

# The ethics and politics of ethics approval

**Tim Battin & Dan Riley**

University of New England

**Alan Avery**

University of Newcastle and Hunter New England Local Health District

The regulatory scope of Human Research Ethics Committees can be problematic for a variety of reasons. Some scholars have argued the ethics approval process, for example, is antithetical to certain disciplines in the humanities and social sciences, while others are willing to give it qualified support. This article uses a case study to cast the debate about how to address the weaknesses in ethics approval processes into the context of an ever-increasing level of managerialist interference in the work carried out by researchers. The problems attached to the former are unlikely to be resolved, while the latter is allowed to continue.

## Introduction

Since the late 1990s, the projects of academics working in non-medical research have increasingly come under the regulation of Human Research Ethics Committees. This process has not developed without criticism. Some critics have focused on how the process can be improved (Cordner & Thompson, 2007; Dodds, 2002; McNeill, 2002; Langlois, 2011), while others (and some of the same) have questioned whether the process is fundamentally in conflict with research in the humanities and social sciences (Parker *et al.*, 2003; Cribb, 2004; Bamber & Sappey, 2007; Langlois, 2011).

Prior to the establishment of ethics approval processes, and independently of them, another literature dealing with workplace bullying in higher education and the potential prevention of such behaviour, has grown considerably (Lewis, 1999; Thornton, 2004; Croucher, 2007; Fogg, 2008; Keashly & Neuman, 2010; Raskauskas, 2006). This article is concerned with a case study that points to a connection between, on the one hand, an attempt to gather data relating to perceptions

of bullying in an Australian university, and, on the other, the procedures and processes followed by a Human Research Ethics committee (hereafter referred to as the ethics committee) in, first, approving a research project investigating perceptions of workplace bullying, and then subsequently suspending its approval of the same project.

The original research project of the authors and one other researcher was an investigation entitled 'Perceptions of Bullying in the Workplace' using a survey instrument at the University of New England (UNE). Subjected to scrutiny by the UNE ethics committee, approved in March 2011 and begun on 1 April 2011, the project gained part of its impetus from a survey implemented by Voice Project Pty Ltd at UNE in mid 2010. Although general in its aims, the earlier survey revealed that many employees had serious concerns about the nature and extent of workplace bullying. For this particular reason, but more fundamentally because of longer standing concerns with the same problems, the research team developed a more extensive survey instrument. A principal aim of the investigation was to determine whether there were dif-

ferent or conflicting perceptions of workplace bullying between various sections or categories of employees – non-managers and managers, academic and professional/general staff, male and female, for example. The aim was (and is) seen as valuable because any demonstration of significant differences in perceptions correlating with a category of staff would hold some important implications for the literature dealing with workplace bullying. Throughout the preparatory stages, the project received the support of UNE's Vice-Chancellor.

This background is necessary to give an outline of the original project, but the present article does not substantively deal with that project. This article is entirely about the procedural issues raised by the fact that the original project's approval, given on 14 March 2011, was subsequently suspended on 8 April 2011. (Prior to suspension, the survey achieved a response rate of 17 per cent in five working days and after only one announcement.) The article concerns itself with the ethical and political issues that this suspension raises. It analyses these issues in the context of, in particular, doubts expressed by writers in the humanities and social sciences about the disciplinary partiality of ethics committee processes, the degree to which these processes can be commandeered by management, and, more generally, what the experience may suggest about forms of institutional bullying.

The article is situated within the literature dealing with the disquiet already expressed by academic writers regarding local ethics committees and the associated processes deriving from the *National Statement on Ethical Conduct in Human Research* (hereafter *National Statement*; NHMRC, 2007). In part, the case study touches on the concern other writers have expressed about whether or to what extent ethics committee processes can display partiality against the humanities and social sciences, especially critical disciplines. The present discussion concerns the disciplines of politics, industrial relations and, to some extent, applied ethics, although because it lacks a comparative element, our case suggests that the concern with potential partiality is an ongoing debate. The underlying conundrum considered is the extent to which the case study reinforces the basis on which previous concerns have been raised, and/or the extent to which it raises other problems. While not finding the architecture of ethics committees and the *National Statement* to be irredeemable, the article does raise the serious question of how the guidelines arising out of this architecture can be ignored and/or misused by those holding institutional power within universities.

