

# REPORT ON TORRES STRAIT FISHERIES RESEARCH PROTOCOLS



2009

A guide for researchers

This protocols research report was commissioned by the Torres Strait Scientific Advisory Committee and produced by Professor N M Nakata and Ms V S Nakata

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Author: Nakata, N. M.

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# Report on Torres Strait Fisheries Research Protocols

## A GUIDE FOR RESEARCHERS

### PROJECT BRIEF | ONE

#### Introduction

At its 45th meeting in 2008, the Torres Strait Scientific Advisory Committee (TSSAC) set down for discussion the need for guiding protocols that researchers adopt when working in the Torres Strait (45.6.1). The Committee considered the current processes and procedures for fisheries research in the Torres Strait, and discussed approaches developed for other organisations. At the following meeting members agreed to commission a review of current approaches and the development of a single source web-based document that would provide guiding protocols for adoption by researchers when working in the Torres Strait. This report is the result of the commissioned work.

#### Background

The Torres Strait Scientific Advisory Committee (TSSAC) provides strategic advice to the Australian Fisheries Management Authority (AFMA) on research priorities in the Torres Strait Islands, sets the criteria for funding, and administers the funding arrangements through its Strategic Research Plan for Torres Strait Fisheries<sup>1</sup> and its Operational Plan<sup>2</sup>. This Committee works in close liaisons with the Torres Strait Protected Zone Joint Authority (PZJA) consultative groups, the Resource Assessment Groups (RAGs), and the Management Advisory Groups (MACs) to identify priority areas for fisheries research.

A key responsibility for TSSAC is to solicit, review and advise research providers working in the Torres Strait on commercial and traditional fishing research projects, especially those providers who seek and receive funding, wholly or partially, from the Australian Fisheries Management Authority's (AFMA) Research Fund.

The Committee recognizes also the benefits of involving traditional inhabitants of the Torres Strait Islands in the management and administration process and encourages Islanders and researchers to work in close partnership in the research field. Such collaboration is acknowledged as key to the role of AFMA in the efficient management of Commonwealth fishery resources researchers, to the role of PZJA in the management of the protected zones designated in the Torres Strait Treaty<sup>3</sup>, and to the role of Torres Strait Islanders in caring for a primary resource base that has sustained them for thousands of years.

As TSSAC actively solicits and promotes collaboration between Torres Strait Islanders and researchers, the Committee has been keen to pursue a set of protocols for researchers to help guide appropriate and

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<sup>1</sup> See 2009 Strategic Research Plan for Torres Strait Fisheries at [http://www.pzja.gov.au/resources/publications/Stratplan\\_TSF\\_Jul09.pdf](http://www.pzja.gov.au/resources/publications/Stratplan_TSF_Jul09.pdf)

<sup>2</sup> See 2009 Operational Plan for Torres Strait Fisheries at <http://www.pzja.gov.au/committees/working/tssac/2009%20TS%20Operational%20Plan%20FINAL.pdf>

<sup>3</sup> See Torres Strait Treaty at <http://www.austlii.edu.au/au/other/dfat/treaties/1985/4.html>

effective methods of engagement, consultation, and communication when conducting research in the field. For TSSAC, such protocols could be instructive of procedures for researchers:

- to correctly identify and contacting Indigenous peoples with rights and interests in the area where the research is proposed;
- to correctly identify and adhering to any process or protocols that Indigenous peoples have established for consultation;
- to establish a mutually agreeable negotiation process;
- to allow sufficient time for the consultation/negotiation process;
- to ensure there is mutual understanding and agreement about the proposed research;
- to agree on the way of conducting the research, including the timing of the project;
- to disclose to the Indigenous people how the results might be used, who will own the outcomes and who will benefit;
- where appropriate and possible, to provide Torres Strait Islanders with the opportunity to participate actively in all phases of research from inception to completion, with opportunities for relevant training;
- to identify what participation in the research will involve for the individual and the community;
- to provide information on how to disseminate the results of their projects to Traditional Inhabitants at the conclusion of the research, and
- to other cultural protocols as appropriate.<sup>4</sup>

### Restatement of the key outcome areas

A decision (46.5.2) at the 46<sup>th</sup> meeting of TSSAC was made to establish procedures through a plain-English, practical, single source, web-based document specific to Torres Strait fisheries research:

- As a down-loadable document which can be utilized by scientific researchers to help them plan, then guide their research projects in the Torres Strait; and
- By the TSSAC as a bench mark criteria when assessing research proposals against the guiding protocols.

### Terms of reference

The following Terms of Reference (47.5.4) was negotiated to help frame an approach to the development of procedures for a guiding protocol.

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<sup>4</sup> Listed in project brief

**1. To review relevant cultural protocols published previously including the following documents:**

- **Guidelines for ethical and effective communication for researchers working in Torres Straits (Jones and Barnett, 2006)**
- **Ethical Principles and Guidelines for Indigenous Research (Walker, Curtin Indigenous Research Centre)**
- **Cultural Protocols for Indigenous Reporting in the Media (ABC Indigenous Programmes Unit)**
- **Mina mir lo ailan mun (Department of Aboriginal and Torres Strait Islander Policy and Development)**
- **Value and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research (NHMRC)**

**2. Based on the information provided in these documents listed above, develop cultural protocols for researchers working in Torres Strait fisheries for adoption by the TSSAC.**

## Key principles

The successful consultant negotiated the following commitments for the commissioned work. The review and development of the guiding protocols will:

- maintain a high set of standards for ethical, and collaborative practice in Torres Strait fisheries research;
- serve both scientific researchers and Torres Strait Islanders with regard to each other's knowledge, methods, and cultural practices;
- emphasize effective communication with and involvement of Torres Strait Islanders;
- include processes to ensure protection of all participants and their interests in both the research process and outcomes; and
- demonstrate currency with emerging national and international best practice.

The following sections of this report detail the investigative process, findings, and development of a guide for researchers undertaking fisheries research in the Torres Strait region. Key documents, references, websites, and appendices have been included at the end of the report, and in preparation for their online presence on PZJA website when required.

## INVESTIGATION METHOD | TWO

Three phases were negotiated and scheduled for the review and development process.

### Phase 1

The first phase (Phase 1) was to undertake a literature search and review of related materials, nationally and internationally, and to develop an early set of principles for consults and site-visits in the Torres Strait (in Phase 2). The literature search was to focus on:

- existing research and ethics protocols for research relating to Indigenous peoples, internationally and nationally, including major research institutions and smaller centres;
- existing cultural and communication protocols for working with Indigenous communities and people, internationally and nationally, including government, NGO, other sectors, and community sets of protocols;
- existing protocols, guidelines and mechanisms for the protection of traditional knowledge and Indigenous knowledge, internationally and nationally, including UN mechanisms, governments, other sectors, and Indigenous knowledge and/or Indigenous research centres; and,
- other relevant international and national developments and discussions relating to all of the above.

The examination of literature focused on:

- standards and processes for ethical research practice that relate to Indigenous people, their lands and seas, and their knowledge;
- standards and processes for consultation, communication, and negotiation with Indigenous people with particular regard to aims and methods of projects, Indigenous participation in projects, and Indigenous contributions of Indigenous knowledge/methods to research projects;
- standards and processes for dissemination to Indigenous participants and communities of research outcomes, decisions about privacy and security issues, storage of research data, and onward use of research etc.; and,
- standards and processes for acknowledging and protecting Indigenous knowledge and contributions to research and negotiation of any benefit-sharing, intellectual or commercial interests.

The Phase 1 review was to achieve an informed basis for setting out some early principles for the protocols and to obtain some measure against commensurate national and international standards of practice.

### Phase 2

The second phase was to focus on consultations with community members across Torres Strait communities to:

- share findings from the literature search and review, including examples of protocols and practice from other places and contexts;
- elicit community feedback on the draft protocols principles;
- gather information on community needs and concerns; and,
- identify any specific additional principles for individual communities,.

The site visits were designed to gain (a) understandings of issues, needs and concerns about fisheries research in the Torres Strait region, (b) understandings of the value of fisheries research across the Torres Strait, and (c) understandings of approaches to how fisheries research could work in their best interest.

### Phase 3

The third phase was incorporated to enable input from scientific researchers, research students, and staff of agencies related to fisheries in the Torres Strait region. This was done as an anonymous online survey (see attached copy in Appendix ), and designed to gain viewpoints from those who have undertaken or have organized field work in the Torres Strait. The survey questions focused on:

- permissions, clearances and approvals for fieldwork;
- whether the processes worked for their projects;
- how to protect Intellectual property of participants in their research work;
- processes for ethical practices;
- returning research information and findings; and,
- what worked well and what didn't.

The survey was to achieve understandings from experiences with current or past projects, and to provide opportunities for input into how things can be improved.

The design of this approach and method for protocols-making has been to discern directions and approaches taken elsewhere as a basis for considering the usefulness of approaches for the specific needs of Australian fisheries research and Torres Strait Islanders, or for determining the need for a different approach. The primary objective was to ensure that the development of protocols for the Torres Strait fisheries context proceeds from a basis that is informed by, and cognisant of, broader approaches and trends across the Indigenous sector, in both national and global contexts. A second and equally important objective was to ensure that the specificities of the Torres Strait fisheries context drive the development of local protocols in a way that ensures the adopted elements in the protocols meet the needs and concerns of all stakeholders, and are workable and transparent in practice for funding agencies, scientists, and Torres Strait Islanders in the Torres Strait region.



## REPORT OF THE FINDINGS | THREE

### Indigenous protocols and research guidelines documents and literature

*Researchers are knowledge brokers, people who have the power to construct legitimating arguments for or against ideas, theories or practices. They are collectors of information and producers of meaning, which can be used for, or against Indigenous interests.<sup>5</sup>*

#### The international context of Indigenous research protocols

As Jones & Barnett<sup>6</sup> have noted, there has been a proliferation of Indigenous protocols and guidelines in the last decade. The wide range of Indigenous protocols developed internationally and in Australia evidences broad acceptance of the need for them in a range of sectors and for a range of purposes.<sup>7</sup> Research is but one of these sectors. Any review and any proposed development of Indigenous research protocols and guidelines is situated within this broader field of Indigenous protocol-making, which is itself situated within a wider discourse and other fields of activity. The trend to protocols is supported by international covenants that support Indigenous rights<sup>8</sup> and a field of Indigenous Studies and related scholarship, as well as Indigenous activity on the ground. The trend to Indigenous protocols is also supported by a range of international activity and agreements much broader than Indigenous interests but increasingly inclusive of them or able to be interpreted and/or applied to uphold Indigenous interests. A full review of this wider field is beyond the brief of this protocols project, but nevertheless the wider literature and activity feeds the current discourse and trends around Indigenous protocols, including Indigenous research protocols and guidelines here in Australia. A synopsis of key strands is useful to place Indigenous protocol-making in context.

In relation to the Indigenous research sector, the wider literature includes deeper discussions around Indigenous knowledge, ‘decolonising’ knowledge, Indigenous-Western knowledge intersections, including research methodologies, priorities and forms of engagement with Indigenous peoples. Theoretically, the underlying issues remain largely unresolved but in Indigenous academia and the everyday they are highly contested and political, and play a part in shaping the ongoing concerns and demands of Indigenous communities.<sup>9</sup>

Also shaping the wider discourse around Indigenous protocols is a global agenda of activity concerned with the preservation of traditional knowledge and the protection of Indigenous peoples’ cultural and intellectual

<sup>5</sup> University of Victoria (Canada), Faculty of Human and Social Development, 2001, *Protocols & Principles for conducting research in an Indigenous context*, at <http://web.uvic.ca/igov/programs/doctorateprogram/protocol.pdf>

<sup>6</sup> A Jones & B Barnett, *Guidelines for ethical and effective communication for researchers working in Torres Strait*, 2006, p. 11. <http://www.crctorres.com/publications/technical/T5.1ReportFinal.pdf>

<sup>7</sup> See protocols and guidelines listed in the bibliography for examples. Nationally and internationally, protocols and guidelines are produced by Indigenous organisations, all levels of governments, regional bodies, research organisations and entities and agencies of various sorts. Protocols cross arts, media, health, social sciences, natural resource management, heritage management, cultural collections and the legal sector. Protocols are variously focussed: towards public events, ceremonies; for public representations of Indigenous histories and cultures; for effective and appropriate communication; for community engagement for a range of purposes; for ethical research practice; for protection of Indigenous cultural and intellectual property rights.

