

General Comments

The Commonwealth of Australia (“Australia”) Addendum to the *Evaluation Instrument for Accreditation* (“*Evaluation Instrument*”) is intended for use by organizations in Australia seeking accreditation; by site visitors evaluating organizations in Australia; and by accredited organizations in the US that conduct or oversee research in Australia. This Addendum includes Standards and Elements where Australian laws, regulations, and guidelines require significant additional protections beyond those defined in the *Evaluation Instrument*, and is intended to be used in conjunction with the *Evaluation Instrument*.

The Addendum is based on a review of the following laws, policies, and guidance:

- Therapeutic Goods Act
- Therapeutic Goods Regulations 1990 (Compilation 83, July 1, 2018)
- National Statement on Ethical Conduct in Human Research 2007 (Updated May 2015), referred to here as “NSEC” (incorporated by reference in the Therapeutic Goods Regulations as a requirement)
- Privacy Act 1998
- Australian Privacy Principles
- Guidelines Approved Under Section 95A of the Privacy Act
- Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research (NHMRC 2003)

Because Australia law incorporates ICH-GCP (E6) by reference, organizations in Australia that conduct or review therapeutic goods (investigational drugs and devices) should ensure all requirements in ICH-GCP (E6) listed in the *Evaluation Instrument* are included in policies and procedures.

This Addendum represents AAHRPP’s current understanding of additional requirements covering organizations conducting or reviewing research in Australia.

We appreciate questions, concerns, and suggestions to improve this document. Please email accreditation@aahrpp.org.

Domain I: Organization

Standard I-1: The Organization has a systematic and comprehensive Human Research Protection Program with appropriate leadership.

Element I.1.A. The organization has and follows written policies and procedures for determining when activities are overseen by the Human Research Protection Program.

Human research is conducted with or about people, or their data or tissue. Human research is to be understood broadly, to include the involvement of human beings through (NSEC, Purpose, Scope and Limits):

- Taking part in surveys, interviews or focus groups.
- Undergoing psychological, physiological or medical testing or treatment.
- Being observed by researchers.
- Researchers having access to their personal documents or other materials.
- The collection and use of their body organs, tissues or fluids (e.g. skin, blood, urine, saliva, hair, bones, tumor and other biopsy specimens) or their exhaled breath.
- Access to their information (in individually identifiable, re-identifiable or nonidentifiable form as part of an existing published or unpublished source or database).

When research is regulated by the Therapeutic Goods Administration (TGA), research means any use of an unapproved therapeutic good. (Therapeutic Goods Act)

- Therapeutic goods include drugs, devices, and biologics, and are broadly defined as products for use in humans in connection with:
 - Preventing, diagnosing, curing or alleviating a disease, ailment, defect or injury.
 - Influencing inhibiting or modifying a physiological process.
 - Testing the susceptibility of persons to a disease or ailment.
 - Influencing, controlling or preventing conception.
 - Testing for pregnancy.
- An “unapproved” use of a therapeutic good means:
 - Any medicine not included in the Australian Register of Therapeutic Goods (ARTG), such as any new formulation, strength or size, dosage form, name, indications, directions for use or type of container of a medicine already in the ARTG.
 - Any medical device (including an in vitro diagnostic device (IVD) not included in the ARTG, such as any new sponsor, manufacturer, device nomenclature system code, classification or unique product identifier (for certain classes of medical devices only) of a medical device already in the ARTG.
 - Any in-house IVD medical device, used for the purpose of a clinical trial, where the laboratory providing the in-house IVD is unable to comply with the regulatory requirements for in-house IVDs.
 - Any biological not included in the ARTG such as:
 - Any new applicable standards, intended clinical use, or principal manufacturer of a Class 1 or 2 biological already in the ARTG.
 - Any new product name, dosage form, formulation or composition, therapeutic indication, type of container or principal manufacturer of a Class 3 or 4 biological already in the ARTG.
 - Any use of a therapeutic good already included in the ARTG not covered by the existing entry in the ARTG.

