SIGNED CONSENT FORMS IN CRIMINOLOGICAL RESEARCH: PROTECTION FOR RESEARCHERS AND ETHICS COMMITTEES BUT A THREAT TO RESEARCH PARTICIPANTS?

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Abstract

The use of signed consent forms to indicate the informed consent of research participants is mandated by most Human Research Ethics Committees and social science ethics codes. In this presentation we argue that the use of signed consent forms provides protection for researchers and ethics committees by providing documentation that ethical procedures have been followed, but poses problems for potential research participants, especially offenders. There is a general reluctance amongst offenders to sign consent forms, creating a barrier to participating in research. Consent forms provide a record of participation in a research project, providing the potential for research documentation to be subpoenaed. This is a threat to the offender’s future wellbeing in research where offenders are asked to report on illegal activities. Further, previous research (Mann, 1994) suggested that some research participants believe they lose their rights to sue the researcher by signing a consent form. We suggest an alternative option to signed consent forms that provides greater protection of research participants’ confidentiality and ensures informed consent.
**Introduction**

Conducting criminological research is fraught with ethical and legal considerations. Institutional ethics committees impose requirements on researchers to ensure that research does not breach nationally accepted ethical or legal standards. However, these requirements have the potential to limit the type of research that can be conducted and the way in which the research is conducted. In essence a focus on protection may lead to poor quality research. This may be an acceptable consequence if the human rights of research participants was significantly enhanced or protected. However, as we will argue in this paper, there is no evidence of this. Indeed it is more likely that just the opposite is the case.

There is a documented history of concern over this issue among criminologists within Australia over the past decade. In 1995 a forum was conducted at the University of Melbourne on ethical and legal issues when conducting research into illegal behaviours (Fitzgerald & Daroesman, 1995). The forum focused on limits to confidentiality, the legal and ethical consequences of research into illegal activities, the need for regulatory and legislative frameworks and guidelines, and balancing the public interest in research versus prosecuting criminal behaviour (Larkins, 1995).

In 1997, Dixon noted that research with criminals “is coming under increasing threat from institutional ethics committees which have raised legal and ethical objections to proposed projects” (Dixon, 1997: p. 211). Specific issues Dixon identified included the inability of researchers to legally protect confidentiality, the potential criminal liability of researchers, the inability of research participants to understand consent forms and research participants’ negative reaction to references to legal liability. Dixon argued that that use of written consent forms is not always appropriate in criminological research, and recommended greater representation of disciplines on ethics committees to counteract the dominance of the medical and scientific models.

These issues have not been resolved and continue to surface. This year the NSW Bureau of Crime Statistics and Research is leading a research project to document problems Australian criminologists have encountered with ethics committees.

In this paper, we examine one aspect of possible contention between ethics committees and researchers: the requirement for use of signed consent forms in criminological research. The examination of this issue is situated within the parameters of current principles and guidelines for ethical research. While the focus is on the situation in Australia generally, specific examples are provided from the University of Western Australia. The differing perspectives of ethics committees, researchers and research participants are outlined, legal issues identified and alternatives to signed consent forms suggested.

**Principles of Ethical Research Underlying Informed Consent**

The requirement to obtain voluntary informed consent from research participants is based on three ethical principles: respect for autonomy, beneficence and justice (Faden & Beauchamp, 1986). By the mid 1970’s, informed consent had emerged as a “major moral rule for human research” (Faden & Beauchamp, 1986:186).

The guiding authority for the conduct of ethical research in Australia is the National Health and Medical Research Council. This committee has promulgated the Statement on Ethical Conduct in Research Involving Human Subjects (NHMRC, 1999). This statement is arguably the most influential guide to ethical research in Australia. The Statement consists of a series of guidelines made in accordance with the National Health and Medical Research Council Act 1992. Based on the principles of integrity, respect for persons, beneficence and justice, the NHMRC statement is aimed at protecting the welfare and rights of research participants.

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1 National Health and Medical Research Council Act 1992 (Commonwealth).
The NHMRC Statement reflects current international thought on ethical research. Influential documents in the development of the statement include the 1947 Nuremberg Code, the 1964 Declaration of Helsinki, and later international documents outlining ethical standards. The first “Statement on Human Experimentation” was published by NHMRC in 1966. Since this time, the statement has been reviewed and supplementary notes have been developed based on international ethical and scientific developments (NHMRC, 1999).

The requirement to obtain voluntary informed consent prior to undertaking research is specified in the NHMRC statement and other influential ethical documents. For example, the 1947 Nuremberg Code consisted of ten standards required for human experimentation as laid down in the judgment by the war crimes tribunal at Nuremberg (BMJ, 1996). The first of these standards related to the need for voluntary informed consent of all research participants. Similarly, the Belmont Report (The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1979) identified respect for persons, beneficence and justice as the basic ethical principles applicable to research. Their first application of these principles was to the requirement to obtain informed consent. The Report proposed the standard of “the reasonable volunteer” who is fully informed about the research, possible risks and the voluntary nature of participation. The report stated it was the researcher’s responsibility to ensure that the information provided was clearly comprehended and consent was obtained without coercion or undue influence.

