

Policy Directive



Research & Ethics - Responding to Allegations of Research Misconduct

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1. Introduction:

The South Western Sydney Local Health District (SWSLHD) is committed to ensuring the legal, ethical and scientific integrity of research activities conducted by its staff members and collaborators. To this end, the SWSLHD expects that its employees and others conducting research in its facilities will do so in accordance with this policy and the following guidelines:

- The *National Statement on Ethical Conduct in Human Research (2007)*
http://www.nhmrc.gov.au/files_nhmrc/file/publications/synopses/e72-jul09.pdf
- The *Australian Code for the Responsible Conduct of Research 2007*
http://www.nhmrc.gov.au/files_nhmrc/file/publications/synopses/r39.pdf
- Policy Directive SWSLHD Research *Code of Conduct*
http://intranet.sswahs.nsw.gov.au/SSWpolicies/pdf/SWSLHD/SWSLHD_PD2015_002.pdf
- Other relevant NSW Health and SWSLHD policies concerning the ethical approval and site authorisation of research.
- NSW Health Policy on Managing Misconduct
http://www0.health.nsw.gov.au/policies/pd/2014/pdf/PD2014_042.pdf

This policy is based on two sources:

- The model policy for responding to allegations of research misconduct developed by the [Office of Research Integrity](#) (ORI). Organisationally, ORI is located in the Office of Public Health and Science (OPHS), within the Office of the Secretary of Health and Human Services (OS), in the United States Department of Health and Human Services (HHS).
- The [UK Research Integrity Office](#) "Procedure for the investigation of misconduct in research. August 2008". The UK Research Integrity Office is an independent body which offers advice and guidance to institutions and individuals about the conduct of research.

Definition of Research Misconduct

In the National Health and Medical Research Council, Australian Research Council and Universities Australia "Australian Code for the Responsible Conduct of Research. 2007." <http://www.nhmrc.gov.au/guidelines-publications/r39>, research misconduct is defined as:

"A complaint or allegation relates to research misconduct if it involves all of the following:

- an alleged breach of this Code
- intent and deliberation, recklessness or gross and persistent negligence
- serious consequences, such as false information on the public record, or adverse effects on research participants, animals or the environment.

Research misconduct includes fabrication, falsification, plagiarism or deception in proposing, carrying out or reporting the results of research, and failure to declare or manage a serious conflict of interest. It includes avoidable failure to follow research proposals as approved by a

research ethics committee, particularly where this failure may result in unreasonable risk or harm to humans, animals or the environment. It also includes the wilful concealment or facilitation of research misconduct by others.

Repeated or continuing breaches of this Code may also constitute research misconduct, and do so where these have been the subject of previous counselling or specific direction.

Research misconduct does not include honest differences in judgment in management of the research project, and may not include honest errors that are minor or unintentional. However, breaches of this Code will require specific action by supervisors and responsible officers of the institution.”

It should be read in conjunction with the Code(s) of Conduct for NSW Ministry of Health and the Research Code of Conduct for SWSLHD.

The scope of this policy:

This policy applies to any person paid by, under the control of, or affiliated with the SWSLHD, such as clinical academics, researchers, conjoint appointees, scientists, trainees, technicians and other staff members, students, fellows, volunteers, guest researchers, or collaborators.

The policy and associated procedures will normally be followed when an official of SWSLHD receives an allegation of possible research misconduct. SWSLHD is committed to ensuring the legal, ethical and scientific integrity of research activities. It will support the rights of both complainant and respondent in any investigation. Particular circumstances in an individual case may dictate variation from the normal procedure as deemed in the best interests of SWSLHD. Any change from normal procedures also must ensure fair treatment to the subject of the inquiry or investigation. The Chief Executive of SWSLHD should approve any variation.

2. Roles

2.1 Investigating Officer

The Investigating Officer will have primary responsibility for implementation of the procedures. The Investigating Officer will be an official with research experience, wisdom, analytical skills, empathy, knowledge of SWSLHD’s policy and management structure, and familiarity with the accepted practices in research, well qualified to handle the procedural requirements involved, and who is familiar with the NSW Ministry of Health Code of Conduct, SWSLHD Research Code of Conduct, policy regarding handling of grievances and policy regarding investigation of a complaint against a clinician.