Written materials describe the process for registering HRECs with the National Health and Medical Research Council. (NSEC Section 5)

Element I.1.D. The Organization has and follows written policies and procedures setting forth the ethical standards and practices of the Human Research Protection Program. Relevant policies and procedures are made available to Sponsors, Researchers, Research Staff, research participants, and the Institutional Review Board or Ethics Committee, as appropriate.

The ethical principles to govern the conduct of research involving human participants include (NSEC, Introduction):

- Respect for human beings
- Research merit and integrity
- Justice
- Beneficence

Clinical trials must be conducted in accordance with the ethical principles that have their origin in the Declaration of Helsinki and that are consistent with good clinical practice and the applicable regulatory requirements.

Standard I-4: The Organization responds to the concerns of research participants.

Element I.4.C. The Organization promotes the involvement of community members, when appropriate, in the design and implementation of research and the dissemination of results.

Add to Written materials require that clinical trials be registered with the Australia New Zealand Clinical Trial Registry at <http://www.anzctr.org.au/>

Standard I-6: The Organization has and follows written policies and procedures to ensure that research is conducted so that financial conflicts of interest are identified, managed, and minimized or eliminated.

Element I.6.B. The Organization has and follows written policies and procedures to identify, manage, and minimize or eliminate individual financial conflicts of interest of researchers and research staff that could influence the conduct of the research or the integrity of the Human Research Protection Program. The Organization works with the Institutional Review Board or Ethics Committee in ensuring that financial conflicts of interest are managed and minimized or eliminated, when appropriate.

Written materials describe disclosure requirements for researchers (HSEC, 3.3.4.):

- Any business, financial or other similar association between a researcher, researcher's immediate family, and the supplier of a drug or surgical or other device to be used in the trial.

- Immediate family members at a minimum include the spouse and each dependent child.
- Any other possible conflicts of interest; and
- Any restrictions on publication.

Written materials define disclosure thresholds for financial interests.

This can mean requiring researchers and research staff to disclose any financial interests, or can mean a threshold amount for financial interests, above which researchers must disclose financial interest.

Examples of a defined disclosure threshold could include the following, or another threshold:

- With regard to any publicly traded entity, a significant financial interest exists if the value of any remuneration received from the entity in the 12 months preceding the disclosure and the value of any equity interest in the entity as of the date of disclosure, when aggregated, exceeds \$5,000. (For purposes of this definition, remuneration includes salary (e.g., consulting fees, honoraria, paid authorship); equity interest includes any stock, stock option, or other ownership interest as determined through reference to public prices or other measures of fair market value).
- With regard to any non-publicly traded entity, a significant financial interest exists if the value of any remuneration received from the entity in the 12 months preceding the disclosure, when aggregated, exceeds \$5,000 or when the Investigator (or the Investigator's spouse or dependent children) holds any equity interest (e.g., stock, stock option, or other ownership interest).
- Intellectual property rights and interest (e.g. patents, copyrights), upon receipt of income related to such rights and interests.
- Investigators must also disclose the occurrence of any reimbursed or sponsored travel (i.e., that which is paid on behalf of the Investigator and not reimbursed to the Investigator so that the exact monetary value might not be readily available) related to the institutional responsibilities; provided, however, that this disclosure does not apply to travel that is reimbursed or sponsored by a government agency, an institution of higher education, an academic teaching hospital, or a research institute that is affiliated with an institution of higher education.

Standard I-7: The organization has and follows written policies and procedures to ensure that the use of any investigational or unlicensed test article complies with all applicable legal and regulatory requirements.

Element I.7.A. When research involves investigational or unlicensed test articles, the organization confirms that the test articles have appropriate regulatory approval or meet exemptions for such approval.

Research involving “therapeutic goods” falls under oversight by the Therapeutic Goods Administration (TGA). (Therapeutic Goods Act)

Written materials describe the process for obtaining authorization from the Therapeutic Goods Administration to conduct a clinical trial

involving one or more unregistered therapeutic goods through either the Clinical Trial Notification regime, or the Clinical Trial Exemption Regime.

