National Ethics Advisory Committee
Kāhui Matatika o te Motu
Annual Report 2010

Ninth Annual Report to the Minister of Health

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www.neac.health.govt.nz

Foreword

This annual report sets out the activities of the National Ethics Advisory Committee – Kāhui Matatika o te Motu (NEAC) and summarises its advice on matters referred to it under section 16 of the New Zealand Public Health and Disability Act 2000.

NEAC's statutory functions are broad and strategic. They include advising the Minister of Health on ethical issues of national significance in respect of health and disability matters, and determining nationally consistent ethical standards across the health system. NEAC works to a broad definition of ethics – identifying what matters and how best to act accordingly – and its independence, credible membership, collaborative relationships, and open, inclusive and thorough processes are all important contributors to its policy advice.

In 2010, NEAC advised the Minister on issues being considered by the Health Committee in its Inquiry into Improving New Zealand's Environment to Support Innovation through Clinical Trials. Health care in New Zealand can be made safer and better for patients through the conduct of well-designed clinical trials. It is also important that appropriate protections are maintained for trial participants. Drawing on its extensive previous work, NEAC offered advice on the overall design and practical functioning of health and disability ethics committees and recommended a review of some legal provisions concerning consent in clinical trials and compensation for injury.

In 2010, NEAC continued its work on projects in the areas of advance care planning, and harm and industrial action.

NEAC proposed exploring the idea of hosting a conference on advance care planning in New Zealand to bring together a diverse range of people and stimulate wider public debate. This would further NEAC's project aim to help people identify their wishes regarding future situations where they may become incapacitated and unable to make their own decisions and to facilitate those wishes being met.

NEAC's work on harm and industrial action examines whether the interpretation and application of the current life-preserving services provisions in the Code of Good Faith ensure that any withholding or withdrawal of service through industrial action also adheres to the 'do no harm' principle. NEAC explored ways in which health and disability workers, their professional bodies and their employers could consider for themselves whether their interpretation and application of the right to strike is consistent with the ethical principle of 'do no harm'.

It was with sadness and reluctance that I tendered my resignation to the Minister in early 2011 due to ill health. I particularly want to acknowledge and thank Geoff Fougere who as Deputy Chair kept NEAC and its work progressing in the second half of 2010.

On behalf of NEAC, I am pleased to present this annual report for 2010.

Robin Wray
Chair
National Ethics Advisory Committee
Kāhui Matatika o te Motu

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Introduction to the National Ethics Advisory Committee

Functions of the National Ethics Advisory Committee

The National Ethics Advisory Committee – Kāhui Matatika o te Motu (NEAC) is an independent advisor to the Minister of Health. NEAC's statutory functions, under section 16 of the New Zealand Public Health and Disability Act 2000, are to:

- advise the Minister of Health on ethical issues of national significance in respect of health and disability matters
- determine nationally consistent ethical standards across the health sector
- provide scrutiny for national health research and health services.

NEAC works within the context of the New Zealand Public Health and Disability Act 2000 and key health and disability policy statements. Section 16(6) of the Act requires that NEAC 'at least once a year, deliver to the Minister a report setting out its activities and summarising its advice on the matters referred to it under this section'.

Membership of the National Ethics Advisory Committee

NEAC is designed to effectively contribute to good health outcomes for New Zealanders. The Minister appoints the members of NEAC, who come from a range of professions and backgrounds, and bring expertise in ethics, clinical leadership and health service provision, health and disability research, public health, epidemiology, law, Māori health and consumer advocacy.

Andrew Moore's term as Chair and as a member of NEAC finished in July 2010. Robin Wray was appointed as NEAC Chair. Two new members were appointed to the Committee in 2010: John McCall and Martin Wilkinson.

National Ethics Advisory Committee's Work Programme in 2010

Overview

A consideration of ethics involves identifying what matters and how best to act accordingly. NEAC works to this definition of ethics, producing work that is both principled and practical, and that is not identifiable with one sector group or interest. NEAC agrees its work programme with the Minister.

Research ethics

In 2010, NEAC advised the Minister on issues being considered by the Health Committee in its Inquiry into Improving New Zealand's Environment to Support Innovation through Clinical Trials. Drawing on its extensive previous work, NEAC recommended reform of ethics committees and review of some legal provisions concerning consent in clinical trials and compensation for injury.

NEAC also drafted a resource document outlining existing elements of Māori research ethics and potential areas for development.

Services ethics

In 2010, NEAC continued its work on projects in the areas of advance care planning, and harm and industrial action.

NEAC proposed exploring the idea of hosting a conference on advance care planning in New Zealand to bring together a diverse range of people and stimulate wider public debate.

NEAC's work on harm and industrial action examines whether the interpretation and application of the current life-preserving services provisions in the Code of Good Faith ensure that any withholding or withdrawal of service through industrial action also adheres to the 'do no harm' principle.

Research ethics work in 2010

Improving New Zealand's environment to support innovation through clinical trials

Summary of NEAC's clinical trials work	
What matters	Making health care safer and better for patients through: • conducting well-designed clinical trials in New Zealand • maintaining appropriate protections.
NEAC contribution	Providing advice on three of the five Health Committee Inquiry's terms of reference: • streamlined ethics approvals systems • benefit to New Zealand patients through clinical trials • removal of unnecessary barriers to conducting clinical trials.
NEAC output	NEAC advice to the Minister on clinical trials supported by NEAC Analysis – Clinical Trials (September 2010).

Supporting innovation through clinical trials

Advances in health care over the last 60 or so years have benefited millions of people worldwide through clinical trials, which have produced reliable answers to previously unanswered questions about life-and-death treatment decisions.

A clinical trial (or intervention study) is research that assigns human beings to receive health-related interventions (such as medicines, procedures and preventive care) to assess the safety and/or the benefit of those interventions for patients.

NEAC supports the conduct of well-designed clinical trials in New Zealand and believes that research-active health care organisations are also good for patient care. NEAC also acknowledges the importance of maintaining appropriate protections.

Clinical trials make health care safer and better for patients by:

- producing the best evidence about the effects of an intervention
- sorting out treatment logistics in the trial phase, which also helps get new treatments to patients more quickly
- helping to attract and retain clinical staff
- delivering health care that tends to be more systematically planned, delivered, monitored and followed up.

