

## Annual Report 2018



LOWI Report on the Year 2018

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Pronken met andermans veren (kleurets) / The bird in borrowed feathers (colour etching), J.W.M. van der Meer, 2014

## Foreword

Established on 1 May 2003, the Netherlands Board on Research Integrity (LOWI) is a joint initiative of the Royal Netherlands Academy of Arts and Sciences (KNAW), the Association of Universities in the Netherlands (VSNU), and the Netherlands Organisation for Scientific Research (NWO).

Since 2014, the LOWI has issued an annual report covering the previous year. The present report describes developments in 2018.

The LOWI received a record number of 29 petitions in 2018. At the same time, the average processing time of 29 (2016), 25 (2015) and 23 (2017) weeks was reduced to 21 in 2018!

A number of opinions are discussed in this foreword because there are aspects that require the specific attention of LOWI-affiliated institutions.

### *Abuse of the right to complain*

In 2018, one and the same Petitioner submitted five petitions to the LOWI in the period from May up to and including July (file numbers 2018-11, 2018-12, 2018-13, 2018-14 and 2018-15), as well as a complaint about a LOWI employee (complaint about the LOWI 2018, no. 2). In an earlier period (2013/2014), this Petitioner also submitted seven petitions and a complaint against an employee.

This multiplicity of petitions by the Petitioner, their interrelatedness and their content raised the question of whether the Petitioner's use of the right to ask the LOWI for an opinion was in accordance with the purpose for which the LOWI procedure was set up. The right to ask the LOWI for an opinion was granted with a view to the general interest of sound academic practice.

Rights can be abused. This can result in damage to individual or to general interests. There are several possibilities to prevent abuse of rights. Sections 3:13 and 3:15 of the Dutch Civil Code (DCC) are relevant in this respect. It follows from Section 3:13 of the DCC that a right cannot be exercised if it is abused. The use of the term "among others" ("*onder meer*") indicates that the summary of three forms of abuse of rights in Section 3:13 of the DCC is not exhaustive. Furthermore, the consequences of abuse of right(s) are not defined. In various (judicial) rulings on abuse of rights, there are three possible consequences: an order to pay the costs of the proceedings or expenses, a declaration that the petition is inadmissible, or a ruling that the petitioner is in the wrong. It follows from Section 3:15 of the DCC that Section 3:13 also applies outside the field of property law, in so far as the nature of the legal relationship does not oppose to this.

It follows from the case law of the Administrative Jurisdiction Division of the Council of State (see, for example, ABRS 19 November 2014, ECLI:NL:RVS:2014:4129) that not only in civil law, but also in administrative law there is scope for the decision that there is an abuse of right *and* that this decision has consequences for the handling of a case. The nature of the legal relationship under complaint law, such as the petition procedure at the LOWI, does not preclude the application of Section 3:13 of the DCC. On the basis of Article 8, paragraph 1, under a, of the LOWI Regulations 2018, the LOWI is not obliged to consider the petition or to continue to consider it if the petition is *manifestly unfounded*. It follows from this provision, read in conjunction with Section 3:13 of the DCC, that the LOWI may decide not to consider or to discontinue the considering of a petition if it believes that there has been an abuse of right(s). The decision to not consider a petition or to discontinue considering it will terminate the procedure without the LOWI issuing an opinion.

In certain circumstances, a petition to the LOWI can therefore be considered as an abuse of right(s). The LOWI adopts a *very cautious* approach in this respect. The right to ask the LOWI for an opinion serves the interest of sound academic practice and the existence of this low-threshold right is a great asset. There must therefore be weighty reasons for restricting that right, as the petitioner in question is effectively denied access to an independent advisory body. In this context, the Administrative Jurisdiction Division has considered "that there are, *inter alia*, serious grounds if rights or powers have been evidently used without a reasonable purpose or for a purpose other than that for which they were granted, that the use of those rights or powers demonstrates bad faith."