<sup>8</sup> Now given expression in the United Nations Universal Declaration on the Rights of Indigenous Peoples <http://www.un.org/esa/socdev/unpfii/en/drip.html>

<sup>9</sup> This is a wide literature across disciplines and communities of practice but see for example L Smith 2000 *Decolonising Methodologies: Research and Indigenous peoples*, Dunedin: Otago University Press for a widely cited general reference that informs the Indigenous position.

property from exploitation<sup>10</sup>, which encompasses innovations and practices associated with Indigenous traditional knowledge, including intangible forms of cultural heritage, and contemporary local knowledge.<sup>11</sup> The quest to preserve traditional knowledge and to find mechanisms to protect Indigenous cultural and intellectual property interests in this knowledge has seen an increase in the documentation of this knowledge. Indigenous knowledge management for future utility, especially as it intersects with digital and database forms, is a growing field of research with its own needs for appropriate protocols.<sup>12</sup> This international activity provides practical support for the agendas of Indigenous peoples in the ongoing quest for self-determination within nation-states. Importantly, the UN supported activity around traditional knowledge and cultural heritage also increasingly provides a benchmark for best practice in the intersections between Indigenous peoples and a range of biological, creative, and human research agendas, whether these be for Indigenous cultural continuity, future utility, development or commercialisation purposes. Where Indigenous concerns are upheld in international instruments, emerging standards of practice provide the context for developing practices in related areas, including in national research contexts.<sup>13</sup> Australian Indigenous people are therefore situated within a global-local network of activity working off human rights platforms to influence and shape agendas in their respective nations.<sup>14</sup>

Indigenous peoples can also find leverage points in national activity through the links between international instruments and government responses. For example, the current Australian *National Strategy for Ecologically Sustainable Development*<sup>15</sup> has its roots in international activity, including the *Rio Declaration on Environment and Development* 1992<sup>16</sup> and specifically the programme for action, *Agenda 21* 1992.<sup>17</sup> Importantly, these not only give direction to agendas for action by government and scientific communities but also help to situate the interests and roles of Indigenous peoples and communities.<sup>18</sup> As well, the *Convention of Biological Diversity*<sup>19</sup> now plays an increasing role in normalising practices that ensure fair and equitable benefit-sharing, exchange of information, and technical and scientific cooperation between those with interests in

<sup>10</sup> See in particular Convention on Biological Diversity Article 8(j): *traditional knowledges, innovations and practices* at <http://www.cbd.int/traditional/> but also other articles in the CBD, which make mention of traditional knowledge, for example, within Articles 10, 17, 18.

See also World Intellectual Property Organization *Traditional knowledge, genetic resources and traditional cultural expressions/folklore* <http://www.wipo.int/tk/en> for access to a range of programs and activity relating to IP protection and the development of examples of international best practice standards. See Janke T, 1998 *Our culture, our future: Report on Australian Indigenous cultural and intellectual property rights* at <http://www.frankellawyers.com.au/media/report/culture.pdf> and WIPO *Minding culture: case studies on intellectual property and traditional cultural expression* prepared by T Janke <http://www.wipo.int/tk/en/studies/cultural/minding-culture/studies/finalstudy.pdf>

<sup>11</sup> See discussions in S Smallacombe, M Davis & R Quiggan *Scoping project on Aboriginal traditional knowledge Report 22, Desert Knowledge CRC, 2007* <http://www.desertknowledgecrc.com.au/publications/> about the definitions and differences between traditional knowledge and local knowledge.

<sup>12</sup> For digitisation guidelines see for example WIPO *Database of existing codes, guidelines and practices* at [http://www.wipo.int/tk/en/folklore/creative\\_heritage/index.html](http://www.wipo.int/tk/en/folklore/creative_heritage/index.html) See also Indigenous Knowledge and Resource Management in Northern Australia (IKRMNA) project at <http://www.cdu.edu.au/centres/ik/ikhome.html>

<sup>13</sup> See for example Brett Lee Shelton, *Consent and consultation in genetic research on American Indians* [http://www.ipcb.org/publications/briefing\\_papers/files/consent.html](http://www.ipcb.org/publications/briefing_papers/files/consent.html)

<sup>14</sup> See for example International Work Group for Indigenous Affairs <http://www.iwgia.org/sw617.asp>

<sup>15</sup> <http://www.environment.gov.au/esd/national/nsesd/strategy/intro.html#WIESD>

<sup>16</sup> <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

<sup>17</sup> <http://www.un.org/esa/dsd/agenda21/>

<sup>18</sup> See for example Section 111 Ch 26 of Agenda 21, the programme for action at [http://www.un.org/esa/dsd/agenda21/res\\_agenda21\\_26.shtml](http://www.un.org/esa/dsd/agenda21/res_agenda21_26.shtml) and Section 1V Chapter 34 for example [http://www.un.org/esa/dsd/agenda21/res\\_agenda21\\_34.shtml](http://www.un.org/esa/dsd/agenda21/res_agenda21_34.shtml)

<sup>19</sup> See in particular Article 8(j) *In-situ Conservation*; Article 10(c)&(d) *Sustainable Use*, Article 15(7) *Access to genetic resources*, Article 17(2) *Exchange of information*, Article 18(4) *Technical and scientific cooperation* <http://www.cbd.int/convention/convention.shtml>

biological resources. These practices apply generally but are providing frameworks for Indigenous people to also set standards of practice.

Indigenous research protocol-making does not only sit within this broader international field of activity or in its trickledown effect to national levels. Indigenous research protocol making sits also in a particular relation to standard research ethics and professional ethics regimes. These are also drawn from international standards of practice. For example, the *National Statement on the Ethical Conduct of Human Research*, the Australian standard for ethical human research practice can trace its various iterations back to the *Helsinki Declaration*<sup>20</sup> 1975 and international codes of ethics that articulate to the World Medical Association's *The Declaration of Geneva* 1948. This was developed to avoid the atrocities of human medical experimentation that had occurred under Nazi regimes and preceded the broader *Universal Declaration of Human Rights* 1948<sup>21</sup> by a few months. Further, the Australian statement was prompted by the requirement for access to government funding to be conditional on the demonstration of ethical research practice.<sup>22</sup>

In summary, then, it is important to note, when reflecting on the elements and forms of Indigenous research protocols, that these have their bases not simply in 'special' rights or outcomes of Indigenous activism borne of grievances with historical mistreatment and/or the practices of scientific research. The bases for Indigenous research protocols and guidelines can also be found in well-accepted standard codes of ethical research and professional practice with links to international human rights instruments. Emerging policy agendas and practice in some research and development intersections can also be traced to programmes of activity developed in the interests of all humanity and, by default, if not always in specified detail, inclusive of Indigenous interests. Further, when reflecting on the Torres Strait fisheries research context, it is important to acknowledge that global resource sustainability agendas and related national policy positions are driven by international scientific concern. Torres Strait Islander concern about, for example, continuous access to and benefit from their traditional resources can be mapped onto scientific interest but does not drive the broader agendas already in play. Like all Indigenous peoples, Torres Strait Islanders must look for opportunities to use these broader agendas to uphold their own interests. Knowledge production in the Torres Strait is therefore always already a matter of politics.

### **The purpose of Indigenous research protocols**

In a context where recognition of Indigenous peoples' human rights is now an accepted basis for more inclusive practices, protocols and guidelines fill a gap in knowledge and procedure that results from prior exclusion of or indifference to Indigenous peoples, knowledge, rights and interests. In essence, Indigenous research protocols and guidelines seek to uphold and protect Indigenous rights and interests while facilitating cross-cultural engagements at the intersection of scientific and Indigenous understandings and practices. Situated in the context of the wider discourses around Indigenous and scientific knowledge intersections, all Indigenous protocols are fundamentally guides for engagement across boundaries where allegiances to differing sources of authority and legitimacy (and the practices that derive from them) are in tension. Situated in the context of the wider discourses on human rights and diversity, the acknowledgement of historical mistreatment and the need for redress for past disadvantage insert a moral imperative to consider the risks and benefits for Indigenous people and communities from research in these intersections through close engagement with Indigenous people. The complexities of inter-cultural engagement, which emerge from a baseline of a

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<sup>20</sup> See *Helsinki Declaration* [http://en.wikipedia.org/wiki/Declaration\\_of\\_Helsinki](http://en.wikipedia.org/wiki/Declaration_of_Helsinki); *Declaration of Geneva* <http://www.cirp.org/library/ethics/geneva/>

<sup>21</sup> The *Universal Declaration of Human Rights* <http://www.un.org/en/documents/udhr/>

<sup>22</sup> NHMRC also provides guidelines for ethical standards in animal research [http://www.nhmrc.gov.au/health\\_ethics/animal/issues.htm](http://www.nhmrc.gov.au/health_ethics/animal/issues.htm)

recognized lack of understanding—about Indigenous social values, practices and conditions, traditional knowledge systems, and contemporary Indigenous standpoints arising from colonial experience—are highlighted in most protocols and guidelines documents.<sup>23</sup>

The primary aim of research protocols is to facilitate the conduct of researchers' engagements with Indigenous people, to avoid harm and risk, and to provide codes of practice that work towards ensuring research is considered in terms of benefits for Indigenous peoples, communities and their knowledge. Further, in the case of traditional and local Indigenous knowledge, how to have these recognized as a valid basis for real research partnerships rather than simply as 'content' for inclusion into 'Western' research is being argued in many places.<sup>24</sup> But further to both these, how to interpret, demonstrate and implement the principles of protocols, even with the aid of guidelines, presents a challenge for the research community. The need for protocols and guidelines suggests that achieving ethical standards of research in Indigenous contexts requires a higher degree of preparation than research in most non-Indigenous contexts. This is especially the case for those scientists unfamiliar with Indigenous Australia. The conduct of research in Indigenous contexts requires no less than effective cross-cultural communication, understanding of Indigenous knowledge and cultural interfaces, understanding of Indigenous concepts of cultural and intellectual property rights, and awareness of Indigenous historical and contemporary conditions and how these have shaped current Indigenous approaches, expectations, and goals. The protocols bar is ever raised higher in response to deeper concerns being articulated through ongoing engagements in these complex and layered knowledge and practice intersections.

### **Elements of Indigenous research protocols**

Indigenous research protocols and/or guidelines vary in form but generally contain a set of underpinning principles, which are supplemented with further information to assist their interpretation and implementation in practice.<sup>25</sup> While the principles that organise different protocols and guidelines are expressed in varying terms, some strong common elements cross them all. These include respect and recognition for human and cultural rights and differences, the need for consultation and negotiation with Indigenous stakeholders, and the responsibilities of researchers to ensure that Indigenous people benefit from research through agreed forms of benefit-sharing and their intellectual and other contributions appropriately protected, acknowledged, attributed and recompensed where warranted. Indigenous participation through equal partnership in the research process is a central tenet in most research protocols and provides some scope for Indigenous partners and/or participants to shape research at all stages and to exert some control over their own contributions to it.

Indigenous research protocols and guidelines that emanate from research organisations particularize the various and well-established professional and research codes of ethics<sup>26</sup> for application in Indigenous contexts. Indigenous protocols and guidelines outline what these might mean from the Indigenous perspective or in Indigenous contexts and how such principles can be demonstrated in relation to Indigenous-focused

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<sup>23</sup> See a range of protocols in the bibliography

<sup>24</sup> See for example Desert Knowledge CRC documents, CRC Aboriginal Health documents, and Northern Australia Indigenous Land and Sea Management Alliance (NAISMA) documents listed in bibliography.

<sup>25</sup> See for example AIATSIS *Guidelines for ethical research in Indigenous Studies* at [http://www.aiatsis.gov.au/data/assets/pdf\\_file/10534/GERIS\\_2007.pdf](http://www.aiatsis.gov.au/data/assets/pdf_file/10534/GERIS_2007.pdf)

<sup>26</sup> There are numerous examples, some mentioned in protocols documents include Australian Association of Researchers in Education (AARE) *Code of Ethics*, <http://www.aare.edu.au/ethics/ethcfull.htm> Media and Entertainment Alliance (MEAA) *Code of Ethics*, Australian Archaeology Association *Code of Ethics* <http://www.australianarchaeologicalassociation.com.au/ethics> and for example university research ethics [http://www.griffith.edu.au/or/ethics/humans/content\\_manual.html](http://www.griffith.edu.au/or/ethics/humans/content_manual.html)

research.<sup>27</sup> For example, while informed consent is a standard element of all ethical research practice, in the Indigenous context, meeting the ethical standard requires attention to the challenges of cross-cultural communication. That is, how is an ethical concept, such as prior informed consent, to be implemented in a way that reveals the full meaning of any research intention to Indigenous participants? Effective cross-cultural communication is also critical to effective dissemination and feedback to participants. Collection, citation, dissemination and storage of Indigenous knowledge contributions, both traditional and local contemporary, must be cognizant of the oral form, secret/sacred knowledge, customary knowledge management practices, Indigenous intellectual property rights, appropriate forms of attribution and communication and the sensitivities and politics of local community governance, and so on. Concepts and forms of benefit-sharing also must be responsive to customary practice and collective organisation. In the Indigenous research context, then, standard ethical research practices almost always require some adjustment to reach a commensurate standard of ethical practice. Making such adjustments requires another layer of knowledge and understanding. While some researchers in the social sciences may already have considerable knowledge of Indigenous people and issues, this cannot be assumed for all, nor for researchers in the biological and environmental sciences. And so, three additional aspects are often layered into Indigenous research protocols and guidelines. These draw attention to the need for researchers to understand the historical and cultural background of participants and host communities, the salient elements of effective cross-cultural communication, and Indigenous intellectual property issues.

Research protocols and guidelines are therefore perhaps the most layered of all Indigenous protocols in their attempts to reconcile a range of tensions around people, communities, and social and knowledge practices.