NEAC advice

The Health Committee initiated an Inquiry into Improving New Zealand's Environment to Support Innovation through Clinical Trials in February 2010, and indicated its interest in NEAC's views on these matters.

NEAC decided to build on its previous work on clinical trials by advising the Minister directly on three of the Inquiry's terms of reference:

- streamlined ethics approvals systems
- benefit to New Zealand patients through clinical trials
- removal of unnecessary barriers to conducting clinical trials.

NEAC provided its advice and analysis to the Minister in September 2010. The Minister forwarded NEAC's advice to the Health Committee to inform its Inquiry.

NEAC advice on streamlined ethics approvals systems

NEAC considers that New Zealand's health and disability ethics committee system is good by international standards, and offered advice on improving the overall design and practical functioning of health and disability ethics committees (HDECs). NEAC's recommendations include:

- restructuring HDECs and revising their member categories, based on study type (such as clinical trials or other sorts of study)
- revising the National Application Form for HDEC approval, based on study type
- centralising at a national level the process of applying to HDECs
- reviewing the locality assessment process
- reviewing Māori consultation processes
- introducing pre-review of all applications to HDECs
- reviewing the *Operational Standard for Ethics Committees*

- considering the long-term options for hosting HDECs
- reviewing the cross-sector ethics committee arrangements
- implementing the remaining accepted recommendation from the 2003 NEAC review of HDECs.

NEAC advice on benefit to New Zealand patients through clinical trials

NEAC addressed the issue of enhancing the contributions of clinical trials to knowledge and health gain through compensation for treatment injury. In general, the Accident Compensation Act 2001 covers treatment injuries in clinical trials. However, section 32 (4–6) of the Act specifically excludes from cover any treatment injury from any trial that is conducted 'principally for the benefit of the manufacturer or distributor of the medicine or item being trialled'. This statutory exclusion from compensation benefits is a disadvantage to all participants in industry-sponsored clinical trials, compared to all other participants in all other research in New Zealand.

NEAC recommends review of the current statutory exclusion of participants in industry-sponsored clinical trials from ACC compensation for treatment injury. Such a review should be based on the principles that policy should be justifiable to those affected by it, and should secure at least ACC-equivalent cover for all clinical trial participants.

NEAC advice on removal of unnecessary barriers to conducting clinical trials

NEAC endorses the principle that participation in a clinical trial should be based on free and informed participant consent, and this principle is firmly embedded in New Zealand statute, regulation, ethics guidance and research practice. The appropriate emphasis on free and informed consent has unfortunately also produced barriers to the conduct of clinical trials of benefit to patients who are incompetent to consent. NEAC considers that lack of capacity to consent should not necessarily be a barrier to participation in clinical trials.

NEAC recommends a review of the law relating to clinical trials participation by those who lack the capacity to give free and informed consent. Such a review should be based on consent to participate for all those who have this capacity, and not necessarily excluding from clinical trials participation of those who lack this capacity.

NEAC's full analysis, which forms the basis of the advice, is available at www.neac.health.govt.nz

Māori health and disability research ethics

Summary of the Māori health and disability research ethics project	
What matters	Improving the quality of research in Māori health Assisting Māori communities to contribute to Māori health development Better addressing Māori ethical issues in research
NEAC contribution	Encouraging discussion and dialogue on Māori ethical issues among Māori communities, researchers and others
NEAC output	A resource document outlining existing elements of Māori research ethics A project partnership with the Health Research Council, Ngā Pae o te Māramatanga (Māori Centre of Research Excellence, based at the University of Auckland) and Pūtaiora (comprising Māori members of health and disability ethics committees) Support for sector development of a guideline or framework on Māori research ethics for ethics committees and researchers

Māori research ethics

The Māori research workforce is growing in numbers and demonstrating increased levels of skill, and a considerable body of literature now exists about Māori research and Māori research ethics. This literature draws on tikanga Māori and mātauranga Māori as ethical bases to guide practice: to indicate what is fair, true and just, and to protect the interests and wellbeing of groups and individuals. Addressing issues and concerns pertaining to Māori research will improve the ethical review system for all researchers and participants.

Project aims

NEAC's work on Māori health and disability research ethics aims to facilitate understanding of Māori research ethics; improve the quality of research for Māori, including the ability of researchers to assist Māori communities; and contribute to Māori health development.

Project process

NEAC's Māori health and disability research ethics project is a collaboration with Ngā Pae o te Māramatanga (the Māori Centre of Research Excellence, based at the University of Auckland), the Health Research Council of New Zealand and Pūtaiora (comprising Māori members of health and disability ethics committees). This partnership has encouraged discussion on ethical issues among Māori communities, researchers, and other people and organisations involved in research ethics.

In 2009, NEAC supported a writing group (including members of Pūtaiora) to develop a framework for addressing Māori ethical issues within the context of decision-making by ethics committee members. This framework, *Te Ara Tika Guidelines for Māori research Ethics: A framework for researchers and ethics committee members*, was published by the Health Research Council in 2010 and was appended to its *Guidelines for Researchers on Health Research Involving Māori*.

NEAC's output for this project is a resource document, *Māori Research Ethics: An Overview*. It summarises and discusses current issues in Māori research ethics with a focus on health and disability. It is intended to provide useful information and practical assistance for health and disability researchers, research institutions, and others involved in health and disability research with Māori. It was prepared to accompany the publication *Te Ara Tika Guidelines for Māori research Ethics: A framework for researchers and ethics committee members*. The draft resource document was peer reviewed in 2010.

Services ethics work in 2010

Advance care planning

In November 2009, the Minister agreed to a NEAC project on advance care planning. The purpose of the project is to develop a resource to help people identify their wishes regarding future situations in which they may become incapacitated and unable to make their own decisions, and to facilitate those wishes being met.

As NEAC carried out further scoping work for this project in 2010, considerable work was also underway in the sector. An international conference on advance care planning held in Melbourne in April 2010 was a catalyst for the formation of a National Advance Care Planning Cooperative in New Zealand.