When submitting a petition to the LOWI, the Petitioner's interests are not the only relevant interests. It should also be remembered that an integrity procedure has a stigmatising character and can be very stressful for the researcher involved. Use of the right of complaint that is not in good faith must therefore be resisted. This is not only for the sake of the individual scientist involved. It is also vital that the scientific community and society can have confidence in integrity procedures. That confidence will be damaged if the LOWI allows itself to be used for petition procedures that are manipulative or malicious.

In its decisions of 2 October 2018 in response to these petitions (and complaint) and the proven pattern of conduct of the Petitioner in question, the LOWI has concluded that there is a disproportionate relationship between the interest that could be served by dealing with the petitions submitted and the long-term heavy burden that this places on an organisation of volunteers with a small staff capacity such as the LOWI. In connection with the conclusion that the Petitioner uses the right to submit a petition as a means of exerting pressure and for a purpose other than that for which this right was granted, the LOWI has concluded that there has been an abuse of right by the Petitioner. The LOWI has assessed the petitions as clearly unfounded and did not consider them any further.

#### *National Ombudsman and abuse of rights*

The same Petitioner also submitted three complaints to the National Ombudsman. Referring to the LOWI, the National Ombudsman reached similar conclusions in his letter of 21 March 2019. The National Ombudsman also points out that citizens have a right to complain and to demand that the public authorities respond to letters and complaints, but this does not mean that a public body has to deal with them in all cases. The National Ombudsman points out that the exception provided for in Section 9:8, subsection 2, of the General Administrative Law Act (*Awb*) – there is no obligation to deal with a complaint if the complainant's interest is manifestly not sufficiently weighty or the conduct manifestly not sufficiently serious – has been included in the law, because the full handling of this type of complaint can be too burdensome. However, the National Ombudsman also warns that it should not be decided too readily not to deal with a complaint on this basis. A complaints body must state the reasons why the handling of the complaint is too burdensome and why there is too little interest on the part of the complainant or too little weight on the part of the actions. In that case, a complaints body may reasonably take the position that there will no longer be any response to complaints concerning the same subject or that are closely related to it.

#### *Developments in 2018*

In conclusion, 2018 was an important year. Firstly, since 21 March 2018, the new LOWI Regulations 2018, into which the old Regulations and the LOWI Procedures have been integrated, have applied to the procedures and working methods of the LOWI. Furthermore, the new Netherlands Code of Conduct for Research Integrity entered into force on 1 October 2018. The code presents itself as being binding on the institutions that adopt it. They will be at least the KNAW, Netherlands

Federation of University Medical Centres (NFU), NWO, Associated Applied Research Institutes (TO2 federation), the Netherlands Association of Universities of Applied Sciences and the VSNU. Other institutions, including private enterprises, will also be able to adopt this code. To be able to enforce the code of conduct, it is essential that the institutions that adopt the code are affiliates of the LOWI. This does not yet apply to all the institutions affiliated with the TO2 federation and to the universities of applied sciences.

The Netherlands Code of Conduct for Academic Practice 2014 addressed only individual researchers, not the institutions as such. Research integrity was mainly seen as an individual responsibility, not a collective responsibility of researchers and their institutions. This also applied to the first ALLEA code from 2011. This changed with the ALLEA code 2017 and the Netherlands Code of Conduct for Research Integrity 2018.

The new ALLEA code addresses the research environment, what research institutions and organisations need to do to raise awareness and ensure a culture of research integrity, clear policies and procedures for good research practice, and an effective infrastructure for managing data and research materials. Training, supervision and mentoring are important tasks for all research institutions and organisations.

Chapter 4 of the new Netherlands Code of Conduct for Research Integrity 2018 sets out the tasks of the institutions in the areas of training and supervision, research culture, data management, publication and dissemination, and ethical standards and procedures. It is striking that the complaints procedures for violations of research integrity by researchers (Chapter 5) do not apply to the duty of care of the institutions. In this respect, research integrity is still not a collective undertaking of researchers and their institutions.