## Main criticisms of the *National Statement* and Ethics Committees

A review of the literature concerned with the faults in the past and present architecture of the *National Statement* and the way in which it has come to be interpreted and implemented by local ethics committees establishes several recurring themes. These themes can be summarised as follows:

1. the human effects of research and the question of whether or in what sense there can be a guarantee that no harm comes to a participant
2. the broad meaning given to participant, especially in the 1999 *National Statement*, and significantly modified to a somewhat more specific meaning in the 2007 version
3. the level of managerial control over ethics committees and the ethics clearance process
4. risk management, especially in the context of what risk it is that some institutions see themselves as managing – risk pertaining to ethical matters, or legal risk
5. the degree to which disciplinary partiality exists in the processes and interpretations of individual ethics committees, together with questions of methodology
6. a corollary of (1), adjudicating between the welfare and rights of participants and the benefit that the research could bring to the community.

This list of the aspects about which the Australian Health Ethics Committee–local ethics committees–*National Statement* nexus has been criticised is not exhaustive; the lack of expertise attributed to some ethics committees, and what are said to be some demanding or unwieldy processes, for example, also feature prominently in the literature (e.g. Dodds, 2002). Rather, the list conveys the relevant factors that could point to the potential for the misuse and abuse of power by institutions.

Of course, with some of these points of analysis, namely, (1), (2), (5) and (6), the degree of concern changes according to whether it is the 1999 or the 2007 version of the *National Statement* that is being examined. Yet, as we shall argue, the case study of an ethics approval that was subsequently suspended shows that some serious questions remain unresolved, in some cases even if it is (from the authors' point of view) the improved *National Statement* of 2007 that is being applied.

One possible objection to the list is that not all its themes relate to matters to which the *National Statement* speaks. Themes (3) and (4) might be said to relate to the institutional architecture of human research ethics review, but only because they are part of the architecture

of management of any committee process. While noting this distinction, we nevertheless can claim that all six themes relate to the general controversy of ethics committees and their institutional infrastructure.

### Important events leading to the suspension of approval

Before coming to each point of analysis, it will be useful to sketch some of the important events and communication leading up to the suspension of ethics approval on 8 April 2011, official correspondence at the time, and communications shortly after. The survey's release on 1 April seemed unproblematic, apart from reports that a senior management figure was in contact with several people, complaining of the survey's general bias, and questioning whether the researchers were objective or held conflicts of interest. These verbal complaints were made before this senior manager realised the survey had ethics approval status. Subsequently, on 4 April, and thereafter (on 5, 6, 8, 11 and 12 April) complaints and queries were received by the UNE ethics committee. (The researchers had to rely on a freedom of information appeal process in order to obtain a redacted copy of the complaints/queries.) On 7 April, when the chair and one member of the ethics committee met for a scheduled meeting to consider business items, the sub committee decided to suspend approval of the project; a letter to this effect was sent to the researchers on 8 April.

The letter from the Chair of the UNE ethics committee outlined the purported 'significant concerns' expressed by 'a number of UNE staff members'. Without consulting the researchers, the ethics committee based its suspension of approval on three grounds. The first, which was no longer operative by the time the ethics committee met, was that one of three logos used by the research team had to be removed from the information sheet and the online survey.

The second concern conveyed by the ethics committee was the involvement in the research of Dr Alan Avery, a former employee of the UNE in the School of Health and currently a Mental Health Promotion Officer with Hunter New England Local Health District. The committee itself made no judgement about Avery's involvement, or about the claims made about his bias, but wanted to give him a full opportunity to address the issue for the record. (The researchers take the committee at its word. At no stage did the committee give any indication that it thought there was any substance to the concerns expressed to it about the involvement of Avery.)

