

Report of the Professional Affairs and Ethics Sub-Committee to the Annual General Meeting, 13 September 2006

1. Membership

The Society has a Professional Affairs and Ethics Sub-Committee whose membership comprises: Dr Russell G. Smith (Chair, Principal Criminologist, Australian Institute of Criminology), Dr Bronwyn Naylor (Senior Lecturer, Faculty of Law, Monash University), Professor Mark Israel (School of Law, Flinders University), Dr Anna Stewart (Associate Professor, School of Criminology and Criminal Justice, Griffith University), Dr Hennessey Hayes (Senior Lecturer, School of Criminology and Criminal Justice, Griffith University), Dr Eileen Baldry (Senior Lecturer, School of Social Work, University of New South Wales), Ms Sally Doran (Consultant, New South Wales), and Mr Gary Allen (Manager, Research Ethics, Griffith University).

2. Meeting

The Sub-Committee had its inaugural meeting via teleconference on 30 January 2006. All members participated in discussions on the Review of the National Statement on Ethical Conduct in Human Research and the proposed collaboration with the British Society of Criminology's initiative to have questions and answers to common ethical questions concerning criminologists on the Society's Website.

The membership of the Sub-Committee was also confirmed and each member of the Sub-Committee described their interest in research ethics and their current appointments. Particular areas of interest included interviews with prisoners by Bronwyn Naylor, archival, interview and focus group-based research on social exclusion, governance of research and legal and criminological education by Mark Israel, research involving dataset linkages by Anna Stewart, interviews with young offenders by Hennessey Hayes, social policy, prison reform, mental health and post-release issues by Eileen Baldry, research with police by Sally Doran, ethics committee processes and administration by Gary Allen, and archival research into fraud by Russell Smith.

3. Review of the National Statement on Ethical Conduct in Human Research

Members of the Sub-Committee collaborated in the preparation of a submission in response to the Review of the National Statement on Ethical Conduct in Human Research. The Sub-Committee expressed its views concerning the ethical aspects of criminological research involving human participants by raising six areas that have particular relevance to criminological research in Australia and New Zealand at present. These were:

(a) the definition of human research, especially the extent to which research involving public source material should be included, the extent to which research using de-identified data should be included, the extent to which qualitative research is included – the handling of emancipatory or participatory models of research is poor, and the scope of the exception relating to administrative agency auditing processes and routine testing;

(b) the application of the Statement to government departments and consultants in the private sector, and how to negotiate restrictions on the publication of privately-funded research;

(c) the chilling effect on research of communicating to subjects information about low level risks associated with the disclosure demands made by courts and law enforcement agencies and the balance between risks and benefits where illegal activity is exposed;

(d) how researchers should deal with situations in which research could involve them in criminal liability, particularly arising from witnessing or being present during the commission of crimes perpetrated by research subjects;

(e) the problem of multi-site research and how to ensure that research is not unnecessarily reviewed by multiple HRECs with respect to the same substantive ethical issues.

(f) the difficulties of justifying covert or partially covert research

A written submission was presented to the Chair of the Review on 31 March 2006 (attached).

Matters for future examination include the need to review how HRECs are making use of the revised National Statement, how best to provide advice and assistance to criminological researchers regarding issues of concern, and the extent to which criminological research may be being impeded by HRECs.

The Sub-Committee also feels that a FAQ page be added to the ANZSOC Website dealing with questions and answers to common issues relevant to research in crime and justice.

4. Links with British Society of Criminology

At the Sub-Committee's teleconference in January 2006, Mark Israel described his discussions with Prof Brian Williams of the Community and Criminal Justice Research Centre at De Montfort University in England regarding the review of the British Society of Criminology's Code of Ethics and the Society's plans for undertaking educational activities. It was agreed that Mark Israel should write to Brian Williams to indicate ANZSOC's support of these activities and to offer any assistance that is needed. Mark was also asked to have discussions when he attends the BSC conference in July in Glasgow. At this conference a research ethics panel was conducted, modelled on our activities in Wellington in 2005. It was also agreed that the ANZSOC Code of Ethics should be examined for review in light of changes to the BSC Code, upon which it was generally based.