### **Some examples of Indigenous research protocols and guidelines**

The following Australian documents, including some which are provided in addition to those listed in the project brief, illustrate some of the different layers, emphases, and approaches drawn into the production of Indigenous research protocols for different spheres of activity. These examples illustrate the cross-referencing, borrowing, and adaptation of various sets of protocols from and across the Indigenous sector, including cultural and communication protocols from outside the research sector. Cross-referencing reinforces the authority of protocols principles and reveals consistent ties to a wider field of international covenants, examples, and standards, as well as national ones. Cross-referencing also provides access to useful supporting information for understanding the issues at stake, also drawn from a wider field and which assists researchers to demonstrate and implement principles in the research process. These examples also begin to illustrate how different aspects and layers of protocols increase the implementation requirements for researchers needed at different stages of the research process, for example, for the application and approval processes, for the conduct of research in the field, and for ongoing knowledge and intellectual property management.

In Australia, two sets of guidelines have emerged as the standard for Indigenous research protocols. The first is the National Health & Medical Research Council, 2003, *Values and ethics: Guidelines for ethical conduct in Aboriginal and Torres Strait Islander health research* and the second is the AIATSIS (Australian Institute of

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<sup>27</sup> For a range of perspectives and discussions on Indigenous research ethics visit the Indigenous Health Ethics Library at <http://www.indigenouthealthethics.net.au/library?filter0=&filter1=&filter2=29&filter3=>

Aboriginal and Torres Strait Islander Studies) 2000 *Guidelines for ethical research in Indigenous Studies*.<sup>28</sup> These are arguably the general national benchmark documents and both are significant sources of authority for what constitutes safe and ethical practice in Indigenous contexts. Reference to them is evident across the range of Indigenous protocols, not just research protocols. There are also other emerging standard setters driven from the Indigenous perspective and emerging from research in specific Indigenous contexts.<sup>29</sup>

### NHMRC

The National Health & Medical Research Council, 2003, *Values and ethics: Guidelines for ethical conduct in Aboriginal and Torres Strait Islander health research* directly addresses human research and ethical practice. These guidelines assist the re-interpretation of well-established standard ethical principles for human research, for the Indigenous human research context. Effective communication is an important aspect. As well, background knowledge about Indigenous Australia to promote trustful and accountable engagement is seen as key to reconciling “the interest of research and researchers with the values, expectations and cultures of Aboriginal and Torres Strait Islander communities”.<sup>30</sup> Guideline principles reflect Indigenous values and these are elaborated and augmented with the implicated requirements for research practice. These are also aligned against the relevant sections of the *National Statement on Ethical Conduct in Human Research*<sup>31</sup> which is the national authoritative statement for all human research, itself consistent with international human rights instruments. The result is a detailed set of requirements that must be demonstrated to pass the ethical test. Further, NHMRC standards require any Indigenous research proposal to be ethically defensible at the following points: conceptualization of the research, development and approval, data collection and development, analysis, report writing, dissemination. The notion of shared understanding and mutual recognition and respect that is promoted in more general communications and/or cultural protocols is deepened through the emphasis on Indigenous partnership in the research process. One outcome of this emphasis has been the need for Indigenous membership on Human Research Ethics Committees (HRECs) or the constitution in some contexts of Indigenous Human Research Ethics Committees as an additional layer to protect Indigenous participants and interests throughout the human research process.<sup>32</sup>

### AIATSIS

While the NHMRC guidelines were developed specifically for health research, AIATSIS (Australian Institute of Aboriginal and Torres Strait Islander Studies) guidelines provide an example of protocols that reach across the range of disciplines and strands that come under the umbrella of Indigenous Studies.<sup>33</sup> The premise on which its principles are based are direct and to the point and anchored to international Indigenous rights frameworks:

<sup>28</sup> Almost all protocols and guidelines and organisations reference these documents, either within documents or supplementary resource lists.

<sup>29</sup> See for example the Indigenous Research Reform Agenda from CRC Aboriginal Health at <http://www.crcah.org.au/research/approachtoresearch.html#linksmono> and the following projects at Desert Knowledge CRC <http://www.desertknowledgecrc.com.au/publications/downloads/DKCRC-Report-15-The-Collaboration-Project.pdf> and <http://www.desertknowledgecrc.com.au/publications/downloads/DKCRC-Report-22-Traditional-Knowledge.pdf> and <http://www.desertknowledgecrc.com.au/publications/downloads/DKCRC-Report-26-Aboriginal-Research-Partnerships.pdf>

<sup>30</sup> p. 5

<sup>31</sup> [http://www.nhmrc.gov.au/PUBLICATIONS/ethics/2007\\_humans/contents.htm](http://www.nhmrc.gov.au/PUBLICATIONS/ethics/2007_humans/contents.htm) issued by NHRMC, endorsed by Australian Research Council (ARC), Australian Vice-Chancellors Committee (AVCC) and major research organisations and bodies

<sup>32</sup> See S Shibusaki & P Stewart, 2003 *Workshop report: Aboriginal and Torres Strait Islander people involved in ethics*. CRC Aboriginal Health, at [http://www.crcah.org.au/publications/downloads/Workshop\\_report\\_on\\_Ethics.pdf](http://www.crcah.org.au/publications/downloads/Workshop_report_on_Ethics.pdf)

<sup>33</sup> AIATSIS Guidelines drew on the NHMRC National Statement. They also drew on research AIATSIS prepared for the Australian Research Council, Commissioned report No 59 *Research of Interest to Aboriginal and Torres Strait Islander Peoples*, and research it commissioned (with ATSIC), *Our culture: Our Future, Report on Australian Indigenous and Cultural and Intellectual Property Rights*, prepared by Terri Janke of Michael Frankel and Company.

*"It is essential that Indigenous peoples be participants in any research project that concerns them, sharing an understanding of the aims and methods of the research, and sharing the results of this work... At every stage, research with and about Indigenous peoples must be founded on a process of meaningful engagement and reciprocity between the researcher and the Indigenous people."<sup>34</sup>*

The AIATSIS guidelines, which are currently under review, organise their eleven principles in three areas: consultation, negotiation and mutual understanding; respect, recognition and involvement; and benefits, outcomes and agreements. These are augmented with additional explanation and supplemented with further advice to assist with implementation. Establishing a formal agreement for the conduct of the research project is encouraged as an outcome of negotiation of all the issues required to be addressed. AIATSIS Guidelines are a reminder that even where research may not involve human participants directly as a subject of research, all research in Indigenous contexts has a human and social aspect or impact and therefore must include Indigenous peoples as participants in the process, be accountable to Indigenous peoples/communities and recognise and/or account for Indigenous interests in any research.

Between them, NHMRC and AIATSIS guidelines ensure that human research standards for ethical practice permeate all Indigenous protocols and guidelines for ethical research practice. This standard can be confronting for natural resource scientists, for example, who may understand their species research as anchored well beyond the Indigenous social context. But to take the example of fisheries, the AIATSIS Guidelines would require scientists to assume the position that where Indigenous peoples have a tradition of fisheries practice in what are their traditional waters, there is an Indigenous interest in other stakeholder interests in these same fisheries. This Indigenous interest applies not just to researchers, but to government legislation and policy, as well as commercial and recreational interests. Indigenous interest in fisheries research, then, is therefore not strictly limited to the scientific research intersection but significantly extends into a wider political and politicised arena. This is significant in the Torres Strait context and helps to explain why research that scientists may view as impartial and disinterested in the politics of Islanders or fisheries is, to Torres Strait Islanders, always already immured in politics and contest.

### ABC PROTOCOLS

The research sector also draws on and/or cross-references to Indigenous protocols outside of the research sector. An oft-cited example is the *ABC Cultural protocols for Indigenous reporting in the media*<sup>35</sup>, which are intended to facilitate effective and respectful engagements between media professionals and Indigenous people/communities. The aim is to promote good relationships and effective communication to avoid the misrepresentation of Indigenous issues and people that occurs when Indigenous perspectives are treated inappropriately, misinterpreted, not understood or excluded. This requires a degree of knowledge about Indigenous cultures and histories. The Queensland Government's Department of Aboriginal and Torres Strait Islander Policy (DATSIP) 1999 protocols<sup>36</sup> are referenced in regard to effective communication as are Lester Bostock's 1997 SBS guidelines for film and television.<sup>37</sup> Because media construct representations of Indigenous people and issues and have been arguably complicit in perpetuating racism or racial stereotyping in the past, these protocols do more than provide background and suggestions for proceeding. They introduce notions of

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<sup>34</sup> p.1

<sup>35</sup> [http://www.abc.net.au/indigenous/education/cultural\\_protocol/culturalprotocol.pdf](http://www.abc.net.au/indigenous/education/cultural_protocol/culturalprotocol.pdf)

<sup>36</sup> Department of Aboriginal and Torres Strait Islander Policy Development, 1999, *Protocols for consultation and negotiation with Aboriginal people*, Queensland Government, viewed 6 June 2009 <http://www.atsip.qld.gov.au/everybodys-business/protocols-aboriginal/documents/protocols-for-consultation.pdf>

<sup>37</sup> Lester Bostock, *The greater perspective; protocol and guidelines for the production of film and television on Aboriginal and Torres Strait Islander communities*, Special Broadcast Services, 2<sup>nd</sup> ed, 1997

Indigenous rights to ethical treatment (via informed consent, privacy and confidentiality, etc.) and notions of benefit sharing where Indigenous people have contributed time, knowledge or intellectual effort in any media production. This signals the importance of Indigenous cultural and intellectual property interests in any communication exchanges that gather and re-present Indigenous perspectives and knowledge. While old and somewhat disorganised, the ABC Cultural Protocols still provide an important reference point for a range of more specific sets of Indigenous protocols because they straddle research, knowledge, cultural practice, communication and community engagement issues.

Effective communication, as the basis for respectful relationships, mutual recognition and trust, is an important aspect of Indigenous research protocols and guidelines and ostensibly all research guidelines cross-reference to examples of these. Oft-cited examples are the Queensland government's Department of Aboriginal and Torres Strait Islander Policy (DATSIP) protocols.<sup>38</sup> *Mina mir lo ailan mun: Proper communication with Torres Strait Islander people*, for example, was developed to facilitate effective communication between government officers and Torres Strait Islanders. The approach aimed to raise awareness about the different meanings and values present in the inter-cultural space in which communication exchanges occur. The emphasis is on understanding Torres Strait Islanders and being sensitive to the assumptions being brought to any inter-cultural exchange by both sides, in order to avoid misunderstanding and conflict. In this sense, background information – historical, cultural, social, economic, religious and political - is critical and these protocols contain considerable detail in terms of both background information and specific practice. As a supplement to research protocols they do provoke researchers to contemplate the social context in which they conduct research and the expectations of Islanders. In essence, however, they tend towards advice on appropriate social behaviour. They also contain information that is outdated, as regional structures and organisations change over time.

#### AHURI

The Australian Housing and Urban Research Institute's (AHURI) *Ethical principles and guidelines for Indigenous research*, produced by Roz Walker, are an example of research guidelines specific to a particular research context, in this case, the Indigenous housing research context. These guidelines are relatively brief and focus on the AHURI funding application process by augmenting AHURI ethical standards with additional content to guide applications for Indigenous-focussed research. Questions for applicants to consider, what is particularly important from the Indigenous perspective, what AHURI prioritises at each stage of research are set out to help applicants. This covers the development of proposals, how to address selection criteria, assessment and approval procedures, ethics approval processes, the use and role of project reference groups and dissemination processes and protocols. This example emanates from a research organisation for which Indigenous-focussed research is a sub-specialisation of the wider focus on housing.

The AHURI Guidelines reflect an identified need in the research sector that is an outcome of the need to follow protocols when researching Indigenous contexts or issues. Their form indicates that interpretation of what the AIATSIS and/or NHMRC standards and communication or cultural protocols mean in a specific context and the implications of these for successful funding applications are a challenge that researchers need assistance with. They also highlight that the demands imposed have implications for the formal processes required to gain ethics approvals, conduct the research proper, and manage the outcomes. A further implication is that this demand does not just fall on individual researchers but also falls on the organisation that distributes funding and supports a specialist research agenda, in this case Indigenous housing. The approach in the AHURI guidelines is to simplify and streamline the research application process by domesticating supporting

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<sup>38</sup> <http://www.atsip.qld.gov.au/everybodys-business/protocols-torres-strait-islander/>

information to be instructive for the applicant. For example, the guidelines refer back to AIATSIS and NHMRC Guidelines for authority. But they also refer to communication protocols, including the Queensland government's DATSIP protocols, as sources of information support for effective communication<sup>39</sup> In addition they source professional ethics guidelines<sup>40</sup>, as well as being supplemented by a range of further references. But as a guideline they are brief and focussed on the application process, which requires clarity on the proposed conduct of research.

### TORRES STRAIT GUIDELINES

Jones & Barnett's 2006 *Guidelines for ethical and effective communication for researchers working in Torres Strait* combine aspects of all the above protocols documents to shape a specific guide for Reef researchers in the Torres Strait. The central emphasis is on effective communication as it relates to the research process, including detail of what the demonstration of this might mean for researchers. History and background to the Torres Strait, including important aspects of cross-cultural communication and research as emphasised in the *Mina Mir* protocols lays out the context for protocols. The protocols principles are a close modification of the *AIATSIS Guidelines for ethical research in Indigenous studies*, with the addition of a section on Cultural and Intellectual Property and a caution about the limits of general guidelines and the need for case-by-case consultation in different communities and research projects. Jones and Barnett's document distinguishes itself from the other documents above by the inclusion of a toolbox for researchers to assist in effective communication and engagement throughout the process of research. That is, the protocols act as a framework to guide the approach to engagement but the toolbox provides some concrete examples to achieve effective engagements with Torres Strait Islanders throughout any research project, for example, how to disseminate research findings in ways that are meaningful Islanders. The result is a very useful document for scientists but perhaps a daunting one. These guidelines attempt to guide researchers towards understanding the remote, regional, inter-cultural context in which they conduct their research.

