[A discussion with a Commission staff member] on the application of competition policy and the breaking of inappropriate professional monopolies related to health care has suggested to me that I ought to send your inquiry the attached example of how institutional ethics committees are problematic in this regard.

It is a submission I previously made to the Executive Director of the Australian Law Reform Commission (ALRC) commenting on the Discussion Paper on the Protection of Human Genetic Information (ALRC/NHMRC, 2002); particularly the ethics chapter.

For a more personal example of how current ethics committees are problematic, a colleague of mine who leads a team supposedly researching the needs of juvenile offenders has been faced with meeting the requirements of four separate organisational ethics committees. Nevertheless, she also enters an arena where the relevant juveniles and those who directly care for them appear unwilling to talk to her, presumably for health, industrial or other reasons of their own. Neither the corrective officers nor their charges are represented on the ethics committees through which she has had to negotiate her project.

I have suggested many times that the best way to approach ethics in situations where researchers are merely wanting to talk to people would be for them to go ahead, wearing big badges or giving out cards which say 'If you don't want to talk to me, tell me to go away. If I don't go, ring this number to complain.' Obviously, none of my colleagues take me seriously. What is the expenditure of large amounts of public money on stupid systems, compared to their potentially injured dignity? As a result of current ethics committee requirements everybody may drown in forms, particularly the least healthy in our community.

Thank you for consideration of this submission related to ethics and monopoly control in health.

Yours truly

Carol O'Donnell

ATTACHMENT

ETHICS AND THE NATIONAL HEALTH AND MEDICAL RESEARCH COUNCIL (NHMRC): THE DIVIDED SELF?

A submission to the Executive Director of the Australian Law Reform Commission (ALRC) commenting on the Discussion Paper on the Protection of Human Genetic Information (ALRC/NHMRC, 2002) and related matters.

Carol O'Donnell

October 2002

1. PURPOSES AND GENERAL OVERVIEW OF SUBMISSION

This submission has the following purposes:

1. **To demonstrate inconsistencies in two influential approaches to ethics in health information and research in Australia**

2. **To suggest a national framework for ethical regulation which appears consistent with current positions of :**
   - **the Australian Law Reform Commission (ALRC)**
   - **the National Health and Medical Research Council (NHMRC)**
   - **the Council of Australian Governments**
   - **major Australian industry and welfare groups**
   - **related international and national standards**

   (It is argued that researchers and other relevant human service workers should be provided with a national, legislated, duty of care, and with a related duty to seek the truth and to inform)

3. **To argue that the Boyer Model of Scholarship should be adopted by the NHMRC and relevant areas of government to assist research prioritisation and funding. (In this context attention is also drawn to potential benefits of the Sydney University definition of commercialisation for interactions with Australia's major trading partners).**

(1) Comparing views of ethics held within the NHMRC

In particular, the submission seeks to compare two recent and apparently contradictory views on ethics and research which have been developed by the NHMRC. These are contained in:

1. the Discussion Paper on the Protection of Human Genetic Information which was produced by the ALRC and the NHMRC in 2002, and

2. the National Statement on Ethical Conduct in Research Involving Humans which was produced by the NHMRC in 1999.

The 2002 discussion paper addresses the comparatively narrow area of ethics and genetic information and research, rather than the total field of health related information and research. I will demonstrate later how the paper on genetic information helps to show that the broader NHMRC (1999) statement on ethics is highly problematic.

However, in spite of its apparent shortcomings, the NHMRC (1999) statement establishes the standard for research conducted in all NHMRC funded organizations and provides guidance to their Human Research Ethics Committees. I will argue that this is a major problem for the taxpayer and the broader community.

(2) Recommending on ethical regulation, duty of care, and duty to inform

The Discussion Paper on the Protection of Human Genetic Information states that to date, submissions to the ALRC/NHMRC inquiry:

> 'have not argued for the establishment of any fixed set of moral or legal standards to regulate the use of genetic information, but have emphasised the need to cultivate a robust and inclusive culture of ethical discussion and debate' (2002, p. 305).

This submission, however, argues the case for a national, general, duty of care regulatory approach consistent with key requirements of state occupational health and safety (OHS) acts and related rehabilitation requirements. In the interests of simplicity, transparency, equity and efficiency a consistent approach should be taken to the duty of care required of employers and practitioners towards workers, consumers and the community, unless another course of action can be shown to be in the public interest.