The third – more curious – line of reasoning related to the anonymity guaranteed to the participants. The committee noted that 'close inspection ... reveals that questions relating to the participants' [profile] age/gender/employment history, etc. could potentially enable some research participants to be identified ...'. The committee's re-interpretation had the effect (if not the aim) of setting a different standard from that to which the researchers had committed themselves. The researchers had undertaken to guarantee participants anonymity in the reporting of the research. The ethics committee re-interpreted anonymity to mean that the researchers would be unable to identify any participant. Further, the committee stated that, because some participants would potentially be identifiable by the researchers, some of their 'comments could potentially lead to adverse consequences', but the committee did not say how this might occur.

In order to make this claim, the ethics committee needed to make at least one unsound assumption. Such an outcome – if at all possible – is conceivable if, and only if, a participant with a sufficiently unusual profile opted to answer enough of the non-compulsory questions relating to profile to out himself. It is at this point that we encounter a crucial and belated – and flawed – claim made by the ethics committee: that 'collection of data in this manner for research purposes is inconsistent with [National Health & Medical Research Council] guidelines which frame the UNE [ethics committee] procedures'. The researchers could find no such guideline in the 2007 *National Statement*.

On receiving the letter from the ethics committee, the researchers complied with the instruction to remove reference to ethics approval in the information to participants. The ethics committee also instructed the researchers to destroy the data, even though approval had only been suspended, pending a response. Acting on an assumption that the committee was being at least partly compelled into its stance by one or more figures in the senior management, two of the researchers sought a meeting with the Vice-Chancellor to try to resolve the situation at hand. At the conclusion of a meeting with the Vice-Chancellor on 11 April it was agreed that a useful course of action would be to arrange a meeting between the researchers and the Chair of the ethics committee. In the meantime, telephone calls of a more insistent manner than a few days' before were made by the secretary of the ethics committee to the lead researcher to make a new demand that the survey website (which was hosted external to the University) be 'taken down'. When this demand was refused, the secretary called back six minutes later with two other demands: that reference to research be deleted in the information

statement pertaining to the project, and that the research team explicitly state that the project is to be regarded as an inhouse quality assurance exercise. The lead researcher asked for these demands to be put in writing. The secretary agreed and sent an email soon after. The significance of this point is that the events suggest that the ethics committee was being driven from outside. It was not enough that the researchers complied with the instruction to remove reference to ethics approval; new demands were being made in a winner take all environment.

It is important to point out that at a meeting, requested by the researchers and agreed to by the Vice-Chancellor, to conciliate and held on 11 April, the Vice-Chancellor stated as his aim, which was agreed to by the researchers present, the restoration of the status quo prior to the suspension of ethics approval. However, by 12 April matters had escalated to the point where an email was sent by a member of the UNE's Legal Office to the lead researcher informing him that the Deputy Vice-Chancellor (Research) (DVCR) had received a complaint that, it was later claimed, alleged research misconduct. In this email it was also conveyed that the Legal Office had advised the Vice-Chancellor that an enquiry under the University's Code of Conduct for Research should proceed.

On 14 April a meeting involving two of the research team, the Chair of the ethics committee, the DVCR, and a representative of the University's Legal Office took place; prior to this meeting, it was still the view of the researchers that a conciliated outcome was possible. However, matters raised by the DVCR and the UNE Legal Office in the meeting of 14 April, and related correspondence, soon suggested that a conciliated outcome was unlikely. Two examples are sufficient to illustrate the escalation. The first relates to the legal officer's claim that a survey that 'facilitated anonymous and unsubstantiated allegations of bullying' could not be allowed to run. The legal officer's claim seemed to be based on unawareness that any research of the kind conducted will give rise to the possibility of anonymous and unsubstantiated allegations being made. Additionally, the legal officer's claim was quite inconsistent with the University's own insistence that the researchers would not be given access to the complaints or allegations made of their research.

The second example relates to the DVCR's focus on methodology and question-design of the survey, about

which the DVCR was seeking some considerable revamping. The researchers present at the meeting informed the DVCR that it was not the role of management to question the methodology of the survey, and that this would be a matter for the refereeing process in particular and the critical means of the academic community in general. On this point, the Chair of the ethics committee, to his considerable merit, supported the view of the researchers.