- When research falls under the Clinical Trial Notification (CTN) regime, written materials describe the process to ensure the HREC has appropriate expertise to evaluate the scientific validity of the trial design, the balance of risk versus harm of the therapeutic good, the ethical acceptability of the trial process, and to approve the trial protocol. The HREC is also responsible for monitoring the conduct of the trial to review the safety of a therapeutic good when evaluating under the Clinical Trial Notification (CTN) regime.
- When research falls under the Clinical Trial Exemption (CTX) regime, written materials must describe the process to verify approval from the Therapeutic Goods Administration to use an unapproved therapeutic good in a clinical trial.

Domain II: Institutional Review Board or Ethics Committee

Standard II-1: The structure and composition of the IRB or EC are appropriate to the amount and nature of the research reviewed and in accordance with requirements of applicable laws, regulations, codes, and guidance.

Element II.1.A. The IRB or EC membership permits appropriate representation at the meeting for the types of research under review, and this is reflected on the IRB or EC roster. The IRB or EC has one or more unaffiliated members; one or more members who represent the general perspective of participants; one or more members who do not have scientific expertise; one or more members who have scientific or scholarly expertise; and, when the IRB or EC regularly reviews research that involves vulnerable participants, one or more members who are knowledgeable about or experienced in working with such participants.

Written materials describe the composition of HRECs (HSEC 5.1.29):

- Each HREC has at least eight members with varying backgrounds to promote complete and adequate review of research commonly conducted by the organization.
- As far as possible, there are equal numbers of men and women.
- As far as possible, at least one third of members are unaffiliated with the organization for which the HREC is reviewing research.
- At least two lay people, one man and one woman, who have no affiliation with the institution and do not currently engage in medical, scientific, legal or academic work.
- At least one person with knowledge of, and current experience in, the professional care, counselling or treatment of people; for example, a nurse or allied health professional.
- At least one person who performs a pastoral care role in a community, for example, an Aboriginal elder, a minister of religion.

- At least one lawyer, where possible one who is not engaged to advise the institution.
- At least two people with current research experience that is relevant to research proposals to be considered at the meetings they attend; these two members may be selected, according to need, from an established pool of inducted members with relevant expertise.
- Each HREC has at least one member who represents the perspective of research participants.

No member may be appointed to more than one category.

Wherever possible one or more of the members should be experienced in reflecting on and analyzing ethical decision-making.

Standard II-2: The IRB or EC evaluates each research protocol or plan to ensure the protection of participants.

Element II.2.A. The IRB or EC has and follows written policies and procedures for determining when activities are exempt from applicable laws and regulations, when permitted by law or regulation and exercised by the IRB or EC. Such policies and procedures indicate that exemption determinations are not to be made by researchers or others who might have a conflict of interest regarding the studies.

Organizations may develop a non-HREC review process to exempt from ethical review research that poses negligible risk, where there is no foreseeable risk of harm or discomfort; and any foreseeable risk is no more than inconvenience. (HSEC 2.1.7. and 5.1.22)

The process must determine:

- The research poses no more than negligible risk.
- The research is limited to the use of existing collections of data or records that contain only non-identifiable data about human beings.
 - Data stored in an identifiable form cannot be used in research that is exempt from ethical review. (HSEC 3.2.10)

Organizations must monitor any process of ethical review of low risk research to ensure those processes continue to provide sufficient protection to participants. (HSEC 5.1.12)

Exemption determinations do not need to be made by the HREC or an HREC member.

Element II.2.D. The IRB or EC has and follows written policies and procedures for conducting meetings by the convened IRB or EC.

Research with more than a low level of risk, where the only foreseeable risk is one of discomfort, must be reviewed by a convened HREC.

Regardless of level of risk, the following research must be reviewed by a convened HREC (NSEC 5.1.6.):

- All research that involves more than low risk, where the foreseeable risk is not limited to potential discomfort.
- Research involving the following vulnerable populations:

- Interventions and therapies, including clinical and non-clinical trials, and innovations.
- Human genetics.
- Women who are pregnant and the human fetus.
- People highly dependent on medical care who may be unable to give consent.
- People with a cognitive impairment, an intellectual disability, or a mental illness.
- Aboriginal and Torres Strait Islander Peoples.
- Research involving illegal activities that is designed to study or expose illegal activities, or that is likely to discover it.