In light of the initiative being taken within the sector, NEAC has identified an opportunity to make a higher level contribution. NEAC proposed exploring the idea of hosting a conference on advance care planning in New Zealand. The aim would be to bring together a diverse range of people to share ideas, to highlight work being done, to stimulate wider public debate, to hear different cultural perspectives, and to give a public face to advance care planning in New Zealand.

Harm and industrial action

In November 2009, the Minister also agreed to the initiation of a NEAC project on the application of the professional ethical principle of 'do no harm' to industrial action.

NEAC's preliminary work suggests that:

- the 'do no harm' principle is applicable to industrial action
- adherence to the 'do no harm' principle would constrain industrial action
- adherence to the Code of Good Faith (Schedule 1B of the Employment Relations Act 2000 – the most relevant legal provision applicable to this matter) might not guarantee adherence to the 'do no harm' principle.

The Code of Good Faith requires District Health Boards to provide for patient safety during industrial action. This includes developing contingency plans to ensure the provision of life-preserving services (such as crisis interventions, care required for therapeutic services and urgent diagnostic procedures) to prevent serious threats to life or permanent disability.

NEAC's position is that the life-preserving services provisions in the Code of Good Faith do not exclude all potential harm to patients and health and disability service consumers that might be caused by the withdrawal or withholding of services during industrial action. This may result from scenarios where:

- an urgent diagnostic procedure is withheld when the likelihood of a serious diagnosis is small but not negligible
- significant harms occur to patients during industrial action because services are withdrawn or withheld for conditions that do not amount to a serious threat to life or permanent disability.

Alongside provision of services to avoid death and permanent disability, it is also important to avoid other serious harms. Alongside provision to obtain diagnostic information on potentially life-threatening conditions and conditions that threaten permanent disability, it is also important to avoid serious harms that are non-fatal and non-permanent.

NEAC's position is that it is appropriate to consider whether the interpretation and application of the current life-preserving services provisions ensure that any withholding or withdrawal of service through industrial action also adheres to the 'do no harm' principle. NEAC agreed to develop a plan to discuss with health and disability workers, through their professional bodies, and employers, the interpretation and application of the right to strike and ensuring that it is consistent with the ethical principle of 'do no harm'.

Membership of the National Ethics Advisory Committee

Andrew Moore – chair

Andrew Moore is an associate professor in the Department of Philosophy at the University of Otago. His teaching, research and community service activities focus on ethics, political philosophy and bioethics.

Andrew's policy experience includes previous membership of the National Health Committee and Public Health Advisory Committee, plus contracted work over many years on prioritisation issues concerning medicines and other health services.

Andrew's practical experience in clinical ethics and health research ethics includes membership of the Health Research Council of New Zealand's Data Monitoring Core Committee for New Zealand-led clinical trials. In addition, he has previously been a member of university, regional and national ethics committees.

Andrew's term finished in July 2010.

Robin Wray – Chair

Robin Wray has worked in his various communities for 40 years, principally in the fields of social welfare, health and education. During his career he has been a social worker in Auckland and Whakatane, a Trustee of the Eastbay Energy Trust, a Trustee of the Auckland Regional Migrants Services Trust and a Councillor for Waiariki Polytechnic.

Robin has also been involved in various health organisations in the Bay of Plenty region for 10 years. He has been the chair of the Bay of Plenty District Health Board, Eastbay Health and the Bay of Plenty Bio-Medical Ethics Committee.

Robin is currently a Judicial Justice of the Peace sitting in the Auckland, North Shore and Waitakere District Courts, is an active Rotarian, a Past President and Paul Harris Fellow. He is a board member of the Rural Education Activities Programme Inc (REAP) in Whakatane and on the REAP Aotearoa NZ national executive. While he lives in Auckland, Robin has a dairy farm in the Eastern Bay of Plenty.

Robin's term as Chair began in July 2010.

Geoff Fougere – Deputy Chair

Geoff Fougere is a senior lecturer in sociology in the Department of Public Health, Wellington School of Medicine (University of Otago). He also holds honorary appointments in sociology at the University of Canterbury and University of Auckland and is an external faculty affiliate of the Center on Organizational Innovation, Columbia University, New York. Geoff's teaching and research interests focus on analysis of political and organisational change and public policy, particularly in the health sector.

Geoff's policy experience includes previous membership of the National Health Committee and chairing of the Public Health Advisory Committee.

Lorna Dyall

Lorna Dyall (Ngāti Maniapoto) is a senior lecturer at Te Kupenga Hauora Māori, Faculty of Medical and Health Sciences, Auckland University. Her teaching and research focuses on improving Māori health and wellbeing. Her particular current areas of interest are positive ageing, gambling and Māori health workforce development.

Lorna has worked widely in Māori health in the public sector, within the Department of Health, Wellington Area Health Board and Te Puni Kōkiri. Lorna holds a master's degree in public policy, a post-graduate diploma in community health and a PhD which focused on gambling as an emerging health issue for Māori.

Lorna was awarded a Queen's Service Medal for Māori health in June 2009.

Andrew Hall

Andrew Hall sustained a spinal cord injury in 1983 as a 19-year-old Massey University student. After completing an agricultural economics degree at Lincoln University, Andrew undertook computer programming work in New Zealand and Australia. He has also farmed in Central Otago.

Andrew is the chief executive of the New Zealand Spinal Trust, a consumer support and service-providing organisation. He is the current chair of the National Spinal Cord Injury Group and a trustee of the Sporting Futures Charitable Trust.

Robert Logan

Robert Logan has extensive experience of the health sector through a variety of roles in clinical practice, management and governance. Until recently, Robert chaired the National Health Committee, National Chief Medical Advisors Group and Workforce Taskforce. He is currently chief medical advisor at Hutt Valley District Health Board and a Crown monitor at Whanganui District Health Board.

Robert has been actively involved in research in New Zealand and overseas, and has published papers on clinical uncertainty.

Joanna Manning

Joanna Manning is an associate professor in the Faculty of Law at the University of Auckland.

Joanna is an academic lawyer, teaching and researching principally in the fields of medical law and ethics, torts and accident compensation. She has published widely, particularly on issues relating to informed consent to medical treatment and the Code of Patients' Rights.

Joanna has a practical background in prosecution and civil litigation. She was also the consumer representative on the Medical Practitioners' Disciplinary Committee for 10 years.