Moreover, at the 14 April meeting between the DVCR, the Chair of the ethics committee, the legal officer and two of the researchers, the DVCR said to the researchers that the project 'raised very serious issues', and later, on 19 April, repeated this claim in an email when writing to the lead researcher.

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Although it was agreed at the 14 April meeting that the researchers would propose a way forward, and although the research team did in fact propose two alternatives on 15 April, both proposals were rejected by the DVCR on 19 April. It should be stressed that the researchers' offer of

15 April to remove one potentially objectionable question of the survey so as to allow reinstatement, was to no avail. The DVCR claimed the project 'raised very serious issues' and that if the researchers wished to proceed with the research, an investigation of research misconduct would be progressed. If the project was dropped, she wrote, it would not be necessary to establish a committee to investigate the complaint of research misconduct. An important legal point, the relevance of which becomes more apparent below, is that on 15 and 21 April (and later on 1 June), senior officers of the UNE were informed by the researchers and others that any enquiry or investigation would have to be in accordance with principles of natural justice and the provisions of the UNE's Collective Agreement. The Collective Agreement provides for testing allegations. In Australia the collective agreements of the universities provide the only legal protection of academic freedom (see Jackson, 2005).

## **Application of the case study to criticisms of the *National Statement*, ethics committees, and institutional architecture**

### ***1. The guarantee that no harm comes to a participant***

Some writers criticising the national and local committee structure have questioned a principle that is said to arise

from the *National Statement* that no harm can come to a participant in human research, and that guarantees are provided in accordance with this principle. We stress that no serious scholar would claim that the *National Statement* guarantees that no harm can come to participants. Our point is that the UNE management, aided by its legal officer, was putting precisely this claim. One pertinent aspect of this literature asks whether such a guarantee should be given in situations in which observing the principle would lead to social scientists being the servants of power (Bamber & Sappey, 2007). Here, it is important to distinguish between the 1999 and 2007 documents, as the 2007 version has its defenders (e.g. Cordner & Thomson, 2007), not least because the previous untouchable status of participants is significantly modified to allow for situations in which participants would *not* be entitled to protection at all costs (Cordner & Thomson, 2007).

Showing sympathy with the concerns of Bamber and Sappey about the possible sabotage of research, Cordner and Thomson go to some length to make the point that participants are not entitled to 'protection against any risk of adverse effects from research' (2007, p. 45). The very broad meaning given to 'participant' in the 1999 document, they concede, was a problem, but the 2007 statement significantly reduces the concerns.

Consider the question of whether to approve a research project that might reveal that (say) middle management in a large firm had been bullying employees or otherwise treating them unjustly. The revised [*National Statement*] does not say, or imply, that those managers are entitled to protection against the effects on them of the exposure of their unjust behaviour (Cordner & Thomson, 2007, p. 46).

The case study enables more light to be directed onto this debate. In attempting to obtain greater transparency of process after the suspension of the project, a freedom of information application was made when requests to see the complaints submitted to the ethics committee, and the allegation of research misconduct, purportedly made to the DVCR, were refused. In turn, access under freedom of information was also denied; that decision was externally appealed, and the University was directed to make a new decision. The original determination given by the Government Information and Public Access (FoI) Officer heavily relied on a right to privacy of the complainants, who, the Officer assumed, were participants. The matter is made more complex by the fact that, in order to adjudicate between privacy and the disclosure of information, we are in part dealing with separate (state-based) legislation. However, insofar as the Officer's determination relied on principles said to be

upheld in the *National Statement* and ethics committee design – for example, by relying upon the information the researchers gave to participants – it can certainly be questioned on those terms. In fact, in representations to review the determination, it was speculated that perhaps all of the complaints to the ethics committee were generated by one discipline of one school and that a senior manager of the institution was orchestrating the campaign. In any case, it is precisely the validity of the complaints, or the lack thereof, that the researchers were trying to establish. It is all well and good that Cordner and Thomson urge that the 2007 *National Statement* 'does not privilege the right to privacy over the right to knowledge so as to exclude research that uncovers sabotage [and/or] bullying in the workplace' (2007, p. 46), but the actual events of the case study, to the extent they suggest complaint generation by certain members of one discipline, show that the potential for an abuse of process nevertheless exists.