### DK-CRC

Another example that warrants some scrutiny is the protocols activity that has occurred at the Desert Knowledge Cooperative Research Centre. The Desert Knowledge CRC

*"is a research and brokerage institution that links researchers with 28 partners and works in dozens of settlements across desert Australia. [It] focuses these research efforts on creating useful outcomes with commercial application for desert people, communities and our partners".<sup>41</sup>*

Significantly, DKCRC must endeavour to commercialise any intellectual property produced. The close proximity of Aboriginal knowledge and the custodians of that knowledge to the Centre and its research agenda place the relevant knowledge, research ethics, and intellectual property tensions in an intense light. The intricacies and implications of knowledge work that occurs in such a mutually-invested intersection have produced a range of documentation<sup>42</sup>. The protocols and supporting information which have emerged shed light on the implications of real research partnerships with Indigenous peoples in practice, for researchers, communities and the research organisation. There are for researchers, an *Aboriginal Research Engagement Protocol*, a *Free Prior Informed Consent Procedures*, a *Good Manners Guide to Working with Aboriginal People in Research*, an *Aboriginal Knowledge and Intellectual Property Protocol* and an accompanying *Guide to Intellectual Property in the DKCRC* as well as Centre agreement guides and forms. For the Indigenous stakeholders, there are an

<sup>39</sup> <http://www.atsip.qld.gov.au/everybodys-business/protocols-torres-strait-islander/> and <http://www.atsip.qld.gov.au/everybodys-business/protocols-aboriginal/documents/protocols-for-consultation.pdf>

<sup>40</sup> <http://www.aare.edu.au/ethics/ethcfull.htm>

<sup>41</sup> See <http://www.desertknowledgecrc.com.au/aboutus/>

<sup>42</sup> See <http://www.desertknowledgecrc.com.au/socialscience/socialscience.htm> |

*Aboriginal Knowledge and Intellectual Property Protocol Community Guide* and a number of related plain English briefing papers. There are also a number of internal management tools which include an IP Register, an Ethics Register, detail of the Centre's Audit and Risk Management arrangements and the Centre's Commercialisation Plan. Elsewhere on the site are research reports, which have informed some of these guides and protocols, in particular the scoping project on Aboriginal traditional knowledge<sup>43</sup>, the collaboration project on strategies for engagement with Desert Aboriginal communities and organisations<sup>44</sup>, and the Central Land Council's project to develop protocols and systems.<sup>45</sup> In addition the website provides access to some relevant international documentation to guide best practice in a complex research intersection.

In this example of a specialized but still broad ranging research context on Aboriginal land it becomes clearer why a range of approvals, permits and agreements from Aboriginal stakeholders designed to protect Aboriginal interests are an important consequence of protocols' practice.<sup>46</sup> The need for forms, agreements, clearances and permissions to satisfy the standards of ethical research practice to uphold Aboriginal interests in research partnerships becomes in part a matter of instituting workable process as much as providing sufficient information to understand how to meet these standards.

The emergence of community guides and information support resources, such as the Desert Knowledge CRC is producing, is some indication of the issues that Indigenous individuals, organisations or communities confront in the research intersection. Community guides are being recognized as essential in some contexts. the NHMRC, for example has produced *Keeping research on track: A guide for Aboriginal and Torres Strait Islander peoples about health research ethics*.<sup>47</sup> Jane Anderson, in the course of an AIATSIS project on *Indigenous Knowledge and Intellectual Property: Access, Ownership and Control of Cultural Materials*<sup>48</sup> produced a *Framework for Community Protocols* (unpublished) to assist Indigenous communities to develop their own protocols for outsiders, including researchers. Included in this framework were templates for biodiscovery, digital archives, research and photographs. It needs to be noted then that the acceptance and proliferation of research protocols and guidelines for ethical practice in Indigenous research contexts brings increasing requirements for Indigenous organisations and bodies to establish their own protocols and guidelines for approving research projects and supplying the relevant clearances and permits required to access Indigenous land, communities, organisations and people. The Northern Lands Council, for example, has protocols and outlined processes, advice and forms for researchers and/or media.<sup>49</sup> This carries with it the need for Indigenous participants to understand Western research practices and methods in order to gauge whether Indigenous interests are being protected or to gauge where Indigenous research interests may be brought into intersection with scientific agendas or not.

## NAILSMA

*Guidelines and Protocols for the Conduct of Research* produced by the North Australian Indigenous Land and Sea Management Alliance (NAILSMA) is an example of protocols generated from an Indigenous body. NAILSMA is an alliance between the Northern Land Council (NT), Kimberley Land Council (WA), Carpentaria Land Council Aboriginal Corporation (Qld) and Balkanu Cape York Development Corporation (Qld) and is

<sup>43</sup> <http://www.desertknowledgecrc.com.au/publications/downloads/DKCRC-Report-22-Traditional-Knowledge.pdf>

<sup>44</sup> <http://www.desertknowledgecrc.com.au/publications/downloads/DKCRC-Report-15-The-Collaboration-Project.pdf>

<sup>45</sup> <http://www.desertknowledgecrc.com.au/publications/downloads/DKCRC-Report-8-CLC-Protocols.pdf>

<sup>46</sup> See also Department Environment, Water, Heritage and the Arts, 2004, Indigenous communities and environment, *Guidelines for regional bodies: Working with Indigenous knowledge in natural resource management*, <http://www.environment.gov.au/indigenous/publications/pubs/guidelines.pdf>

<sup>47</sup> [http://www.nhmrc.gov.au/files\\_nhmrc/file/publications/synopses/e65.pdf](http://www.nhmrc.gov.au/files_nhmrc/file/publications/synopses/e65.pdf)

<sup>48</sup> See <http://www.aiatsis.gov.au/research/past.html>

<sup>49</sup> See Northern Land Council 2003 *Visiting Aboriginal land: research and media*, [http://www.nlc/org/au/html/visit\\_media.html](http://www.nlc/org/au/html/visit_media.html)

“committed to improving the wellbeing and livelihoods of Indigenous Australians across northern Australia through supporting natural and cultural resource development and management activities”.<sup>50</sup> Its member organisations have provided funding for research and natural resources management projects and are committed to ethical research. The guidelines cover the context of research, the relation between resource management and research, approaches to research and NAILSMA’s requirements for research approval. There are five requirements: compliance with the requirements of Indigenous partner organisation and land owners; adherence to a NAILSMA checklist that sets out criteria for favoured research; adherence to AIATSIS Guidelines; compliance with application and ethical clearance of sponsoring institutions; and adherence to legislative permit requirements of relevant states and territories. The layers of work involved and the need for sequenced processes to manage these requirements is clear.

### INTELLECTUAL PROPERTY AND INDIGENOUS KNOWLEDGE PROTOCOLS

In addition to these examples, the trend to produce separate protocols for Indigenous knowledge and intellectual property interests requires noting. The work being done in this area is ongoing.<sup>51</sup> These are but some examples and approaches to the development of protocols and guidelines for ethical practice in Indigenous research contexts that illustrate the layered nature of Indigenous research protocols and the raft of requirements necessary to satisfy safe ethical practices in the Indigenous research context.

### The efficacy of Indigenous protocols

There is relatively little discussion in the literature of Indigenous research protocols per se. There appears to be no formal evaluation of the efficacy of research protocols which might provide insight into strengths and weaknesses in practice and areas for improvement.<sup>52</sup> Much of the literature that seeks to improve Indigenous research practice advocates, rationalizes, and/or describes deeper engagement with the existing principles, content, and mechanisms that guide ethical Indigenous research practice. A large proportion of this literature is focused on health research.<sup>53</sup> There is also literature that describes and/or discusses some of the more intricate legal issues of ethics requirements such as prior informed consent, access and benefit sharing,

<sup>50</sup> See NAILSMA 2007 *Guidelines and protocols for the conduct of research*, [http://www.nailsma.org.au/nailsma/downloads/NAISMA\\_Guidelines\\_Jun07.pdf](http://www.nailsma.org.au/nailsma/downloads/NAISMA_Guidelines_Jun07.pdf)

<sup>51</sup> See Terri Janke & Co. at <http://www.terrijanke.com.au/>; E Hudson Cultural Institutions, Law and Indigenous Knowledge: A Legal Primer on the Management of Australian Indigenous Collections IPRIA Melbourne 2006 at <http://www.law.unimelb.edu.au/ipria/publications/Reports/Legal%20Primer.pdf>; Natural Resources Management Board (NT) 2009, *Maintain and strengthen your culture: Handbook for working with Indigenous ecological knowledge and intellectual property*. Commissioned Report prepared by M Davis, with S Holcombe & Terri Janke & Coy; National Resources Management Board (NT) 2009 *Guidelines for Indigenous ecological knowledge management (including archiving and repatriation)* Commissioned report prepared by S Holcombe, with M Davis and Terri Janke Company Pty Ltd; *Interim protocols NRMB(NT) for Indigenous ecological knowledge* at <http://www.nrmbnt.org.au/files/iek/Interim%20protocols%20for%20IEK%20projects.pdf>

<sup>52</sup> See Hill R 2006 *The Effectiveness of Agreements and Protocols to Bridge Between Indigenous and Non-Indigenous Toolboxes for Protected Area Management: A Case Study from the Wet Tropics of Queensland*, *Society & Natural Resources*, Volume 19, Issue 7 August 2006, pages 577-590 for a fine-grained examination of one agreement and one protocol. Another is in the Library, Archive, and Information Services sector. See Nakata et al, *Libraries, Indigenous Australians and a developing protocols strategy for the library and information sector*, in Nakata & Langton, 2005 *Australian Indigenous Knowledge and Libraries*, Academic and Research Libraries, Canberra, pp195-210 <http://epress.lib.uts.edu.au/dspace/handle/2100/57>

<sup>53</sup> See a range of Indigenous ethics literature at <http://www.indigenouthealthethics.net.au/library?sort=asc&order=Year&filter0=&filter1=&filter2=29&filter3=>

copyright, attribution and protection of Indigenous knowledge sources, which are reminders of the complex contests at play in these research intersections.<sup>54</sup> Collectively, this literature reinforces the notion that for researchers to implement the intent of protocols, they require more and more detailed information in order to make appropriate judgements at a range of points in the research process. As well, the literature also reinforces the notion that to increase Indigenous control in research intersections, Indigenous community-controlled and other relevant organisations need to develop and assert their own requirements and review processes.

While the bulk of the literature advocates for deeper responses in research ethics processes to be inclusive of Indigenous values, it is possible to discern the tensions that arise in the procedural requirements to ensure ethical practice is followed. The language of ‘navigation’ and ‘brokerage’ features in Indigenous ethics and protocols literature and highlights the tensions involved in procedural requirements. For example, Davison et al<sup>55</sup>, in the Canadian context have discussed the challenges in reconciling institutional ethics and the ethical situations research students face in the field around concepts of informed consent, where research participants have differing perceptions. Their study underlined that student researchers in Aboriginal settings in Canada had a “sense of having to negotiate between the procedural and the practical, the theoretical and the research reality”.<sup>56</sup> One effect, according to the authors was to decrease researchers’ agency in the field: “they are unable to make judgments about being ethical within the unique and evolving research settings in which they find themselves”.<sup>57</sup>

In the Australian health research context, Dunbar and Scrimgeour<sup>58</sup> have highlighted how the process for brokering collaborative research partnerships is not straightforward nor effective, even though ethics review and guidelines ask for it, asserting that

“...members of the research community (including those responsible for the funding, ethical assessment and conduct of research) do not routinely consult with appropriate community-based organizational representatives over proposals for research”.<sup>59</sup>

Raised as issues are the problematic of different understandings of ‘community’ and what constitutes a representative community organisation (also raised in Davidson et al, 2006), resistance within the research establishment to increased community control over research, especially with regard to the perceived “fundamental contradiction between the quest for scientific ‘truth’ and the privileging of Indigenous ‘community

<sup>54</sup> See, as examples, Janke, T 2009 *Writing up Indigenous research: authorship, copyright and Indigenous knowledge systems* [http://www.terrijanke.com.au/pdf/Writing\\_up\\_Indigenous\\_research.pdf](http://www.terrijanke.com.au/pdf/Writing_up_Indigenous_research.pdf); Bannister, K n.d. *Lessons for ABS: Academic policies, community protocols and community-level PIC*. Discussion paper, International Expert Workshop on Access to Genetic Resources and Benefit Sharing, [http://www.polisproject.org/PDFs/Bannister%202004\\_ABS%20Lessons.pdf](http://www.polisproject.org/PDFs/Bannister%202004_ABS%20Lessons.pdf) Raven, M 2006, Protocols and ABS: Recognising Indigenous rights to knowledge in Australian bureaucratic organisations *Indigenous Law Bulletin* No 39 <http://www.austlii.edu.au/au/journals/ILB/2006/39.html>; Bowrey, K. 2006, Alternative intellectual property?: Indigenous protocols, copyleft and new juridifications of customary practices *Macquarie Law Journal* No 6 <http://www.austlii.edu.au/au/journals/MqLJ/2006/6.html>; Ellis, JB & Earley, MA, 2006, Reciprocity and constructions of informed consent: Researching with Indigenous populations, *International Journal of Qualitative Methods* 5(4) December 2006.