5. Future Activities

The Sub-Committee considers that future issues which it could address include the RQF, links with other professional societies, and undergraduate and postgraduate education by setting up panels at conferences.

Russell G. Smith

Chair, Professional Affairs and Ethics Sub-Committee

18 August 2006

**Submission of the Professional Affairs and Ethics Sub-Committee of
the Australian and New Zealand Society of Criminology to the
Review of the National Statement on Ethical Conduct in Human Research**

The Australian and New Zealand Society of Criminology Inc is an association of criminologists, incorporated in Victoria, and with membership of some 350 members throughout Australia and New Zealand, and in some other countries.

The Society has a Professional Affairs and Ethics Sub-Committee whose membership comprises: Dr Russell G. Smith (Chair, Principal Criminologist, Australian Institute of Criminology), Dr Bronwyn Naylor (Senior Lecturer, Faculty of Law, Monash University), Professor Mark Israel (School of Law, Flinders University), Dr Anna Stewart (Associate Professor, School of Criminology and Criminal Justice, Griffith University), Dr Hennessey Hayes (Senior Lecturer, School of Criminology and Criminal Justice, Griffith University), Dr Eileen Baldry (Senior Lecturer, School of Social Work, University of New South Wales), Ms Sally Doran (Consultant, New South Wales), and Mr Gary Allen (Manager, Research Ethics, Griffith University). In addition, a number of other Australian criminologists contributed to this submission.

Members of the Sub-Committee have collaborated in the preparation of this submission in response to the Review of the National Statement on Ethical Conduct in Human Research. The Sub-Committee welcomes the opportunity to express its views concerning the ethical aspects of criminological research involving human participants, and does so by raising six areas that have particular relevance to criminological research in Australia and New Zealand at present. These are set out below, cross-referenced to appropriate sections of the draft revised National Statement.

By way of background, the purposes for which the Society is established are:

- (a) to promote study, understanding, and co-operation in the field of Criminology;
- (b) to bring together persons actively engaged, or who have been actively engaged, in teaching and / or practice in the field of Criminology;
- (c) to foster training and research in Criminology in institutions of learning, and in law enforcement, judicial, and correctional agencies;
- (d) to encourage communication within the field of Criminology through publications and conferences; and
- (e) to promote and foster understanding of Criminology by parliaments, governments, and the public.

The Society has a Code of Ethics the terms of which must be agreed to by all new members upon being granted membership of the Society. This can be inspected on the Society's Website at: <http://www.anzsoc.org/society/codeOfEthics.html> and a copy is attached.

The six areas of concern are as follows:

(a) The definition of human research (see pp. 1-2 of the draft National Statement).

In the definition of human research, we note four problems in the draft statement.

Extension to social science research

The Sub-Committee welcomes the extension of the National Statement to research in the social sciences. In the past, the use of the National Statement was problematic as reference was made to illustrations from the natural sciences, which were often inappropriate for social scientific research. Nonetheless, Section 3 of the draft National Statement continues to emphasise issues that arise in medical research without dealing with issues of particular concern to social science research in sufficient depth. It is also important for Forms used in conjunction with the Statement to be neutral as to the nature of the scientific discipline in order to accommodate social science research. Any examples given, ideally, should also be suitable for the social sciences.

De-identified data

The Sub-Committee acknowledges that *some* research involving identified data already on the public record, de-identified data, or previously published data raises significant ethical issues, but most such work raises no significant issues or concerns, or it can be more generally located under the heading of 'responsible practice'. The Sub-Committee feels that it is far too inclusive to include all published and de-identified data. For example, it would mean that researchers who obtain data from criminal justice statistics' agencies would require ethics approval (even if through the low risk process). This is an unnecessary extension of the Statement.

The effect of defining all work of this kind as human research could both considerably expand the workload of already over-burdened HRECs, and introduce an unnecessary impediment to work that raises no human research ethics issues, thus generating ill-will amongst researchers.

The Sub-Committee urges the review committee to reconsider these elements in terms of their likely impact upon the operation of HRECs and the potential deleterious results for the climate between researchers and ethics committees. The Sub-Committee recommends that the National Statement include the following guideline on the handling of de-identified data:

Research institutions should promote and support reflective ethical practices by researchers. They should be encouraged to establish a local framework to assist its researchers to identify the level of review required in any given case.

