A Submission to the
National Health and Medical Research Council (NHMRC)
Australian Research Council (ARC)
and the
Australian Vice-Chancellors' Committee (AVCC)

Second consultation draft of the
National Statement on Ethical Conduct
in Human Research

15 March 2006

Contact: Professor Sue Serjeantson
Australian Academy of Science
GPO Box 783
Canberra ACT 2601
Tel: (02) 6201 9401
Fax: (02) 6201 9494
Email: es@science.org.au

The Australian Academy of Science has considered the 2006 Draft of the National Statement on Ethical Conduct in Human Research.

The Academy has serious reservations about aspects of this Draft. We will present our comments as numbered points, so they can be considered individually by AHEC. The points that are listed are most important points of principle and practice that we wish to bring to your attention.

1. The Academy believes that the document does not emphasise sufficiently the fact that biomedical research is, in general, a scientific and social good. As Professor John Harris commented recently, "Biomedical research is so important that there is a positive moral obligation to pursue it and to participate in it." (Harris, J., Journal of Medical Ethics, April 2005, pp 242-248). Biomedical research is not ethically neutral; the underlying intentions of both the research and the researchers are overwhelmingly ethical. The Australian Academy of Science believes it is particularly important that the NHMRC makes this point about the essential and ethical nature of medical research.

   That is not to say that there cannot be unethical researchers, or unethical projects proposed, but these are aberrations, not part of the core value system of research. The document reads as if the authors would preface a document on general practice and community medicine with a long reference to the career of Dr Shipley. Doctors who are murderers are as unrepresentative of the profession as are researchers who are unethical.

2. Specific examples occur in the Preamble, such as the reference to "the role of the so-called Nazi doctors in unethical human experimentation in detention and concentration camps". This goes a step further than the more muted statement in the preamble to the 1999 version of the National Statement. We suggest that the Preamble be changed to reflect the positive view of medical research given in our point 1 above, and refers in a more positive way to the fundamental ethical nature of medical research, perhaps including a note on the Hippocratic Oath. A further example is the sentence at the end of the first section: "This Statement will help research to meet such standards." In the spirit of the previous National Statement, we suggest this be amended to "This Statement will help to continue to maintain such standards."

3. Page 1, Defining Research: The Academy notes a major problem in this definition when it is applied to clinical practice. Many authorities argue that every clinical encounter should be seen as an opportunity to advance knowledge. Indeed, this is the reason why an appreciation of scientific method is taught to medical students in our Universities. This is seen clearly in Pathology; every sample is taken for a clinical purpose (diagnosis, for instance), but in aggregate these samples are (and must be) the raw material for research. To perform a test without the intention of gaining knowledge would, indeed, be unethical.

The Academy suggests that the use of clinical specimens to study the disorder for which they have been taken should not be "research that must be put to a HREC", provided that the primary purpose of their collection is to define and study the clinical condition of that patient, her/his family and/or contacts. It is possible that this could be made clear on Page 2, "Ethical Conduct…", para 2, by stating that such studies on samples taken primarily for clinical purposes do not represent more than a low level of risk if they are used to study the condition for which each has been collected (see below). Evidence-based medicine depends totally on appropriate research using such samples, which is required to improve safety and health of the patients themselves. This is quite different from the use of samples to further research that does not relate directly to the study of the clinical condition that provides the reason for taking the sample.

4. Page 4, introduction: It is not clear to the Academy why, of the four principles of respect, research merit and integrity, justice and beneficence, the Draft Report argues that "respect is the most fundamental". If the authors of the report are re-phrasing principlist ethics in this context (which they appear to be), it would certainly not be generally accepted by philosophers that the principle of respect (subsuming the principle of autonomy) is the most fundamental. Indeed, as the second paragraph of the introduction intimates, it is unclear why principlist ethics has been chosen as the philosophical model that is used in this Draft Report, when the previous National Statement stated principles but did not constrain the document to this framework. To the extent there are surveys of community attitudes to ethics in the context of medical research (surveys conducted for Research Australia, AusBiotech, and ASMR, 2004, 2005) it appears that the majority view of the community is closest to a person-oriented, modified form of consequentialism. Presumably, the Ministers of Religion who are members of Health Ethics Committees (as prescribed by the Act) have philosophical views that are, for the most part, deontological. It is wrong to impose one version of ethics on all HRECs.