As economists often point out, perfect operation of the market depends upon having perfect competition. As they point out much more rarely, perfect competition in turn depends upon having perfect information. On the historical evidence, continuously improving information is integral to the march of science, and also appears necessary as a means of eventually achieving perfection in management, democracy and justice.

These principles logically lead to the recommendation that a national duty of care regulatory approach should normally be accompanied by a related duty to seek the apparent truth and to inform widely, unless another course of action can be shown to be in the public and individual interest. The coordinated national approach to information, research and education which is necessary for such an evidence based approach to global and regional development will be discussed later in this context.

(3) Definitions of research and the Boyer model of scholarship

The Statement on Ethical Conduct in Research Involving Humans NHMRC (1999) says there are many definitions of research and that it is difficult to find an agreed definition. It leaves the problem unresolved.

On the other hand, in 1997 the report of the Health and Medical Research Strategic Review stated that Australia should develop a focus on the prioritized creation and assessments of interventions and policy. Adopting definitions from the World Health Organisation (WHO) it stated the national research effort should take three forms. Fundamental research should generate knowledge about problems of scientific significance. Strategic research should generate knowledge about specific health needs and problems. Research for development and evaluation should create and assess products, interventions and instruments of policy that seek to improve on existing options.

This seems to be consistent with the Boyer approach to scholarship (1990) which appears to have growing support in Australia (Senate Employment, Workplace Relations, Small Business and Education References Committee, 2001, p.211), and which seeks to integrate teaching and research activities. This model distinguishes between four forms of scholarship. Discovery creates new knowledge. Integration puts it in an intellectual context. Application applies it in useful ways for individuals, industry and institutions. Teaching facilitates student learning and developing scholars in all these areas.

2. ETHICS IN THE DISCUSSION ABOUT HUMAN GENETIC INFORMATION

The Discussion Paper on the Protection of Human Genetic Information (ALRC/NHMRC 2002, pp 289-305) claims that in recent public debates relating to the regulation of genetic research, 'ethics' has sometimes figured as the adversary of science. It has been argued, for example, that an 'inevitable tension' exists between the 'scientific community' who want 'unfettered opportunities for research', and the 'moral and ethics community' which seek guidelines and restrictions.

The discussion paper rightly points out that ethics need not be defined in opposition to activities like medical research. It may rather be seen as an integral aspect of such activities, especially as they relate to the interests of all members of society, which includes scientists and ethicists as well as a wide range of other professional and social groups. The discussion paper goes on to argue that from the broader vantage point, the aim is not primarily to 'balance' ethical commitments against scientific or medical interests, but to ensure that scientific and medical interests are pursued in ethical ways, in the interests of the whole community. Since scientists and ethicists who work in democracies normally depend substantially on the public purse for their sustenance, this ALRC/NHMRC position seems surely to be reasonable in any man's language.

The paper approvingly quotes a remark by Saunders and Komesaroff that:

> In a given situation, there is often no unique single, valid ethical decision or action. What makes a decision ethical is therefore not its substantive content, but the process that generated it – namely, the quality of the dialogue and reflection in which the protagonists engaged.

The only fault I find with this observation is that the writers apparently see only protagonists in the intellectual arena. The word 'protagonists' powerfully suggests an arena entered by two warring sides. It suggests the aggressive, side-blinded and self-seeking performance of the adversarial 'justice' tradition, which Australia has inherited from British feudal times. The role of adversarial lawyers is to secretively and selectively gather and use evidence in the manner most consistent with maximising the interests of their respective clients. They are gatekeepers of all evidence admitted for presentation. The treatment of the case may be constrained by the highly detailed and specific requirements of a particular law and related legal tradition. There is little or no case outcome evaluation.

This can be contrasted with the historically later scientific approach to the consideration of evidence in order to find the apparent truth. The scientific approach requires a broad and informed view to be taken to the resolution of any apparent problem, in order to dispassionately consider the information produced by a multiplicity of communities and individuals who seek to present their evidence and views. As Braithwaite (2002) points out, the deepest psychopolitical reality of the choice between peace and war is whether we should give the enemy what we believe he deserves, or whether we should look for solutions to problems. The former approach is adversarial, the latter is scientific.