Written materials describe requirements for convened meetings (NSEC 5.2):

- A majority of HREC members must be present.
- At least one member whose primary concerns are in non-scientific areas must be present (for example, a lay member who does not currently engage in medical, scientific, legal, or academic work; or a person who performs a pastoral care role; or a lawyer).
- If the HREC or EC reviews research that involves vulnerable populations one or more individuals who are knowledgeable about or experienced in working with such participants are present.
- At least one unaffiliated member is generally present at HREC meetings. This may be accomplished by:
 - Requiring an unaffiliated member as part of quorum.
 - Placing an attendance requirement on the unaffiliated member (e.g., attend 10 of 12 meeting per year).
 - Documenting the general attendance of the unaffiliated member (e.g., minutes indicate attendance at 10 of 12 meetings).
- At least one member who represents the general perspective of research participants is generally present at HREC meetings. This may be accomplished by:
 - Requiring a member who represents the general perspective of research participants as part of quorum.
 - Placing an attendance requirement on the member who represents the general perspective of research participants (e.g., attend 10 of 12 meeting per year).
 - Documenting the general attendance of the member who represents the general perspective of research participants (e.g., minutes indicate attendance at 10 of 12 meetings).
- Where there is less than full attendance of the minimum membership at a meeting, the Chairperson should be satisfied, before a decision is reached, that the views of those absent who belong to the minimum membership have been received and considered. (HSEC 5.2.30)
- For research to be approved it must receive the approval of a majority of members present at the meeting.
- If quorum is lost during a meeting, the HREC cannot take votes until the quorum is restored.

Element II.2.F. The IRB or EC has and follows written policies and procedures to conduct reviews by an expedited procedure, if such procedure is used.

Element II.2.F.1. – Initial review

Element II.2.F.2. – Continuing review

Element II.2.F.3. – Review of proposed modifications to previously approved research

Organizations that choose to establish levels of ethical review other than by a convened HREC for research must limit this to:

- Low risk research in which the only foreseeable risk is one of discomfort. (NSEC 2.1)
- Negligible risk research in which there is no foreseeable risk of harm or discomfort; and any foreseeable risk is no more than inconvenience.
 - Research that involves negligible risk may be exempt from ethics review.

Organizations must monitor any process of ethical review of low risk research to ensure those processes continue to provide sufficient protection to participants. (HSEC 5.1.12)

Element II.2.G. The IRB or EC has and follows written policies and procedures for addressing unanticipated problems involving risks to participants or others, and for reporting these actions, when appropriate.

The problems researchers have to report to the HREC include (HSEC 5.5):

- Serious adverse events that are related to a therapeutic good that are fatal or life threatening and that occur within Australia.
- A significant safety issue (SSI) that could adversely affect the safety of participants or materially impact on the continued ethical acceptability or conduct of the trial, for example by altering the risk-benefit balance of the trial.
- Changes made to the research without prior HREC approval in order to eliminate apparent immediate harm.
- Other unanticipated information that is related to the research and when participants or others might be at increased risk of harm.
- New information that might affect adversely the safety of the participants or the conduct of the clinical trial.
- Any changes significantly affecting the conduct of the clinical trial or increasing the risk to participants.
- Sponsors must report serious adverse events related to a therapeutic good to the TGA within 15 days.
- Sponsors must report significant safety issues to the TGA within 72 hours, with follow up within 8 days.

Standard II-3: The IRB or EC approves each research protocol or plan according to criteria based on applicable laws, regulations, codes, and guidance.

Element II.3.A. The IRB or EC has and follows written policies and procedures for identifying and analyzing risks and identifying measures to minimize such risks. The analysis of risk includes a determination that the risks to participants are reasonable in relation to the potential benefits to participants and to society.

When analyzing risks, the HREC must consider the use of a placebo alone or the incorporation of a non-treatment control group in controlled clinical trials. These are ethically unacceptable where (NSEC 3.3.10):

- Other available treatment has already been clearly shown to be effective; and
- There is known risk of significant harm in the absence of treatment.