John McCall

John McCall is the McKenzie professor of clinical science at the Dunedin School of Medicine, University of Otago. He is also a practising general surgeon at the Southern District Health Board. He previously worked in the New Zealand Liver Transplant Unit.

John has been involved in a range of laboratory and clinical research activities, including gastrointestinal cancer, transplant immunology and liver disease. He is a member of the Health Research Council of New Zealand's Data Monitoring Core Committee.

John's terms started in July 2010.

Robin Olds

Robin Olds is chief executive of the Health Research Council of New Zealand. He is a medical graduate of the University of Otago with postgraduate training in pathology, and a fellow of the Royal Australasian College of Pathologists. He researched the molecular genetics of haemostatic disorders at Oxford University as a Nuffield Dominions Medical Fellow.

Robin was a chair in pathology at the Dunedin School of Medicine, where his research focused on molecular aspects of the major mood disorders, particularly manic depression. Robin was head of the Department of Pathology and had additional roles in the management of the medical curriculum.

Ann Richardson

Ann Richardson is an epidemiologist and public health physician working in the areas of information and capacity building, and chronic disease prevention for the public health service of the Canterbury District Health Board. She is particularly interested in public health, epidemiology and cancer screening.

Ann obtained her undergraduate and postgraduate qualifications in medicine and public health in New Zealand and was a clinical research fellow in the Cancer Epidemiology Unit at the University of Oxford. She has also worked in the Department of Public Health and General Practice at the University of Otago Christchurch campus.

Elizabeth Smales

Libby Smales is a palliative care physician who trained in London and San Francisco. She came to New Zealand in 1979.

Libby is currently shifting her focus from clinical to psychological practice and workshop facilitation. She has a private practice, and works with people in crisis. She has wide experience of practising and teaching palliative care in New Zealand and overseas.

Libby has been medical director of Cranford Hospice in Hawke's Bay, president of Hospice New Zealand, honorary treasurer of the Asia Pacific Hospice Network, and president of the Hawke's Bay branch of the New Zealand Medical Association. She has also worked as a general practitioner, in family planning and as an assessor for the Accident Compensation Corporation, working with men and women who have been sexually abused.

Jacob Te Kurapa

Ko Mataatua te Waka; Ko Manawaru te Maunga; Ko Ohinemataroa te Awa; Ko Mataatua te Marae; Ko Ngati Tawahaki te Hapu; Ko Tuhoe te Iwi; Ko Hakopa Te Kurapa taku ingoa. Tihei Mauri Ora!

Jacob Te Kurapa is currently the youngest elected member of the Whakatane District Council. He is also chair of the Murupara Community Board.

Jacob has worked as a community action youth and drugs service coordinator, which is a health promotion position dedicated to finding alternative and positive solutions for young people in Murupara and the surrounding districts.

Jacob has wide-ranging governance experience, including roles with a school board of trustees, a community health provider, a community development and economic provider and a number of charitable trusts.

Martin Wilkinson

Martin Wilkinson is an associate professor in Political Studies at the University of Auckland. He works mainly in applied ethics, with special research interests in transplantation and public health. His book *Ethics and the Acquisition of Organs* will be published in November 2011 in the Oxford University Press series *Issues in Biomedical Ethics*. He was chair of the Bioethics Council from 2006 to 2009.

Martin's term started in July 2010.

National Ethics Advisory Committee Secretariat in 2010

Role of the National Ethics Advisory Committee secretariat

The NEAC secretariat provides dedicated analytical policy support and administrative support to NEAC. The NEAC secretariat is located in the Ministry of Health.

Membership of the National Ethics Advisory Committee secretariat

The NEAC secretariat in 2010 comprised:

- Barbara Burt, Senior Analyst
- Vanessa Roberts, Analyst.

Contact Details for the National Ethics Advisory Committee

Contact details for NEAC:

Phone	64 4 496 2000
Email	neac@moh.govt.nz
Postal address	PO Box 5013, Wellington 6145
Website	www.neac.health.govt.nz

Appendix A: Goals, Objectives and Desired Outcomes of an Ethical Review System

The Ethical Review System

GO DO

Goals, **O**bjectives and **D**esired **O**utcomes

Goals
Facilitate research and innovative practice that contribute to knowledge and improved health outcomes.
Protect participants in health and disability research and innovative treatment.
Find a balance that minimises risks and maximises benefits arising from health and disability research.
Recognise and respect the principles of the Treaty of Waitangi by enabling Māori to contribute to the ethical review system for health and disability research.

Objectives	Desired outcomes
Accountable	Public accountability requirements are defined. Ethical reviews meet internationally recognised standards. Ethical reviews take into account relevant legislation.
Enabling	Research participants/subjects are protected. Quality research is facilitated. Review processes are clear about jurisdiction and coverage. Awareness of ethical practice among all stakeholders is developed. Good communication with affected communities is demonstrated. Local input is achieved. Positive relationships with all stakeholders are developed. System review mechanisms are in place.
Informed	Researchers consider ethical implications from the outset; for example, it is clear who will benefit from the research (participants, the public and so on). The perspectives of affected communities are included. Review processes are proactive, attend to emerging issues and are responsive to change over time. Review processes apply appropriate expertise. Scientific and ethical standards are considered alongside each other where appropriate. Decision-making is consistent. Review capacity and relevant expertise are maintained and developed.

Objectives	Desired outcomes
Enabling of Māori participation	A Māori ethical framework is developed and implemented. Consultation with Māori is collaborative, genuine, inclusive and appropriate. Māori participation in the decision-making component of the system is facilitated. The potential for diversity of opinion across iwi and regions is recognised and respected. Māori research capability is facilitated.
Fair	Review processes are independent. Stakeholders have access to due process. Outcomes of processes are equitable. Applicants to review processes have the right of reply. Conflicts of interest are acknowledged and addressed.
Efficient	Time and resources are used productively. Reviews are timely. Sector guidance is updated regularly, with opportunity for all stakeholders to participate.

GO DO is a 'nationally consistent ethical standard', determined in accordance with section 16 of the New Zealand Public Health and Disability Act 2000. For background, see *Review of the Current Processes for Ethical Review of Health and Disability Research in New Zealand* (NEAC 2003), available at www.neac.health.govt.nz

Appendix B: Terms of Reference for the National Ethics Advisory Committee

The role of the committee

The National Advisory Committee on Health and Disability Support Services Ethics (the National Ethics Advisory Committee) is a ministerial advisory committee established under section 16 of the New Zealand Public Health and Disability Act 2000 (the Act). The National Ethics Advisory Committee is established by and accountable to the Minister of Health.