Nobody understands the value of the word better than the lawyer. The term ‘protagonists’ unhelpfully represents a pre-scientific set of assumptions and an assumed mode of action and discourse which predates the development of modern capitalism, democracy, the ideal of the enabling state, and related international standards, such as those outlined in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. (For a further discussion of such issues see the recent writings of Braithwaite, Strang and others on the requirements of human rights, restorative justice and responsive regulation.)

As the ALRC/NHMRC discussion paper indicates, ethical inquiry is consistent with scientific inquiry, in that it is centrally concerned with the kind of procedures or discussions that allow all relevant sources of information and viewpoints on a disputed matter to be taken into account in coming to a decision. In its exploratory sense, ethics is a rational and impartial activity, concerned to inform and justify decisions and actions in a community context. However, this does not imply that an ethical judgement will be a conclusive one. On the contrary, ethical judgment, like scientific activity, is necessarily an ongoing activity, since our community life is continually developing, (along with our knowledge and our related conception of ‘truth’).

The ALRC/NHMRC view outlined above is also consistent with the practice of risk management, which is required in all Australian workplaces as a result of State OHS acts. Risk management is a logical and systematic method of identify and controlling risks associated with any activity in order to continuously improve its administration and outcomes. The process is outlined in the Australian Standard on risk management (AS/NZS 4360: 1999). It is consistent with international standards to promote good management such as the guidelines on quality management and environment management (ISO 9004.1 and ISO 14004). In 1999 Standards Australia met with Australian and New Zealand health industry stakeholders and also with senior representatives of the National Health Service in Britain in order to discuss implementation of this standard in their respective health systems.

The Discussion Paper on the Protection of Human Genetic Information also points out that an emphasis on reason does not imply that ethical procedures seek to exclude or devalue emotion. Rather, they should seek to understand and compassionately evaluate all views and information, however passionate or dispassionate, in the context of the broader social and environmental influences and conditions which produced them. The approach to human rights, restorative justice and responsive regulation which is outlined by Braithwaite, Strang and others (2000, 2002) is consistent with this position.

The discussion paper states that:

> 9.46 Many submissions emphasised the importance of education and debate in the area of genetics and favoured the view that ethical authority should be concentrated neither at the 'top' nor the 'bottom' of the hierarchy. Ethics should not be regarded as a matter solely for individual judgment; but nor should it be the preserve of an elite, whether political, scientific, professional or moral. Instead, ethical authority should be distributed across the system, encouraging an open minded and responsible attitude on the part of all decision makers.

This view is consistent with the requirements of democracy and cost-containment. It is also consistent with quality management and risk management, especially as ideally practiced through a pathways of care approach in the Australian health care system. Pathways of care are essential to the development of an increasingly evidence based, or scientific approach to service provision. A multi-disciplinary team defines the expected care practice or 'treatment pathway' for a particular client group according to the best available evidence, in order to achieve identified objectives. Treatment of the individual client may vary from the pathway in a way made necessary by their specific situation. The variation from normally expected practice is recorded and explained. Analysis of all case outcomes should lead to development of better future practice (Johnson, 1997).

Socially approved decision makers are not the only people who are unable to escape responsibility for their actions, as the Nuremberg trials established. As Sartre also pointed out – we are condemned to be free and cannot escape responsibility for our personal action or inaction. The ethical obligation of those who disagree with decision makers should normally be to speak out on why a generally approved decision seems wrong to them.

3. VERY LITTLE ETHICAL FIGHT IN THE FAMILY: NOBODY HURT

Prior to the provision of the ALRC/NHMRC (2002) Discussion Paper on the Protection of Human Genetic Information, the NHMRC (1999) produced its National Statement on Ethical Conduct in Research Involving Humans. This statement guides all institutions or organizations that receive NHMRC funding or which have established human research ethics committees. Its discussion of basic ethical principles is supposedly based on the Belmont Report of Ethical Principles and Guidelines for the Protection of Human Subjects of Research, produced by the U.S. National Commission for the Protection of Human Subjects of Biomedical and Behavioural Research in 1978.