These influential documents on ethical standards in the conduct of research all have their roots in medical research. While some (e.g. the Belmont Report and NHMRC Statement on Ethical Conduct in Research Involving Humans) have been expanded to include other types of human research, the focus remains on the medical/scientific model. A major complaint of behavioural and social science researchers is that ethics committees use these biomedical guidelines to regulate their research without sufficient recognition of the differences in the type of research conducted (Azar, 2002).

**Guidelines for Ethical Research**

Many disciplines have developed their own guidelines for ethical research in the form of codes of ethics. Within the field of Criminology, codes of ethics have been developed by some societies. Two relevant examples are the Australian and New Zealand Society of Criminology (ANZSOC) Code of Ethics and the British Society of Criminology Code of Ethics (Appendices 1 and 2).

The ANZSOC and British Society of Criminology Code of Ethics share a focus on the advancement of criminological knowledge, the protection of academic freedom, responsibilities to colleagues and to research participants and the conduct of relationships with other organisations. The similarities in codes are not surprising given ANZSOC largely draws on the British Society of Criminology Code of Ethics.

The need to obtain informed consent is approached by the society codes in the context of trying to promote and protect the interests of research subjects. For example the British Society Code has a section on the obligations of researchers to research participants which begins:

> Researchers should recognise that they have a responsibility to ensure that the physical, social and psychological well-being of an individual participating in research is not adversely affected by participation in the research. They should strive to protect the rights of those they study, their interests, sensitivities and privacy. Researchers should consider carefully the possibility that the research experience may be a disturbing one, particularly for those who are vulnerable by virtue of factors such as age, social status, or powerlessness and should seek to minimise such disturbances. They should also consider whether or not it is appropriate to offer information about support services (e.g. leaflets about relevant self-help groups).
The British Society of Criminology Code of Ethics goes on to spell out the issues associated with informed consent. These details are much more relevant to the challenges faced by researchers in a social science such as criminology than the rather bland guidelines contained in the NHMRC document which were clearly drafted with science and medical research in mind:

Researchers should base research, so far as possible, on the freely given informed consent of those studied. This implies a responsibility on the part of the researchers to explain as fully as possible, and in terms meaningful to participants, what the research is about, who is undertaking and financing it, why it is being undertaken, and how any research findings are to be disseminated. Researchers should also make clear that participants have the right to refuse permission whenever and for whatever reason they wish. Research participation should be informed about how far they will be afforded anonymity and confidentiality. Researchers should consider the possibility of discussing research findings with participants and those who are the subject of the research. Where there is a likelihood that identifiable data may be shared with other researchers, the potential uses to which the data might be put should be discussed with research participants. Research participants should be informed if data is likely to be placed in archives, including computer archives. Researchers should respect promises of confidentiality and not pass on identifiable data to third parties without participants' consent. Researchers should also note that they should work within the confines of current law over such matters as copyright, confidentiality and data protection.

Where societies have not developed a code of ethics, members may be encouraged to use the code of ethics of their background discipline. For example, The American Society of Criminology has not yet formally adopted a code of ethics, although a draft document has been prepared and is being discussed by their Executive Board. The American Society of Criminology currently recommends that interested persons examine codes of ethics adopted by other professional associations.

Given the limited attention to informed consent within the ANZSOC Code of Ethics, the Australian Psychological Society Code of Ethics was examined. Psychology has been described as the behavioural and social science discipline with “the richest and lengthiest history of struggle with the problem of consent” (Faden & Beauchamp: 1986:167). In Section E of the Australian Psychological Society Code of Ethics it is noted that informed consent must be “appropriately documented” (p. 6). Further, it later states that “Before deciding that research does not require informed written consent of research participants, members must consult with colleagues or gatekeepers and ethics committees as appropriate” (p. 6).

Within universities in Australia Human Research Ethics Committees (HRECs) have been established to review and approve research proposals. The NHMRC Statement on Ethical Conduct in Research Involving Humans outlines the parameters under which HRECs operate. Within this framework, each HREC develops their administrative procedures and guidelines. While HRECs are bound by the NHMRC Statement on Ethical Conduct in Research Involving Humans, they are not bound to comply with individual codes of ethics such as the ANZSOC Code of Ethics.

In summary, obtaining voluntary informed consent is a basic premise outlined in key ethics documents. Informed consent may best be conceptualized as an accepted principle governing human research. The need to obtain voluntary informed consent is reinforced through ethical codes and HRECs. However the degree to which such requirements are needed or best suited to the full range of disciplines from medicine to anthropology has never been articulated.
Signed Consent Forms

Signed consent forms are widely used as a method of obtaining informed consent in research on humans and are often viewed as the standard. For example, at the University of Western Australia the Guidelines to Assist in the Preparation of Information Sheet and Consent Form state that “Consent should be obtained in writing unless there is a good reason to the contrary.”