The Investigating Officer will ensure that confidentiality is maintained. The Investigating Officer will assist the Investigation Panel and all institutional personnel in complying with these procedures and with applicable standards imposed by government or external funding sources. The Investigating Officer is also responsible for maintaining files of all documents and evidence relating to the allegation and for the confidentiality and the security of these files.

The role of the Investigating Officer does not include deciding whether misconduct occurred or conducting exhaustive interviews and analyses.

2.2 Complainant

The complainant will have an opportunity to:

- make a statement before any Investigator and Investigation Panel
- have the advice of a support person at interviews
- review portions of the reports pertinent to their allegations or testimony
- be informed of the results of the inquiry and investigation
- be protected from harassment, victimisation or any other form of reprisal by the subject of the complaint or any other employees.

The complainant is responsible for making allegations in good faith, maintaining confidentiality, and cooperating with an inquiry or investigation. The complainant has the right to have a support person present at interviews.

2.3 Respondent

The respondent will be:

- informed in writing of the allegations when an Investigation Officer is appointed and when an Investigation Panel is established.
- notified in writing of the final determinations and resulting actions arising from these inquiries.
- offered the opportunity to be interviewed and present evidence to the Investigating Officer and any Investigation Panel, to review any formal reports, and to have the advice of a support person at interviews.

The respondent is responsible for maintaining confidentiality and cooperating with the conduct of an inquiry or investigation. The respondent has the right to have a support person present at interviews.

2.4 Advisor in Research Integrity

SWSLHD must appoint one or more senior staff members as advisors in research integrity. Each advisor will be able to advise a staff member who is unsure about a research conduct issue and may be considering whether to make an allegation. Advisors should be people with research experience, wisdom, analytical skills, empathy, knowledge of SWSLHD's policy and management structure, and familiarity with the accepted practices in research.

An advisor should not be involved in a case if he or she has a relevant conflict of interest. The advisor in research integrity should explain the options open to the person considering making, or having made an allegation. These options include:

- referring the matter directly to the person against whom the allegation is being made
- not proceeding or withdrawing the allegation if discussion resolves the concerns
- referring the allegation to a person in a supervisory capacity for resolution at the local or departmental level

- making an allegation of research misconduct in writing to the designated person.

The advisor's role does not extend to investigation or assessment of the allegation. The advisor must not make contact with the person who is the subject of the allegation, and he or she must not be involved in any subsequent inquiry. The advisor will document names, discussions, actions and dates of any research integrity issue.

2.5 Chief Executive

The Chief Executive through their delegate, the Director of Research, has the responsibility to initiate an investigation, to review any comments made by the respondent or the complainant depending on the stage of the process, and to ensure that relevant policy is followed.

2.6 Director of Research

The Director of Research has overall strategic responsibility for research development within the District.

Policy Statement

All allegations of research misconduct will be dealt with in a timely, effective and fair manner as outlined in the procedure.

3. Principles

3.1 Responsibility to Report Misconduct

All employees or individuals associated with SWSLHD should report observed, suspected, or apparent misconduct in research to the Director of Research. The Director of Research should declare any potential conflict of interest. If the Director of Research has a significant conflict of interest then the Chief Executive will appoint an alternative officer.

If an individual is unsure whether a suspected incident falls within the definition of research misconduct, he or she may contact the Director of Research or the Research advisor to discuss the suspected misconduct informally.

If the circumstances described by the individual do not meet the definition of research misconduct, the Director of Research may refer the individual or allegation to other offices or officials with responsibility for resolving the problem.

At any time, an employee may have confidential discussions and consultations about concerns of possible misconduct with the Director of Research and will be advised about appropriate procedures for reporting allegations.

3.2 Protecting the Complainant

The Director of Research will monitor the treatment of individuals who bring allegations of misconduct or of inadequate institutional response thereto, and those who cooperate in inquiries or investigations. The Director of Research will ensure that these persons will not be retaliated against in the terms and conditions of their employment or other status at SWSLHD and will review instances of alleged retaliation for appropriate action.