Routine testing and analysis

The definition of research (p. 1 of the draft National Statement) excludes routine testing and routine analysis of materials. The Sub-Committee feels that this should be clarified in such a way that quality review and auditing of activities by administrative agencies (such as police) should be excluded from ethical review, even if this entails the completion of inventories or survey instruments by human participants. The inclusion of such auditing activities by some HRECs leads to a substantial increase in workloads and slows considerably the functioning of HRECs. The last paragraph on page 1 does not provide sufficient guidance on how quality assurance is to be handled (but refers to another document). In many criminal justice agencies, such as police, there is a large amount of administrative review activities undertaken and these tend not to be centrally co-ordinated and reported to HRECs. A literal interpretation of the guidelines would require the central reporting and monitoring of all such activity (if it is to be regarded as low risk activity) or

full ethical review if there is no exemption. The resource implications are of concern.

Consultation with professionals

The Sub-Committee believes that the process of consultation with professionals involved in the practice of criminal justice or policy should be excluded from the definition of research. At present interviewing a small group of law enforcement officers could require review by a HREC. This appears to be unduly burdensome and unnecessary. The Sub-Committee believes that unless a compelling ethical question arises consultation with professionals should not require clearance by a HREC.

(b) The application of the National Statement to government departments and consultants in the private sector, (p. 1 of the draft National Statement).

The Sub-Committee notes that university-based researchers are frequently commissioned to conduct work for the private sector and for government agencies for internal use of those organisations or agencies. In addition, criminologists employed in the public sector often carry out research for private sector organisations. In such cases, the contract for the work can often stipulate limitations on the publication of results.

Such work can often be characterised as being audit, evaluation or quality assurance, although on occasions, quantitative and qualitative research involving human participants is involved. We recommend that the NHMRC's existing guidelines for clinical audits be used as a template for producing more broad guidelines for work of this kind. Our reasoning is that such work is often not broadly published; thus, the ethical principle of integrity may need to be assessed by another standard.

A related difficulty for work of this kind is that the mechanisms for recruitment and consent may be quite different from the standards typically applied by HRECs. For example, if an employer commissions a researcher to evaluate professional development outcomes within their organisation, the employer may direct all staff to participate as a 'work activity'. We note in the second consultation draft's discussion that researchers may justify an alternative approach for consideration by a HREC. We are concerned that this explicit flexibility may not be taken up by HRECs.

We recommend that examples be given to assist researchers and HRECs concerning the ethical considerations (including consent) governing this kind of research. This is perhaps a new role for the HREC Handbook.

Lastly, the timeframes associated with commissioned work make even 'expedited review' problematic. This can result in frustration, delay and even lost opportunities for researchers and commercial research sponsors. It may also force a certain amount of such activity 'underground'. Indeed, the Sub-Committee is aware of social scientific research being carried out by private sector organisations which have no ethical review attached at all. Similarly, there is disparity in the extent to which public sector agencies require staff engaged in research to seek and to obtain ethical review of their research activities. The Sub-Committee urges the review committee to flag this as an issue to be considered and addressed by a separate document.

(c) Research involving illegal activity (see pp. 68-9 of the draft National Statement).

The statement of ethical principles and considerations specifically excludes any discussion of legal rights and obligations (p. 3). Nonetheless, the Sub-Committee believes that some questions of legal liability of social science researchers are of such importance that they ought to be addressed in the National Statement.

A key question is how information is conveyed to participants during the consent procedure. The draft National Statement states that 'the guiding principle for researchers is that a person's decision to participate is to be voluntary, and based on sufficient information and adequate understanding' (para. 2.2.1, p. 13).

In criminological research, there are potential risks to participants if they provide incriminating information in that such information might be seized by police or produced in court. In many cases the actual likelihood of such a demand to provide the information may be very low, and the research may be designed to minimise identifiability of information. Should such risks be explained as part of a consent procedure? Our view is that in stating such risks, participants will decline, and this leads to a chilling effect on research. The Sub-Committee recommends that the Statement should provide guidance on this issue, despite the fact that this may entail the provision of legal advice which, at present, is excluded (p. 68). The advice that 'Institutions should develop policies to inform their and researchers' responses to such orders' (p. 69) is, in the view of the Sub-Committee, inadequate in enabling researchers to understand fully their obligations when conducting research that could involve illegality on the part of participants (or researchers themselves). We would be pleased to suggest guidelines in this area.

