

## Procedure for handling complaints or potential breaches of the Human Ethics Policy

### 1. Introduction

- 1.1 The University has a commitment to ensuring that all University human research, relevant teaching activities and research involving highly sensitive information conforms to high ethical standards.
- 1.2 The University's Human Ethics Committee (HEC) has responsibility for the oversight of human research conducted by University researchers to protect participants and researchers from poor practice.
- 1.3 The University's Human Ethics Guidelines provide that complaints may be lodged to the HEC by any person and the HEC may suspend approval of an application while the complaint is considered.
- 1.4 This guidance outlines the principles and procedure for how the HEC should receive and respond to complaints, concerns, or potential breaches of ethics. This procedure does not override relevant legislation (e.g. the Privacy Act) or the Staff Conduct Policy or Student Conduct Statute, which take precedence.

### 2. Principles for handling complaints

- 2.1 Most researchers act in good faith and are motivated by the desire to expand the body of knowledge. Notwithstanding these good intentions, research participants, the general public and other researchers may be negatively impacted by research and question the ethics of a particular piece of research. In receiving complaints, concerns or potential breaches the HEC has a responsibility to be responsive to the concerns of research participants, researchers involved in any complaint, and the general public. The HEC will review complaints, concerns or potential breaches according to the University's values and the principles laid out in the Human Ethics Policy and Guidelines. In particular, the following principles will guide how complaints are handled:
  - (a) **Manaakitanga** - Any complaints must be responded to with care and compassion for all involved.
  - (b) **Fairness** - The process and decision-making must be fair to all involved, including participants, researchers, and supervisors by following the principles of natural justice.
  - (c) **Responsiveness** - The process must be shaped to the context of the situation in a flexible and proportionate way and attempt to resolve issues at the earliest possible stage and without undue escalation.
  - (d) **Restoration** – The process will be informed by the concept of utu with a focus on restoring balance by putting right any harms that may have occurred as soon as practicable.

- (e) **Akoranga** - The process should aim to identify learning for individuals and the University, including opportunities for improvements to the HEC's approval and oversight processes.

### **3. Receiving complaints and identifying potential breaches of ethics**

3.1 Complaints, concerns or potential breaches of the Human Ethics Policy may be brought to the attention of the HEC through contact with a person raising concerns, or on the HEC's own initiative as part of its duty to oversee the conduct of human research.

3.2 Any complaints, concerns or potential breaches received by other parts of the University, or members of the HEC, should be communicated to the Convener of HEC (the Convener) who will notify the Research Office in writing as soon as possible.

### **4. Preliminary Assessment**

4.1 Research Office staff will undertake a preliminary assessment under the direction of the Convener. This preliminary assessment will dictate what further steps may be required with the goal of appropriately addressing the concerns identified at the lowest possible level, particularly where minor, unintentional errors are revealed.

4.2 The preliminary assessment should be undertaken as quickly as possible to minimise the impact on all parties.

4.3 Where there appears to be a breach of the Privacy Act 2020, Research Office staff must inform the University's Privacy Officer as soon as possible and follow the Privacy breach process which is available from the University Privacy Officer. For more information see <https://intranet.wgtn.ac.nz/staff/your-university/privacy-centre>.

4.4 The preliminary assessment will involve the following steps:

#### **(a) Locate the application and communicate with complainant**

- i) The Research Office will firstly identify which ethics application the potential breach relates to, either through direct contact with any person raising concerns, or through searches of the electronic database of applications, or through other reasonable means.
- ii) The Research Office will act in consultation with academic supervisors (supervisors) and other relevant parties to ensure that the complainant, research participants, researchers and any other affected people are, as far as possible, safe from future harm.
- iii) After consultation as per (ii) above, the Convener in discussion with the senior Research Office manager responsible for ethics oversight, will consider whether additional conditions to the ethics approval are needed, or whether immediate suspension of data gathering, in whole or in part, is required to prevent potential

harm occurring pending completion of the Preliminary Assessment.