Employees should immediately report any alleged or apparent retaliation to the Director of Research for referral to the appropriate officer for management under the appropriate policy.

SWSLHD will protect the privacy of those who report misconduct in good faith to the maximum extent possible. SWSLHD is required to undertake diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations

3.3 Protecting the Respondent

Inquiries and investigations will be conducted in a manner that will ensure fair treatment to the respondent(s) in the inquiry or investigation and confidentiality to the extent possible without compromising public health and safety or thoroughly carrying out the inquiry or investigation.

SWSLHD employees accused of research misconduct may consult with their legal counsel or a non-lawyer personal advisor (who is not a principal or witness in the case) to seek advice and may bring the counsel or personal advisor to interviews or meetings on the case as a support person.

3.4 Cooperation with Inquiries and Investigations

SWSLHD employees will cooperate with the Director of Research and other SWSLHD officials in the review of allegations and the conduct of inquiries and investigations. Employees have an obligation to provide relevant evidence to the Director of Research or other officials on misconduct allegations.

4. Performance Measures

- Number of allegations of research misconduct received per year
- Time taken from complaint to recommendations to the Chief Executive

5. Definitions

Advisor in Research Integrity is a person appointed by the Chief Executive who is able to advise a staff member who is unsure or concerned about a research conduct issue and is contemplating making a complaint (refer to 2.4).

Allegation means any written or oral statement or other indication of possible research misconduct made to an institutional official.

Complainant means a person who makes an allegation of research misconduct.

Conflict of interest means the real or apparent interference of one person's interests with the interests of another person, where potential bias may occur due to prior or existing personal, pecuniary or professional relationships.

Good faith allegation means an allegation made with the honest belief that research misconduct may have occurred. An allegation is not in good faith if it is made with reckless disregard for or wilful ignorance of facts that would disprove the allegation.

Investigation means the formal examination and evaluation of all relevant facts to determine if misconduct has occurred and, if so, to determine the responsible person and the seriousness of the misconduct.

Investigating Officer means the official (or delegate) responsible for assessing allegations of research misconduct and determining when such allegations warrant inquiries and for overseeing screenings and investigations. (refer to 2.1)

Procedural fairness means any allegations of research misconduct forming the basis of an investigation must be stated clearly in writing, the person facing the allegations has a right to be heard, and the members of any panels must be free of bias or preconception, and must conduct themselves in a manner that demonstrates this. The person subject to the inquiry be able to hear and respond to any and all material to be used by a panel in its decision-making process. Any decision by a panel must be based on evidence.

Research record means any data, document, computer file, computer diskette, or any other written or non-written account or object that reasonably may be expected to provide evidence or information regarding the proposed, conducted, or reported research that constitutes the subject of an allegation of research misconduct. A research record includes, but is not limited to, grant or contract applications, whether funded or unfunded; grant or contract progress and other reports; laboratory notebooks; notes; correspondence; videos; photographs; X-ray film; slides; biological materials; computer files and printouts; manuscripts and publications; equipment use logs; laboratory procurement records; animal facility records; human and animal subject protocols; consent forms; medical charts; and patient research files.

Respondent means the person against whom an allegation of research misconduct is directed or the person whose actions are the subject of the inquiry or investigation. There can be more than one respondent in any inquiry or investigation.

Retaliation means any action that adversely affects the employment or other institutional status of an individual that is taken by an institution or an employee because the individual has in good faith, made an allegation of research misconduct or of inadequate institutional response thereto or has cooperated in good faith with an investigation of such allegation.

Research misconduct or misconduct in research is defined by the Joint NHMRC /ARC/Universities Australia "Australian Code for the Responsible Conduct of Research 2007."

Screening means gathering information and initial fact-finding to determine whether an allegation or apparent instance of research misconduct warrants an investigation.