The HREC must determine there is an ethically defensible plan for disclosing information to participants in genetics research, where research may discover or generate information about risks of potential importance to the future health of participants, or their blood relatives.

The HREC must determine that the plan (HSEC 3.5):

- Enables participants to decide whether they wish to receive the information and who else may be given the information.
- Set out a process for finding out whether those other people want to receive information.

Element II.3.D. The IRB or EC has and follows written policies and procedures to evaluate the proposed arrangements for protecting the privacy interests of research participants, when appropriate, during their involvement in the research.

Written materials define when research is covered by the Privacy Act and Guidelines Approved Under Section 95A of the Privacy Act:

- Research involves health information or health services
- It is impracticable to seek consent from the individual(s) involved to collect, use, or disclose their health information for the purpose of research relevant to public health or public safety.

The HREC must determine the public interest in the proposed activity substantially outweighs, or does not substantially outweigh, the public interest in the protection of privacy, based upon (Guidelines Approved Under Section 95A of the Privacy Act, Section D):

- The degree to which the proposed collection, use, or disclosure of health information is necessary to the functions or activities of the organization.
- The degree to which the research, compilation, or analysis of statistics activity is relevant to public health or public safety.
- The degree to which the research, or compilation or analysis of statistics or the health service management activity is likely to contribute to:

- The identification, prevention or treatment of illness, injury or disease;
- Scientific understanding relating to public health or safety;
- The protection of the health of individuals and/or communities;
- The improved delivery of health services;
- Enhanced scientific understanding or knowledge; or
- Enhanced knowledge of issues within the fields of social science and the humanities relating to public health or public safety
- Any likely benefits to individuals, to the category of persons to which they belong, or the wider community that will arise from the research, or compilation or analysis of statistics, or management of a health service being undertaken in the manner proposed in considering benefits to the category of persons to which the individual(s) belong, specific consideration should be given to any likely benefits to individuals that belong to certain categories where the information may be of a particularly personal or sensitive nature; for example:
 - Children and young people;
 - Persons with intellectual or psychiatric disability;
 - Persons highly dependent on medical care;
 - Persons in dependent or unequal relationships;
 - Persons who are members of collectivities;
 - Aboriginal and Torres Strait Islander peoples;
 - Persons whose information relates to their mental or sexual health.
- Whether the research, or compilation or analysis of statistics, or management of a health service study design can be satisfied without needing to waive or alter consent.
- The scientific defects in the activity that might arise if the activity was not undertaken in the manner proposed.
- The cost of not undertaking the research, or compilation or analysis of statistics, or management of a health service activity (to government, the public, the health care system etc.).
- The public importance of the proposed research, or compilation or analysis of statistics, or management of a health service activity.
- The extent to which the data being sought are usually available to the public from the organization that holds that data:
 - Whether the research, compilation, or analysis of statistics activity, involves use of the data in a way that is inconsistent with the purpose for which the data was made public.
 - Whether the research, compilation, or analysis of statistics activity requires alteration of the format of the data of a kind that would, if used or disclosed by an organization, involve a breach of an Australian Privacy Principle.
- Whether the risk of harm to an individual whose health information is to be collected, used, or disclosed in the proposed research, or compilation or analysis of statistics, or management of health service activity is minimal.

- The standards of conduct that are to be observed in the research, compilation, or analysis of statistics, or management of a health service activity, including:
 - The study design and the scientific credentials of those involved in conducting that study.
 - If the study involves contact with participants, the procedures or controls that will apply to ensure that participants are treated with integrity and sensitivity, including whether questions to be asked or procedures to be employed are intrusive.

Element II.3.E. The IRB or EC has and follows written policies and procedures to evaluate proposed arrangements for maintaining the confidentiality of identifiable data, when appropriate, preliminary to the research, during the research, and after the conclusion of the research.

