

Research with legal implications

What is research with legal implications?

Research may have legal implications when conducted in certain contexts. It may be that:

- There is an intention to study illegal activity such as illicit drug use or illegal sex work
- There is no intention to study illegal activity, but the research is likely to do so (e.g., a study of industry responses to regulations surrounding banned or illegal products)
- An illegal activity can be inadvertently discovered while conducting the research (e.g., where a participant voluntarily provides information unrelated to the research activity).

This Guidance Note concentrates upon the first two scenarios. Research involving illegal activity research that is likely to uncover illegal activity requires careful planning to manage legal and other risks to researchers and participants. This Guidance is informed by the [National statement on ethical conduct in human research, 2018](#), (NS) and in particular Chapter 4.6 'People who may be involved in illegal activities', and will help researchers identify and manage some of the common risks arising research with legal implications.

What are some important considerations about research with legal implications?

The NS requires researchers to mitigate or adopt strategies to reduce risks of research to participants including the risk of legal harms (e.g., prosecution of criminal conduct).

Legal harms for participants can occur where research involves illegal activities. Research that may identify participants, or other people or organisations not directly involved in the

research, as being involved in illegal or improper activities that opens them to a threat of prosecution of criminal conduct. Where research is looking at an activity that is not itself illegal information that has been collected can also be used against participants (e.g., in disputes over child custody or a workplace accident). RMIT Ethics Review Bodies will generally expect that research is conducted in a way that reduces the legal risks to participants or anyone else not directly involved in the research.

Information collected by researchers may become subject to subpoenas even when the research was not interested in illegal activity. Information collected from people may be relevant in proceedings involving, for example, the Family Court, the Victorian Civil and Administrative Tribunal (VCAT) or employment or insurance claims.

Data collected for or about people may have legal implications for participants or others if it could be used in legal proceedings. For example, information a researcher collected about participants' drinking or drug-taking habits may be relevant in a legal action involving a car accident and a participant.

Respecting participants

A key requirement of ethical human research is that it is respectful of participants. Asking participants to put themselves at risk of harm for the sake of the research is unethical, particularly when there is no individual and little community benefit.

Participants need to be informed of any risks in a research project before they provide consent. In the RMIT Participant Information and Consent Form (PICF) template there is the advice to participants that:

Any information that you provide can be disclosed only if (1) it is protect you or others from harm, (2) if specifically allowed by law, (3) you provide the researchers with written

permission. Any identifying information obtained for the purpose of this research project and for the future research described will be treated as confidential and securely stored (Section 10).

This advice about confidentiality and its limits is not considered sufficient for some research, especially where the research is focussed upon illegal activity or is likely to raise legal risks.

Additional information needs to be included in the PICF if there is a reasonable likelihood that participants may reveal, and/or the research will collect, information about their involvement in an illegal activity or an activity/behaviour that may not be an illegal activity or could have legal implications potentially. Participants in a study that will likely collect information about illegal activities must be made aware of the risk they accept by taking part.

Researchers need to be candid in explaining any risks to participants in the PICF.

Mandatory reporting obligations

There are several provisions in State and Commonwealth legislation that require reporting by specific occupational classes or individuals. Some of these are set out below in summary form (this is not an exhaustive list). This summary is for the purposes of alerting researchers of their obligations and is provided as a guide only. Researchers must access the relevant legislation and be familiar with the specific requirements in each jurisdiction.

Please seek legal advice from RMIT's Legal Services Group if you require further information or advice about the ambit of this legislation in relation to your research.

Health Practitioners

In all states and territories in Australia the Schedule to the *Health Practitioner Regulation National Law (Victoria) Act* may apply. Section 141 of the Schedule states that a registered health professional must notify the Australian Health Practitioner Regulation Agency if they have a reasonable belief that another registered health professional has:

- practiced while intoxicated (alcohol or drugs)
- engaged in sexual misconduct during professional practice

- placed the public at risk of substantial harm because of an impairment; or placed the public at risk of harm because they practiced in a way that constitutes a significant departure from accepted professional standards.