6. Procedure

6.1 Preliminary Assessment of the Allegations – Case Review

On receipt of an allegation of research misconduct, the Director of Research will immediately assess the allegation to determine whether the allegation falls under the definition of research misconduct as defined by the Joint NHMRC / AVCC Statement and Guidelines on Research Practice and whether there is sufficient evidence to warrant a primary investigation.

Breaches of the Australian Code for the Responsible Conduct of Research that do not constitute research misconduct should as far as possible be managed at the departmental level in correspondence with the relevant policies.

Matters which constitute minor breaches of the code should be referred to the appropriate SWSLHD official for resolution. If the matter is judged to be serious by the Director of Research, then a Primary Investigation should occur.

6.2 The Primary Investigation

6.2.1 Initiation and Purpose of the Primary Investigation

Following the preliminary assessment, if the Director of Research determines that the allegation provides sufficient information to allow specific follow-up, and may fall under the definition of research misconduct as defined by the Joint NHMRC / AVCC Statement and Guidelines on Research Practice, and would be considered a serious breach, they will immediately consult with the SWSLHD Chief Executive.

From this consultation, an Investigating Officer will be nominated. This person will have the authority to conduct a Primary Investigation. In initiating the Primary Investigation, the Investigating Officer should identify clearly the original allegation and any related issues that should be evaluated.

The purpose of the Primary Investigation is to make a preliminary evaluation of the available evidence and testimony of the respondent, complainant, and key witnesses to determine whether there is sufficient evidence of possible research misconduct to warrant an inquiry. The purpose of the Primary Investigation is to determine if a full inquiry regarding research misconduct should take place, and **not** to reach a final conclusion about whether misconduct definitely occurred or who was responsible.

The findings of the Primary Investigation must be set out in a report for the information of the Director of Research. The report will either:

- Recommend dismissal of the complaint as vexatious
- Recommend dismissal of the complaint as unfounded
- Recommend dealing with the complaint at a local level, as it does not constitute a serious breach of the Joint NHMRC / AVCC Statement and Guidelines on Research Practice
- Recommend the appointment of an Investigation Panel to conduct a formal inquiry.
- If the allegations are found not be in good faith, the matter should be referred to the appropriate line manager for action.

6.2.2 Sequestration of the Research Records and other matters

As part of the process of the Primary Investigation, the Investigating Officer must ensure that copies of all research records and materials and locations relevant to the allegation are immediately secured. Failure to comply with the requests of the Investigating Officer regarding sequestration and copying of relevant records will be deemed misconduct.

The Investigating Officer, in consultation with The Director of Research and the Chief Executive will undertake a preliminary risk assessment and may advise:

- Temporary suspension of the respondent from duties on full pay
- Temporary barring of the respondent from part or all of the premises of the organisation or partner organisation
- Temporary restriction of contact by the respondent with some or all of the staff of the organisation or partner organisation

If a formal investigation is found not to be warranted, then, at the discretion of the Investigating Officer, sequestration is removed, unless deemed necessary by the Director of Research as required by other administrative processes.

Supervised but free access to the sequestered material is allowed to both complainant and respondent for the purposes of responding to allegations until the establishment of an Investigating Panel, when access without good cause will be restricted to both complainant and respondent.

6.2.3 The Investigation Process

The Investigating Officer will prepare a written brief that describes the allegations and any related issues. This written brief will be given to the respondent.

The Investigating Officer will interview the complainant, the respondent, and key witnesses as well as examining relevant research records and materials. The Investigating Officer will then evaluate the evidence obtained. The Investigating Officer will recommend to the Director of Research whether there is sufficient concern that there may have been research misconduct to recommend further investigation. The role of the Investigating Officer does not include deciding whether misconduct occurred or conducting exhaustive interviews and analysis.

Following the investigation, the Investigating Officer will prepare a report for the Director of Research.

6.2.4 The Investigating Officer Report

a) Elements of the Investigating Officer Report

A written inquiry report must be prepared for the Director of Research that states:

- the allegations
- a summary of the inquiry process used
- a list of the research records reviewed
- summaries of any interviews
- a description of the evidence in sufficient detail to demonstrate whether an investigation is warranted or not
- the determination as to whether an investigation is recommended
- whether any other actions should be taken if an investigation is not recommended.