When research involves health information or health services and it is impracticable to seek consent from the individual(s) involved to collect, use, or disclose their health information for the purpose of research relevant to public health or public safety, the HREC must determine there are adequate provisions to protect the confidentiality of information obtained through the Privacy Act (Guidelines Approved Under Section 95A of the Privacy Act, Section D):

- Whether access to health information is adequately restricted to appropriate personnel involved in conducting the proposed study.
- The procedures that are to be followed to ensure that the health information is permanently de-identified before the publication of results.
- The procedures that are to be followed at the completion of the proposed study to ensure that all data containing health information are at least as secure as they were in the sources from which the data was obtained, including the date when the data will be destroyed or returned. These procedures must be in accordance with Australian Privacy Principle 11.

Element II.3.F. The IRB or EC has and follows written policies and procedures to evaluate the consent process and to require that the researcher appropriately document the consent process.

In addition to other required basic and additional elements of consent disclosure, consent documents should include a description of (HSEC 2.2.6.):

- How the research will be monitored.
- Provision of services to participants adversely affected by the research.
- The amounts and sources of funding for the research.
- The likelihood and form of dissemination of the research results, including publication.
- Any expected benefits to the wider community.
- The alternative procedures or treatment that might be available to the participant, and their important potential benefits and risks.

- That the monitor, the auditor, the HREC, and the regulatory authority will be granted direct access to the participant's original medical records for verification of clinical trial procedures or data, without violating the confidentiality of the participant, to the extent permitted by the applicable laws and regulations and that, by signing a written consent form, the participant or the participant's legally acceptable representative is authorizing such access.
- The approval of the HREC.

The HREC determines that the consent process includes documentation of consent, unless waived (ICH-GCP (E6)(R2)):

- Prior to a participant's participation in the trial, the written consent document should be signed and personally dated by the participant or by the participant's legally acceptable representative.
- Prior to a participant's participation in the trial, the written consent document should be signed and personally dated by the person who conducted the informed consent discussion.
- If a participant is unable to read or if a legally acceptable representative is unable to read, an impartial witness should be present during the entire informed consent discussion.
 - After the written consent document and any other written information to be provided to participants, is read and explained to the participant or the participant's legally acceptable representative, and after the participant or the participant's legally acceptable representative has orally consented to the participant's participation in the trial and, if capable of doing so, has signed and personally dated the consent document, the witness should sign and personally date the consent document.
 - By signing the consent document, the witness attests that the information in the consent document and any other written information was accurately explained to, and apparently understood by, the participant or the participant's legally acceptable representative, and that consent was freely given by the participant or the participant's legally acceptable representative.
 - Prior to participation in the trial, the participant or the participant's legally acceptable representative should receive a copy of the signed and dated written consent document and any other written information provided to the participants.

Element II.3.G. The IRB or EC has and follows written policies and procedures for approving waivers or alterations of the consent process and waivers of consent documentation.

An HREC may approve a consent process that omits some or all required elements of disclosure (not disclosing all required elements of consent), provided the convened HREC determines the following general requirements for limited consent are met (HSEC 2.3.1.), where:

- There are no suitable alternatives involving fuller disclosure by which the aims of the research can be achieved
- The potential benefits of the research are sufficient to justify both the limited disclosure to participants and any risk to the community's trust in research and researchers
- The research involves no more than low risk to participants (i.e., no more than a risk of discomfort).
- The partial disclosure is unlikely to affect participants adversely
- The precise extent of the partial disclosure is defined
- Whenever possible and appropriate, after their participation has ended:
 - Participants will be provided with information about the aims of the research and an explanation of why the omission or alteration was necessary.
 - Offered the opportunity to withdraw any data or tissue provided by them.

Where limited disclosure involves active concealment or explicit deception, and the research does not aim to expose illegal activity, a convened HREC may approve the research provided that, in addition to the above requirements, the convened HREC determines (HSEC 2.3.2.):

- Participants will not be exposed to an increased risk of harm as a result of the concealment or deception.
- A full explanation, both of the real aims or methods of the research, or both, and also of why the concealment or deception was necessary, will subsequently be made available to participants.
- There is no known or likely reason for thinking that participants would not have consented if they had been fully aware of what the research involved.

Where research involving partial disclosure aims to expose illegal activity, the HREC must determine that the adverse effects on those whose illegal activity is exposed are justified by the value of the exposure. (HSEC 2.3.3.)