<sup>55</sup> Davison, CM, Brown, M, & Moffitt, P. 2006, Student researchers negotiating consent in northern Aboriginal communities *International Journal of Qualitative Methods* 5(2) June 2006 at [http://www.ualberta.ca/~iiqm/backissues/5\\_2/PDF/davison.pdf](http://www.ualberta.ca/~iiqm/backissues/5_2/PDF/davison.pdf)

<sup>56</sup> p. 8

<sup>57</sup> p. 8

<sup>58</sup> Dunbar T & Scrimgeour 2006 Ethics in Indigenous research – Connecting with community *Bioethical Inquiry* 2006, 3:179-185 <http://www.springerlink.com/content/15483632172h206w>

<sup>59</sup> p180

ownership' of research findings and the power of veto over publication"<sup>60</sup>. Also raised as an issue is the under-funding of community-based service delivery organisations who may not have the administrative capacity to be involved in brokering research. Accordingly, these barriers "impact at either the structural or process level of research development and assessment"<sup>61</sup>. On the other hand, the problems that researchers encounter during the brokerage stage have

*"been identified as: identifying key and appropriate stakeholders; identifying relevant community representatives and mobilising 'communities of interest' for the purpose of research; engendering Indigenous community 'ownership' of the research challenge; negotiating the identification of 'shared concerns' and, competing time demands on Indigenous community members and their representative organisations"*.<sup>62</sup>

Dunbar and Scrimgeour support the need for "expert local assistance, from the outset, in brokering the terms of engagement over research in Indigenous settings"<sup>63</sup> and further proposed "the development of a shared language or framework for engagement between Indigenous peoples and researchers [as] an important first step in negotiations over research"<sup>64</sup>. The NHMRC community guide, *Keeping Research on Track*<sup>65</sup> was cited as an example of good practice as well as the use of research agreements that set out rights and responsibilities of all stakeholders and how to monitor these in progress.

Hill has examined a protocol and an agreement designed to foster partnership with Indigenous land owners in protected area management in Far North Queensland. Apart from government failure to underpin their own rhetoric around the policy of partnership, through appropriate formal mechanisms and resources to support agreements and protocols, Hill found "the most important impediment appeared to relate to profoundly different interpretations of the protocols"<sup>66</sup>. Indigenous owners saw the protocol as formal recognition of their rights and shared authority in collaborative practice, whereas departmental officers saw it as an informal advisory mechanism. "

Even where good relationships are brokered and established, the issues of oversight, monitoring and enforcement of the principles of protocols and guidelines as expressed in project proposals is a further area of tension, highlighted in some literature, especially where legal provisions are relevant.<sup>67</sup> Indigenous research protocols are voluntary codes of practice without legal status, indeed generally constructed due to the absence of appropriate formal or legal procedures where conflicting codes of practice are at work in mutually-invested intersections.<sup>68</sup> In social intersections, mutual trust and relationships are the first casualties of misunderstanding or failure to follow protocols and carry obvious penalties for the conduct of research and the quality of research outcomes. In the legal context of informed consent, privacy and confidentiality, and all the areas of intellectual property intersection, the potential for serious dispute, including into the future, is always present for researchers. Institutional ethics regimes provide due diligence protection for researchers

<sup>60</sup> P 182

<sup>61</sup> p. 182

<sup>62</sup> P. 183

<sup>63</sup> p. 181

<sup>64</sup> p.183

<sup>65</sup> NHMRC 2005, *Keeping research on track: A guide for Aboriginal and Torres Strait Islander peoples about health research ethics* [http://www.nhmrc.gov.au/publications/synopses/\\_files/e65.pdf](http://www.nhmrc.gov.au/publications/synopses/_files/e65.pdf)

<sup>66</sup> Hill, 2006, p.586

<sup>67</sup> For example, see McIntosh, C Indigenous self-determination and research on human genetic material: a consideration of the relevance of debates on patents and informed consent, and the political demands on researchers. *Health Law Journal* 13, (Annual 2005): p. 213(39).

<sup>68</sup> Raven, 2006

but there is arguably still negligible protection for Indigenous communities. McIntosh, for example, cites Annas, a legal scholar and bioethicist, who asserts that oversight and enforcement of ethics principles is a generic problem in all human research but is amplified for Indigenous people. In his words, “What happens if you do not have informed consent? Not much actually. Domestic law in both Canada and the United States is a hodgepodge of professional guidelines, common law, and piecemeal legislation”.<sup>69</sup> The quest for remedies, however, is being pursued by First Nations in North America. In Australia, Bowrey<sup>70</sup> takes a more optimistic view to the voluntary status of protocols and guidelines with the reminders that formal law is not necessarily followed on the one hand, and that voluntary codes of practice do

*“prescribe modes of conduct through emphasizing or normalizing particular forms of cultural engagement. Whilst this effect is not assured, over time protocols do have the capacity to influence change in ways that differ to stringent bureaucratic or legislative programs. Protocols are part and parcel of repositioning certain agendas”.*<sup>71</sup>

In support of voluntary implementation and compliance with protocols, the emergence of community protocols or guides in remote Australia and Indigenous membership in the ethics review processes are two responses designed to strengthen Indigenous oversight within research intersections. In Australia, Janke<sup>72</sup>, whose work over time has explicated the legal issues confronted in Indigenous-Western intellectual property intersections, has recently outlined the relevant legal issues and how to attend to them when writing up research that includes Indigenous knowledge.<sup>73</sup>

The more salient broader point in these concerns is that even where community guides and education about the research process have been developed, the capacity of Indigenous communities to track and assess whether researchers follow the ethical standards as set out in research proposals is negligible. As Bowrey argues when discussing access and benefit-sharing mechanisms,

*“it could be argued that protocols are a meaningful mechanism enabling the expression of community autonomy regardless of their informal status. A question remains if management of the relevant protocols can be meaningfully administered at the community level. The more it requires legally trained experts to interpret and negotiate...the closer the matter returns to that existing under more positivistic engagements with custom. On the other hand, the requirement that Indigenous communities have the interest and capacity to educate and negotiate as to what the appropriate protocols demands with all comers who decide they want to interact with the community may also be an unrealistic and onerous expectation, especially given the level of poverty and disadvantage in many communities”.*<sup>74</sup>

These tensions predominately appear to lie between the principles of protocols and the emerging processes to facilitate compliance. However, despite the increasing demands on researchers, funding organisations and Indigenous community entities, there appears to be very little evidence in the literature of dissent from the wide acceptance of the content of Indigenous research ethics and protocols<sup>75</sup> and very little negative

<sup>69</sup> Annas, cited in McIntosh p.20

<sup>70</sup> Bowrey, 2006

<sup>71</sup> Bowrey, 2006, p.13

<sup>72</sup> See [http://www.terrijanke.com.au/fs\\_topics.htm](http://www.terrijanke.com.au/fs_topics.htm)

<sup>73</sup> Janke, T 2009 *Writing up Indigenous research: authorship, copyright and indigenous knowledge systems* Terri Janke and Company, at [http://www.terrijanke.com.au/pdf/Writing\\_up\\_Indigenous\\_research.pdf](http://www.terrijanke.com.au/pdf/Writing_up_Indigenous_research.pdf)

<sup>74</sup> Bowrey, 2006, p.13

<sup>75</sup> See as an exception Rolls, M 2003 *Why I don't want to be an ethical researcher: A polemic paper* and Peters-Little's response, as well as Peters-Little 2003 *The impossibility of pleasing everybody: A legitimate role for white filmmakers making*

reporting of the implications of them for the research process.<sup>76</sup> Dunbar and Scrimgeour contend that “researchers are obviously reluctant to openly criticise a system on which they rely for access, and so it is difficult to track the extent of resistance to increased levels of Indigenous community control over research and its findings”<sup>77</sup>. However, Taylor and Fox’s description of the ethics hurdles for a national eye health survey in Australia is arguably less evidence of resistance to ethical standards and more a questioning of the realities of the process and the implications for researchers and funding agencies in terms of largely unacknowledged added costs and time.

While Indigenous people are arguably unsympathetic to researchers’ frustrations and read these descriptions as evidence that processes are working in the interests of Indigenous people, Taylor and Fox do raise valid issues that need to be aired if processes are to be workable and effective. For example, despite the recommendations of the 1999 Australian Research Council report<sup>78</sup> for funding agencies to provide resources to allow researchers to negotiate the terms and details of research involving Indigenous peoples before the allocation of longer-term funding, this has not become practice. In this context, Taylor and Fox’s report that the ethics approval process for a survey took more than a year and one full time person and even after all that was still not finalized, raises a valid concern. Likewise, Dunbar and Scrimgeour’s example of the consultation demands that occur in remote communities where in one month members of an Indigenous community council were required to participate in thirty meetings at the request of outside agencies provide evidence of the onerous demands on the Indigenous sides.

In a different sector, but similar vein, Frances Peters-Little<sup>79</sup> has described some of the contradictory impulses at work in Indigenous film protocols. The aim of protocols and guidelines to protect Indigenous communities from harmful effects of any cinematic representation of Indigenous experience has led to an evolving practice that may be “paradoxically putting a gag on black creativity and self-criticism”<sup>80</sup>. The problematic of who is community, who can interpret and control filmic representations, the effects of this on Indigenous performances, who is to determine offensiveness within an interpretive and creative process that by its nature is open to many interpretations for various ends and audiences, what is a benefit to the community in any benefit-sharing or exchange for filming, the obligations of particularly Aboriginal filmmakers that benefit-sharing incurs and so on. Peters-Little’s concerns are with the curtailing of creative licence through well-intentioned but over-protective measures. However, her concerns highlight some negative effects that accrue from the generalised application of principles for Indigenous protocols and guidelines across different situations and contexts. In research contexts, the unquestioned requisite that proposed research must involve or be of direct benefit to Indigenous peoples may be similarly restrictive to cutting edge fisheries research or research that lies beyond Islanders’ prioritised interests.

If protocols are to work effectively, issues such as these also require attention. The justification, need, and value of Indigenous research protocols and guidelines is beyond question but more critical analysis of their efficacy as instruments for Indigenous research intersections would appear to be timely and beneficial.

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black films, all at *Australian Humanities Review*, January–March 2003

<http://www.australianhumanitiesreview.org/archive/Issue-Jan-2003/home.html>

<sup>76</sup> See Taylor H & Fox S, 2008 Ethical hurdles in indigenous research, *Australian and New Zealand Journal of Public Health* vol 32, no 5 pp.488-490 for an instructive report about the ethics process for the National Indigenous Eye Health Survey.

<sup>77</sup> Dunbar & Scrimgeour, 2006, p. 182

<sup>78</sup> ARC 1999 *Research of interest to Aboriginal and Torres Strait Islander peoples* Commissioned Report 59.

[http://www.arc.gov.au/pdf/99\\_05.pdf](http://www.arc.gov.au/pdf/99_05.pdf)

<sup>79</sup> Peters-Little, F 2003 Response to Mitchell Rolls *Australian Humanities Review* Jan –March 2003

<http://www.australianhumanitiesreview.org/emuse/ethics/peterslittle2.html>

<sup>80</sup> Peters-Little, 2003, p. 5

## Summary of trends in Indigenous research protocols and guidelines

To sum up, a number of trends can be identified in the Indigenous research protocols activity described in the literature. Discerning the trends helps to situate any arguments or proposals to develop specific fisheries protocols for the Torres Strait within the wider discourse that supports Indigenous protocol-making as well as against the practical experiences, suggestions and expectations of both researchers and Islanders. These trends are outcomes of the research sector's commitment to establish ethical practices in Indigenous research contexts that satisfy both scientific/professional and Indigenous standards and values. These trends are also outcomes of ongoing Indigenous involvement in and responses to the research sector's efforts.

Indigenous research protocols and guidelines typically draw from and/or include crossovers between standard ethical human research guidelines, professional codes of conduct, Indigenous cross-cultural communication protocols, community engagement or cultural protocols, and attention to Indigenous cultural and intellectual property (ICIP) interests in traditional and contemporary productions of knowledge. Standard ethical research guidelines and professional codes of ethics support principles expressed in international human rights instruments. Cultural, communication and engagement protocols deliver background and instructive content to highlight differences between Indigenous and non-Indigenous codes of practice.

In Indigenous research protocols and guidelines, standard ethical principles are commonly augmented with Indigenous values and meanings to assist researchers to demonstrate the inclusion of Indigenous interests in proposed research applications and to facilitate partnerships in research that concerns Indigenous people, their knowledge, customary practices, or lands or resources. These values and meanings may be expressed within principles and/or as background information.

