# NSW OHMR Guidelines for Low and Negligible Risk (LNR) Research Review Processes or Exemption from Ethical Review

This Guideline represents NSW Health's Office for Health and Medical Research's (OHMR's) interpretation of the *National Statement on Ethical Conduct in Human Research* (the "National Statement") as it applies to low and negligible risk research. It is intended to provide greater consistency amongst HRECs and others in interpreting and clarifying some of the concepts contained in the National Statement. It should not be used as a substitute for reading and applying those concepts as directly expressed in the National Statement and other related documents.

## 1) Determination of level of risk and appropriate level of review per the National Statement

The National Statement defines risk as *"the function of the magnitude of a harm and the probability that it will occur".* The types of harm that may be encountered when research is conducted are described below.

| Types of harm | Possible examples |
|---|---|
| Physical harm | Including injury, illness, pain |
| Psychological harm | Including feelings of worthlessness, distress, guilt, anger or fear related, for example, to disclosure of sensitive or embarrassing information, or learning about a genetic possibility of developing an untreatable disease |
| Devaluation of personal worth | Including being humiliated, manipulated or in other ways treated disrespectfully or unjustly |
| Social harms | Including damage to social networks or relationships with others; discrimination in access to benefits, services, employment or insurance; social stigmatisation, findings of previously unknown paternity status, reputational harm to a participant, researcher, institution or community |
| Economic harms | Including the imposition of direct or indirect costs on participants |
| Legal harms | Including discovery and prosecution of criminal conduct |

Adapted from National Statement, 2007 (updated May 2015)

The National Statement permits institutions to establish levels of ethical review that are proportionate to the degree of risk involved, and provides the following definitions:

- **Negligible risk research:** Where there is no foreseeable risk of harm or discomfort; and any foreseeable risk is no more than an inconvenience to participants. Examples of inconvenience in human research may include filling in a form, participating in a de-identified survey or giving up time to participate in a research activity.
- **Low risk research:** Where the only foreseeable risk is one of discomfort. Discomforts include, for example, minor side-effects of medication, discomforts related to measuring blood pressure and anxiety induced by an interview.
- **More than low risk research:** Where the risk, even if unlikely, is more serious than discomfort, the research is not low risk.

Researchers, Human Research Ethics Committees (HRECs) and other ethical review bodies are required to determine the existence, likelihood and severity of risk based on a number of factors including the study's methodology and design, participant characteristics and the research activity. In some cases, the requirement for full HREC review may be mandated by Australian law (e.g. Commonwealth or state privacy legislation, the Therapeutic Goods Regulations 1990 and the Research Involving Human Embryos Act 2002). Where no such mandate exists, determination of the appropriate review pathway is influenced not only by the risk to participants, but also by a range of other contextual considerations:

- **The level of complexity of the research**: For certain types of research such as complex qualitative research or clinical trials, the HREC may wish undertake/confirm that a rigorous assessment of the methods used to avoid or reduce bias has taken place, as poorly designed research poses risks to data validity and credibility.

- **Whether a research activity raises associated ethical issues:** For example:
  - The handling of unanticipated findings beyond the aims of the research that may have health implications for the participant and/or their family
  - For research involving the analysis of bio-specimens, the context in which the bio-specimens were acquired or any known limitations the donor(s) placed on their use during the consent process.
- **Participant characteristics:** The National Statement outlines ethical considerations specific to participants in Section 4, which may influence the level of ethical review required. For example**:**
  - Cultural or religious considerations or the possibility that a dependent relationship may compromise the voluntary character of the participant's decisions
  - Whether participants have the capacity to give their informed consent
- **The intent of the research:** For example,
  - Whether the research aims to expose illegal activity or involve active deception or planned concealment
- **The risks to researchers or staff:** For example,
  - Research assessing emergency services or research requiring home visits
- **The nature and context of the test/procedure/measure**: For example,
  - The frequency of its use
  - The degree of its invasiveness
  - The skill and experience of the person performing it
  - Whether there is adequate supervision of the activity
  - Whether the measure is already part of the **standard of care** is also relevant to the determination of whether a research project is suitable for review under low or negligible risk processes. In such cases the following question could be considered:

  *Are the probability and magnitude of harm, discomfort or inconvenience anticipated in the research intrinsically greater than those ordinarily encountered during the performance of physical or psychological examinations or tests routinely employed in clinical practice?*

## 2) Projects that must be reviewed by an HREC

According to the National Statement, if the project includes any of the following types of research and/or participants, it will require HREC review[1] regardless of the level of risk:

- Waiver of consent for:
  - Use of personal information in medical research or personal health information (2.3.9)
  - Use of human biospecimens obtained without specific consent for their use in research, or where the proposed research is not consistent with the scope of the original consent (3.4.12)
  - Eligible emergency care research (4.4.6)
  - Transfer of genetic material or related information to any researcher not engaged in the research project (3.5.7iii)
- Interventions and therapies, including clinical & non-clinical trials and innovations (3.3)
- Research involving the derivation of embryonic stem cell lines or other products from a human embryo (3.4)
- Research involving ***prospective collection*** of human biospecimens including establishment of a biobank (3.4.1 - .4)
- Research involving the ***use*** of human bio-specimens that may give rise to information that may be important for the health of the donors, their blood relatives or their community (3.4.10)

[1] *HREC review* means review by an HREC that is constituted and functioning in accordance with Section 5 of the National Statement.

- Exportation of bio-specimens for research in accordance with institutional policy (3.4.15 b)
- Human genetics (3.5)*
- Research on women who are pregnant, research on the human foetus in utero, and research on the separated human foetus or on foetal tissue (4.1)*
- Research involving people highly dependent on medical care who may be unable to give consent (4.4)*
- Research involving people with a cognitive impairment, an intellectual disability or a mental illness (4.5)*
- Research that is intended to study or expose, or is likely to discover, illegal activity (4.6)*
- Research with Aboriginal and Torres Strait Islander Peoples (4.7)

***** *Except where that research uses collections of non-identifiable data and involves negligible risk and may therefore be exempted from ethical review.*

## 3) Projects that may[2] be suitable for review by 'other ethical review bodies'/non-HREC levels of ethical review dependent on the context of the research

These examples were generated in consultation with NSW public health organisations.

### *a) Examples of projects involving the collection, storage and disclosure of data*

- Surveys or questionnaires where the data are <u>not</u> identifiable or potentially identifiable to the researcher (e.g. returned anonymously) where the questions are not overly sensitive, and they have been satisfactorily peer reviewed to ensure that the questionnaire is likely to achieve the intended outcomes. For example:
  - Online and/or anonymous surveys where there is no direct contact with participants (i.e., recruitment is through generic email, mail or a social networking site link.)

- Research interviews/focus groups that do not include highly sensitive topics or where accidental disclosure would not have serious consequence

- Establishment of a data registry using non-identifiable data from existing data sets

### *b) Examples of projects involving the use of bio-specimens*

Research using existing bio-specimens already taken with unspecified (i.e. broad) or extended consent for research:
- Where the research does not involve any risks to the donors, their blood relatives or their community that are more serious than discomfort
- Where the research cannot reveal information that may be important for the health of the donor(s), their blood relatives or their community
- Where specific individuals cannot be identified from the bio-specimens used (i.e. the bio-specimens are non-identifiable to the researcher).

[2] Inclusion on this list merely means that the activity is eligible for review through LNR processes when the specific circumstances of the proposed research involve no more than low risk to participants.

### *c) Examples of projects involving non-invasive or minimally invasive activities*

- Prospective research involving non-invasive or minimally invasive activities may be eligible for low risk review. Examples might include research activities where participants are asked to read materials, review pictures or videos, play online games, solve puzzles, or perform cognitive tasks.