(d) Criminal liability of researchers (Chapter 4.6 of the draft National Statement).

A good deal of criminological research could involve researchers in potential criminal liability, for example, by being an accessory before or after the fact to crimes perpetrated by research participants. The Sub-Committee believes that clear guidance is required in the National Statement about the extent to which such research is ethical and how situations of potential criminal liability should be dealt with (see draft National Statement in Chapter 4.6, pp. 68-9). In addition, guidance is needed about when researchers are required to comply with police requests for data and other information gathered during research activities. For example, the Australian Institute of Criminology's *Human Research Ethics Protocols* (25 November 2003, p. 7), provide specific guidance on when AIC researchers would face criminal liability and in what circumstances. Advice is also given on compliance with police demands for data and information collected from subjects and what to do in situations in which research participants may be involved in the commission of criminal acts. The terms of this guidance may be obtained from the Chair of the HREC of the Australian Institute of Criminology.

The Sub-Committee recommends that these questions be addressed in the National Statement in order to provide clear guidance to researchers regarding their obligations and responsibilities to the police and the courts when carrying out research.

(e) Multi-site research and duplication of procedures (Chapter 5.3 of the draft National Statement).

The Sub-Committee notes the considerable volume of academic commentary from Australia, the United States and the United Kingdom, which indicates that even when the national framework provides a sensible and efficient solution for the review of multi-site research, it is frequently resisted or ignored by ethics committees.

We support the efforts in the second consultation draft in reinforcing the message to HRECs that, if a proposed multi-site project has already been reviewed by another HREC, it should only be reviewed again under very special circumstances (the criteria of which should be available and transparent).

We recommend that National Statement includes an explicit articulation that the standard position for multi-site human research is that there would only be one HREC review. This could be achieved by adopting the following:

- Institutions may have a specific duty of care to some participants. These should be addressed through local governance arrangements, and may result in a form of special local review. However, the existence of such matters does not mean that such work would need to be reviewed by that institution's HREC.
- Only under very special circumstances should a local HREC review a proposal that has already been reviewed by another HREC. The criteria for making such a determination should be publicly available, and there should be an independent review process for any decision to conduct a local review.
- There should be some guidance offered as to which HREC in a multi-site project should conduct the review.

(f) Covert research (Chapter 3.2 of the draft National Statement).

In many cases, research in the broad social sciences will involve some degree of limited disclosure. For example, a researcher may administer a survey apparently about preferred post codes for home residence, without disclosing that they are interested whether perceptions of crime rate play a role in this decision making. The Sub-Committee agrees that a reflection about extra risk, disclosure and withdrawal of data is an appropriate feature of the ethical design, review and conduct of such work. However, the Sub-Committee disagrees that that all such work must be reviewed by a HREC. In many cases the limited prior disclosure is so innocuous, that an 'expedited review' is still appropriate.

(g) Other matters


The Sub-Committee believes that clear guidance should be provided in the National Statement regarding the application of general principles of ethical review to a multitude of different fact situations. At present, the looseness of drafting means that it is impossible to know in many situations whether requirements are cumulative or in the alternative, and whether the listed conditions are illustrative or exhaustive. It is also sometimes difficult to understand the relationship between the clauses (e.g. 5.1.7 and 5.1.9: where it is unclear if the intent is to establish 3 levels of activity governed by 3

different processes: full ethical review, processes other than full review, complete exemption).

Finally, the Sub-Committee believes that a more robust procedure be specified for the review of decisions of HRECs, some of which can be arbitrary and capricious. A simple and quick appeal process could be provided for to deal with situations in which decisions are clearly flawed in order to provide a fair outcome for applicants. If such a procedure were to be introduced, it would be necessary to have adequate screening of appeals to remove frivolous or vexatious complaints that may be raised.

Should any of the above matters require clarification, we would be happy to provide additional information or supporting evidence. Any questions should be directed to the writer by email to Russell.Smith@aic.gov.au, or by telephone 03 9467 6110.

Yours sincerely,



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