The National Ethics Advisory Committee's statutory functions are to:

- provide advice to the Minister of Health on ethical issues of national significance in respect of any health and disability matters (including research and health services)
- determine nationally consistent ethical standards across the health and disability sector and provide scrutiny for national health research and health services.

As part of its functions the National Ethics Advisory Committee is also required to:

- consult with any members of the public, persons involved in the funding or provision of services and other persons that the committee considers appropriate before providing advice on an issue (section 16(4) refers)

- at least annually, deliver to the Minister of Health a report setting out its activities and summarising its advice on the matters referred to it under section 16 of the Act by the Minister of Health
- provide timely and sound advice to the Minister of Health on the membership and operation of its Sub-Committee on Appeals, including advice on those member categories that cannot be filled from the National Ethics Advisory Committee's membership, and will therefore require a wider nominations process. The National Ethics Advisory Committee may make nominations as part of this wider process.

In undertaking its functions, the National Ethics Advisory Committee is expected to:

- provide advice on priority issues of national significance as requested by the Minister of Health
- provide advice to the Minister of Health regarding ethical issues concerning emerging areas of health research and innovative practice. The advice is to include the National Ethics Advisory Committee's rationale for its advice and any relevant evidence and/or documentation
- provide advice to the Minister of Health regarding aspects of ethical review in New Zealand, including the setting of principles and guidelines in relation to each of the different types of health research and innovative practice. The advice is to include the National Ethics Advisory Committee's rationale for its advice and any relevant evidence and/or documentation

- develop and promote national ethical guidelines for health research and health and disability support services (the guidelines should address how to conduct different types of health research (including ethical issues relating to Māori health research) and innovative practice in an ethical manner and should establish parameters for, and provide guidance on, the ethical review of such types of health research and health and disability support services)
- monitor and review the operation of the health and disability ethics committees for the purposes of providing direction, guidance and leadership to ensure the ongoing quality and consistency of ethical review in the health and disability sector
- undertake its tasks in a manner consistent with the principles of the Treaty of Waitangi
- develop guidelines on conducting observational studies in an ethical manner and establish parameters for the ethical review of observational studies (including guidance regarding weighing up the harms and benefits of this type of research).

Composition of the committee

The National Ethics Advisory Committee shall consist of not more than 12 members appointed by the Minister of Health (the Minister). The National Ethics Advisory Committee's membership shall include:

- two health professionals (one of whom must be a registered medical practitioner)
- two health researchers (one of whom should have knowledge and expertise of qualitative research and one of whom should have knowledge and expertise of quantitative research)

- one epidemiologist
- three other members (must not be a health professional or health researcher. One of whom must be a lawyer and one who must be an ethicist. Includes persons with a knowledge and understanding of the ethics of health research and the provision of health care, and academic staff)
- three community/consumer representatives (must not be health professionals, health researchers or professional members)
- one member nominated by the Health Research Council of New Zealand.

At any time, the National Ethics Advisory Committee shall have at least two Māori members, one of whom shall be a person with Māori research/ethics background.

The Director-General of Health will appoint an advisor to the National Ethics Advisory Committee who will be responsible for providing advice regarding government policy and the mechanics of government.

Terms and conditions of appointment

Members of the National Ethics Advisory Committee are appointed by the Minister of Health for a term of office of up to three years. The terms of office of members of the National Ethics Advisory Committee will be staggered to ensure continuity of membership. No member may hold office for more than six consecutive years unless an additional period of up to 12 months is confirmed to allow for continuity of projects. Unless a person sooner vacates their office, every appointed member of the National Ethics Advisory Committee shall continue in office until their successor comes into office. Any member of the National Ethics Advisory Committee may at any time resign as a member by advising the Minister of Health in writing.

Any member of the National Ethics Advisory Committee may at any time be removed from office by the Minister of Health for inability to perform the functions of office, bankruptcy, neglect of duty or misconduct, proved to the satisfaction of the Minister.

The Minister may from time to time alter or reconstitute the National Ethics Advisory Committee, or discharge any member of the National Ethics Advisory Committee or appoint new members to the National Ethics Advisory Committee for the purpose of decreasing or increasing the membership or filling any vacancies.

Chairperson

The Minister will from time to time appoint a member of the National Ethics Advisory Committee to be its Chairperson. The Chairperson will preside at every meeting of the National Ethics Advisory Committee at which they are present. The Chairperson may from time to time appoint a new member as Deputy-Chairperson.

Duties and responsibilities of a member

This section sets out the Minister of Health's expectations regarding the duties and responsibilities of a person appointed as a member of the National Ethics Advisory Committee. This is intended to aid members of the National Ethics Advisory Committee by providing them with a common set of principles for appropriate conduct and behaviour and serves to protect the National Ethics Advisory Committee and its members.

As an independent statutory body, the National Ethics Advisory Committee has an obligation to conduct its activities in an open and ethical manner. The National Ethics Advisory Committee has a duty to operate in an effective manner within the parameters of its functions as set out in its Terms of Reference.

General

1. National Ethics Advisory Committee members should have a commitment to work for the greater good of the committee.

2. There is an expectation that members will make every effort to attend all the National Ethics Advisory Committee meetings and devote sufficient time to become familiar with the affairs of the committee and the wider environment within which it operates.

3. Members have a duty to act responsibly with regard to the effective and efficient administration of the National Ethics Advisory Committee and the use of committee funds.

4. Members of the National Ethics Advisory Committee are not obliged to accept nomination to the Sub-Committee on Appeals.

Conflicts of interest

1. Members must perform their functions in good faith, honestly and impartially and avoid situations that might compromise their integrity or otherwise lead to conflicts of interest. Proper observation of these principles will protect the National Ethics Advisory Committee and its members and will ensure it retains public confidence.

2. Members attend meetings and undertake committee activities as independent persons responsible to the committee as a whole. Members are not appointed as representatives of professional organisations and groups. The National Ethics Advisory Committee should not, therefore, assume that a particular group's interests have been taken into account because a member is associated with a particular group.