Consent forms are frequently accompanied by an information sheet outlining the purpose of the research, the methodology, what involvement in the research will involve, and potential risks to the individual. While the wording of consent forms and information sheets may vary across institutions, within an institution a HREC may provide standardized wording for use on all such documents.

Previous research has raised concerns over the readability of these documents and the degree to which they are comprehensible by research participants. Consent forms are typically written at a level that requires a higher level of education to read and understand than is suitable for the intended research participants (Matthew & McGrath, 2002; Ogloff & Otto, 1991; Paasche-Orlow, Taylor, & Brancati, 2003).

In light of these findings, the readability of the recommended wording for consent forms at the University of Western Australia was examined. The recommended wording for consent forms is:

I (the participant) have read the information provided and any questions I have asked have been answered to my satisfaction. I agree to participate in this activity, realising that I may withdraw at any time without reason and without prejudice.

I understand that all information provided is treated as strictly confidential and will not be released by the investigator unless required to by law. I have been advised as to what data is being collected, what the purpose is, and what will be done with the data upon completion of the research.

I agree that research data gathered for the study may be published provided my name or other identifying information is not used.

The Flesch Reading Ease\(^2\) score and Flesch Kincaid Grade level\(^3\) for this wording were calculated. The results indicated poor understandability (Flesch Reading Ease: 25.8) requiring completion of secondary education (Flesch Kincaid Grade level 12.0).

The required wording for a section that must be included on either the consent form or information sheets is:

The Human Research Ethics Committee at the University of Western Australia requires that all participants are informed that, if they have any complaint regarding the manner, in which a research project is conducted, it may be given to the researcher or, alternatively to the Secretary, Human Research Ethics Committee, Registrar’s Office, University of Western Australia, 35 Stirling Highway, Crawley, WA 6009 (telephone number 9380-3703). All study participants will be provided with a copy of the Information Sheet and Consent Form for their personal records.

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\(^2\) The Flesch Reading Ease was calculated using Microsoft® Word. It rates text on a hundred point scale with higher scores indicating greater understandability. It is based on the average sentence length and average number of syllables per word. A score between 60 and 70 is recommended for most standard documents (Microsoft® Word 2002 Help files).

\(^3\) The Flesch Kincaid Grade level was calculated using Microsoft® Word. It rates text on a U.S. grade-school level. For example, a score of 8.0 means that an eighth grader can understand the document. A score between 7 and 8 is recommended for most standard documents (Microsoft® Word 2002 Help files).
The results indicated extremely poor understandability (Flesch Reading Ease: 0) requiring completion of secondary education (Flesch Kincaid Grade level 12.0). This suggests that while the recommended consent form may be suitable for use with university students as research participants, it will be extremely difficult to comprehend for the majority of offenders who have not completed secondary education.

Perspectives on Signed Consent Forms

Perspectives on signed consent forms vary between ethics committees, researchers and research participants. The use of signed consent forms is examined from the perspective of each of groups below.

HRECs
For HRECs, the use of information sheets and signed consent forms provide a form of proof that research participants have been informed about the research and consented to participate. This is consistent with the central aim of a HREC to protect the welfare and rights of research participants. In addition, it provides a legal safeguard against liability for the institution and the researcher (Daroesman, 1995). An NHMRC requirement is for HRECs to retain copies of approved information sheets and consent forms on file (NHMRC, 1999, Section 2.32). As part of the monitoring of research projects, HRECs may conduct random inspections of signed consent forms (NHMRC, 1999, Section 2.36).

Researchers
For researchers, signed consent forms provide documented proof that each research participant has given their consent to participate in the research project. This provides a legal safeguard against liability for the researcher (Daroesman, 1995). However, the requirement to obtain signed consent forms as an indication of informed consent may adversely affect the research. Where identifying information is required on a consent form, potential participants may choose not to participate in research projects which require self-reporting of illegal activities, if this information may later serve to incriminate them. This can affect both response rates and the representativeness of the sample. Potential participants who do agree to sign the consent form may choose to limit their disclosure in the research, affecting the quality of the data. The decreasing anonymity increases the likelihood of self-protecting answers, particularly in relation to illegal activities. In the second author’s previous research with prisoners, Indermaur (1995) faced many refusals to participate in research because of the requirement for a signed informed consent form. While prisoners were willing to talk openly about their prior criminal activities, they were not prepared to do so when identifying information was required.