The process set in motion in 2016 to establish a LOWI Foundation may finally come to a successful conclusion in 2019. The purpose of setting up a foundation is to emphasise that the LOWI is independent of its founders and that they cannot intervene in the way in which the LOWI performs its tasks.

Prof. R. Fernhout, LOWI Chairperson

## 1. Composition of the LOWI in 2018

The LOWI has six members, including its chairperson and deputy chairperson. Until September 2018, members were appointed for a three-year term by the LOWI's founders, with two extension options of three years.

An amended term of appointment has been agreed with the founders. Since September 2018, the term of appointment has been four years, with the possibility of one extension of four years.

In the year under review, the composition of the LOWI was as follows:

Prof. R. Fernhout, chairperson	administrative law
Prof. W.J. Zwolve, deputy chairperson	historical development of the law
Prof. L. Lechner	health psychology
Prof. J.W.M. van der Meer	internal medicine
Prof. J. Reedijk <i>until 1 September</i>	inorganic chemistry
Prof. I.E.C. Sommer	psychiatry
Prof. J.P. Hogendijk <i>from 1 September</i>	history of mathematics

The LOWI is assisted in its work by a secretariat. In 2018, H.M.L. Frons was official secretary and F.J.L. Roepnarain deputy secretary. Support was provided by A.M.E. Muller.

The LOWI meets in the Trippenhuis Building, Kloveniersburgwal 29, Amsterdam.

## 2. LOWI's status

The LOWI operates independently of its founders and other institutions (including affiliated institutions) and arrives at its opinions without the involvement of third parties. In 2016, the first steps were taken to emphasise the fact that the LOWI is independent of its founders and that they do not interfere with the way in which the LOWI fulfils its task. KNAW, VSNU and NWO have jointly decided to set up a LOWI Foundation. The LOWI Foundation is expected to be set up in 2019.

On 1 March 2018, an updated version of the LOWI Regulations (2018) came into force.

## 3. LOWI's tasks

### *Advising the Boards of affiliated institutions*

The LOWI's task is to advise the Board of an affiliated institution on a ruling (or a provisional ruling) of that Board concerning an alleged violation of research integrity. Generally, the Board arrives at such a ruling in response to a specific complaint, but it can also do so *ex officio*.

Anyone who was party to the complaint procedure before the Board can apply to the LOWI on completion of this procedure and petition the LOWI to rule on the Board's ruling or provisional ruling. This ruling by the LOWI is given in the form of an advisory opinion to the Board on the final ruling to be taken.

The parties in the case of a petition to the LOWI will at all events be the Petitioner (i.e. the initial Complainant or Defendant, who does not agree with the Board's provisional ruling) and the Board. A

so-called Interested Party almost always participates in the LOWI procedure as well. That is the initial Complainant or Defendant who *does* agree with the Board's provisional ruling and has not therefore petitioned the LOWI.

The opinions issued by the LOWI are not binding, but are generally complied with. Although the opinions are not binding, they do entail obligations. Where a Board decides not to comply with a LOWI opinion, it must give reasons for this in the final ruling.

### *Knowledge transfer*

In 2018, the LOWI also contributed to various meetings concerning research integrity.

- 2 March 2018 - Roel Fernhout acted as chairperson of the VSR law & society study afternoon at the VU Amsterdam: Who pays the piper. The research integrity of contract research under pressure.
- 23 May 2018 - presentation by Jos van der Meer to the Accademia Nazionale dei Lincei, Rome: *Teaching Scientific Integrity*.
- 23 August 2018 - Roel Fernhout spoke at the PRINTEGER Symposium 'Novel approaches on research integrity in practice' in Nijmegen: *Some procedural aspects of the Bonn Statement, by looking at the ALLEA code, the new Netherlands Code of Conduct and a number of recent LOWI opinions*.  
PRINTEGER is the European project Promoting Integrity as an Integral Dimension of Excellence in Research. The symposium was co-organised by the Netherlands Research Integrity Network (NRIN).
- 22 October 2018 – Roel Fernhout and Willem Zwolve attended the NRIN/CWIs/LOWI meeting in Utrecht on the new Code of Conduct for Research Integrity and the draft of the new National Model Complaints Procedure on Research Integrity.