5. Page 5, Research Merit: The Academy notes from its members that a tension arises when an HREC attempts to assess "research merit" in detail for projects that are placed before it for approval. Most HRECs have, at most, one or two individuals with research experience. The Academy cautions that the way in which 1.1 is written could encourage HRECs to investigate in detail all research projects, and particularly those that are in any way adventurous, speculative or meet new needs. At the least, this section should begin with a note that: "(a) research that has passed peer review for funding (eg, approval by NHMRC, ARC or one of the major charitable funding bodies) has already been assessed by a group of individuals who may be assumed to be qualified to pass on its merit."

6. Page 6, Justice: 1.4 should note that research participants should be given the opportunity to access research outcomes, not forced to access them. Some participants do not wish to avail themselves of this opportunity.

7. Page 7, Application of these values…: In the view of the Academy, this statement should be placed at the front of this section, in the context of encouraging HRECs to consider context in a liberal fashion. Most people who suffer from a disease or disability want to see their health restored, to the extent this is possible. Research in this context is an integral component of clinical care.

8. Chapter 2.1, Risk: There are many medical research studies that involve no risk to participants. There are also many contexts in which members of the community see a prima facia benefit in participating in research, for its own sake. This should be made clear in this section. If the National Statement fails to mention that many studies are without risk, it invites HRECs to look for risk in every situation, even when it is not there. The Academy suggests, at the least, that section 2.1.2 begins with (a) identifying whether there are any risks at all in the proposed research.

9. Chapter 2.2, Consent: See comments "3" above. In the Academy's view, consent can pose a problem in the context of research that is very closely linked to clinical care. Indeed, an argument can be made that it is bad medicine not to conduct "research" of this type. There may be contexts where specific consent should be subsumed under willingness to accept treatment, and may cause an HREC to consider this research as "low risk".

10. Databanks: The Draft continues the neutral position taken by the previous National Statement between identifiable and non-identifiable data. However, there are often real advantages to individuals in retaining identity in a database, particularly if the database is for those with a condition or disease. One use of databases is to define sub-groups of individuals who have different underlying causes leading to disease, or different outcomes. Non-identifiable databases permit these studies, but then do not permit the researchers to notify the outcomes to those most concerned, those who have participated in the research. In the sections on Justice and Beneficence, this point should be clearly stated, and indeed the Statement might go as far as saying that identifiable data bases are preferred unless there are compelling reasons for other options.

11. The Academy accepts that there are difficulties in drawing clear demarcations between different categories of research in the context of clinical interventions. However, the Academy suggests that the Draft does not sufficiently distinguish between a clinical trial of a new drug for a serious disease conducted by a pharmaceutical company under TGA regulation, as compared to an academic study of prevention or response to a common illness in the community. The TGA has primary responsibility for patient safety in the context of a clinical trial that is under its jurisdiction. It is not the role of HRECs to duplicate the role of the TGA. It is particularly invidious if law firms representing a Hospital are invited to intervene at the level of the HREC. If legal liability is to be minimised, this is part of a Hospital-based legal process and must be quite distinct from the role of an HREC, and seen to be so.

12. Chapter 3.5 on Genetic Research should note that genetic research no longer refers only to research into DNA. Genetic research can be conducted by studies on proteins, on immune responses, and on clinical phenotypes. The AHEC/ALRC report ("Essentially Yours") dealt with this issue in a more relaxed way than the Draft, in pointing out that clinical genetic research, whether based on DNA or protein, has an exciting potential to provide clinical benefits to our community. Examples of this potential (as for screening for haemochromatosis) are moving from research to clinical practice. Considering that much of medical research now involves some genetic studies, offering counselling (3.5.17) on likely implications may be unrealistic, particularly as the "likely implications" may be unknown. Section 3.5.18 proposes that individuals decide whether or not to receive information that may have major implications for their future health, and allow prevention of illness and death. It is unethical (and may be illegal) to bar clinicians from communicating information to patients enrolled as research subjects, when clinicians would have to communicate identical data to the same individuals if not enrolled as research subjects.