The use of signed consent forms provides an identifying link between the research participant and the data collected from them. This places criminological researchers at risk of being subpoenaed. This is not just a theoretical risk. Russel Ogden, a student at Simon Fraser University in Canada, conducted research which involved interviewing people who had assisted in the suicides and euthanasia of persons with AIDS. Ogden was subpoenaed by the Vancouver Coroner to give evidence at an inquest (Palys & Lowman, undated). Two research projects were suspended by University of Melbourne “because of doubts raised about the capacity to protect confidentiality in the conduct of research into illegal behaviors” (Fitzgerald, 1995: 4). David Moore, a researcher with the National Centre for Research into the Prevention of Drug Abuse at Curtin University of Technology, expressed concern over the lack of legal protection for himself and his data on drug users when interest was shown by law enforcement officials in his research (Loxley & Hawks, 1995). A further study by the National Centre for Research into the Prevention of Drug Abuse was relocated from the street to prisons upon interest by the Drug Squad (Loxley & Hawks, 1995).
Legislation can be enacted to protect the confidentiality of data collected, and hence the confidentiality of research participants. For example, in the United States of America, the National Institute of Health can issue Certificates of Confidentiality to researchers for specific projects where disclosure of information could have adverse consequences for research participants. This specifically includes research where data on substance abuse of other illegal risk behaviours is collected. These certificates enable researchers to refuse to disclose identifying information on research participants in any proceeding (civil, criminal, administrative, legislative, or other) at federal, state, and local levels (for more information see http://grants1.nih.gov/grants/policy/coc/).

Within Australia, legislation exists in some areas that provides limited protection to researchers and their research participants (e.g. ACT Epidemiological Studies (Confidentiality) Act 1992; Commonwealth Epidemiological Studies (Confidentiality) Act 1981). In Western Australia in 1993 the Law Reform Commission recommended that parliament “enact a statutory judicial discretion allowing courts to excuse witnesses from disclosing information in breach of a confidential relationship in judicial proceedings” (Law Reform Commission, 2002: 236). It was recommended the exercise of this discretion be based upon the balance of public interest in disclosure of the evidence and public interest in the maintenance of confidences between parties. In an update in 2002, the Law Reform Commission noted that the recommendations had not resulted in legislative action, and rated this as a high priority area for reform.

HRECs have power over researchers in determining the consent procedures to be used. A survey of HRECs in Australia found that in 95% of cases where HRECs sought changes to research proposals, the changes related to consent issues (McNeil, Berglund & Webster, 1990, cited in Daroosman, 1995). Failure to obtain HREC approval for a proposed method of obtaining informed consent can result in the termination of a research project. To ensure compliance with HREC a university may deem that research grants are not released to researchers until formal HREC approval is obtained (this occurs at the University of Western Australia).

Particular difficulties with consent procedures may exist for researchers where research is funded by, or conducted within, more than one organisation. Azar (2002) described a study where every research participant was required to sign two consent forms, one meeting the requirements of the university Institutional Review Board, and one meeting the requirements of the medical centre from which the research participant was recruited. Each medical centre used a different form. In these circumstances it is difficult to imagine that the research participants involved viewed consent forms as other than an administrative necessity. If the intent of a consent form is to ensure that an individual freely consents to participate in research about which they have been fully informed, what purpose does a second form serve from the point of view of the research participant? For the potential research participant it is likely to be seen as yet one more favour for the researcher. The focus is removed from that of fully informing potential participants about the research, to one of completing administrative requirements.

**Research participants**

Ostensibly the signing of an informed consent form is beneficial to the research participant as it serves to clarify and confirm for the participant that the participant is willing to participate in the research without inducement. However, it is worth asking if this is the case. It is a rare and unusual form of interaction where an administrative form is completed for the benefit of a person who is being approached to perform a favour. Indeed it is worth asking whether the notion of no inducement or coercion is itself a meaningful and realistic concept to begin our thinking through the issues. It may be easier if we begin with a much clearer situation – say blood donation.

In Australia we depend on the willingness of volunteers to come forward and donate their blood. We may require them to sign a form to state that they are willing participants in this extraction and they have been informed of all the dangers. Presumably a person does this because they think of the
benefit to others that may derive from their act and this makes them feel good. Indeed advertising for blood donations often draws upon such humanitarian urgings to attract volunteers in. Many other countries simply pay for people to provide blood. The degree to which donors could ever have been fully informed of the risks of diseases such as HIV is arguable.

The point is that it is this willingness to provide information for the benefit of humankind which is presumably the assumed motive as to why somebody would answer a series of questions from a social science researcher. While a range of factors (e.g. societal factors, research design, researcher characteristics) may interact to determine whether an individual will participate in research (Groves, Cialdini & Cooper, 1992), the limited research that has been conducted into the motivation of those individuals who do participate in research supports the notion of altruism as one of the primary motivations (Fry & Dwyer, 2001; Hayman, Taylor, Peart, Galland & Sayers, 2001; Roberts, Warner & Brody, 2000; Smith, King, Hindley, Barnetson, Barton & Jobst, 1998). While the issue of the motivation of subjects to participate in criminological research and the potential benefits of participation has not been sufficiently examined, we need to assume people want to be helpful and will comply with a reasonable request from a serious researcher. In this context, what is the meaning of an informed consent form? The only reasonable interpretation is that it is one more favour that is being asked for - in this case for the benefit of the researcher.