3. When members believe they have a conflict of interest on a subject that will prevent them from reaching an impartial decision or undertaking an activity consistent with the committee's functions, they must declare that conflict of interest and withdraw themselves from the discussion and/or activity.

4. A member of the National Ethics Advisory Committee who has a proposal before the committee, or who has an involvement in a proposal, such as a supervisory role, shall not take part in the National Ethics Advisory Committee's assessment of that proposal. The member may be present to answer questions about a proposal but should be asked to leave the meeting while the remaining members consider the proposal. This will allow proposals to be considered in a free and frank manner.

Confidentiality

1. The public has a right to be informed about the issues being considered by the National Ethics Advisory Committee. The National Ethics Advisory Committee should have procedures in place regarding the release of information and processing requests for information.

2. Individual members must observe the following duties in relation to committee information. These provisions ensure that the National Ethics Advisory Committee as a whole maintains control over the appropriate release of information concerning applications or issues before it.

    - Meetings of the National Ethics Advisory Committee, including agenda material and draft minutes, are confidential. Members must ensure that the confidentiality of committee business is maintained.
    - Members are free to express their own views within the context of committee meetings, or the general business of the National Ethics Advisory Committee.
    - Members must publicly support a course of action decided by the National Ethics Advisory Committee. If unable to do so, members must not publicly comment on decisions.
    - At no time should members individually divulge details of committee matters or decisions of the National Ethics Advisory Committee to persons who are not committee members. Disclosure of committee business to anyone outside the committee must be on the decision of the committee, or, between meetings, at the discretion of the Chairperson of the National Ethics Advisory Committee. In choosing to release or withhold information, the committee must comply with the provisions of the Official Information Act 1982 and the Privacy Act 1993.

- Committee members must ensure that committee documents are kept secure to ensure that the confidentiality of committee work is maintained. Release of committee correspondence or papers can only be made with the approval of the committee.

Working arrangements

The National Ethics Advisory Committee will agree a work programme with the Minister of Health. The National Ethics Advisory Committee will be serviced by permanent staff, sufficient to meet the Committee's statutory requirements, who will be based in the Ministry of Health.

In carrying out its terms of reference, the National Ethics Advisory Committee must:

- provide the Minister of Health with advance notice of any media statements or reports to be published
- ensure its advice is published and widely available
- ensure that, in developing any advice, guidelines or its views in relation to an appeal, an appropriate balance exists between protecting the rights and wellbeing of patients and research participants and facilitating health research and innovative practice
- ensure that, where appropriate, any advice or guidelines contain clear guidance regarding the application of ethical principles that is appropriate to the type of health research or innovative practice being considered (due regard should be given to the different nature of qualitative and quantitative approaches to research)
- ensure that any advice, guidelines and views in relation to an appeal, comply with the laws of New Zealand
- ensure appropriate consultation has occurred in accordance with the requirements set out below.

Consultation

Where appropriate, the National Ethics Advisory Committee must make reasonable attempts to consult with:

- health and disability ethics committees
- the National Ethics Advisory Committee on Assisted Human Reproduction
- the Health Research Council Ethics Committee
- any other ethics committee established by the Minister of Health
- organisations known to the committee to represent affected patients or other groups of the community
- relevant whānau, hapū and iwi
- a reasonably representative sample of affected patients or members of the public or (if the National Ethics Advisory Committee thinks it more appropriate) a reasonably representative sample of people who would be entitled to consent on behalf of the affected patients or members of the public
- a reasonably representative sample of affected health researchers and/or affected health professionals
- relevant government bodies.

Performance measures

The National Ethics Advisory Committee will be effectively meeting its tasks when it provides relevant and timely advice to the Minister of Health based in research, analysis and consultation with appropriate groups and organisations.

The National Ethics Advisory Committee must:

- agree in advance to a work programme with the Minister of Health
- achieve its agreed work programme
- stay within its allocated budget.

Meetings of the National Ethics Advisory Committee

Meetings shall be held at such times and places as the National Ethics Advisory Committee or the Chairperson of the National Ethics Advisory Committee decides.

At any meeting, a quorum shall consist of six members. A quorum must include either the Chairperson or Deputy-Chairperson. An endeavour will be made to ensure reasonable representation of community/consumer members and members with specialist knowledge and experience.

Every question before any meeting shall generally be determined by consensus decision-making. Where a consensus cannot be reached a majority vote will apply. Where a decision cannot be reached through consensus and a majority vote is made, the Chairperson shall have the casting vote.

Subject to the provisions set out above, the National Ethics Advisory Committee may regulate its own procedures.

Reporting requirements

The National Ethics Advisory Committee is required to:

- keep minutes of all committee meetings which outline the issues discussed and include a clear record of any decisions or recommendations made
- prepare an annual report to the Minister of Health setting out its activities and comparing its performance to its agreed work programme and summarising any advice that it has given to the Minister of Health. This report must also include details of the appeals heard by the Sub-Committee on Appeals. The report is to include the National Ethics Advisory Committee's rationale for its advice and any relevant evidence and/or documentation. This report will be tabled by the Minister of Health in the House of Representatives pursuant to section 16(7) of the Act.

Servicing of the National Ethics Advisory Committee

The Ministry of Health will employ staff to service the National Ethics Advisory Committee out of the Committee's allocated budget allocated and consistent with the Memorandum of Understanding between the National Ethics Advisory Committee and the Ministry of Health.

Fees and allowances

Members of the National Ethics Advisory Committee are entitled to be paid fees for attendance at meetings. The level of attendance fees are set in accordance with the State Services Commission's framework for fees for members of statutory bodies. The Chairperson will receive $430 per day (plus half a day's preparation fee) and an allowance of two extra days per month to cover additional work undertaken by the Chairperson. The attendance fee for members is set at $320 per day (plus half a day's preparation fee). The Ministry of Health pays for actual and reasonable travel and accommodation expenses of the National Ethics Advisory Committee members.

Sub-Committee on Appeals

The National Ethics Advisory Committee will convene a Sub-Committee on Appeals (the SCA).

Whereas the main statutory function of the National Ethics Advisory Committee is to advise the Minister of Health on ethical issues of national significance regarding health and disability, the function of its SCA is to review particular proposals at appeal.