Also evident is that most research institutions and increasing numbers of organisations or funding agencies have responded formally by including Indigenous ethics processes for research projects and that NHRMC and AIATSIS Guidelines for ethical practice have become the standard benchmark references in Australia. The consideration of Indigenous people as partners in research has seen Indigenous membership on research ethics committees and the establishment of discrete Indigenous research ethics committees in some sectors, for example, Aboriginal health, to legitimate research approval processes.<sup>81</sup> Meeting ethical standards increasingly requires formal agreements with Indigenous entities around the conduct of the research project.

A strong trend to deal with the increase in requirements is the emergence of protocols and guidelines that are specific to a particular research funding organisation or research intersection. Indigenous research protocols and guidelines are layered as they attempt to provide enough information for researchers to engage in partnerships and traverse the applications and approval process for research funding, the conduct of the research proper, and ongoing intellectual property and information management issues in ways that satisfy both scientific and Indigenous standards of practice. How to adjust standard ethical principles and requirements in a specific research context which is also cross-cultural form the basis of guidelines that supplement protocols principles. Where proposed research intersects with Indigenous knowledge, issues related to intellectual property, attribution, confidentiality, storage of data, and access and benefit-sharing require more attention in the application process, the conduct of research, and after the project finishes.

Indigenous professional and/or community organisations and entities are also repositioning themselves as significant authorities in setting the conditions of research in particular sectors and/or in Indigenous communities or on Indigenous lands and seas. In an effort to uphold/defend Indigenous interests and guide

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<sup>81</sup> See Stewart P, 2008, Indigenous research ethics is alive and well and operating in Australia, Canada and New Zealand. *Aboriginal & Islander Health Worker Journal*, July/August, vol 32, no 4, pp 9-12.

researchers, more and more detail specific to particular Indigenous and particular research contexts is sought by Indigenous communities and/or organisations and required of researchers before permission to conduct research with Indigenous people or on Indigenous land is granted. The additional scrutiny, clearances and permissions from Indigenous communities and organisations or entities with broader oversight (e.g. State and regional or sector bodies/committees) adds to the complexity of any proposed research application process and timeline.

In practice, through this combination of funding application requirements, ethics forms, referral to ethics review committees inclusive of Indigenous people or organisations, processes for obtaining various levels of consent from Indigenous communities, landowners, organisations or individuals, the use of Indigenous-inclusive reference groups to guide research progress, and agreements for conduct of research, information and benefit-sharing, all contribute to ensuring ethical practice prevails at all stages of research.

However, the increased requirements to meet these standards of ethical practice impacts on individual researchers, research and/or funding agencies, and Indigenous communities and organisations alike. Implementation of protocols impacts on human resources, timelines and ultimately finances in all these quarters. This increasingly has implications for Indigenous resources, skills and capacity, in what is a relatively minor area of Indigenous governance activity compared to the provision of basic essential services that challenge Indigenous communities.

How to align protocols principles with workable processes for implementation and compliance that satisfy both scientific and Indigenous codes of practice as well as research and Indigenous realities emerges as a central concern.

## Field Findings: Torres Strait Islanders and fisheries research

### The approach

Field interviews with Torres Strait Islanders with interest in fisheries were sought to gauge Islander views on the current content and process for fisheries research and their views on the development of protocols. Site visits to Badu, Saibai, Iama and Erub were undertaken in July 2009. Various members of Torres Strait Islander Regional Councils, PBCs, fisheries and the broader community were consulted at each of these communities through pre-arranged meetings as well as informal gatherings in the community. A range of issues were discussed.<sup>82</sup> The issues also were canvassed cognisant of the trends in Indigenous research protocol-making and cognisant of some of the challenges for both researchers and Indigenous peoples as outlined in the literature. Where opportunities were available to dialogue or workshop through some possible approaches to protocols and processes, these were taken. In a context where 'outsider' perspectives and pressures are not always fully understood by Islanders who confront their own pressures in the day to day world, discussion of all perspectives was considered useful. Such discussion can be particularly useful if Islander standpoints are upheld throughout the consultation process via a problem-solving approach that acknowledges and supports Islander concerns while being mindful of the pressures associated with research realities. Consultations focussed on Islander concerns but shaped discussions towards the shared space of interest with scientists rather than the points of difference. This ensured a less defensive and more productive and positive stance to be applied to the problems arising in this intersection of different goals, expectations and codes of practice.

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<sup>82</sup> See Appendix 1 for the range of issues

### **What Islanders say**

There was agreement across all sites about the common and shared interests between marine scientists and Torres Strait Islanders and reaffirmed Islanders willingness to facilitate rather than impede researchers. However, these consultations also revealed Islander frustrations with the information flow and processes involved in approving, informing, arranging, conducting, disseminating and utilising research in their communities. The layers and connections between fisheries and research policy priorities, project approvals, ethics approvals, individual researchers, different organisations, entities and Island communities and the issues dealt with by each of them with regard to the research process are not clear at the community level, despite the evidence of much cooperative effort towards this end. That is, while the dots in the process appeared to be in place, connecting them to produce the desired effect appeared to be the major challenge. This indicates that there is some future work to be done to sort and clarify processes and areas of organisational responsibilities to ensure that any protocols developed are able to be implemented by both researchers and Islanders undertaking their respective roles in the process in a way that works more efficiently.

However, these issues were not limited to processes that related solely to the arrangements for individual researchers to work in communities. Also at issue were research priorities and research results. It is fair to say that for Torres Strait Islanders these latter issues become entwined with the conduct of field research arrangements by individual researchers. As much larger political points of contention, perceived concerns about research priorities and outcomes can translate into frustration with or ambivalence about research projects being negotiated in local host community settings. However, clearly these issues relate to higher order policy settings and whole of Torres Strait concerns about access to research findings once a project is over. It needs to be noted that deposit of research reports or publications was discerned as different from feedback and dissemination of project progress to the community. Feedback was considered essential and welcomed in appropriate formats. However, the deposit of original research in standard scientific format in a central location was also considered essential on the grounds of future access to the Torres Strait research corpus. Given that these concerns were common across the sites visited, the strong indication is that compliance with (a) agreed research priorities and (b) deposit of research findings are standard issues to be managed and overseen at a central level but made more transparent at local levels via criteria-setting in the application and approval processes.

Towards this end, across all sites there was acknowledgement of some key elements considered vital to the development of fisheries research protocols. There was acknowledgement of existing documentation of protocols and their usefulness. However, it was also acknowledged that it was important that protocols facilitate a more-informed process so communities and researchers knew what to expect of each other, before, during and at the conclusion of any research project. Presented with the trends in Indigenous protocols development, it was recognised and supported by local experience that the inclusion of too many items or principles in protocols could cloud rather than clarify the processes for both community and researchers. There was agreement by all community stakeholders that there existed an opportunity with this protocols project to work towards an approach that streamlined the process for both parties and facilitate meaningful interactions around fisheries research.

### **Analysis**

Out of these discussions, three areas were identified and agreed upon by Torres Strait Islanders as key to the development of protocols: (a) a shared vision between community and researchers that emphasised the

common interests; (b) an identified process for the conduct of the research engagement in the community; and (c) the need for researchers to make their research materials available for the ongoing development of Torres Strait Islanders' fisheries priorities. In the subsequent analysis of data from Islander consultations a fourth area was discerned to be (d) the treatment of Torres Strait Islander traditional and local knowledge. In consultations, the issues surrounding the place of Torres Strait knowledge underpinned and were integral to all discussion. The shared vision, the processes for the conduct of research and the demand for access to findings, all sprang from a firm insistence that the presence of Torres Strait Islander knowledge of the marine environment and its resources is the fundamental basis of the shared space with scientific research. These assumptions are not necessarily visible to scientists and have therefore been drawn out and identified separately here.

The willingness to work with the notion of shared interests rather than from the determination of points of difference signals a shift from current approaches described in the literature which arguably set out what researchers must do to appease concerns to protect Indigenous interests in any research engagements. The approach discussed here instead sets out the grounds of agreement in the vision, the conduct, the treatment of Torres Strait knowledge, and the outcomes of any research. These elements may form the basic organising principles of a protocols document, and as the centrepiece of a larger information resource for both researchers and Islanders. Importantly, because the principles are simplified, a range of concerns of both scientists and Islanders that need to be dealt with to each other's satisfaction requires some additional layers of information and documentation to aid implementation. Thus the need for supplementary resources stands. But the associated increased levels of requirements seen elsewhere can be streamlined via the improved sequence of processes and alignment of forms and organisational adjustment. The re-consideration of the alignment, sequence and organisation of forms and processes required to implement the principles is thus a critical part of improving efficacy of protocols practice.

**A shared vision** The community view is that Torres Strait fisheries have sustained Islanders for thousands of years and that the sustainability of marine resources for thousands of years to come is the paramount priority for current generations of Torres Strait people. While all had specific priorities for various and different marine species in each local area, the future sustainability issues for all of Torres Strait and its people was considered the higher position and therefore the foundational principle of any research protocols. As long as scientific research projects supported this goal, Islanders were less concerned about questioning the rationale or details of scientific projects and more interested in seeking any intersections with their own interests, including knowledge contributions, increasing/supplementing their own knowledge and practices, and/or seeking employment or training opportunities on the project. Where the coincidence of interest was very strong, Islanders would be interested in close participation in a project, for example, where research was directly tied to an Islander problem or where Islander knowledge was integral to the scientific proposal. Where a research proposal supported the shared vision but was possibly not of great interest to a community or its priorities, Islanders preferred overt honesty rather than covert patronization of their interests through forced connections. Where research projects consistently failed to engage Islander priorities for marine sustainability they sought a process for having this addressed at the TSSAC level.

**Torres Strait knowledge and intellectual property** The shared vision emerged as acknowledgement of the intersections of Torres Strait Islander people's knowledge of the marine environment and that of marine science. Torres Strait knowledge includes traditional knowledge, and environmental and ecological knowledge that may form part of contemporary understanding and practice where this is relevant. The issue of respecting scientific method and assisting scientific researchers while protecting Islanders' intellectual property was discussed at length. The resolve was that all contributions made by participants be properly attributed in any

research project and subsequent publications as a formally agreed standard of practice to satisfy community concerns about the protection of their intellectual property interests. This implies a standard clause to attribute input of knowledge by Torres Strait Islanders to be built into the application and ethics process, and included as a principle in the protocols.

In consultations, Islanders were agreed that where this knowledge was given by Islanders and used by researchers in the course of their research, and cited in reports, publications or future scientific knowledge development, it needed to satisfy the attribution section of an ethics process, set down by TSSAC, and monitored as well through Islander membership on this committee. All the ethical issues around what informed consent procedures, privacy and confidentiality standards, appropriate attribution and notification of use, access and benefit-sharing mean, and how they can be met in what are cross-cultural research engagements, need to be attended to at the ethics applications and approval level and explained to Islanders in local settings with the help of the central point of contact when the arrangements for the conduct of research are being made. Islanders at the local level looked for assurances that ethical standards of practice would be met through the central process in place at the committee level but required to be kept informed that standards had been met and what these meant in the context of any specific research project. This has implications for the application and approval processes for funding, ethics, and conduct of the project in a local setting.

**The process for the conduct of the engagement** This aspect is focussed on the arrangements for conducting a research project in a community. Considered from the community perspective, Islanders argued that the approach must be clear and workable and facilitate both the researcher and community needs and concerns. Commonly at issue has been the timely flow of information about projects as well as lack of clarity about the approval and permissions processes, and roles and responsibilities of all stakeholders involved in project development and execution.

There was agreement across the communities visited that a single, central point of contact was needed to provide a consistent channel to advice and information for researchers while also providing a point through which to channel the diverse concerns or needs of different communities. Some suggested this be incorporated into the role of an existing employee of the Council. Some suggested it be included within the position description of rangers. Others suggested the position be housed in the Land and Sea Management Unit (LSMU) on Thursday island. But all agreed there needs to be a single, identified central point of contact rather than a range of possible points of contact across different organisations or community members, or for different projects. All agreed that for the single point of contact to work, the position description of the role needs to be clearly set out and remunerated appropriately, within the larger role also undertaken by the contact. The areas of work identified included: receiving information about proposed projects; ensuring the stakeholders in the community are informed; drafting a briefing paper for stakeholders in the community clearly outlining the outcomes of the ethics and grant application stage; negotiating with researchers arrangements in the community for the field work; identifying possible options for equipment and personnel that may assist the projects; assisting researchers with general advice and information about community conditions and expectations; following up researchers on the deposit of materials so that these can be accessed by the community; reporting to stakeholders including TSSAC when project is completed.

Discussions about this role centred on its importance as a central coordination point and/or the need for a more centrally positioned broker's role to assist local contact points. Wherever the role was housed, membership on TSSAC was considered to be advantageous to reassure local community contacts and researchers that approval and ethics processes were accountable at that level. Formalising this role was seen to assist researchers by providing a focal point for their negotiations with the host community. It was seen to

assist communities by clarifying community roles and responsibilities in the research process and providing a mediation and feedback point for community concerns and any cross-cultural communication issues.