**(b) Consider whether additional conditions or research suspension is required**

The decision as to whether additional conditions on the ethics approval are required, or whether immediate suspension of data gathering is required in whole or in part, will be based on:

- i) The potential severity of the alleged breach and the potential for harm to occur while the matter is being assessed and will be cognisant of the likely impact of a complete suspension of the project approval on the researcher and others. In considering the seriousness of the breach some factors to be considered are:
  - The extent of the departure from accepted practice;
  - The extent to which the breach has affected participants and the wider community;
  - The level of experience of the researcher;
  - Whether institutional failure has contributed to the breach;
  - Whether the breach impacts the trustworthiness of the research.
- ii) Full suspension of the research only being required where lesser measures cannot realistically protect from harm occurring. An instruction to suspend the research, in whole or in part, should be regularly reviewed through the process and reduced, rescinded or increased if necessary, in light of information emerging through the assessment process.
- iii) Potential breaches of the HEC Policy and Guidelines can occur on a spectrum, from minor, often unintentional, breaches to more serious breaches. Examples of more serious breaches may include, but not limited to:
  - Conducting research without approval from the HEC (where required);
  - Significantly varying from the HEC Approval;
  - Fabrication, falsification or misrepresentation of data;
  - Failure to appropriately manage research data; or
  - Failure to disclose conflict of interest.

**(c) Notify concerned parties**

- i) Potential breaches relating to staff-led research projects will be notified to the principal investigators. If the potential breach concerns a named associate they too will be notified.
- ii) Potential breaches relating to student-led research projects should usually be notified to the supervisors in the first instance, and then to the student researcher.
- iii) Potential breaches relating to teaching projects, or to research projects involving recruitment of students from University courses, will be notified to

the principal investigators and the course coordinator, and then to other concerned parties as appropriate.

**(d) Consult with concerned parties**

The Convener or Research Office staff (acting under the Convener's direction) will consult with relevant parties (including the complainant, research participant(s), researcher(s), and supervisors of student researchers), and will gather information relevant to the potential breach. They will also determine who will be involved if any action is required to take care of people (participant, complainant and/or researcher). Information gathered will be treated sensitively in line with privacy principles. The Convener and Research Office staff may convene meetings between concerned parties if they believe that this is likely to assist with early and appropriate resolution of the matter.

**(e) Provide information to researcher**

Once the preliminary assessment has been completed, the Convener or Research Office staff (acting under the Convener's direction) will provide all relevant information gathered to the concerned parties consistent with the principles of natural justice.

**5. Preliminary decision**

5.1 On completion of the preliminary assessment, the Convener and the senior Research Office manager responsible for ethics oversight (the Preliminary Decision-Makers) will decide based on the information gathered whether the matter should be:

- (a) Dismissed
- (b) Resolved informally with or without corrective action (including amendments made to the original application)
- (c) Referred for investigation under this procedure, and/or
- (d) Referred to University processes under the Staff Conduct Policy or the Student Conduct Statute.

5.2 Factors that will indicate the need for a formal investigation under this procedure include:

- (a) Clear indication of a serious breach;
- (b) Lack of cooperation by the researcher in question;
- (c) Lack of consensus between those undertaking the preliminary assessment and the complainant and researcher;
- (d) Initial inquiries have been unable to reach clear conclusions about what has occurred;
- (e) If it appears that significant harm may have occurred.

5.3 If it appears the issue can be resolved informally, with or without corrective action, the

Preliminary Decision-Makers will document this and communicate with those concerned what corrective action is required. If the complainant or researcher is dissatisfied with a proposed resolution, they can request that the Preliminary Decision-Makers refer the matter to investigation under this procedure.

5.4 If the matter is referred for investigation under this procedure, or to processes under the Staff Conduct Policy or the Student Conduct Statute, the Convener and/or Research Office will notify the researcher(s), and the Head of School. For student-led research projects, supervisors will also be notified. The Convener may decide to suspend, or continue to suspend, the approval of an application (in whole or in part) while further investigation takes place.

5.5 Where organisational learnings are clearly identified at this stage, the Research Office/Convener will record these and take immediate steps to implement internal process improvements.

## **6. Investigation and determination**

6.1 Consistent with the principle of mahi tahi (partnership), the University is committed to providing both a standard pathway as well as a Tikanga Māori pathway for seeking resolution of matters at the University. This procedure provides for the investigation and determination to follow either pathway as outlined below.

6.2 Complaints, concerns or potential breaches of Ethics Policy may be addressed by applying Tikanga Māori if the complainant, respondent, Preliminary Decision-Makers, and the Tumu Ahurei agree to such a process, including who will participate in that process and the procedure to be followed. The Tumu Ahurei will have the responsibility of ensuring that all parties are sufficiently aware of tikanga before agreeing to the process. The process will be facilitated by the Tumu Ahurei based on the Guidelines for a Tikanga Māori Process included in the Staff Conduct Policy Guidelines.