The SCA will be responsible for hearing appeals from decisions of the following health and disability ethics committees:

- Regional Ethics Committees (RECs) established under section 11 of the New Zealand Public Health and Disability Act 2000
- the Multi-region Ethics Committee (MEC) established under section 11 of the New Zealand Public Health and Disability Act 2000.

Authority of the SCA

An appeal may only be lodged with the SCA by the principal researcher identified in the application in question. The SCA may not hear any appeal that is lodged by any third party.

The SCA may only hear appeals in cases where a second opinion from the Health Research Council Ethics Committee has been sought (by either the original ethics committee or the researcher) and received, and the matter reconsidered by the original ethics committee. All appeals will be from the decision made by the original committee following the second opinion.

All appeals heard by the SCA will be by way of re-hearing, focusing on specific alleged errors of judgement or reasoning in the original decision.

In hearing an appeal, the SCA will have discretionary power to re-hear any part of the evidence that is relevant to these specific alleged errors of judgement or reasoning. The SCA will also have the power to receive further evidence and to call individuals involved in the reconsidered decision to give evidence in person.

In hearing an appeal, the SCA will be bound by the presumption that the original decision was correct. The SCA will affirm the decision being appealed against where:

i. the SCA is not satisfied that errors exist in the original decision

ii. the SCA is satisfied of the existence of such errors but considers the errors to be of insufficient importance to warrant reversing the original decision.

The SCA will reverse the original decision only where it is satisfied that the original decision contained errors of judgement of a sufficiently serious nature to warrant the reversal.

The SCA will in all cases either affirm or reverse the original decision.

Consequential amendments to the Operational Standard for Health and Disability Ethics Committees

These Terms of Reference have precedence over the Operational Standard for Health and Disability Ethics Committees on any point of conflict. Otherwise, the Operational Standard applies to the SCA.

Approvals

The SCA must be approved for all purposes required for the application in question.

Role of the SCA

The primary role of the SCA will be to hear appeals from the decisions of the health and disability ethics committees named above.

The SCA will act so as to safeguard the rights, health and wellbeing of consumers and research participants and, in particular, those persons with diminished autonomy. In order to do this, the SCA shall:

i. foster an awareness of ethical principles and practices in the health and disability sector and research community

ii. facilitate excellence in health research and innovative practice for the wellbeing of society

iii. collaborate with researchers to ensure the interests, rights, dignity, welfare, health and well-being of participants and consumers are protected

iv. give due consideration to community views

v. consistent with section 4 of the New Zealand Public Health and Disability Act 2000 and He Korowai Oranga, recognise and respect the principles of the Treaty of Waitangi

vi. operate in accordance with the *Operational Standard for Health and Disability Ethics Committees*

vii. operate in accordance with any guidelines issued or approved by the Director-General of Health.

Composition and membership

Guiding principle

The primary guiding principle for appointing members to the SCA is to ensure the most appropriate expertise, skills, knowledge and perspectives to hear appeals from the decisions of the MEC and the RECs.

Minister to appoint members

Members of the SCA will be appointed by the Minister of Health.

Member numbers

The number of members of the SCA shall be at least twelve, including a lay chairperson.

Lay/non-lay membership

At least one half of the total membership shall be lay members. A lay member is a person who is not:

- currently, nor has recently been, a registered health practitioner (for example, a doctor, nurse, midwife, dentist or pharmacist)
- involved in conducting health or disability research or who is employed by a health research agency and who is in a sector of that agency which undertakes health research; or
- construed by virtue of employment, profession or relationship to have a potential conflict or professional bias in a majority of protocols reviewed.

At any time, the SCA shall have one member who is a lawyer and one member with expertise in ethics (for example, a teacher of ethics, philosopher, theologian, or community-recognised person such as a Māori elder). In addition, it is important that the SCA's composition also includes individuals possessing a knowledge and understanding of consumer and community issues and perspectives.

The SCA's non-lay membership shall include two health researchers, two health practitioners, one biostatistician and one pharmacist or pharmacologist.

NEAC/non-NEAC membership

Members will in the first instance be drawn from the membership of NEAC. All members of the National Ethics Advisory Committee, with the exception of the Chair and any NEAC member who is also a member of a Regional Ethics Committee, the Multi-region Ethics Committee or the Health Research Council Ethics Committee, shall be eligible for appointment to the SCA.

Where further members are required to meet the requirements for approval under these terms of reference and the relevant legislation, these further members will be drawn from outside of NEAC.

Whole committee requirements

At any time, consistent with the requirements of the New Zealand Public Health and Disability Act's requirements for District Health Boards and with the requirements of the Operational Standard, the SCA shall have at least two Māori members, who should have an awareness of te reo Māori and an understanding of tikanga Māori. All members of the SCA are expected to have knowledge of the principles of partnership, participation and protection and their application to ethical review.

The SCA's membership should include expertise in the main kinds of health and disability research (eg, interventional, observational, kaupapa Māori and social research), and in both quantitative and qualitative research methods.

Members should possess an attitude that is accepting of the values of other professions and community perspectives, and it is important that the SCA be comprised of people from a range of backgrounds and ethnicities.

Terms and conditions of appointment

Members of the SCA who are also members of NEAC will be appointed to both committees by the Minister of Health for a term of office of up to three years. Other members will also be appointed to the SCA for a term of office of up to three years. The terms of office of members of the SCA will be staggered to ensure continuity of membership. No member may hold office for more than six consecutive years.

Unless a person sooner vacates their office, every appointed member of the SCA shall continue in office until their successor comes into office. Any member of the SCA may at any time resign as a member by advising the Minister of Health in writing.

A member of both NEAC and the SCA may resign from the SCA and remain on NEAC. A member of both NEAC and the SCA who resigns from NEAC shall require specific Ministerial approval to continue serving on the SCA.

Any member of the SCA may at any time be removed from office by the Minister of Health for inability to perform the functions of office, neglect of duty, bankruptcy or misconduct, proved to the satisfaction of the Minister.

Chairperson

The Chairperson of the SCA shall also be a member of the National Ethics Advisory Committee.