Given consent forms may not be comprehensible to offenders where the reading level is pitched too high, they may be signed without an understanding of the content (Mann, 1994). Further, signing a consent form can result in research participants believing they can not sue the researcher (Mann, 1994). In short, use of a consent form is interpreted, probably correctly, as a request and favour asked of the participants for the benefit of the researcher. However, the original intent in a history of the development of the consent forms seems to have been as a benefit for the participant.

Where identifying information is requested from research participants, researchers are unable to provide absolute assurances of confidentiality. The ability of the researcher to deliver on promises of confidentiality have not been examined in the depth required given this is the essential offer or promise being made to the research participant.

Despite this, clauses as to the effect that such protections can not be provided are rarely made explicit in consent forms and theoretically could give rise to a legal suit that such protections were not made explicit and indeed the general tenor of the form might suggest they were available.

One of the reasons that signed consent forms may have been so widely accepted as part of the administration of research in Australian Universities is not for the benefits that they provide to research participants but rather to research administrators and others. Signed consent forms provide proof of research participation which can be used to substantiate a claim that the research was undertaken. Perversely it may also facilitate subpoena of a researcher. Under these circumstances, the potential exists for information provided by the research participant as part of a research project to later be used to incriminate them (Fitzgerald, 1995).

When viewed in light of the principles of ethical research the use of signed consent forms in criminological research does not hold up to scrutiny. The combined threats to research participants and to the integrity of research projects though decreased response rates, unknown effects on the representativeness of samples and the dubious quality of the data obtained under circumstances when signed consent forms are mandated are contrary to these principles. Research studies are arguably less ethical where informed consent procedures result in poor quality data (Rees & Sheard, 2002). This highlights the need to look for alternative methods of obtaining informed consent that do not require identifying information from research participants in criminological research.
International Perspective

It is interesting to note that there may be different expectations developing within research communities in different countries concerning the use of consent forms. The issue of the need to have signed informed consent forms to ensure the ethical quality of research has been an interest of the second author over a number of years. To this end he has spoken personally with a number of British criminologists in regard to their practice in obtaining informed consent. The consensus is firstly that signed informed consent forms are usually not required by funding agencies, government departments or administering universities. Second criminologists are sensitive and alive to the need for properly informed consent to be given and brief interviewers in such a way that the voluntariness of the research is assured. A third point is that informed consent forms are seen as being impractical, would significantly decrease response rates and in many cases would be perverse to the atmosphere of open disclosure being sought by researchers, often in highly controlled environments like prisons and police stations.

As an example, consider the research which seeks to understand the way individuals give up crime. The “desistence” literature requires innovative and intensive investments in locating individual desistors, gaining their trust and providing an environment where the (ex) offender will speak frankly about their experience. One notable recent study from the UK (Maruna, 2001) involved interviews with 65 individuals. Maruna mentions that he provided participants with “compensation” for their time, but does not seem to have presented them with an informed consent form for signing. In contrast similar research carried out by Leibrich (1993) in New Zealand struggled with ethical issues such as informed consent. In her book Leibrich details (in the Appendix) the issues in regard to informed consent (p. 242-244) and reveals in regard to signing forms only that: “before the researcher leaves, the person will be asked to sign a contract with the researcher, which sets out the agreement discussed at the beginning of the interview.” (pp. 242-243). Leibrich does not provide detail on how many responded to the request to sign the contract, but it is worth noting that this request came after an interview lasting on average two hours and following a range of preliminary inquiries, conversations and explorations – so it is fair to assume that by this stage a relationship had developed by researcher and subject. The existence of this relationship may well be key to the willingness of subjects to comply with requests by the researcher.

Alternatives to Signed Consent

There is nothing in the current NHMRC guidelines that prevents the development of alternatives to signed consent forms. As cited earlier, Section 1.9 of the guidelines clearly provides for alternative methods of obtain consent:

Where consent to participate is required, research must be so designed that each participant’s consent is clearly established, whether by a signed form, return of a survey, recorded agreement for interview or other sufficient means (p. 12, italics added).

While HRECs may vary in their views on optimal methods for obtaining informed consent, the potential to waive the requirement for signed consent forms in situations where this presents a threat to confidentiality exists (Daroeasman, 1995).

There are precedents for the waiving of signed consent forms in behavioural disciplines. Within the field of criminology, two large and highly publicised, commonwealth funded research projects have proceeded without the need for signed informed consent forms. The first of these is the Drug Use Monitoring in Australia (DUMA) project. Hundreds of offenders at lock ups around Australia are routinely quizzed about their lifestyle and drug use.
As part of this process detainees are initially shown a statement describing the study, for those with reading difficulties interviewers read the statement to them. Following this interviewers point out that the person does not have to do the interview if they do not want to; they do not have to answer any questions they do not want to; that they can stop the interview and leave at any time. Finally they are asked if they agree to participate in the study (Makkai & McGregor, 2002: 20).