The guiding ethical principles described in this document (NHMRC 1999) appear to be largely consistent with the school of principalist or jurisprudential ethics, as it is described in the Discussion Paper on the Protection of Human Genetic Information. The latter paper states that this field of ethics is characterised by:

> an assumption that scientific progress is essential for the good of humanity, coupled with a concern to protect individual and group rights that may be endangered in the course of scientific research. It seeks to establish principles that must be respected in carrying out this work, building upon traditional principles of medical practice such as those set out in the 'Georgetown mantra' which requires respect for **autonomy, beneficence, non-maleficence, and justice** (ALRC/NHMRC 2002, p. 294).

It will be shown later that little mention of the public interest is contained in this ethical discussion, at least in its NHMRC (1999) guise. Concentration on the principal relationship between the researcher and the researched appears to be the conceptual framework for decision making on offer. The interests of all those outside this relationship appear to be ignored.

As is normally the way, and in spite of their interest in ethics, those who wrote the discussion on the protection of human genetics do not centrally confront the apparently major differences in their own broad ethical position and that of their narrower brethren, who wrote the NHMRC National Statement on Ethical Conduct in Research Involving Humans.

The conclusion in the ALRC/NHMRC document is that the 'Georgetown mantra' principles offer guidance but do not prescribe the outcomes of decision making. It further notes that to date, submissions to the inquiry have not argued for the establishment of any fixed set of moral or legal standards….but have emphasised the need to cultivate a robust and inclusive culture of ethical discussion and debate (2002, p. 303).

With the normal, enigmatic, professional aplomb the ALRC/NHMRC 2002 report concludes that:

> A balanced response to the range of ethical opinion expressed would also retain a central role for the established principalist conception of ethics. That role may be twofold – to define the position of important professional stakeholders and to provide a starting place from which to develop a more inclusive and mutually respectful approach to ethical discussion and decision-making (p. 305).

Nobody knows the value of the word better than the lawyer. Other interested stakeholders might again note that the use of the word 'mutually' suggests only two voices are engaged in ethical discussion or decision-making. Neither do the writers appear to mention in this context, the position of important community stakeholders, who are probably also relevant service consumers and taxpayers. Presumably this will continue to leave the field largely free to the same old adversarial crowd, assisted, perhaps, by a few new spear holders. Whether mutually enriching or not, such spectacles are often held at the public expense.

4. ETHICS IN THE NHMRC NATIONAL STATEMENT ON ETHICAL CONDUCT IN RESEARCH

The integrity of researchers:

The National Statement on Ethical Conduct in Research Involving Humans sets out some basic ethical principles, beginning with the **integrity** of researchers. This supposedly includes the commitment to research questions that are designed to contribute to knowledge, a commitment to the pursuit and protection of truth, a commitment to reliance on research methods appropriate to the discipline, and honesty (NHMRC 1999, p. 3).

It is difficult to see how a commitment to reliance on research methods appropriate to the discipline is linked in any way to honesty or to the pursuit and protection of truth. Disciplinary boundary riding has more often than not been the hallmark of the mediocre mind and the self-interested performer. Major intellectual progress has often, if not necessarily always, been made by those who transgress the normally accepted conceptual boundaries erected for them by their supposed peers or betters.

The professionally protective values enshrined in first place in the NHMRC statement on the integrity of researchers appear home grown, as a result of the Joint NHMRC/AVCC statement and guidelines on research practice (1997). The supposed primary commitment by U.S. researchers to **autonomy** (ALRC/NHMRC 2002 p.294) is not mentioned in this earlier NHMRC discussion of ethics.

According to the NHMRC (1999 p. 4) the Belmont report: Ethical principles and guidelines for the protection of human subjects of research, which was produced by the U.S. National Commission for the Protection of Human Subjects of Biomedical and Behavioural Research in 1978, outlines **three** major ethical principles, which also guide the NHMRC. These are **respect for persons, beneficence and justice**.

Respect for persons:

Respect for persons, according to the NHMRC, essentially entails the view that individuals should be treated as autonomous agents and that persons with diminished authority are entitled to protection. There is no mention here of whether those ‘with diminished authority’ are also entitled to empowerment, as is implied in World Health Organisation (WHO) agreements such as the Ninth General Program of Work of the WHO for the Period 1996-2000. This program had the primary goal of increasing the span of healthy life for all people in such a way that the health disparities between social groups are reduced internationally and within countries.