Such an abuse of process can of course be minimised by the establishment of transparent complaints handling procedures. The *National Statement*, while it does not prescribe these procedures, does require institutions to establish them. The University did not in fact have any documented complaint procedure in place. One obvious benefit of a complaints procedure is that it might provide all parties with procedural fairness. For instance, it is common in such procedures for researchers to be notified of complaints in sufficient detail to enable an adequate defence if one is to be had.

Indeed, examination of the *National Statement* in light of this case study reveals that fully three complaints processes were either not provided or followed. First, the *National Statement* calls for a procedure to be in place to facilitate the handling of complaints made about research. While the case study shows the University had in place a procedure of a kind, it also reveals that this was not followed. Second, and moreover, the *National Statement* calls for institutions to have processes in place for handling and resolving complaints about the review bodies (*National Statement*, 2007, 5.6.4). Clause 5.6.5 of the Statement requires that where 'the complaints cannot be readily resolved between the complainant and the review body that is the subject of the complaint, complainants should have access to a person external to that review body to handle the complaint'. Third, at 5.6.6 the Statement provides: where 'a complaint that has not been resolved by [earlier processes, institutions] should identify a person or agency external to the institution'. No such processes were provided.

## 2. Meaning given to 'participant'

Some of the implications of the previous section depend on what is meant by the term 'participant', and the case study shows that the concern of those taking a sceptical view of an overly broad meaning, or interpretation, is well placed. But the problem is greater than this. As Langlois points out, the extent to which individual participants may take on substantial forms of power, depending on the institutional context, is still ignored by the 2007 *National Statement* (Langlois, 2011, p. 148). Purportedly helpless participants who claim victim status, but who, because of their capture of institutional forms of power – (say) by objecting to information disclosure, claiming to be stressed by a voluntary survey, claiming that reprisals would possibly be forthcoming (from the researchers), and/or aligning themselves with senior managers in order to close down a survey – are actually in the more powerful position, and can often abuse such power. Langlois' advocacy for new guidelines to be provided to ethics committees, so that a reconceptualisation of participants within a political context can be facilitated, is well founded.

An even more telling aspect of Langlois' analysis is the extent to which it suggests that, in some ways, there is only limited value in trying to decipher whether the primary complaint is with the overall ethics architecture or with forms of abuse within individual institutions. One case study cannot make for a definitive statement, but it can suggest that the actions of powerful figures in institutions raise doubts about the status of the guidelines and their associated procedures and the impunity with which they can be ignored.

## 3. Level of managerial control over human ethics committees and ethics clearance process

Among the criticisms of the ethics clearance process, some considerable comment has focused on the potential for an ethics committee to have its authority undermined by senior management within a university. The concerns mainly go to forms of indirect monitoring: ethics committees second guessing what a management might object to (Bamber & Sappey, 2007; Cordner & Thomson, 2007) or so-called ethics standards really being about legal hurdles or following rules (McNeill, 2002; Cribb, 2004).

The case study suggests that, as important as this potential for indirect control is, direct managerial intervention is likely in some circumstances. Such direct intervention is shown in the case study at four levels at least. The first is revealed by the attempt made by the DVCR on 14 April to challenge the methodology and design of the survey (which she retracted on 19 April). The second is exposed