## 4) Projects that may be exempt from ethical review

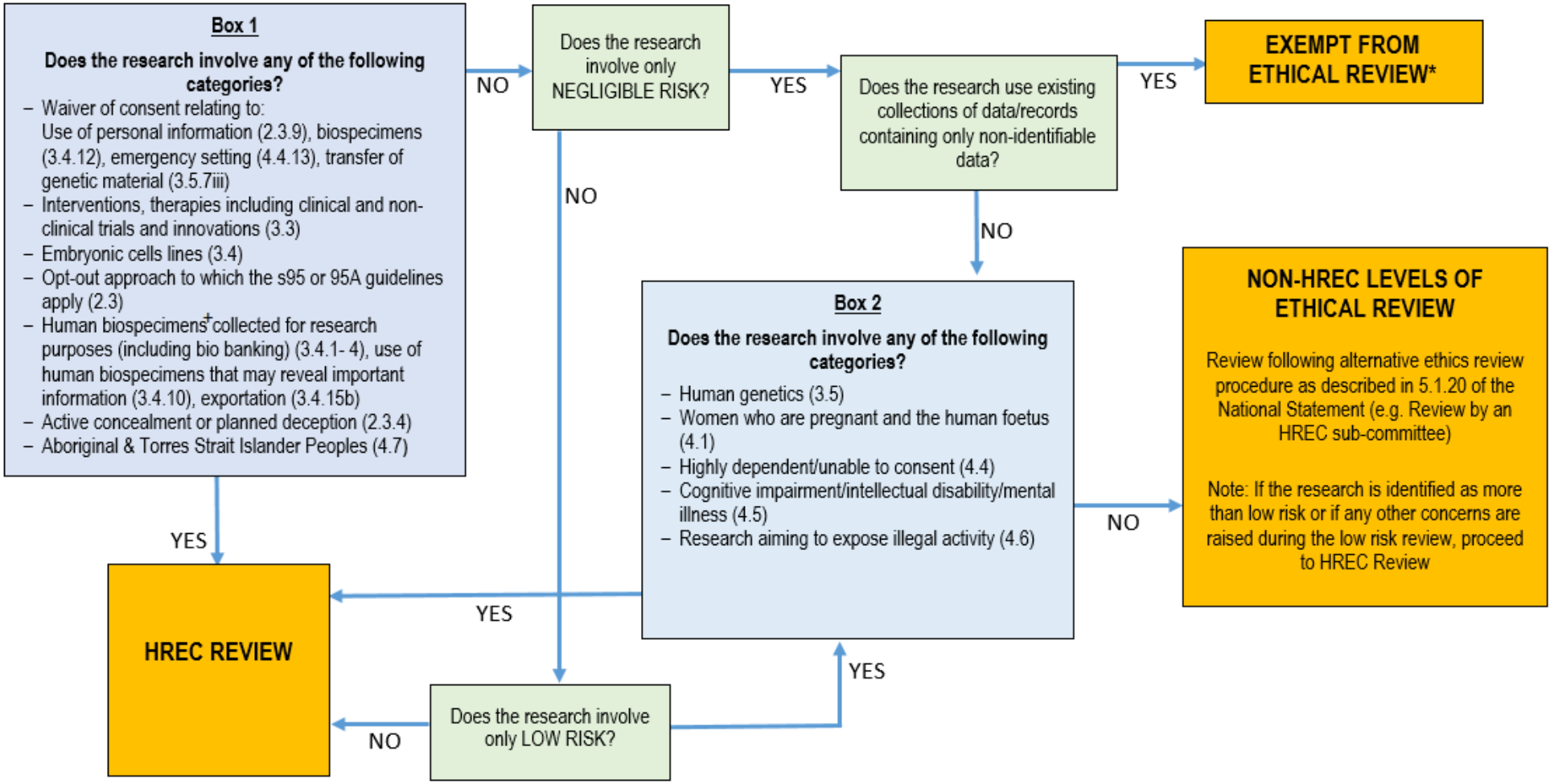
Institutions may choose to exempt from ethical review, research that involves the use of existing collections of data or records that contain only non-identifiable data about human beings and is negligible risk research.

Institutions that do not have separate procedures for reviewing research that is exempt from ethical review are likely to review this sub-set of research under their established low risk review processes.

**Journal Requests for Ethical Review**
If required by a journal as a condition of publication, an HREC/HREC subcommittee may be willing to review a study. However, editors of most journals will usually accept a letter from the HREC Chair confirming that ethical review is not required.

**Figure 1** below provides an overview per the National Statement, including step-wise considerations to help institutions determine the appropriate level of review.

**Figure 1: Flowchart for Low and Negligible Risk Review**




** Institutions that do not have separate procedures for reviewing research that is exempt from ethical review would review this sub-set of research under their established LNR review processes*

*+ Research involving the **use** of human biospecimens that still meets the definition of low risk after 3.4.8-9 are considered, may qualify for a non-HREC level of ethical review.*