6.3 If a standard pathway investigation under this procedure is determined to be required, the senior Research Office manager in consultation with the Convenor will:

- (a) Prepare a statement of allegations;
- (b) Develop Terms of Reference (including the allegations) for the investigation (See Template Terms of Reference at Appendix A);
- (c) Nominate the investigating panel and Chair;
- (d) Seek legal advice on matters of process where appropriate.

6.4 In nominating the investigating panel, the senior Research Office manager will consider:

- (a) The seniority and role status of those involved
- (b) The need to maintain public confidence in research
- (c) The disciplinary skills, experience, cultural competence, diversity, and freedom from conflicts of interest of panel members.

- 6.5 The panel will usually be composed of 3 to 5 people and must include at least one current or former member of the HEC as Chair, and one academic staff member who is not a member of HEC. If the researcher is a student, a student representative from HEC must be part of the panel.
- 6.6 In accordance with the principles of natural justice the researcher(s) and complainant must be provided an opportunity to comment on the Terms of Reference and the panel composition.
- 6.7 Once finalised, the panel will conduct the investigation as soon as possible in accordance with the Terms of Reference and will be supplied with all relevant written material gathered through the preliminary assessment. The researcher concerned has a right to give their perspective on the allegations to the panel in person or in writing. The panel may request to meet with the complainant, the researcher(s) and any other relevant persons including their support people.
- 6.8 The panel will:
- (a) Arrive at a judgement about the complaint or concern based on the information gathered;
  - (b) Identify, on the balance of probabilities, whether the Human Ethics Policy has been breached and how it has been breached;
  - (c) Determine the seriousness of the breach; and
  - (d) Make appropriate recommendations, including those relating to the ethics systems and processes.
- 6.9 The panel will provide its findings in a written report to the Vice-Provost Research (VPR).
- 6.10 The VPR (or, in their absence, their nominated alternate) will make the final decision, normally within 10 working days of receipt, as to whether a breach of the Human Ethics Policy has occurred, along with any corrective action including referring the matter for proceedings under the Staff Conduct Policy or the Student Conduct Statute. The VPR (or in their absence, their nominated alternate) will notify the relevant Head of School of their decision and provide them with a copy of the investigation report.
- 6.11 Where a Tikanga Māori process has been followed, the Tumu Ahurei will confirm the decision reached in writing to the VPR (or, in their absence, their nominated alternate) who will notify the relevant Head of School.
- 6.12 Corrective actions must be proportionate to the severity of the breach and consistent with the principles outlined at Clause 2, with a focus on putting right any harms that have occurred, preventing future harm and ensuring individual and organisational learning.
- 6.13 The Research Office will maintain a record of all complaints, concerns and breaches received, the organisational learnings that have been identified and a record of the remedial actions taken to address these in keeping with the principle of Akoranga.

## 7. Appeals

7.1 The researcher or a complainant (in cases where a complainant is personally affected by the conduct) may appeal the findings in the Panel report and/or the decision by the VPR, in writing to the Provost, within 20 working days of the communication of the VPR's decision. If the appeal is not lodged within the specified timeframe, the Panel's report and subsequent decisions by the VPR will be regarded as uncontested.

7.2 On receipt of an appeal the Provost

- (a) must review
  - i. the evidence submitted to the Panel
  - ii. the Panel report
  - iii. the VPR decision, and
- (b) may request
  - i. any further evidence that it deems relevant and
  - ii. to meet the student appealing or other relevant parties and
  - iii. to meet the Convenor of the HEC.

7.3 The Provost may allow an appeal if they are satisfied that:

- (a) the decision of the VPR (or their nominated alternate) was:
  - i. unfair because of some material defect in the procedure followed; or
  - ii. was incorrect because of:
    - the information considered by the decision-maker; or
    - additional information not available to the decision-maker; or
    - additional information available to the decision-maker but not considered; or
- (b) the corrective action required by the decision maker was manifestly excessive.

7.4 The Provost may:

- (a) if the decision was unfair because of some material defect in procedure, set aside the decision and refer it back to the decision-maker including requiring further investigation by a new panel if natural justice principles have not been followed;
- (b) if the decision was incorrect, set aside the decision and substitute another decision;
- (c) if the corrective action required was manifestly excessive, set aside those requirements and substitute other corrective actions.