SWSLHD Counsel will review the report for procedural fairness and legal sufficiency.

b) Comments on the Findings by the Respondent and the Complainant

The Director of Research will provide the respondent with a copy of the Investigating Officer report for comment and will provide the complainant, if they are identifiable, with portions of the report that address the complainant's role and opinions in the investigation.

The Director of Research may establish reasonable conditions for review to protect the confidentiality of the report.

Within 14 calendar days of their receipt of the report, the complainant and respondent will provide their comments, if any, to the Investigating Officer. Any comments that the complainant or respondent submits on the report will become part of the Investigating Officer report and record, and will be listed separately and identified as comments from the respondent and complainant.

Based on the identification and validation of errors of fact, the Investigating Officer may revise the findings as appropriate.

c) Time Limit for Completing the Report

The Investigating Officer will complete the screening and submit their report in writing to the Director of Research no more than 42 calendar days following their appointment unless the Director of Research approves an extension for good cause. If the Director of Research approves an extension, the reason for the extension will be entered into the records of the case and the report. The respondent and complainant will be notified of the extension.

d) Investigating Officer Decision and Notification

The Director of Research will transmit the final report and any comments to the Chief Executive, who will make the determination of whether findings from the Investigation Officer provide sufficient concern about possible research misconduct to justify convening an investigation panel. The primary investigation is completed when the Chief Executive makes this determination, which will be made within 20 days of receipt of the report. Any extension of this period will be based on good cause and recorded.

The Chief Executive will notify both the respondent and the complainant in writing of the decision of whether to proceed to an investigation and will remind them of their obligation to cooperate. The Chief Executive will also notify all appropriate institutional officials of the decision.

6.3 The Investigation Panel – The Inquiry

6.3.1 Purpose of the Investigation Panel

The purpose of the Investigation Panel is to:

- explore in detail the allegations
- examine the evidence in depth
- determine specifically whether misconduct has been committed, by whom, and to what extent.

It might also become apparent that there are additional instances of possible misconduct that would justify broadening the scope beyond the initial allegations. If this is apparent, then the Investigation Panel can approach the Chief Executive regarding a change of terms of reference.

The findings of the Investigation Panel will be set forth in an investigation report.

6.3.2 Further Sequestration of the Research Records

The Investigating Officer will immediately sequester any additional pertinent research records that were not previously sequestered during the inquiry. This sequestration should occur before or at the time the respondent is notified that an Investigation Panel will be formed. The need for additional sequestration of records may occur for any number of reasons, including SWSLHD's decision to investigate additional allegations not considered during the inquiry stage or the identification of records during the inquiry process that had not been previously secured. The procedures to be followed for sequestration during the investigation are the same procedures that apply during the primary investigation.

6.3.3 Appointment of the Investigation Panel

The Chief Executive, will appoint an Investigation Panel and the Panel chair within 20 working days of the notification to the respondent that an investigation is planned.

The Investigation Panel should consist of at least three individuals who do not have real or apparent conflicts of interest in the case, are unbiased, and have the necessary expertise to evaluate the evidence and issues related to the allegations, interview the principals and key witnesses, and conduct the investigation. These individuals may be scientists, administrators, subject matter experts, lawyers, or other qualified persons.

If an independent external Investigation Panel is deemed necessary, then policy as outlined in the Australian Code for the Responsible Conduct of Research should be followed (viz):

“Panel members who conduct an independent external research misconduct inquiry must not be employed by the institution, have other current or recent dealings with SWSLHD, or otherwise be subject to a reasonable perception of bias.

The panel should normally be constituted with a minimum membership of three people.

- At least one member should be legally qualified or have extensive experience as a member of a tribunal or similar body.
- At least one member should have knowledge and research experience in a relevant, related field of research, but not directly in the research area of the allegations.
- Procedural fairness demands that the person subject to the inquiry be able to hear and respond to any and all material to be used by the panel in its decision-making process. Therefore, it is preferable that any expert knowledge that may be required is provided to the inquiry by witnesses rather than members of the panel.
- This will allow the witnesses to be questioned by both the panel and the person subject to the inquiry. If a panel member has relevant expert knowledge, it must be put to the defendant.