The NHMRC (1995) stated that the attainment of population health should be guided by four basic principles which encompass a focus on prevention, an understanding of the causes and determinants of illness, evidence based practice and community participation in decisions which affect health. How does the NHMRC concept of ‘respect for persons’ relate to this position, or to earlier WHO agreements which Australia has signed?

For example, in 1978, WHO members agreed that health is a fundamental human right and that the highest possible level of health is a most important world wide social goal. The Ottawa Charter for health promotion was signed in 1986 and stated that the necessary supports for health include peace, shelter, food, income, a sustainable economic system, sustainable resources, social justice and equity. The Charter called for the development of public policy and the reorientation of health services, as well as community action and education to support health goals. In 1992 the UN Declaration on Environment and Development was also signed by Australia. Its first principle put human well-being at the centre of development. The 1997 WHO meeting had as its theme the development of health promotion through cooperation between government and the private sector (Plymat 1998).

The NHMRC argues that if respect for persons is equivalent to treating others as autonomous agents, then we cannot show respect for those whose authority we recognise as diminished. In such cases, respect apparently entails:

> respect for the inherent dignity and the rights of the person. It is, at the same time, a commitment not to use a person only as a means to an end (1999, p. 4).

This is obviously an important statement from the perspective of the NHMRC, but I have absolutely no idea what it means. Does abhorrence of ‘using a person only as a means to an end’ suggest that aimless scientific activity is desirable? Does it suggest that maximising self-interest may be unethical behaviour? Or are they perhaps Right to Lifers, with all that this entails?

The NHMRC concept of dignity does not clearly or centrally address the role of client participation, informed consent or the public interest, in the relationship between the researcher, the researched and the wider community. In addition, there is no indication of how the NHMRC’s ethics and research goals relate to implementation of the broader national or international agreements on health and sustainable development which were outlined earlier.

Beneficence:

The NHMRC states that beneficence is the obligations (sic) to maximise possible benefits and minimise possible harms. The document is unclear about the range of stakeholders who possess such obligations, but states that:

> Researchers exercise beneficence in assessing the risks of harm and potential benefits to participants, in being sensitive to the rights and interests of people

> involved in their research and in reflecting on the social and cultural implications of their work (1999, p. 4).

The idea that exercising care is an example of **beneficence** rather than an expectation of service provision is an extraordinary and chilling position for doctors to take. In comparison, state OHS acts provide all Australian employers and workers with a legislated **duty** of care. Employers must provide a safe place of work and workers must work safely. Employers are required to identify and control risks in consultation with workers who are provided with information and training.

A wide range of industry codes of practice supports the general duty of care contained in OHS legislation. A different approach to work from that outlined in the code of practice may be used at the workplace, as long as it can be demonstrated that this is just as safe or safer than implementation of the code. (The use of codes of practice has similarities with the use of pathways of care in the health sector.)

National health goals and a related planning process were first established in Australia in 1986 and are still continuing. A key social justice goal established at that time was to foster participation of communities and individuals in decision-making at all levels of health service planning and delivery (Commonwealth Dept. of Human Services and Health, 1994). How does this goal of client inclusion and involvement relate to the NHMRC's view of beneficence in relation to research?

Justice:

According to the NHMRC, the principle of justice 'addresses the resolution of the question of who ought to receive the benefits of research and bear its burdens'. It is stated that in contemporary times researchers and their organizations

> 'should recognize the potential for injustice where some groups are regularly selected as research subjects because of convenience and without regard to the frequency of research with those populations or to whom the benefits of the research flow' (2002, p. 4).

This seems to be a narrowly commercial view of the concept of justice. In addition, working constantly with the same group of research subjects is likely to be bad science as well as unjust, since these subjects may become increasingly different from their peers in the rest of the community as a result of their increasingly intimate relationships with the researchers.

The NHMRC further states that 'questions of justice can also arise in relation to the use of public funds for research', but no clarification is provided in regard to how such public provision might most appropriately relate to the relationship between the researcher and the researched. The ensuing discussion of cultural relativism provides no real guidance in regard to this question. It also ignores relevant international and national agreements and the related potential of quality/risk management processes for achieving scientific progress through the increasing development of evidence based practice.