The role of local contacts in individual community settings was less agreed upon. Such was the varied nature and presence of research projects and community capacities that local contacts were more likely to be assigned for each project rather than form part of an identified position in a community organisation. But how a local contact would be identified, remunerated, and operate was seen to be one of the tasks of the central contact person and would depend to some extent on the details of the project being proposed or negotiated. For the research arrangements to be put in place, one local contact with a clear list of responsibilities needed to be in place in the local setting but accessed through the central contact at all times. One clear issue that emerged in discussions was that the central point of contact had to know what was occurring between researchers and local contacts in communities. That is, that the left hand had to know what the right hand was doing to avoid crossed communication channels. It was crossed communication channels that appeared to contribute to misunderstanding and contradictory information being circulated in ways that contributed to misinformation about research and confusion about schedules of researchers.

**Availability of research findings** All those consulted indicated that the part of any research activity potentially vital to local and collective Torres Strait interests is the findings from the research. At the same time, all indicated their understanding of the importance of the independence of researchers, in terms of the focus of research investigations, the scientific method, and the researchers' restrictions in responding to Islander concerns outside of the immediate brief of their research projects.

Islanders also agreed that the potential of research findings to shape policy or resource arguments towards the specific interests of Islanders were not the province of the researcher who produced them, but required further expertise that could more directly utilise a range of scientific findings to build cases to support specific Torres Strait community, governance or individual interests. They saw great value in an approach to build in requirements for researchers to make copies of their materials available to provide potential support to the Torres Strait community's ongoing policy and regional interests. They acknowledged this was different from requiring researchers to disseminate research to the community in appropriate formats.

### **Summary of emerging issues**

In local settings, Islanders' concerns about fisheries research relevance and priorities appeared to be engaged through their dealings with individual research projects, and not generated via an informed process about the broader regional research policy goals and how these are translated through approvals for research project funding across the Torres Strait. Islander support for scientific research depends on the visibility of Islander priorities in the overall research program being envisioned. The vision itself needs to be a shared one where common interests are in focus. How scientific research is organised and administered is part of the information set that Islanders need to understand the constraints or realities of research. How fisheries research articulates to other scientific research also needs some illumination, for in local settings fisheries research is not the only research being undertaken. The value of a bigger schema as a context for Islanders to locate fisheries research practices should not be underestimated. Without these information sets Islanders cannot see their location in relation to research interests and practices, and recognise an old position in a web of patronising relations rather than having a role as real players and contributors in a shared zone of interest.

What was also made very clear in this consultation process was that effective cross-cultural communication between researchers and host communities was not the substantive issue, from the Islander perspective. Rather, effective communication channels to facilitate negotiations about the conduct of research arrangements

between researchers and Island communities were the real source of frustration. Once researchers were on the ground, communication and relationships seemed to work themselves out, indeed these were not raised as an issue, from the Islander perspective at least, even where the meanings of a project were not clear. Communication channels currently appear to be triangulated between the coordinating point on Thursday Island, local contacts in outer Island communities and researchers, in an ad hoc manner. These are process and organisational issues that can be streamlined through requirements in the grants application and approval process. Islanders in local settings need to know who researchers are, when they are arriving, and what they intend to do in their communities. Islanders also need to know what they are required to do to enable rather than impede the flow of information and the conduct of research.

In support of this, decisions about the worth and value of any project could remain in the hands of TSACC with an Ethics Committee constituted by both scientists and Islanders. The flow of information to relevant communities and researcher contact with communities could be managed through a central point of contact who brokers the consultation and information-sharing at the local level and back to assist researchers in arranging field work. In the early stages at least, a researcher will best be facilitated by a single point of advice, informed by both Committee and local concerns and so will relevant stakeholders in communities. The quality of this advice and service is paramount to the success of future processes.

As witnessed in previous projects, without a way to resolve tensions that occur for Islanders who fail to see their interests directly upheld in any research project, negative perceptions can produce Islander ambivalence to research, via anger about the perceived lack of attention to Islander concerns and frustration about the real meaning and value of scientific research.

This brings us full circle to the principles which underpin a protocols guideline. These need to bring into focus the common and shared interests between scientists and Islanders rather than the points of dispute. Conflict over the fisheries agenda requires avenues for resolution at the policy level rather than in the guts of every proposed research project. Research applicants need to be aware of Islander goals and agendas at the outset, funding criteria and application processes need to reflect this. Islanders could find ways to appreciate the value of research that may at first glance not appear to be of direct interest or benefit to Islander interests by focusing on the common areas of interest.

## Field Findings: Researchers and protocols

### Issues raised by researchers and others involved in the research process<sup>83</sup>

To use the words of one respondent, the current approach for researchers seeking approval to research in the Torres Strait and seeking the correct permissions from local communities and other stakeholders is “unclear, time-consuming and confusing”. It was reported that there was no single individual responsible for the process and nor was there an initial point that set out all the permissions required and the order in which they must be sought. Problems for researchers that accrue as a result were that time lapses in responses to researchers from the Torres Strait end contribute to delays in negotiations and arrangements, increase the risk of misunderstandings, reduce the time available to conduct research, and therefore compromise the quality of research projects.

As examples, researchers have been affected by the postponement of meetings of the Torres Strait Boards, Councils and committees who grant approval and likewise by the absence of the local personnel in

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<sup>83</sup> See Appendix 2

communities responsible for local permissions and arrangements. They can be affected particularly if permissions which they were not informed about at the beginning of the process are then not forthcoming in time for them to soundly conduct the relevant aspects of research dependent on these permissions. Funding constraints mean time is a valuable component in research. Another significant impediment centred on communication with outer Islands and having the people there when a researcher wants to meet, negotiate or present was viewed as one of the more difficult aspects from the research perspective.

Respondents however were also unanimous about the need for community engagement. There was agreement that presenting research findings in person to the community was the most effective method in their experience. TSRA Newsletters and newspaper articles were also seen as useful for disseminating news and information about projects. Reports, CDs and posters were viewed by one as insufficient on their own.

Respondents also indicated understanding of the need to protect Islanders Intellectual Property rights and to work on protection arrangements. One researcher who attempted to create a partnership agreement to protect IP interests could not get the agreement signed. In the absence of a signed agreement this researcher was guided by the university's ethical code of conduct but aware that the generic nature of this code may not have accommodated Islanders' expectations.

These responses were typical of the willingness of researchers to negotiate a range of arrangements and demonstrate awareness of the need for permissions, clearances, community engagement, research feedback, and the need to protect Torres Strait Islanders' intellectual property interests. Comments were overwhelming focused on processes. The underlying principles that necessitated these processes were not at issue.

### **Suggestions from researchers**

The recommendations from researchers, however, did attend to ethics issues as well as process issues. For example, it was suggested that a community-led panel could supervise and manage ethics in the Torres Strait region, with the qualification that Islander members should have experience in research, government or business management. A document detailing what is considered ethical practice in the Torres Strait region was also considered to be a useful resource. In addition, a contact for advice on this area, either a body or at least an identified individual was suggested.

With regards to mechanisms for protecting Islander Intellectual Property (IP), one respondent suggested "a clearly identified body acting as the custodian of results involving sensitive knowledge and IP issues. This body could then decide what can be shared with other institutions and also decide the level of detail that can be published". Also mentioned was the attribution of knowledge contributors and participants in published work taking into account requests for confidentiality.

But it was process issues that received the most attention and these revolved around personnel, communication channels, and approval and response timelines, all of which were considered the most difficult aspects of undertaking fieldwork in the Torres Strait. A clearly identified single point of contact who could give impartial advice on issues that researchers had to be informed about was also suggested. The streamlining of clear and well-sequenced processes to cross application, approval, ethics, and field arrangements was also seen to be needed with some attention given to establishing acceptable timelines for approvals, permissions and arrangements.

### **Summary of the issues**

Researchers' comments confirm to a large extent the comments by Torres Strait Islanders. These insights from the research perspective suggest once again that perhaps the emphasis on effective communication is not the substantive issue from the research perspective either, even though it is essential in meeting informed consent and other ethical standards. Rather, it is the need to streamline processes to enable effective communication channels and consistent advice, especially in the approval and planning stages of research. These need to be in place to facilitate the proposal and approval process at the TSRA and TSAAC level and the onward communication with remote host communities before researchers make preliminary visits to arrange the conduct of engagement and/or before they are scheduled to begin fieldwork proper. In the initial stages the central point of contact could be more effectively positioned to manage, for example, the reality that Islanders do not use diaries as standard organisational practice, with the result that community contacts often need reminder contacts in the lead up to the impending arrival of researchers. This would assist researchers and enable Islanders to retain oversight of the coming and goings of researchers in various communities. These communication channels need to be equally effective when researchers return to present findings.

Also researchers' comments seem to confirm once again that once researchers are on the ground, effective communication is much easier, as long as all parties are in possession of the same relevant information. This is not to say that important cultural information to assist communication and mutual understanding is not necessary, only that it is not sufficient, and it is more difficult to manage over long distances and without face to face contact in the initial negotiation stages before interpersonal relationships are established. Effective communication guides come into play as a supportive resource but are not a substitute for process.

## Conclusions and implications of findings

There was evidence of much common ground between Torres Strait Islanders and researchers in the knowledge intersections specific to fisheries research, and a willingness to focus on the shared interests in scientific investigation of the Torres Strait fisheries. Acknowledgement of the presence, and respect for the value, of each other's knowledge, methods and practices was acknowledged by both Torres Strait Islanders and researchers. However, most in evidence was frustration with the processes for arranging field research, and these frustrations related most strongly to the identification of personnel, communication channels, and the identification of, and sequence for gaining, the required approvals, permissions and schedules for field arrangements. Both sides also expressed concern about the specificities of Torres Strait standards for ethical practice, especially in relation to the knowledge input provided by Islanders and protection of their intellectual property and how to monitor this. The local deposit of research findings in scientific format were sought by Islanders to build a Torres Strait corpus of fisheries research for future local reference. This is emerging as a priority in other Indigenous research contexts but is particular to Islanders' need to keep abreast of the development of knowledge in the region from research agendas over time.

### Implications for the development of protocols

Protocols, and therefore the requirements for researchers and the demands this places on Island communities, could be made easier by sorting out a number of issues. It would seem that in the context of fisheries research this would require:

- That the differences between the principles of protocols and the processes to ensure their implementation/compliance in practice need to be drawn in sharper relief. This would allow principles to be demonstrated in research practice through establishing effective and logical organisation and administration via requirements inserted into official forms and supported through supplementary information.

- That protocols principles be based on a simple set of shared interests and goals that are able to be practically demonstrated at the funding application and ethics approval stages and monitored by a checklist review of publications and reports at the point of final deposit. It needs to be acknowledged that in this effort to facilitate scientific research, Islanders carry the risk burden of protocols practice failing to uphold their vested interests in any knowledge production. In the case being put in this report, where it is being argued to simplify protocols principles and streamline processes in an effort to reduce rather than increase the raft of requirements for researchers, it is imperative that the processes put in place do work effectively to protect Islander interests.
- That processes for demonstrating the requirements of protocols need to be streamlined and simplified from the funding application stage, through the approval processes, through the process for making field arrangements with local communities, including any conduct of engagement agreement, and on to the final stages of local dissemination, reporting, publication, and deposit of research findings.
- That serious consideration is given to setting up a TSSAC Ethics Committee for fisheries research and that the cross-cultural implications for ethical procedures such as informed consent, etc. and Torres Strait knowledge and IP issues are dealt with through a process to be determined by such a committee.
- That the requirement to deposit scientific publications in the Torres Strait also needs a streamlined process that begins at the application stage, can monitor compliance, and which can manage future access and use issues for Islanders and scientists in a standard process. This implies the need for a well-constructed deposit form such as AIATSIS uses.
- That the forms and processes around application, approval, conduct of engagement and field work arrangements, deposit of findings and publications, IP, ethics, and disputes with Islanders are constructed in such a way as to require the minimum number of applications, documentation, coverage letters, permissions required by scientists, as possible. And similarly, that the points for scrutiny and surveillance by Islanders are minimized, given the demands and capacities in communities. This implies that application forms for funding should consider in the first instance the need to include space for plain English, concise descriptions of proposals and methods that are meaningful to Islanders, and room for meaningful demonstration of protocols principles (that is, that can also be used for community consultation and ethical compliance). And that ethics approval forms should be a supplement and a supporting document to institutional ethics forms in a way that reduces duplication of work by scientists who must also seek institutional ethics clearances. Where possible the central point of contact should facilitate and broker the initial arrangements for consultation, cover letters, local permissions, and arrangement details.
- That the requirements and processes for approval are itemised, sequenced, and scheduled with consideration for the interests of both researchers and Islanders and the time/resource constraints of both parties.
- That Islander participants receive sufficient training to meet their responsibilities in the assessment process of ethical practice.

- That forms and information about the application and approval processes are supplemented by links to useful information about the Torres Strait region, Torres Strait history, culture and contemporary concerns, especially where these intersect with fisheries research. That links to further information about Indigenous research and ethics issues are also provided.
- That a standard process for any dispute handling requires building in to any ethics or conduct of engagement agreements and that this process needs to be able to clearly distinguish the area under dispute (e.g. a policy matter or an ethical conduct matter) and refer it to the appropriate mechanisms for dealing with it.
- That the effectiveness of these protocols and processes are reviewed and updated through timely feedback mechanisms for Islanders and researchers, as well as formal evaluations.