The second project proceeding without the use of informed consent forms is the Drug Use Careers of Offenders (DUCO) project (see http://www.aic.gov.au/research/drugs/research/duco-intro.html). Interviewers employ a method of reading information to participants and obtaining their verbal consent to be interviewed. In anthropological research, consent forms are rarely used unless mandated by funding bodies (Fleur-Lobban, 1994). Typed consent has been used in psychological studies conducted on-line where the researcher and research participants never physically met (Roberts, Smith and Pollock, forthcoming).

The alternative to signed consent forms we present here is based upon our current research evaluating the Perth Drug Court Pilot Project. As part of the evaluation we are conducting interviews with offenders who are currently involved with the Drug Court. The interviews are semi-structured and cover potentially incriminating topics (e.g. drug use and criminal activity). In conjunction with the HREC at the University of Western Australia, procedures for obtaining informed consent for this group of offenders without using signed consent forms were developed.

Current clients of the Drug Court are approached outside the Drug Court and invited to take part in the evaluation. Prior to the interview, individuals who accept the invitation to participate are read the contents of the informed consent form, given an information sheet will full details about the research, asked if they have any questions about the research and asked if they consent to the interview. The interviewer records on the interview sheet that the contents of the consent sheet have been read to the respondent and an opportunity has been provided for asking questions. Following these preliminaries, the participant is interviewed if informed consent has been obtained. At no stage during the consent or interview process is the individual’s name or identifying information requested.

There are three major advantages to this approach. First, through reading the consent form to offenders, rather than the offender reading the form, comprehension of the information provided is likely to be improved (Wolgater, Howe, Sifuentes & Luginbuhl, 1999). Comprehension may be further increased by the practice of ensuring the opportunity for discussion and questions about the research is provided. Verbal explanations by researchers are rated by research participants as the most useful source of information about research (Hayman, Taylor, Peart, Galland & Sayers, 2001). These procedures are designed to ensure that the consent obtained is truly informed.

Second, as no identifying information is obtained, the potential for information obtained during the research process to be used against research participants in later legal proceedings is removed. For Drug Court participants, this also means that any fears that their involvement in the research may in some way jeopardise their continuation with the Drug Court program are alleviated.

Third, as identifying information is not obtained using these procedures, threats to the validity of the research are reduced. Because research participants can be confident that the information they supply will not be used to incriminate them at a later date, they are less likely to refuse to take part in the study, removing the threat to response rates and the representativeness of the sample obtained. Further, it reduces the perceived need for self-protecting responses on sensitive topics.
There are positive benefits from adopting these alternative methods of obtaining consent for research participants and researchers. This manner of conducting research ensures that the rights of participants are maintained and protected with less liability, as the researchers remain unaware of the names of the respondents or other identifying information. The researcher obtains the data they require without risking affecting response rates, the representativeness of the sample or the quality of the data.

Indeed the “worse case scenario” with this procedure is that the actual quality of the research can not be audited. However consent forms were never intended as a method of auditing research and having consent forms used for this purpose would probably be in breach of the information provided to participants on how their information would be used.

Conclusion

The time for taking a closer look at the issue of informed consent in social science research is overdue. The need for ensuring that research meets a high ethical standard is paramount. A more meaningful way of ensuring this is achieved than the current laborious and self serving mechanisms is to start from the humanitarian principle that at the very least all research should ensure that “it does no harm”. This principle can provide a lens against which we can hold up social science research and ask – does it do any harm? Could it possibly do harm? We may believe it will do “good” but realistically we can never be sure and what is more important the research participant can not be sure. The essential compact, the essential trust between researcher and participant is, therefore, that the procedure will at least do no harm. The choice as to whether to bother to do the research is then made by the participant with that security. Ensuring that no harm be done should be at least as important to researchers as ensuring that the quality of the research is sufficient so that potentially some good may also be achieved.

The goals of research in criminology are to enhance our understanding of crime and justice. In this process we need to ensure that we do no harm to research participants. If at all possible the research may also enhance, promote and reinforce the human rights, sense of empowerment and esteem of the research participant. The question of the best way to achieve this will vary with the particular circumstances of the potential research participant. In many cases requesting interviewees to sign a form signifying “informed consent’ does not enhance human rights and may place researchers and research participants in less than preferred positions.

Obtaining informed consent does not always necessitate obtaining a signature or other personally identifying information. In some situations, research participants and researchers can be better protected through the development of alternative measures. In deciding the appropriate form of obtaining informed consent, the requirements of the institution, the ethics committee, the proposed research, the researcher and the research participants need to be considered. Researchers need to work with institutional ethics committees to establish workable procedures that provide protection for all parties.