by the incapacity or unwillingness of the ethics committee to reinstate its approval once its 'concerns' were dealt with in a letter from the researchers of 30 May 2011 or to engage with the arguments of the researchers. An email of 31 May 2011 from the then chair of the ethics committee left the researchers with the distinct impression that he was avoiding substantive matters or engaging with argument. He informed the research team that its request for project reinstatement could not be considered until a research misconduct investigation, under the purview of the DVCR, had occurred. Third, and critically, it was the advice of the National Tertiary Education Union that, if the investigation proceeded in terms made clear by the UNE, it would be conducted according to a process that is inconsistent with the provisions of the University's Collective Agreement dealing with misconduct. Those procedures (in the University of New England Academic Staff-Union Collective Agreement 2010–2012 clause 39) set out a mandatory code of procedures for dealing with misconduct. Actions taken were inconsistent with that code would be in breach of the Agreement (and, if that were the case, it would be actionable under Commonwealth industrial law). (This transgression is not a feature of, nor is it sanctioned by, the *National Statement*, but it is improperly supported by Part B of the *Australian Code for the Responsible Conduct of Research* (HMRC/ARC/UA, 2007).) And fourth, as already noted, with the assistance of the Legal Office, the management proceeded to argue that it did not want to facilitate a survey that allowed 'anonymous and unsubstantiated allegations of bullying' to be collected, even though the nature of the research (and, incidentally, many other research projects) makes such allegations possible, and even though the University was refusing to let the researchers have access to the anonymous complaints about the project and the allegation about their conduct.

Some writers may be prepared to argue that there ought to be no misapprehension that ethics committees are independent of management control. We dispute this. The very subject matter of ethical consideration, the department of the institutional architecture, and the detailed nature of the accompanying documents – despite the shortcomings – make it impossible to sustain a view that all these requirements can be over-ridden. Regardless of what final view one takes on that point, it is critical to see that the described events in the case study take the matter well beyond any disagreement over whether management has final say. Clearly, the researchers are entitled to form the opinion that the threat of a research misconduct investigation was used so that the project would

be dropped by the researchers. However, the researchers, having met the threat, then saw the University drop the investigation even though it had claimed that very serious issues of misconduct had been raised.

To what extent these actions reveal problems inherent to the local-national committee architecture and to what extent they reveal faulty and/or abused processes within an institution is an important question that needs further exploration. The question may not be definitively answered here, but finding an answer will turn, at least in part, on the extent or severity of any breach by a management of *National Statement* guidelines or a breach of the Collective Agreement. Confining ourselves to the single most serious action, the threat to conduct an investigation in breach of the University's Collective Agreement, we are presented with examples of faulty processes set out in the *Australian Code for the Responsible Conduct of Research* and of faulty processes more particular to the UNE. The relevant authorities have been warned that such a process, if followed, would bring legal action, yet they have not seen fit to amend the Code; in the case of the UNE, its management issued a threat, failed to carry it out, did not provide for any process of proceeding with the research, and did not acquit the researchers on the allegation of research misconduct, which it said arose out of a complaint.

#### 4. What risk – ethical or legal?

The case study reveals that the consideration given to whether ethics committees are more concerned with ethical standards or with legal risk (McNeill, 2002) warrants further research attention. The very fact that a legal officer, who was not a member of the ethics committee, acted in a manner that appears to be consistent with having made assumptions about the effect of implementing the ethics committee's approval of the research, clearly raises serious problems about the integrity – that is to say, the intended collegiality – of ethics committee processes. The case study also suggests that such research would benefit the academic community if it were primarily focused on the potential use of specious arguments about what is, or is not, legally permitted.

#### 5. Discipline partiality

Underlying much of what happened at the University of New England somewhat reinforces the basis of the concerns already expressed about the discipline partiality that is at play when some projects, especially in the humanities and social sciences, encounter greater levels of hostility. As other writers suggest or explicitly state

(Parker *et al.*, 2003, pp. 60–61; Bamber & Sappey, 2007; Langlois, 2011, pp. 148–150), there is a world of difference between a health and medical model of ethics clearance, where researchers are in a relatively powerful position, and the kind of research necessary in politics, industrial relations, political or economic sociology, applied ethics, non-orthodox economics or human geography. Researchers in these non-medical disciplines, if they are not to experience discipline bias, need a model that will not militate against – either by passive omission or iniquitous design – projects that challenge forms of institutional power. Although it is generally recognised that the 2007 *National Statement* provides much-improved processes to allow greater specificity in the approach of various disciplines (Langlois, 2011), the case study demonstrates one of two things: that a model developed historically from a worldview of health academics – and (despite the improvements of the 2007 *National Statement*) retaining a health repository – could in some circumstances be exploited by a university management determined to suppress some kinds of research; or, rather, that the architecture and design were simply not established and those processes were not followed because they did not exist. The more that the case study cannot find weakness in the national architecture, the more the criticism must be with the university.