13. Chapter 3.6: Human Tissue Samples. The Academy reiterates points 3 and 9 above. In many cases a pathology sample is (and should be) simultaneously a clinical sample and a research sample. The collections of slides with sections from tumours in an anatomical pathology department, or diagnostic samples of serum in a biochemistry department, must be available for direct analysis. In the view of the Academy, the minimal level of oversight required by an HREC could be achieved if research on human tissue samples taken in the context of a necessary clinical procedure is defined as research involving no more than low risk (5.1.7 and 5.1.8) that can be exempted from review. The same could be stated for in vitro research with any established human cell line.

14. Section 3.7, "Human Stem Cells", is a new section. The Academy doubts that AHEC understands the implications of bringing all research involving "non-embryonic stem cells" into this section. Virtually every primary cell culture from a human contains non-embryonic stem cells. This is most clear for bone marrow and cord blood, but is also true for skin, liver, bone, brain and adult blood. Is it really the intention of AHEC that any experiment in Australia using human blood, bone marrow cells or cord blood cells should be referred to GTRAP (3.7.1)? Why should this be the case, if there is no intention to use these cells therapeutically? Why should every primary human cell culture (because, a priori, all could be judged to contain non-embryonic stem cells) be treated as if an embryonic cell line, when there have never been ethical issues described for such primary lines from blood, liver, skin or other tissues in the past? Why should a human primary adult cell culture from marrow or any other tissue that is brought from another country be subject to Australian guidelines in its derivation? The Academy can see possible reasons for such restrictions with respect to embryonic stem cells, but not for adult stem cells. These proposals go far beyond the legal obligations agreed by Parliament.

15. 3.7.5 states “Research using … non-human stem cells that are likely to be pluripotent is ethically unacceptable if these cells are … grafted to a non-human fetus”. This would end the entire field of mouse embryology and genetics, including the creation of transgenic mouse models for human diseases, in Australia. It could even be interpreted as applying to lower animals such as *Drosophila* or zebrafish. The Academy cannot believe that this is the intention of AHEC. Section “c” should be deleted.

16. Section 3.7.7 states that “Human stem cell lines … should be anonymised for use in research unless the research involves autologous donation.” Human stem cell lines in this context would include both bone marrow and cord blood samples. These are sometimes donated by family members for research that has the potential to help a related individual. (An example would be donation of cord blood or bone marrow from a sibling for research into cell transplantation.) These samples are not, strictly speaking, autologous, and the present wording would prevent research into the effective use of cord blood from “saviour siblings” to treat diseases such as thalassaemia and cystic fibrosis. The Academy does not believe that this is the intention of AHEC. Autologous donation should, at the least, include family members, but the Academy suggests it would be better still if 3.7.6 and 3.7.7 and 3.7.12b are omitted.

17. Section 4.1.13 states that it is ethically unacceptable to conduct non-therapeutic research that involves carrying out a procedure on a fetus with the intention of establishing safety in anticipation of an induced termination. This may be too sweeping a statement, in light of studies of which the Academy is aware that involve attempting non-invasive prenatal diagnosis on fetal cells obtained by a cervical smear. Such studies involve a procedure already undergone by many hundreds of thousands of women in Australia each year. If conducted on volunteers who have already decided to have a termination, this could be thought to be a more appropriate and ethical way to establish safety and efficacy than putting a continuing pregnancy at risk.

18. In general terms, the Academy complements AHEC on Section 4.5. We note that there is remarkably little research with persons suffering from cognitive impairment or mental illness, and part of the reason for this may be the reluctance of HRECs to deal with the issues outlined in Section 4.5. If research does not take place with persons who have these disorders and diseases, they are further disadvantaged, leading to an unethical outcome for this already marginalised group. The Academy suggests that the Draft mentions the need for further research in this area.

19. In Chapter 5.2, it might be useful to suggest that an HREC should attempt to respond to an application within a period of time. The Academy suggests that the maximum time permitted for response to an application should be two months.

20. It has come to the attention of Fellows of the Academy that some institutions have refused to name the members of their HREC. There should be an instruction that the names of members of an institutional HREC should be available in the Annual Report of any public body that has such a Committee.