The NHMRC states that:

> ‘ethical inadequacies in a research project are as significant as scientific inadequacies’

Can these concepts be weighed and compared in such a manner? The NHMRC argues that projects without scientific merit are wasteful of resources and subject participants to extra risks, (or perhaps benefits?). However, it does not point out that projects without ethical merit are also wasteful of scientific resources. This seems the case, for example, in regard to the NHMRC’s own report. An example from a larger canvas is that the Cold War encouraged major international expenditure on researching weapons of mass destruction, including biological warfare, rather than research on health problems and environment development.

This is not a trivial matter, as the absence of discussion on how unethical research may waste scientific resources favours the status quo, which involves the major provision of public funding to support research primarily driven by traditional professional and commercial interests. This contrasts with a planned and applied approach to the expenditure of research funds, which is designed primarily to serve national and internationally agreed goals for health and environment development.

In summary, it is hard to take the current NHMRC Statement on Ethical Conduct in Research Involving Human as a serious document. It is shocking to think that researchers and ethics committees are currently applying its requirements across the nation. In this context, the treatment of ethics which is found in the discussion paper on the protection of human genetic information should be considered a major advance.

5. NATIONAL GOALS, DUTY OF CARE AND DUTY TO INFORM

National goals:

In the 1990s Australian governments made commitments to wholesale legislative review to establish national minimum standards, and competition policy. The Council of Australian Governments (COAG, 1991) agreed to mutual recognition of state and territory laws, except where national standards would be developed, including for health and environment protection. The Competition Policy Reform Act (1995) stated that private sector and government service providers should compete on a level playing field, unless another course of action could be shown to be in the public interest. Through this process government has increasingly put the public interest at the centre of national analysis and development, and called for a supporting administrative approach which is transparent and evidence based.

The COAG adopted four principles to guide its decision-making. The structural efficiency principle calls for the elimination of inefficient Commonwealth/State divisions. The subsidiarity principle requires regulation and management responsibility to be devolved to the maximum extent possible and consistent with the national interest. The accountability principle requires that intergovernmental arrangements should promote transparency to the electorate. The precautionary principle is an ethical 'principal of caution' which is also addressed in the discussion paper on the protection of human genetic information

This government position is consistent in important ways with the integrated approach to ethics, science and the management of related service provision which is contained in the Discussion Paper on the Protection of Human Genetic Information described earlier. COAG adoption of principles related to caution and transparency particularly appear to set parameters for the expectation that scientific interests must be pursued in ethical ways, which are also in the interests of the whole community.

Duty of care:

In this context, this submission argues the case for a national, general, duty of care regulatory approach consistent with key requirements of state OHS acts and related rehabilitation requirements.

In the interests of simplicity, transparency, equity and efficiency a consistent approach should be taken to the duty of care required of employers and practitioners towards workers, consumers and the community, unless another course of action can be shown to be in the public interest.

Currently, the lack of a legislated, general definition of the duty of care required of health professionals and related groups such as researchers, exacerbates the problem identified by the recent Inquiry into Compensation and Professional Indemnity in Health Care (1995). The inquiry stated is that there is currently no systematic approach to the collection of data about health related injuries, and no linkages between the compensation system, quality assurance processes, and programs or practices aimed at their prevention.

Other recent reports (Australian Health Ministers Advisory Council 1996; National Expert Advisory Group on Safety and Quality in Australian Health Care 1999) have pointed out that from a public interest perspective, publicly funded expenditure by professional cultures may often appear unjustified. The latter report recommended that health ministers lead the way in promoting a safety and quality enhancement ethos throughout the whole health system. It also recommended education and training for quality improvement of a kind which appears to be consistent with the data driven and consultative practice required in health promotion, as well as with risk management requirements of State OHS acts.