### *LOWI International*

The LOWI is a member of the European Network of Research Integrity Offices (ENRIO). The aim of the network is to promote an international debate on research integrity. Via the website of ENRIO – [www.enrio.eu](http://www.enrio.eu) – other ENRIO members, but also interested parties, have access to information on the establishment, advisory role and procedure of the LOWI. All affiliated institutions have an individual web page containing information on their organisation. The LOWI also publishes English-language summaries of LOWI's opinions and an English version of the annual report on the website. The LOWI also provides information on its advisory role and procedure to countries outside this network.

In December 2018, the chairperson and deputy chairperson of the LOWI received a delegation from the Finnish National Board on Research Integrity (TENK), a member of ENRIO. TENK had requested a meeting with the LOWI because it wanted to be informed about the tasks and activities of the LOWI and the experiences of the LOWI with the new Netherlands Code of Conduct for Research Integrity 2018.

#### 4. LOWI-affiliated institutions

An increasing number of institutions have joined the LOWI in the years since it was founded. In 2018, the institutions affiliated to the LOWI were:

- the founders KNAW, NWO and VSNU and their institutes
- the public and special universities, including the University Medical Centres and the Open University
- Sanquin Blood Supply Foundation
- University of Humanistic Studies
- National Institute for Public Health and the Environment (RIVM)
- Wageningen Research Foundation
- Netherlands Institute for Health Services Research (NIVEL)
- Theological University of Apeldoorn (TUA)
- Theological University of Kampen (TU Kampen)
- Protestant Theological Universiteit (PThU)
- Amsterdam School of Real Estate (ASRE)
- Princess Máxima Centre for Paediatric Oncology
- Royal Netherlands Meteorological Institute (KNMI)
- Nyenrode Business University (NBU) *affiliated since 20 February 2018.*

In addition, in 2018, three institutions indicated that they would like to become affiliated to the LOWI. In 2018, exploratory talks were held with these institutions about the possibility of affiliation.

#### 5. Website and press

The anonymised full opinions issued by the LOWI are published on the website ([www.lowi.nl](http://www.lowi.nl)), along with a summary of these opinions. The summaries also report the rulings taken by the Boards after receiving the LOWI's opinions. The summaries are translated into English and published on the English version of the website.

The website also shows which petitions to the LOWI did not result in substantive opinions being issued to the Boards. These are often petitions that do not meet the admissibility criteria, e.g. because they have been submitted outside the specified period.

Finally, the website provides information on any complaints concerning the conduct of the LOWI. These complaints are treated by analogy with Title 9.1 of the Dutch General Administrative Law Act (*Algemene wet bestuursrecht*). In 2018, three complaints were submitted about the conduct of the LOWI.

The LOWI is regularly contacted by the press or third parties. However, we operate on the principle that the LOWI does not provide information on whether an issue is (or has been) pending with the LOWI.