Only a convened HREC can review and approve research that (HSEC 2.3.4):

- Involves active concealment or planned deception, or
- Aims to expose illegal activity.

Where research involves an opt-out approach to participant recruitment because it is not feasible to contact some or all of the participants, and where the project is of such scale and significance that using explicit consent is neither practical nor feasible, the HSEC must determine (HSEC 2.3.6.):

- Involvement in the research carries no more than low risk to participants.
- The public interest in the proposed activity substantially outweighs the public interest in the protection of privacy.

- The research activity is likely to be compromised if the participation rate is not near complete, and the requirement for explicit consent would compromise the necessary level of participation.
- Reasonable attempts are made to provide all prospective participants with appropriate plain language information explaining the nature of the information to be collected, the purpose of collecting it, and the procedure to decline participation or withdraw from the research.
- A reasonable time period is allowed between the provision of information to prospective participants and the use of their data so that an opportunity for them to decline to participate is provided before the research begins.
- A mechanism is provided for prospective participants to obtain further information and decline to participate.
- The data collected will be managed and maintained in accordance with relevant security standards.
- There is a governance process in place that delineates specific responsibility for the project and for the appropriate management of the data.
- The opt-out approach is not prohibited by Australia state or federal law, or international law.

A convened HREC may grant a waiver of consent provided it determines (HSEC 2.3.10.):

- Involvement in the research carries no more than low risk to participants.
- The benefits from the research justify any risks of harm associated with not seeking consent.
- It is impracticable to obtain consent (for example, due to the quantity, age or accessibility of records).
- There is no known or likely reason for thinking that participants would not have consented if they had been asked.
- There is sufficient protection of their privacy.
- There is an adequate plan to protect the confidentiality of data.
- In case the results have significance for the participants' welfare, there is, where practicable, a plan for making information arising from the research available to them (for example, via a disease-specific website or regional news media).
- The possibility of commercial exploitation of derivatives of the data or tissue will not deprive the participants of any financial benefits to which they would be entitled.
- The waiver is not prohibited by Australia state or federal law, or international law.

Where research involves illegal activity, the HREC may approve a waiver of consent provided it determines (HSEC 2.3.11.):

- The value of exposing the illegal activity justifies the adverse effects on the people exposed.
- There is sufficient protection of their privacy.
- There is sufficient protection of the confidentiality of data.

- The waiver is not prohibited by Australia state or federal law, or international law.

When the HREC approves a waiver of consent, the organization is responsible to make publicly accessible (for example in annual reports) summary descriptions of all its research projects for which consent has been waived. However, waiver decisions should not be made publicly accessible until the research has been completed. (NSEC 2.3.12.)

Standard II-4: The IRB or EC provides additional protections for individuals who are vulnerable to coercion or undue influence and participate in research.

Element II.4.A. The IRB or EC has and follows written policies and procedures for determining the risks to prospective participants who are vulnerable to coercion or undue influence and ensuring that additional protections are provided as required by applicable laws, regulations, codes, and guidance.

Research involving women who are pregnant and the human fetus (NSEC, Chapter 4.1); children and young people (NSEC, Chapter 4.2.); people highly dependent on medical care who may be unable to give consent (NSEC, Chapter 4.4); people with a cognitive impairment, an intellectual disability, or a mental illness (NSEC, Chapter 4.5); and Aboriginal and Torres Strait Islander Peoples (NSEC, Chapter 4.7, and Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research) must be reviewed by a convened HREC, and may not be reviewed by expedited review or exempt review.

Research in people who are highly dependent on medical care includes:

- Neonatal intensive care.
- Terminal care.
- Emergency care.
- Intensive care.
- The care of unconscious people.

When research involves people who are highly dependent on medical care, in order to approve the research, the HREC must determine:

- It is likely that the research will lead to increased understanding about, or improvements in, the care of this population.
- The requirements of relevant jurisdictional laws are taken into account; and either:
 - Any risk or burden of the proposed research to this particular participant is justified by the potential benefits to him or her; or
 - Where participants have capacity to consent, any risk or burden is acceptable to them and justified by the potential benefits of the research.