7.4 The Provost must provide written reasons for their decision to:

- (a) The person appealing
- (b) the other party (complainant or researcher), and
- (c) the VPR.

7.5 The decision of the Provost is final.

## Appendix A - Template Terms of Reference for investigating panel

### Terms of Reference - Human Ethics Subcommittee

#### Background

A complaint has been received about HEC Application (insert research application reference number) made by (insert name of researcher) on (insert date research application approved).

#### Role of subcommittee

The subcommittee has been convened by the senior Research Office Manager with responsibility for ethics, in consultation with Convenor of the Human Ethics Committee (HEC), to investigate the complaint against HEC Application (insert application reference number) and to report their findings to the Vice-Provost Research (VPR).

#### Membership

The Convenor of the Human Ethics Committee (HEC) has appointed the following to sit on the *ad hoc* subcommittee for the period of the investigation of this matter:

Name	University Role	Specific subcommittee role/mandate
1.		Chair
2.		Academic staff (Non-HEC)
3.		Student representative from HEC (if researcher is a student)
4.		
5.		

#### Information provided to subcommittee

The following information has been gathered through the preliminary assessment and provided to the subcommittee:

1. HEC Application (insert research application reference number)
2. Complaint/concern received from (insert name of complaint/informant)
3. Researcher's initial response to complaint/concerns raised
4. Actions and communication taken following receipt of complaint/concern
5. Other documentation as follows: (insert description/reference of other documentation provided)

#### Duties of subcommittee

The subcommittee is to:

- (a) Arrive at a judgement about the complaint or concern based on the information gathered;
- (b) Identify, on the balance of probabilities, whether the Human Ethics Policy has been breached and how it has been breached;
- (c) Determine the seriousness of the breach; and
- (d) Make appropriate recommendations, including those relating to the ethics systems and processes.

The panel will provide its findings in a written report to the Vice-Provost Research (VPR).

### **Key focus of investigation**

The investigation will focus primarily on the conduct of the research approved under HEC Application **(insert HEC application reference number)**, to determine whether the research has proceeded in accordance with the ethical approval issued through HEC and the University's Human Ethics Policy.

The investigation will pay particular regard to issues raised in the complaint pertaining to **(insert specific aspects of the complaint information that needs to be determined)**.

The investigation is not intended to be a disciplinary process. In accordance with section 9.2 of the Human Ethics Policy, any determination of misconduct or other disciplinary sanctions are matters for the Head of School in the first instance and are therefore excluded from the scope of this investigation.

The investigation must be conducted in accordance with the principles of natural justice.

### **Suggested steps**

1. Subcommittee meets with the complainant to gather further information and ask clarifying questions about the complaint;
2. Subcommittee meets with the researcher and supervisors to seek further information and ask clarifying questions about how the research has proceeded to date;
3. Subcommittee meets with the Convenor and previous past Convenor of HEC to seek further information and ask clarifying questions about how the research has proceeded to date;
4. Subcommittee meets to discuss what action, if any, is required to address the complaint, which may include recommending suspending or restoring HEC approval and/or the requirement for amendments to the research.
5. Subcommittee provides a written report on its decision and any findings on the matters to the VPR for their decision
6. **(insert further steps as required)**.

### **Decision making**

The VPR (or in their absence, their nominated alternate) will make the final determination,

normally within 10 working days of receipt of the sub-committee's report, as to whether a breach of the Human Ethics Policy has occurred, along with any corrective action required including referring the matter for proceedings under the Staff Conduct Policy or the Student Conduct Statute. The VPR (or in their absence, their nominated alternate) will notify the relevant Head of School of their decision and provide them with a copy of the investigation report.

### **Appeals**

The researcher or a complainant (in cases where a complainant is personally affected by the conduct) may appeal a finding in the Panel report, in writing to the Provost, within 20 working days of the communication of the findings of the VPR's decision. The person appealing should indicate in their submission if they wish to appear in person. If the appeal is not lodged within the specified timeframe, the Panel's report and subsequent decisions by the VPR will be regarded as uncontested.

Signed by: (insert name of Convenor of the Human Ethics Committee)

Designation: Convenor of the Human Ethics Committee

Date of appointment of subcommittee: (insert date)