The LOWI in (scientific) publications:

- A.H.A. Mohammad LL.M. & Prof. Y.E. Schuurmans, 'De openbaarmaking van wetenschappelijke onderzoeksgegevens' in *Ars Aequi* (AA 20180393), p. 393-401, <http://hdl.handle.net/1887/62661>



- Horbach, S.P.J.M., Breit, E., & Mamelund, S.-E. (2018), 'Organisational responses to alleged scientific misconduct: Sensemaking, sensegiving, and sensehiding in: *Science and Public Policy*, scy068, <https://doi.org/10.1093/scipol/scy068>
- <https://www.advalvas.vu.nl/nieuws/auteursrecht-mag-wel-wat-scherper-gedragscode>;
- <https://universonline.nl/2018/03/15/nieuwe-gedragscode-wetenschappers-onduidelijk-auteurschap>

## 6. Overview of petitions submitted and settled in 2018

### *Number of petitions in 2018*

In 2018, the LOWI had a total of **34** petitions awaiting settlement or further consideration. The breakdown is as follows: 2018 began with a backlog of five petitions submitted and considered in 2017 but not yet settled by the end of 2017; in addition, the LOWI received a total of 29 new petitions in the course of 2018.

### *Number of opinions and rulings issued in 2018*

In 2018, **20** petitions were settled in full and published on the website. The breakdown of that figure of 20 petitions settled in full is as follows: a total of 16 petitions were considered on substance. In 11 of these cases, the LOWI issued an opinion to the Board concerned. In five cases of one Petitioner, the LOWI declared the request manifestly unfounded, due to abuse of the right of complaint. A total of 4 petitions were not considered. The LOWI declared those cases inadmissible.

### *Boards involved in 2018*

The 20 petitions settled by the LOWI concerned rulings by the Boards of the following institutions.

Research university	Number of cases	Number of LOWI opinion
VU University	6	2018-02, 2018-07, 2018-08, 2018-09, 2018-12, 2018-19
VU/VUmc	1	2018-06
Leiden University	3	2018-13, 2018-14, 2018-18
University of Amsterdam	2	2018-01, 2018-16
Maastricht University	2	2018-17, 2018-20
UvA/UM	1	2018-05
Radboud University Nijmegen	2	2018-03, 2018-04
Open University	1	2018-11
Tilburg University	1	2018-15
Delft University of Technology	1	2018-10

### *Expert opinions in 2018*

In 2018, the LOWI did not consult any experts in respect of the petitions settled in full in 2018.

### *Hearings in 2018*

In 2018, the LOWI held hearings in order to settle two petitions.

### *Length of the LOWI procedure in 2018*

The LOWI's procedures took between five (minimum) and 44 weeks (maximum), from receipt of the petition by the LOWI to the relevant opinion or decision issued by the LOWI. On average, a LOWI procedure took approximately **21 weeks**.

### *Opinions of the LOWI, final rulings of the Boards*

The LOWI's full opinions can be found on the LOWI website. Sections 1 to 3 of these opinions contain a summary of the complaint and the Research Integrity Committee (RIC) advice, followed by a summary of the position of the Petitioner, Board and Interested Party or Parties. The considerations and opinion of the LOWI can then be read in sections 4 and 5 of the opinions. The LOWI website also contains summaries of the full opinions. These summaries state whether the Board involved has followed the LOWI in its final ruling.

## 7. Summary table

The table below presents the most relevant figures from section 6 of this report.

<b>2018</b>	
Total number of petitions:	34
Total number of petitions settled:	20
- ruling on submission requirements	4
- ruling on substance	16
Total number of opinions/decisions issued:	20
- number of these published	20
Average length of procedure	21 weeks

The tables from previous years:

<b>2017</b>	
Total number of petitions:	20
Total number of petitions settled:	14
- ruling on submission requirements	3
- ruling on substance	11
- withdrawn	1
Total number of opinions/decisions issued:	14
- number of these published	14
Average length of procedure	23 weeks

<b>2016</b>	
Total number of petitions:	26
Total number of petitions settled:	18
- ruling on submission requirements	4
- ruling on substance	14
Total number of opinions/decisions issued:	18
- number of these published	16
Average length of procedure	29 weeks

<b>2015</b>	
Total number of petitions:	25
Total number of petitions settled:	15
- ruling on submission requirements	4
- ruling on substance	11
Total number of opinions/decisions issued:	14
- number of these published	12
Average length of procedure	25 weeks