While individual researchers should pursue workable alternatives with their institutional ethics committees, there is a need for action at a broader level. We urge ANZSOC, as the representative body of criminologists within Australasia, to clearly articulate in their Code of Ethics the issues involved and alternatives available. We strongly support the current development of a statement of principles led by the NSW Bureau of Crime Statistics and Research. Actions such as this can mirror efforts by other social and behavioural science disciplines to ensure that meaningful and appropriate guidelines are developed for the social and behavioural sciences.

4. For example, the American Psychological Association is currently developing educational documents for Institutional Review Boards aimed at increasing their understanding of the goals and procedures of behavioural research (Azar 2002).
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APPENDIX ONE: The Australian and New Zealand Society of Criminology (ANZSOC) Code of Ethics


1. Purpose of the Code

This Code of Ethics seeks to:

a) provide guidance to members of the Australian and New Zealand Society of Criminology Inc. ('the Society') on how to comply with the aims of the Society and how to maintain the highest ethical standards in criminological work;

b) provide a framework of principles to assist members of the Society in making appropriate decisions in the practice of criminological research, writing, administration, and teaching; and

c) raise awareness of ethical issues which confront criminologists in Australia and New Zealand.

2. General Obligations

Members of the Society should endeavour to:

a) advance criminological knowledge;

b) permit free and open access to criminological knowledge;

c) maintain and develop their professional competence and skill;

d) demonstrate objectivity and integrity in their work;

e) be punctual in meeting deadlines for the completion of work;

f) avoid undertaking work which entails a conflict of interest;

h) refrain from making misleading or deceptive statements in connection with their work;

i) take all reasonable steps to ensure that their qualifications, capabilities, or views are not misrepresented by others and to correct any misrepresentations which exist;

j) refrain from laying claim to expertise in areas of criminology which they do not have; and

j) avoid conduct which may bring the wider criminological community into disrepute.

3. The Dissemination of Knowledge

Members of the Society should promote a working environment and professional relationships conducive to:

a) the advancement and dissemination of criminological knowledge;

b) the protection and enhancement of intellectual freedom; and

c) the creation of free and independent criminological inquiry.

4. Responsibilities to Colleagues

Members of the Society should:

a) in carrying out and publishing work, recognise fully the contribution of the work of colleagues;

b) avoid the exploitation of junior work colleagues;

c) avoid harassment of colleagues on any grounds;

d) actively promote the professional development of colleagues by ensuring that they receive training and support and protection in work environments which may jeopardise their well-being;
e) not claim the work of others as their own;
f) not use others’ ideas and/or research materials and products without permission and due acknowledgment;
g) share criminological knowledge with colleagues;
h) promote equal opportunity for colleagues; and
i) actively seek to avoid discriminatory practices affecting colleagues.

5. Responsibilities to Research Subjects

Members of the Society when undertaking research should:

a) comply with all legal requirements including laws protecting intellectual property, privacy, confidentiality, and data integrity;
b) ensure that any research is undertaken in accordance with the requirements of accepted principles governing research involving human and animal experimentation;
c) obtain approval from Institutional Research Ethics Committees prior to undertaking research which requires approval of such Committees; and
d) respect undertakings of anonymity and confidentiality.

6. Relationships with Other Organisations

Members of the Society should seek to:

a) maintain good relationships with all funding and professional organisations;
b) disclose all sources of financial support and sponsorship received;
c) avoid contractual conditions that limit intellectual freedom or are contingent upon a particular outcome or set of findings;
d) avoid contractual or financial arrangements which emphasise speed and economy at the expense of quality work;
e) avoid contractual or financial arrangements which place restrictions on their freedom to disseminate research findings;
f) comply with written agreements and undertaking entered into or given to organisations; and
g) be sympathetic to the constraints on organisations participating in research and not inhibit their functioning by imposing unnecessary burdens on them.

7. Compliance with the Code

Members of the Society agree to:

a) comply with the provisions of this Code of Ethics in their work as criminologists and
b) abide by decisions made by the Society following any non-compliance with the provisions of this Code of Ethics.

Dated: 3 April 2000
This Code draws upon provisions contained in the Codes of Ethics of:
• the British Society of Criminology <http://www.lboro.ac.uk/departments/ss/bsc/council/CODEETH.HTM>
• the American Society of Criminology <http://www.asc41.com/ethics98.htm>
British Society of Criminology
Code of Ethics for Researchers in the Field of Criminology

The purpose of this Code is to offer some guidance to researchers in the field of criminology in keeping with the aims of the Society to value and promote the highest ethical standards in criminological research. Clearly, this Code of Practice is not mandatory, but it is intended to promote good practice. Members should read the Code in the light of any other Professional Ethical Guidelines or Codes of Practice to which they are subject. The guidelines do not provide a prescription for the resolution of choices or dilemmas surrounding professional conduct in specific circumstances. They provide a framework of principles to assist the choices and decisions which have to be made also with regard to the principles, values and interests of all those involved in a particular situation. Membership of the British Society of Criminology is taken to imply acceptance of these general principles and the need to be aware of ethical issues and issues regarding professional conduct that may arise in people's work.