When adults are unable to consent, the HREC determines:

- A non-therapeutic clinical trial (i.e. a trial in which there is no anticipated direct clinical benefit to the participant) should be conducted in participants who personally give consent and who sign and date the written consent document.
- Non-therapeutic clinical trials may be conducted in participants with consent of a legally acceptable representative provided the following conditions are fulfilled:
 - The objectives of the clinical trial cannot be met by means of a trial in participants who can give consent personally.
 - The foreseeable risks to the participants are low.
 - The negative impact on the participant's wellbeing is minimized and low.
 - The clinical trial is not prohibited by law.
 - The opinion of the HREC is expressly sought on the inclusion of such participants, and the written opinion covers this aspect.
 - Such trials, unless an exception is justified, should be conducted in patients having a disease or condition for which the investigational product is intended. Participants in these trials should be particularly closely monitored and should be withdrawn if they appear to be unduly distressed.

When research involves Aboriginal or Torres Strait Islander Peoples the HREC review must include an assessment by or advice from (NSEC Chapter 4.7):

- People who have networks with Aboriginal and Torres Strait Islander Peoples and/or knowledge of research with Aboriginal and Torres Strait Islander Peoples; and
- People familiar with the culture and practices of the Aboriginal and Torres Strait Islander people with whom participation in the research will be discussed.

Element II.4.B. The IRB or EC has and follows written policies and procedures requiring appropriate protections for prospective participants who cannot give consent or whose decision-making capacity is in question.

When research involves children and young people, the HREC may approve research in which only the child or young person consents if it determines:

- The child or young person is mature enough to understand the relevant information and to give consent, although vulnerable because of relative.
- Immaturity in other respects.
- The research involves no more than low risk.
- The research aims to benefit the category of children or young people to which this participant belongs; and either:
 - The young person is estranged or separated from parents or guardian, and provision is made to protect the young person's safety, security and wellbeing in the conduct of the research. (In this case, although the child's circumstances may mean

- he or she is at some risk, for example because of being homeless, the research itself must still be low risk); or
- It would be contrary to the best interests of the young person to seek consent from the parents, and provision is made to protect the young person's safety, security and wellbeing in the conduct of the research.

Element II.4.C. The IRB or EC has and follows written policies and procedures for making exceptions to consent requirements for planned emergency research and reviews such exceptions according to applicable laws, regulations, codes, and guidance.

The convened HREC may approve a waiver of consent for emergency care research involving emergency treatment, provided it determines (NSEC 4.4.1):

- It is likely that the research will lead to increased understanding about, or improvements in, the care of this population.
- The requirements of relevant jurisdictional laws are taken into account; and either:
 - Any risk or burden of the proposed research to this particular participant is justified by the potential benefits to him or her; or
 - Where participants have capacity to consent, any risk or burden is acceptable to them and justified by the potential benefits of the research.

In addition, to approve a waiver of consent for emergency care research, the convened HREC must determine (NSEC 2.3.6.):

- Involvement in the research carries no more than low risk (i.e., risks are no more than discomfort for participants).
- The public interest in the proposed activity substantially outweighs the public interest in the protection of privacy.
- The research activity is likely to be compromised if the participation rate is not near complete, and the requirement for explicit consent would compromise the necessary level of participation.
- Reasonable attempts are made to provide all prospective participants with appropriate plain language information explaining the nature of the information to be collected, the purpose of collecting it, and the procedure to decline participation or withdraw from the research.
- A reasonable time period is allowed between the provision of information to prospective participants and the use of their data so that an opportunity for them to decline to participate is provided before the research begins.
- A mechanism is provided for prospective participants to obtain further information and decline to participate.
- The data collected will be managed and maintained in accordance with relevant security standards.
- There is a governance process in place that delineates specific responsibility for the project and for the appropriate management of the data.

- The opt-out approach is not prohibited by Australia state or federal law, or international law.

The participant or the participant's legally authorized representative must be informed about the clinical trial as soon as possible and provides consent if the participant wishes to continue.