The Chairperson of the SCA shall be chosen by the Minister of Health. The Chairperson will preside at every meeting of the SCA at which they are present. The Chairperson may from time to time appoint a member as Deputy Chairperson to act in the place of the Chair when required.

Duties and responsibilities of a member

This section sets out the duties and responsibilities generally expected of a person appointed as a member of the SCA. This is intended to aid SCA members by providing them with a common set of principles for appropriate conduct and behaviour.

General

SCA members should have a commitment to protecting the interests of human participants while promoting and facilitating excellence in research and innovative practice.

There is an expectation that SCA members will make every effort to attend all SCA meetings and devote sufficient time to become familiar with the affairs of the SCA and the wider environment within which it operates.

Members have a duty to act responsibly with regard to the effective and efficient administration of the SCA and the use of SCA funds.

Conflicts of interest

SCA members should perform their functions in good faith, honestly and impartially and avoid situations that might compromise their integrity or otherwise lead to conflicts of interest. Proper observation of these principles will protect the SCA and its members and will ensure it retains public confidence.

SCA members attend meetings and undertake SCA activities as independent persons responsible to the SCA as a whole. Members are not appointed as representatives of professional organisations or particular community bodies. The SCA should not, therefore, assume that a particular group's interests have been taken into account because a SCA member is associated with this group.

When SCA members believe they have a conflict of interest on a subject that will prevent them from reaching an impartial decision or from undertaking an activity consistent with the SCA's functions, they should declare that conflict of interest and withdraw themselves from the discussion and/or activity.

A member of the SCA who has any involvement in any proposal under appeal shall not take part in the SCA's assessment of that proposal. The member may be present to answer questions about a proposal but should take no part in the discussion surrounding the consideration of the proposal or any decision relating to the proposal. This will allow proposals to be considered in a free and frank manner. The SCA must exhibit transparency in avoiding or managing any real or perceived conflict of interest.

Confidentiality and information sharing

The SCA should assure all appellants that, subject to the Official Information Act 1982, the details of their appeals will be kept confidential.

It is desirable for the members of the SCA to have an opportunity to discuss issues arising from appeal with key contacts and support people prior to the consideration of proposals. This process should be encouraged. However, due to the need to protect any personal information and the commercial sensitivity of some applications, names, identifying details and written material should not be circulated or made known outside the SCA. The SCA will need to consider the Privacy Act 1993 and the Health Information Privacy Code 1994 in developing processes around information sharing.

Within the SCA, members with particular community expertise should be consulted and provide advice on the appropriate consultative process for all ethical issues concerning particular communities of interest.

Agendas and minutes, except for 'in committee' items, should be available to the public. Subject to the Official Information Act 1982, copies of proposals under appeal will not be available to individuals outside the SCA without the prior approval of the researcher.

Committee meetings

Meetings of the SCA shall be held whenever an appeal or other related business is before the committee. Meetings shall be called by the Chairperson of the SCA.

Meetings of the SCA shall be open to the public. However, the SCA may exclude non-members from being present while it considers a decision.

The minutes of all meetings shall be publicly available.

Appellants may attend meetings, in person or by teleconference, to be available to talk to their proposal and answer any questions the SCA may have. The SCA should advise appellants that they may be asked to leave the meeting while the SCA considers its decision on the appeal.

Subject to the provisions set out in this document, the SCA may regulate its own procedures.

Quorum

At any meeting, a quorum shall consist of at least six members or the minimum number constituting a majority. The quorum must include a reasonable representation of members with health professional, research, ethical and community/consumer expertise, knowledge and perspectives.

Decision-making process

Decisions

Where possible, decisions of the SCA shall be made by consensus. If consensus cannot be reached within a reasonable period of time, as defined by the Chair, a decision may be made by simple majority vote. In such cases, the Chair of the SCA shall hold a casting vote.

Members of the SCA should be free to participate fully in discussion and debate. In particular, the Chairperson should have skills in consensus decision-making and conflict resolution.

Issues of ethical review are often complex and can involve ethical dilemmas on which there is no consistent community view. Members of the SCA have a responsibility to identify underlying ethical principles.

In relation to appeals involving issues for Māori, it is important that Māori expertise be available to ensure that all issues are appropriately considered. Where it is not possible for Māori members to attend an SCA meeting or for those members' views to be sought and represented at the meeting, the matter should be deferred.

On occasion, individual members may wish to abstain from some or all of the decision-making process because of strong personal moral or religious reasons. Such abstentions shall not affect the appeal process.

Communication of decisions

All decisions of the SCA will be communicated to:

i. the principal investigator of the application in question
ii. the committee which made the original decision
iii. other RECs/MEC
iv. the National Ethics Advisory Committee
v. the Health Research Council Ethics Committee
vi. the Director-General of Health.

The reasoning behind the decision must be explained as clearly as possible.

Members will be expected to publicly support the decisions of the SCA.

Once the SCA has made and communicated its decision on the matter at appeal, the ethics committee that made the original decision will resume its full responsibilities in relation to the ethics committee application in question. The original committee will be bound by the decision of the SCA.

Expert advice and consultation

Where the Chairperson or a quorum of SCA members believes there is insufficient expertise on the SCA to assess an application or an issue, the committee should seek additional expert advice.

Training for members

Training should be provided for new members and chairpersons within six months of appointment to the SCA.

Records

Information held by the SCA is subject to the Privacy Act 1993, the Official Information Act 1982, and the Archives Act 1957.

Records may only be accessed with the permission of the Chairperson or the Director-General of Health. The secretariat of the SCA is responsible for maintaining and controlling access to the SCA's records.

Fees and allowances

Members of the SCA are entitled to be paid fees for attendance at meetings. The Chairperson's attendance fee is set at $430 per day (plus half a day's preparation fee). The attendance fee for members is set at $320 per day (plus half a day's preparation fee). The level of attendance fees are set in accordance with the State Services Commission's framework for fees for members of statutory bodies. The Ministry of Health pays actual and reasonable travel and accommodation expenses of the SCA members.

Servicing and administration of the SCA

The SCA will use the administrative resources of the National Ethics Advisory Committee.

The contact address for the SCA will be:

Sub-Committee on Appeals
National Ethics Advisory Committee
PO Box 5013
WELLINGTON

Email: appeals_neac@moh.govt.nz