#### 6. Welfare of participants versus the benefit to the community

Although the authors of the 2007 *National Statement* seem conscious of the importance of weighing the welfare of participants against the benefit of research to the community, there is little specific guidance that can be relied on. 'Determining whether [risks] are justified by the potential benefits of the research' (*National Statement* p. 15) is all well and good, but anyone from the humanities and social sciences has to read between the lines of the Statement to find anything approaching firm ground. In terms of this case study, the point may be academic, since the more fundamental error of the UNE ethics committee, on the evidence available to the researchers, appears to be its failure to provide any evidence that it even attempted to weigh one entity against the other. According to the *National Statement*, local ethics committees are to make 'judgements on whether risks are justified by potential benefits' (p.15) by identifying whom the risks may affect and to whom benefits are likely to accrue (p. 17), but no evidence was presented that the UNE ethics committee made any attempt to do this. It simply took the statements of complainants as read, assumed they were participants,

and provided no evidence that any assessment was made of the potential benefits of the research to the community. In fairness to the ethics committee, the *National Statement's* dearth of detail regarding how such an assessment is to be made tends to open the door for arbitrary decisions to be imposed on a committee that may have otherwise steered a collegial and non-managerial course.

## Conclusion

This article has considered the literature concerned with the local and national ethics committee architecture by using a case study of a research project that obtained ethics approval only to have that approval suspended. Although setting out with the purpose of testing the weaknesses of the present design of the present national-local model, in particular the extent to which it allows for managerial abuse of power in universities, the case study found other weakness. One flaw in particular is the ongoing irregularity, sanctioned by Part B of the *Australian Code for the Responsible Conduct of Research*, where institutions receive tacit encouragement to conduct misconduct investigations that are arguably unlawful. In the main, our case study finds that the institution was irresponsible in not establishing or observing important aspects of the *National Statement* architecture, and in applying the *Australian Code* in a way that would appear to offend the provisions of a Collective Agreement.

## Summary

- Ethical approval was suspended without consulting the researchers, a failure to follow the procedures in *National Statement* paragraphs 1.9, 5.5.6–5.5.9.
- The ethics committee made findings about data collection that were irrelevant to matters set down in the *National Statement*.
- The University did not have complaints processes to handle complaints about either research or research ethics review.
- The planned research misconduct investigation was not in accordance with the relevant Collective Agreement.
- The ethics committee did not seem to apply the *National Statement* requirements on judgements about risks and benefits.

In placing more stress on the institution's irresponsibility and abuse of power than on the shortcomings of the national architecture, it should be emphasised that the researchers answered the concerns of the ethics commit-

tee on 30 May, yet the university management provided no process to restore the project's approval. The University's Legal Office introduced specious legal argument, which was allowed to stand. Procedural justice principles were violated. Obfuscation occurred, most notably in denying access to information that could reasonably be expected to reveal improper behaviour. (The researchers do not question the integrity of the University's freedom of information officer. In our view the officer is in no way responsible for determining the direction of events.) And finally, a university management made preparations to carry out a misconduct process without producing any allegation, and then aborted the same process when the threat failed to dissuade the researchers.

Abuse of process is very much part of the abuse of power. A more systematic strategy is needed to address the institutional biases that currently prevent more progress against industrial bullying. Those attempting to combat bullying are going to have to redouble their efforts – and develop wider strategies – to overcome the techniques used by those who use institutional means to thwart such progress.

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**Tim Battin teaches and researches in politics and political economy at the University of New England, Armidale.**

**Dan Riley is the lead author of *Bullying of Staff in Schools* (2012), published by the Australian Council for Educational Research.**

**Alan Avery is a registered nurse and adult educator. His areas of project interest include mental health promotion and workplace health and wellbeing.**

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