To be consistent with the general practice of tribunals, there are standard practices that should be followed. The panel should normally be assisted by a legally qualified person acting as ‘counsel assisting’, whose role it is to prepare the material to be put to the tribunal and to examine (question) witnesses on behalf of the panel. This person is not a member of the inquiry panel but may provide the panel with legal advice during the hearing. The person facing the allegations should be entitled to legal representation. The inquiry is not bound by the rules of evidence but its procedures must be consistent with the principles of natural justice and due process. In making findings, the inquiry should apply the civil standard of proof, although the standard of proof in serious cases will be higher than the mere balance of probabilities. Counsel assisting the inquiry will normally advise on this issue.”

The Chief Executive will notify the respondent of the proposed Investigation Panel membership within 5 days of its formation. If the respondent submits a written objection to any appointed member of the Investigation Panel or expert, the Chief Executive will

determine whether to replace the challenged member or expert with a qualified substitute. The final decision regarding the composition of the Investigation Panel is the responsibility of the Chief Executive.

Whether an external research misconduct inquiry by people external to SWSLHD is open to the public or conducted in private should be determined by the panel itself on the basis of public interest. The panel has the responsibility to hear the views of all parties on this matter before such a decision is made.

Upon completion of its tasks, the independent external research misconduct inquiry must advise the Chief Executive or their delegated officer of its findings of fact, and what, if any, research misconduct has occurred. The Chief Executive or their delegated officer must, in due course, inform the SWSLHD Board of the outcome of the inquiry. The research misconduct inquiry findings must be considered by the Chief Executive or their delegated officer and appropriate actions must be taken. Appropriate actions must also be taken when the allegations of misconduct are shown to be unfounded. The findings of an independent, external research misconduct inquiry should be made available to the public.

If an external independent Investigation Panel is appointed, the respondent and Panel Members will be informed that any findings will, on completion of due process, be made public.

6.3.4 Brief to the Investigation Panel and the First Meeting

1. Brief to the Investigation Panel

The Investigating Officer will define the subject matter of the investigation in a written brief to the Investigation Panel that describes the allegations and related issues identified during the screening, defines research misconduct, and identifies the name of the respondent. The brief will state that the Investigation Panel is to evaluate the evidence and testimony of the respondent, complainant, and key witnesses to determine whether, based on a preponderance of the evidence, research misconduct occurred and, if so, to what extent, who was responsible, and its seriousness.

During the investigation, if additional information becomes available that substantially changes the subject matter of the investigation or would suggest additional respondents, the Investigation Panel will notify the Chief Executive, who will determine whether it is necessary to notify the respondent of the new subject matter or to provide notice to additional respondents, bearing in mind the principles of procedural fairness.

2. The First Meeting

The Chief Executive or their delegate will convene the first meeting of the Investigation Panel to review the allegation, the inquiry report, and the prescribed procedures and standards for the conduct of the investigation, including the necessity for confidentiality and for developing a specific investigation plan. The Investigation Panel will be provided with a copy of these instructions

6.3.5 Investigation Panel Process

The Investigation Panel will be appointed and the process initiated within 30 working days of the completion of the preliminary inquiry, if findings from that inquiry provide a sufficient basis for conducting an investigation. The investigation will normally involve examination of all documentation including, but not necessarily limited to, relevant research records, computer files, proposals, manuscripts, publications, correspondence, memoranda, and notes of telephone calls.

Whenever possible, the Investigation Panel should interview the complainant(s), the respondents(s), and other individuals who might have information regarding aspects of the allegations. Interviews of the respondent should be tape recorded or transcribed. All other interviews should be transcribed, tape recorded, or summarised. Summaries or transcripts of the interviews should be prepared, provided to the interviewed party for comment or identification of factual error, signed and included as part of the investigatory file.

The standard of proof used by an internal Investigation Panel is that based on the balance of probabilities.