If a researcher is a registered health professional and the research involves another registered health professional(s) they must comply with Section 140, or they may face disciplinary proceedings.

All states and territories in Australia require medical practitioners and/or nurse practitioners and/or pathologists and/or diagnostic laboratories to report notifiable conditions (notifiable communicable diseases). The reporting requirements and communicable diseases vary. Please consult the relevant State or Territory government website for up-to-date details.

Suspected child abuse or neglect

There are a variety of reporting requirements across Australia and these have been summarised by the [Australian Institute of Family Studies](#). In terms of reporting sexual offences in Victoria, Section 327 of the crimes act makes it an offence for a person to fail to report a sexual offence committed against a child by an adult (where a person has reason to believe an offence had occurred). This could possibly arise in the situation of research being conducted into areas of sexual abuse where the researchers may receive information about sexual offences committed against minors. They could then have an obligation to report it to Victoria police under Section 327 (subject to exceptions appearing in Section 327).

Research conducted in the Northern Territory

In the Northern Territory there is a legal requirement to report family violence. Under Section 124A of the *Domestic and Family Violence Act 2007* (NT), an adult must report to police their belief, on reasonable grounds, the life and safety of another person is under serious or imminent threat because of domestic violence has been, is being, or is about to be committed. A failure to make a report is a criminal offence.

If you are conducting national surveys in areas involving family violence or child abuse, then you will need to consider the legal requirements in individual states in your project and ethics application.

Key things to remember when completing the submission:

Minimising legal risks

Research that may reveal evidence or indications of illegal activity should be designed to avoid compromising participants and researchers. How the legal risks in the research are minimised will depend upon the aims of the research and specifically whether you are researching an illegal activity per se or whether the research is likely only to uncover illegal activity.

In general, it is important to avoid eliciting information about the participant that suggests involvement by them or other people in illegality or impropriety. If the data collection method involves surveying or interviewing, then questions that would divulge actual or allegations of illegality must be avoided.

While planning research and designing the methodology, researchers need to implement all possible safeguards by ensuring identities cannot be determined by:

- not collecting names and other identifying information (where risks are particularly high, verbal consent may be preferable to written consent)
- using pseudonyms
- storing data in coded rather than showed form
- protecting links between names and data and storing them separately from other research materials.

When designing the research, you should also consider:

- restricting the collection and retention of 'risky' information to what is necessary to answer your research questions
- collecting information in the most 'general' form possible rather than individually identifiable (e.g., collect year of birth or even the age range of participants e.g., '18-25' rather than date of birth)

- constructing questions to elicit opinion rather than personal disclosures
- whether the information you are collecting will be of interest to authorities such as the police
- relevant legislation and laws in the specific state or country where the data is to be collected; and
- the requirements of data verification against that of participant confidentiality and anonymity.

Protecting data

Part of the risk management strategy in a research project is management of data. Generally, data collected by researchers is retained for a specified period and remains confidential unless a request is made through a court to release that information. It is only through a court order or subpoena or warrant that data can be released. Therefore, if a participant reveals illegal activity as part of a research project they could be exposed to legal sanction at a future time.

Data collected about illegal activities will be especially sensitive and researchers may need to consider added strategies to protect the data and to maintain confidentiality.

What should I do if I receive a legal order to provide information?

Researchers must disclose participant information if required by law to disclose it.

If you receive a legal request for information such as a subpoena, summons or search warrant it is recommended that you contact Research Office and the RMIT Legal Services Group before they respond to the request. The CHEAN or HREC that approved the application should also be advised of any request to release data collected as part of a project that had human research ethics approval as this involves a departure from the terms of the human research ethics approval.

Further information

Further information can be found in the [RMIT Research Policy: Human Research Ethics Procedure](#).

For further advice on this topic or other human research ethics matters, please email humanethics@rmit.edu.au. A Research Governance and Ethics Coordinator will assist you and may connect you to one of the CHEAN or HREC members in your discipline who can offer expert ethics advice.