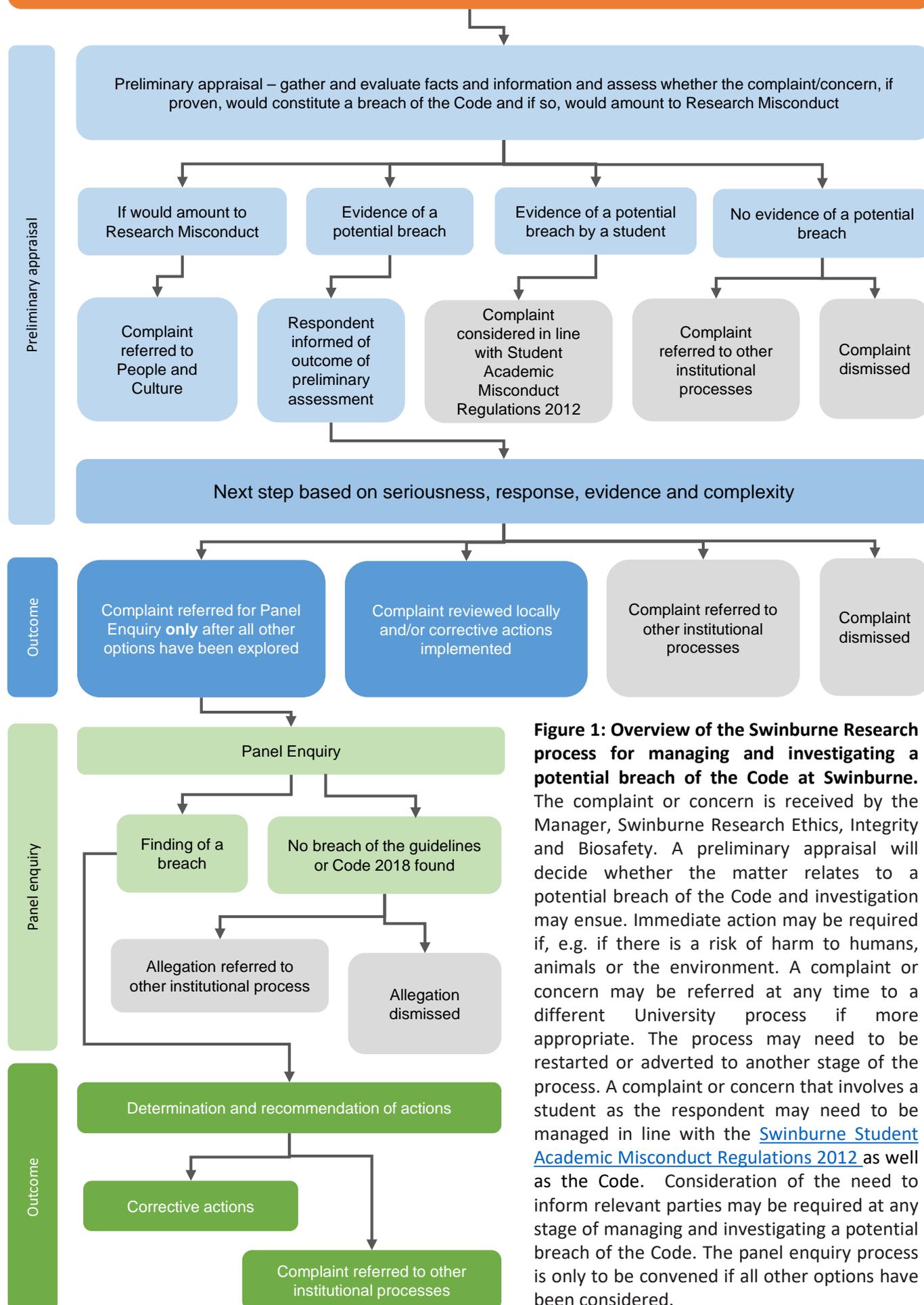


Figure 1: Overview of the Swinburne Research process for managing and investigating a potential breach of the Code at Swinburne. The complaint or concern is received by the Manager, Swinburne Research Ethics, Integrity and Biosafety. A preliminary appraisal will decide whether the matter relates to a potential breach of the Code and investigation may ensue. Immediate action may be required if, e.g. if there is a risk of harm to humans, animals or the environment. A complaint or concern may be referred at any time to a different University process if more appropriate. The process may need to be restarted or adverted to another stage of the process. A complaint or concern that involves a student as the respondent may need to be managed in line with the [Swinburne Student Academic Misconduct Regulations 2012](#) as well as the Code. Consideration of the need to inform relevant parties may be required at any stage of managing and investigating a potential breach of the Code. The panel enquiry process is only to be convened if all other options have been considered.