The Investigation Process is confidential. If the Investigation Process is undertaken as the result of a Protected Disclosure, it might not be possible to conceal the identity of the complainant. Decisions about such matters should be taken only after legal counsel is obtained.

6.3.6 The Investigation Panel Report

a) Elements of the Investigation Panel Report

The final report submitted to the Chief Executive must indicate whether the allegations of misconduct in research are:

- upheld in full
- upheld in part
- not upheld

The final report must also:

- describe how and from whom information relevant to the investigation was obtained
- state the findings, and explain the basis for the findings
- include an accurate summary of the views of any individual(s) found to have engaged in misconduct
- recommend any sanctions to be imposed
- recommend administrative actions to be taken by SWSLHD.

b) Comments on the Report

1. Respondent

The Chief Executive will provide the respondent with a copy of the investigation report for comment. The respondent will be allowed 10 working days to review and comment on the report. The respondent's comments will be attached to the final report. The findings of the final report should take into account the respondent's comments in addition to all the other evidence. The report should be modified, as appropriate, based on the respondent's comments, but only in so far as errors of fact, validated by the Panel, are identified.

2. Complainant

The Chief Executive will provide the complainant with those portions of the investigation report that address the complainant's evidence in the investigation. The report should be modified, as appropriate, based on the complainant's comments, but only in so far as errors of fact, validated by the Panel, are identified.

3. SWSLHD Counsel

The investigation report will be transmitted to SWSLHD counsel for a review of its legal sufficiency. Comments should be incorporated into the report as appropriate.

4. Confidentiality

In distributing the report, or portions thereof, to the respondent and complainant, the Chief Executive will inform the recipient of the confidentiality under which the report is made available and may establish reasonable conditions to ensure such confidentiality.

6.3.7 Transmission of the Final Investigation Panel Report

After comments have been received and the necessary changes have been made to the draft report, the Investigation Panel should transmit the final report with attachments, including the respondent's and complainant's comments, to the Chief Executive.

6.3.8 Time Frame for Completion of the Investigation Panel Report

An investigation should ordinarily be completed within 80 working days of its initiation, with the initiation being defined as the first meeting of the Investigation Panel. This includes conducting the investigation, preparing the report of findings, making the draft report available to the subject of the investigation for comment, and submitting the report to the Chief Executive for approval.

6.4 Final SWSLHD Decision

The Chief Executive is not bound to accept the recommendations of the Investigation Panel, and may make a determination separate to the recommendations of the Investigation Panel, provided that the determination is consistent with current policies concerning discipline, and research misconduct and fraud. When a final decision on the case has been reached, the Chief Executive will notify both the respondent and the complainant in writing. In addition, the Chief Executive in consultation with the Investigating Officer will determine what other bodies/agencies should be notified of the outcome of the case. The Chief Executive is responsible for ensuring compliance with all notification requirements of funding or sponsoring agencies. The Chief Executive's determination, together with the Investigation Panel's report, constitutes the final investigation report.

6.5 Institutional Administrative Actions

SWSLHD will take appropriate administrative actions against individuals when an allegation of misconduct has been substantiated. If the Chief Executive determines that the alleged misconduct is substantiated by the findings, they will decide on the appropriate actions to be taken.

7. Other Considerations

7.1 Termination of Institutional Employment or Resignation Prior to Completing Inquiry or Investigation

The termination of the respondent's institutional employment, by resignation or otherwise, before or after an allegation of possible research misconduct has been reported, will not preclude or terminate the misconduct procedures. If the respondent, without admitting to the misconduct, elects to resign their position prior to the initiation of an inquiry, but after an allegation has been reported, or during an inquiry or investigation, the inquiry or investigation will proceed. If the respondent refuses to participate in the process after resignation, the Panel will use its best efforts to reach a conclusion concerning the allegations, noting in its report the respondent's failure to cooperate and its effect on the Panel's review of all the evidence.

7.2 Vexatious Allegations

The relevant official will determine whether the complainant's allegations of research misconduct were made in good faith. If an allegation was not made in good faith, disciplinary action may be taken against the complainant.

7.3 Record Retention

All material relating to the investigation should be retained according to the appropriate NSW Government regulation.

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