

CHAPTER 4.6: PEOPLE WHO MAY BE INVOLVED IN ILLEGAL ACTIVITIES

INTRODUCTION

Research may in some instances discover illegal activity (including notifiable activity) by participants or others, or may discover information indicating future illegal activity. Such research may:

- be intended to study, and perhaps to expose, illegal activity;
- be not specifically intended to discover illegal activity, but likely to do so;
- discover illegal activity inadvertently and unexpectedly.

In the first category there may be particular ethical questions about participants' consent (see *Chapter 2.2: General requirements for consent*). In all three categories both ethical and legal questions for researchers and institutions might arise from:

- what researchers might be obliged to disclose;
- the vulnerability of participants and researchers because of discovery of participants' illegal activity (see paragraph 5.1.2(b)(ii), page 77).

Legal implications may include:

- a statutory obligation for a researcher to disclose information revealed or discovered;
- legal orders that compel disclosure of information obtained by a researcher.

This chapter is not concerned with investigation conducted as part of law enforcement. Nor does it contain information or guidance about legal obligations of researchers arising from their conduct of any research that discovers illegal activity. Further, it is not the role of a Human Ethics Research Committee (HREC) or other ethical review body to provide legal advice on the existence or performance of any of those obligations.

Research that is intended to study or expose illegal activity or that is likely to discover it must be reviewed and approved by a Human Ethics Research Committee (HREC) rather than by one of the other processes of ethical review described in paragraphs 5.1.7 and 5.1.8 (page 78), except where that research uses collections of non-identifiable data and involves negligible risk, and may therefore be exempted from ethical review.

Values, principles and themes that must inform the design, ethical review and conduct of all human research are set out in Sections 1 and 2 of this National Statement. The guidelines and headings below show how those values, principles and themes apply specifically in research that is the subject of this chapter.

GUIDELINES

Research merit and integrity

- 4.6.1 Research designed to expose illegal activity should be approved only where the illegal activity bears on the discharge of a public responsibility or the fitness to hold public office. Variation of consent requirements for such research must comply with either paragraph 2.3.3 (page 24) or paragraph 2.3.7 (page 24).
- 4.6.2 Participants may be subject to risks because of their involvement in research that discovers illegal activity. It should be clearly established that these risks are justified by the benefits of the research. Where the research is designed to expose illegal activity under paragraph 4.6.1, that exposure may sometimes be benefit enough.

Justice

4.6.3 Where research discovers information about illegal activity by participants or others, researchers and institutions may become subject to orders to disclose that information to government agencies or courts. Decisions by researchers and institutions about how to respond to those orders should have regard to values and principles set out in this National Statement and to scholarly values of academic freedom and inquiry.

response the researcher will make to any legal obligation or order to disclose such information.

- 4.6.7 Researchers should be satisfied that participants who are subject to criminal justice processes:
- (a) are aware that the research may discover illegal activity; and
 - (b) do not have unrealistic expectations of benefit from their participation.

Beneficence

4.6.4 Consideration should be given to the use of pseudonyms, or to the removal of links between names and data, for participants whose illegal activity may be revealed or discovered in research.

Respect

- 4.6.5 Researchers may have contact with those participants in other professional roles. Where this is the case, researchers should make every effort to ensure both that the research is not compromised by contact in those other roles, and that other obligations to participants are not compromised by the research activity. In research that is likely, but not designed, to discover illegal activity, researchers should also make clear to participants when a contact or intervention is part of research and when it is not.
- 4.6.6 In research that may foreseeably discover illegal activity but is not designed to expose it, researchers should explain to participants as clearly as possible:
- (a) the likelihood of such discovery and of any resulting legal obligation of disclosure the researcher may incur; and
 - (b) the extent to which the researcher will keep confidential any information about illegal activity by participants or others, and the