Duty to inform:

In the current context, academic freedom may easily be construed as freedom to act upon one's own interests at the public expense, rather than as the duty to freely and fearlessly research and tell the apparent truth about matters of public importance. A legislated duty of care should therefore be accompanied by the legislated duty to inform. This would:

- Protect researchers from pressures to be silent or bend their findings to suit political, commercial or related sectional forces

- Facilitate comparison of research outcomes and promote general awareness of the relationship between perfect information, perfect competition, perfect democracy and perfect justice

- Promote recognition of the need for public funding to be used primarily in the public interest

6. RESEARCH AND THE BOYER MODEL OF SCHOLARSHIP

The Review of Higher Education Financing and Policy (1998, p.23) noted that universities will need to address the ramifications of a view of the world based on collegial decision-making. The Senate Employment, Workplace Relations, Small Business and Education References Committee (2001) report on higher education discussed universities' contribution to regional development and exports. It addressed the limitations imposed on development by current university governance structures, and the need to identify alternate funding models that would better serve the needs of regional and disadvantaged students. Under utilization of opportunities for continuing education have also been identified (Gallagher, 2000).

There appears to be growing support in Australia for the Boyer model of scholarship (1990). This model distinguishes between four forms of scholarship. Discovery creates new knowledge. Integration puts it in an intellectual context. Application applies it in useful ways for individuals, industry and institutions. Teaching facilitates student learning and developing scholars in all these areas.

However, current systems for awarding taxpayer funds for university research do so primarily on a historical basis. They use non-competing professional peer review to select from submissions made by individuals or small groups, instead of an effectively planned and coordinated approach to meeting the greatest community need and the national interest. Employer, worker and government representatives appear to believe that the traditional research process is often not particularly useful, but is designed so that people with an academic specialty keep generating programs and publications in their areas of interest, rather than the total research pool being used primarily to meet public need (Industry Commission, 1995, p. 227).

The report of the Health and Medical Research Strategic Review (1997) stated that Australia should develop a focus on the prioritized creation and assessments of interventions and policy. Adopting definitions from the World Health Organisation, it stated the national research effort should take three forms. Fundamental research should generate knowledge about problems of scientific significance. Strategic research should generate knowledge about specific health needs and problems. Research for development and evaluation should create and assess products, interventions and instruments of policy that seek to improve on existing options. This appears to be consistent with the Boyer approach to scholarship. Nationally and regionally planned development programs targeted to improve community health and sustainable development should now be a growing priority.

7. COAG PRINCIPLES, HUMAN RIGHTS AND THE SYDNEY UNIVERSITY DEFINTION OF COMMERCIALISATION

It seems from the statement of COAG principles discussed earlier, that government is not prepared to address any community needs for transparency which might come into conflict with the protection of intellectual property or related commercial interests as they are currently pursued. For example, in spite of national competition principles, state freedom of information acts continue to apply only to the public sector.

This stance is particularly interesting in the light of the need to balance potentially contradictory requirements outlined in Article 27 of the Universal Declaration of Human Rights. This article deals with the potential tension between maximising the benefits which accrue to the individual or organisation as a result of protecting intellectual property on the one hand, and the pursuit of the community right to knowledge and protection on the other.

Article 27 states that:

1. Everyone has the right *freely* (my emphasis) to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

In this context a definition of commercialisation, which was provided by a representative of the Sydney University Business Liaison Office at the Sydney University College of Health Sciences Conference in 2002, is particularly interesting in terms of its emphasis on the pursuit of public interest outcomes. Commercialisation was defined as the process of transferring research outcomes to the community in a manner that:

- optimises the chances of their successful implementation
- encourages their use
- accelerates their introduction
- shares the benefits among the contributing parties

This definition also seemed to me to have potential for integrating traditional but contradictory market, collegiate and democratic government objectives in a more just, healthy and efficient way. This could also offer protection against some types of failure, which often appear to be the product of fluctuations in the normal business cycle. I offer the Sydney University definition of commercialisation for consideration as an appropriate path to follow in any organization which utilizes significant amounts of public funding, although I understand that it currently has no legislative or contractual backing.

Personally, I recommend that the broadest possible discussions be undertaken with the Chinese, Vietnamese and any potentially interested others in regard to all these matters. Discussions might have the primary aim of trying to maximise communication, education and research related coverage for Australian product, in order to achieve maximum economies of scale, and in order to meet the community and individual interest in education, health and environment development in an effectively planned and targeted fashion, guided by relevant national, regional and international agreements and reports.

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