1. General Responsibilities
Researchers in the field of criminology should endeavour to:

- advance knowledge about criminological issues
- maintain and develop their professional competence and integrity
- identify and seek to ameliorate factors which restrict it
- refrain from laying claim, directly or indirectly, to expertise in areas of criminology which they do not have take all reasonable steps to ensure that their qualifications, capabilities or views are not misrepresented by others
- correct any misrepresentations and adopt the highest standards in all their professional relationships with institutions and colleagues whatever their status
- respect their various responsibilities as outlined in the rest of this document

2. Responsibilities of Researchers Towards the Discipline of Criminology
Researchers have a general duty to promote the advancement and dissemination of knowledge, to protect intellectual and professional freedom, and therefore to promote a working environment and professional relationships conducive to these. More specifically, researchers should promote free and independent inquiry into criminological matters and unrestricted dissemination of criminological knowledge. As part of this, researchers should avoid contractual conditions that limit freedom or are contingent upon a particular outcome or set of findings.

3. Researchers’ Responsibilities to Colleagues
Researchers should:

- recognise fully the contribution to the research of junior colleagues and avoid exploitation of them. (E.g. reports and publications emanating from research should follow the convention of listing contributors in alphabetical order unless one has contributed more than the other(s))
- actively promote the professional development of research staff by ensuring that staff receive the appropriate training and support and protection in research environments which may jeopardise their physical/emotional well-being
• not claim work of others as their own; the use of others' ideas and research materials should be cited at all times, whatever their status and regardless of the status of the ideas or materials (e.g. even if in draft form).

• promote equal opportunity in all aspects of their professional work and actively seek to avoid discriminatory behaviour

4. Researchers' Responsibilities towards Research Participants

Researchers should:

• recognise that they have a responsibility to ensure that the physical, social and psychological well-being of an individual participating in research is not adversely affected by participation in the research. They should strive to protect the rights of those they study, their interests, sensitivities and privacy. Researchers should consider carefully the possibility that the research experience may be a disturbing one, particularly for those who are vulnerable by virtue of factors such as age, social status, or powerlessness and should seek to minimise such disturbances. They should also consider whether or not it is appropriate to offer information about support services (e.g. leaflets about relevant self-help groups).

• be sympathetic to the constraints on organisations participating in research and not inhibit their functioning by imposing any unnecessary burdens on them

• base research, so far as possible, on the freely given informed consent of those studied. This implies a responsibility on the part of the researchers to explain as fully as possible, and in terms meaningful to participants, what the research is about, who is undertaking and financing it, why it is being undertaken, and how any research findings are to be disseminated. Researchers should also make clear that participants have the right to refuse permission whenever and for whatever reason they wish. Research participation should be informed about how far they will be afforded anonymity and confidentiality. Researchers should consider the possibility of discussing research findings with participants and those who are the subject of the research.

• where there is a likelihood that identifiable data may be shared with other researchers, the potential uses to which the data might be put should be discussed with research participants. Research participants should be informed if data is likely to be placed in archives, including computer archives. Researchers should respect promises of confidentiality and not pass on identifiable data to third parties without participants' consent. Researchers should also note that they should work within the confines of current law over such matters as copyright, confidentiality and data protection.

5. Relationships with Sponsors

Researchers should:

• seek to maintain good relationships with all funding and professional agencies in order to achieve the aim of advancing knowledge about criminological issues and to avoid bringing the wider criminological community into disrepute with these agencies. In particular, researchers should seek to avoid damaging confrontations with funding agencies and the participants of research which may reduce research possibilities for other researchers.

• seek to clarify in advance the respective obligations of funders and researchers and their institutions and encourage written agreements wherever possible. They should recognise their obligations to funders whether contractually defined or only the subject of informal or unwritten agreements in the light of any institutional agreements or policies. They should attempt to complete research projects to the best of their ability within contractual or unwritten agreements. Researchers have a responsibility to notify the sponsor/funder of any proposed departure from the terms of reference.
seek to avoid contractual/financial arrangements which emphasise speed and economy at
the expense of good quality research and they should seek to avoid restrictions on their
freedom to disseminate research findings. In turn, it is hoped that funding bodies/sponsors
will recognise that intellectual and professional freedom is of paramount importance and
that they will seek to ensure that the dissemination of research findings is not
unnecessarily delayed or obstructed because of considerations unrelated to the quality of
the research

BSC Code of Ethics produced by Loraine Gelsthorpe, Roger Tarling and David Wall (Sub-