Given that this represents more than the construction of protocols and a web resource, the following course of action is needed:

1. Review and adapt current grant application as a single point of documentation for proposed research project details and ethical practice;
2. Establish TSSAC Ethic committee to review grant applications related to ethical practice for both researchers and participants, and provide reports to TSSAC;
3. Establish a set of ethic guidelines for researchers;
4. Establish Islander representative on all decision-making committees of fisheries research in the Torres Strait Islands and remunerated on Commonwealth allowances established for boards or councils;
5. Provide the necessary training for Islanders to be fully engaged in committees' discussions and assessments of the research and ethic requirements;
6. Establish and resource a central contact person to coordinate between researchers, communities, participants, relevant community organisations, and TSSAC;
7. Reconstitute TSSAC membership to include the central contact person;
8. Establish an online repositories for research materials on Torres Strait fisheries;
9. Establish processes for Researchers at the completion of projects to submit form that confirms ethical practice, that materials will be deposited into central repository, and commit to providing copies of future publications;
10. Establish in position description of the central contact person a clearly defined role in a follow up procedure for completed projects to ensure completed ethic form have been submitted, that materials are deposited, and future publications continue to be uploaded into the repository.

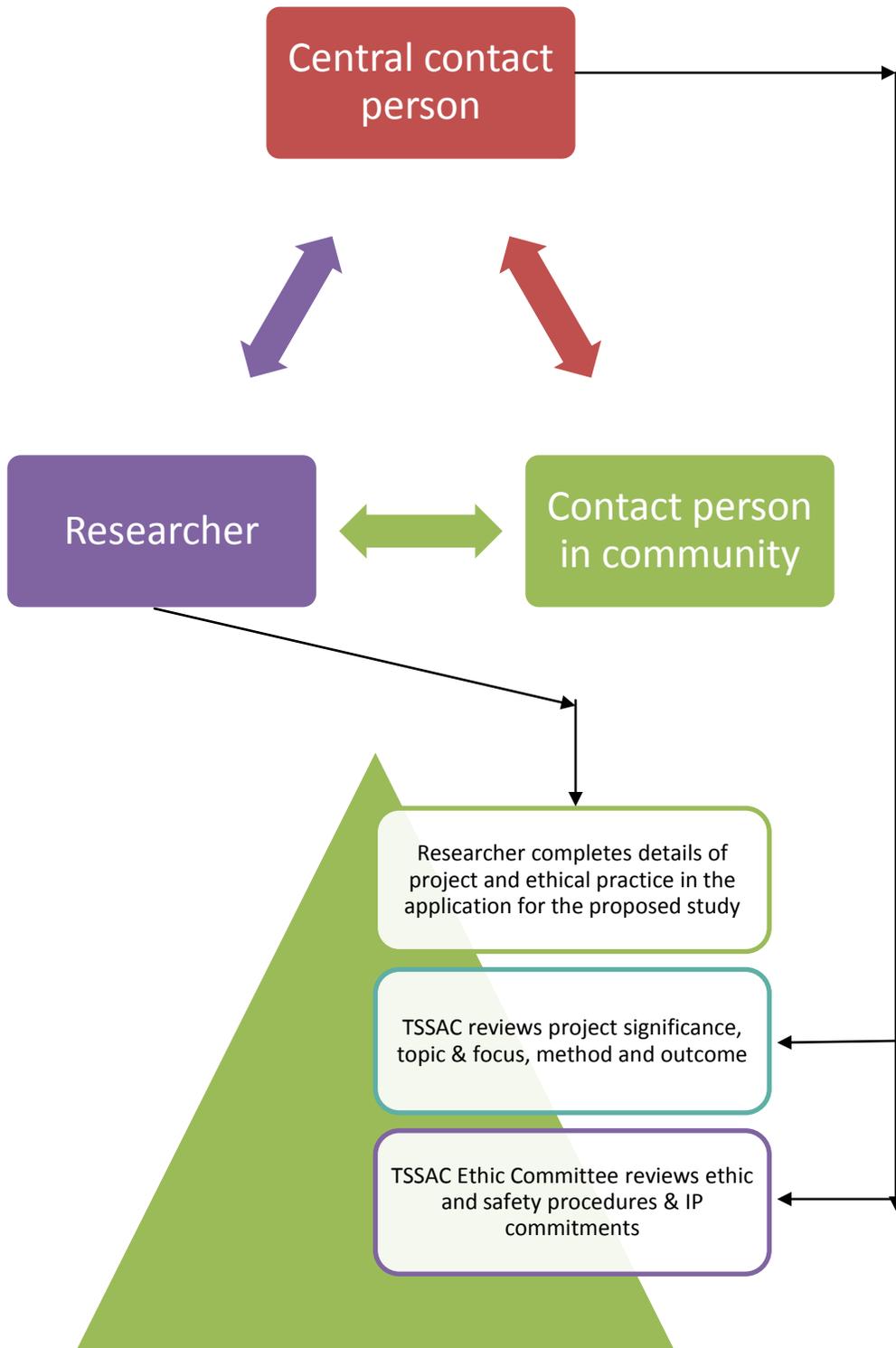


FIGURE 1

## A GUIDE FOR THE PROTOCOLS | FOUR

### The framework for protocols, formal processes, and best practice standards

Protocol	Focus and responsibilities	Standards for best practice	Key compliance points	Checkpoints
<b>Our Shared Vision</b> Commitment to and understanding of long-term sustainability issues	<p>Recognition of common interest in sustainability of marine environment and resources</p> <p>Recognition and respect for Torres Strait Islander and scientific knowledge, methods, practices, goals, and realities</p> <p>Recognition of connections between Islander marine knowledge, ongoing custom, and social, economic and political futures.</p>	<p>Aust Govt strategy for ecologically sustainable development 1992, EPBC Act 1999, UNCED 1992 Agenda 21 – Global Agreement on Sustainable Development<sup>84</sup></p> <p>TSRA website for general Islander priorities and goals</p> <p>Mina Mir Guidelines</p> <p>UN Dec. of Rights of Indigenous Peoples,</p> <p>Article 8(j) CBD and other CBD and WIPO documents relating to traditional knowledge</p>	<p>Clear statements in the grant application process on proposed significance and benefits to Islanders, the region and the sustainability of marine resources</p> <p>Statements in relevant sections of research proposals and ethics section of any intersections or implications for Islander priorities, input, and knowledge.</p> <p>Statement of commitment to respectful relationships and exchange in the conduct of research in communities.</p>	TSSAC committee to assess research application for contribution to our shared vision
<b>Torres Strait Knowledge and Intellectual property</b>	Recognition and respect for Torres Strait Islander knowledge and	Australian & International Intellectual Property regimes,	Clear statements in proposals and final reports that identify	The TSSAC Ethic committee will assess and be assured that

<sup>84</sup> Our current National Strategy for ecologically Sustainable Development was adopted in 1992. The Strategy corresponds with global agreements set down in UNCED Agenda 21 on sustainable development, establishes a broad framework for policy development in Australia, and informs a plan of action. Agenda 21 was established in Rio de Janeiro, Brazil as part of the Earth Summit in 1992, and as a response to the impact of humans on the environment and the need to prioritise more sustainable means of production. It is an international agreement on commitments and actions that countries, governments, industries and communities can take to achieve sustainability agendas.

Protocol	Focus and responsibilities	Standards for best practice	Key compliance points	Checkpoints
Commitment to safeguard interests of both parties	<p>customs that have developed over thousands of years in the grant application</p> <p>Recognition that Western sciences and researchers have a long tradition of evidence-based knowledge practices</p>	<p>Copyright Act, Trademarks, Patents, UN CBD on Access &amp; Benefit-Sharing, WIPO on Traditional knowledge and IP, IPRIA<sup>85</sup>, Janke, DK-CRC, AIATSIS</p>	<p>researcher and/or institution intellectual property interests</p> <p>Clear statements of commitment in application to prior and informed consent procedures when seeking permission to use and/or publish TS knowledge and right of informants to correct interpretations or withdraw them; attribution of TS knowledge, marine or otherwise in all research products including future use; retention and appropriate storage of original data and authorising documentation; formal agreements for any access and benefit-sharing arrangements (necessary in relation to use of TS knowledge where appropriate); attention to any customary requirements</p>	<p>procedures for prior and informed consent meets best practice standards; attribution of information and knowledge sources will be made; and process is identified for documenting access and use conditions of materials gathered during the study.</p>

<sup>85</sup> E Hudson Cultural Institutions, Law and Indigenous Knowledge: A Legal Primer on the Management of Australian Indigenous Collections IPRIA Melbourne 2006 at <http://www.law.unimelb.edu.au/ipria/publications/Reports/Legal%20Primer.pdf>

Protocol	Focus and responsibilities	Standards for best practice	Key compliance points	Checkpoints
			around the circulation of knowledge or privacy of informants; deposit in TS of any future use or development	
<b>Conduct of engagement</b>	Collaborative arrangements for fieldwork	AFMA/TSSAC, TSRA, LSMU, Islander Councils & Organisations, NHRMC, AIATSI	<p>Submit EOI to TSSAC for in-principle approval</p> <p>Negotiate with central contact person possible sites and participants</p> <p>Negotiate fieldwork arrangements with recommended contact at your chosen site</p> <p>Submit full grant and ethic application to TSSAC</p> <p>Fieldwork to commence when approval, clearances and permissions have been finalized</p>	TSSAC will assess whether adopted procedures and clearances for AFMA-funded projects have been fulfilled
	Ethical practices	International Code of Medical Ethics 1949, Helsinki Declaration 1964, NHMRC Act 1992,	Proposed research projects must detail, in the grant application process, ethical	TSSAC Ethic Committee must be satisfied that the ethical aspects of the proposed

Protocol	Focus and responsibilities	Standards for best practice	Key compliance points	Checkpoints
		Aust. Govt. 2009 <sup>86</sup> , NHMRC, University HREC guidelines	practices that will be used in the study	research meets best practice standards
	Effective communication, Informed consent and participation, and freedom to withdraw	Mina Mir guidelines, NHRMC & HREC guidelines, UN ILO, CBD, Andean Pact <sup>87</sup>	Researchers in the grant application must detail a commitment to respect traditions and customs; to communicate research elements	TSSAC Ethic Committee will assess details in the grant application, respond to any concerns during the study, and require signed statements

<sup>86</sup> The standard of practice in Australia on ethical research involving human subjects is set down by a National Statement on the Ethical Conduct of Human Research. Its history in Australia began in 1960s and was in part linked to the government’s funding of medical research. Drawing from the Helsinki Declaration 1964, and previously from the International Medical Code of Ethics 1949, various iterations were made by the National Health and Medical Research Council to achieve the current National Statement on Ethical Conduct in Human Research (2009). This Statement now offers a standard of ethical practice in research that is endorsed by the Australian Government, the National Health and Medical Research Council, the Australian Research Council and the Australian Vice-Chancellors’ Committee. Well over 220 Human Research Ethic Committees established in research institutions across Australia attests to its daily use as a standard for ethical practice in human research. Chapter 4.7 of the Statement sets out specific items for the Australian Indigenous people. The NHMRC 2003 publication, Values and Ethics - Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research, attempts some content for the application of ethic principles as too the NHRMAC 2005 publication, Keeping research on track: A guide for Aboriginal and Torres Strait Islander peoples about health research ethics. The Guidelines for Ethical Research in Indigenous Studies published by Australian Institute of Aboriginal and Torres Strait Islander Studies in 2002 also attempts some guidance for researchers in the social science areas.

<sup>87</sup> The Convention on Biological Diversity (CBD) is a key UN instrument that recognizes sovereign rights of states to their natural and genetic resources. Article 15 expressly deals with parameters for access to genetic resources, mutually agreed terms, prior and informed consent, and benefit-sharing in a fair and equitable way. The Bonn Guidelines adopted in 2002 were established to assist terms, methods and processes for stakeholders in implementing prior and informed consent requirements and benefit sharing arrangements. Specific provisions were made in Article 26(d) of the Bonn Guidelines to address matters as they relate to Indigenous people, “consent of the relevant stakeholders, such as indigenous and local communities, as appropriate to the circumstances and subject to domestic law, should be obtained”. Article 31 details further, that “[r]especting established legal rights of indigenous and local communities associated with the genetic resources being accessed or where traditional knowledge associated with these genetic resources is being accessed, the prior informed consent of indigenous and local communities and the approval and involvement of the holders of traditional knowledge, innovations and practices should be obtained, in accordance with their traditional practices, national access policies and subject to domestic laws.” Article 8j of the CBD relates specifically to traditional knowledge, and the principle of prior and informed consent is key to its implementation. But how was this to be established within the sovereign states? An early Program of Work was developed in 2000 to demonstrate a Just way to implement 8j and its related provisions. A key principle for the early process was that “access to traditional knowledge, innovations and practices of indigenous and local communities should be subject to prior informed consent or prior informed approval from the holders of such knowledge, innovations and practices”. To assist the implementation process further, and particularly the ways impact assessments were made of the social, cultural and environmental areas, the Akwé: Kon Voluntary Guidelines were developed and adopted in 2004. Sui generis systems for protecting Indigenous people’s interests were also pursued with WIPO, PFI, NGOs and other relevant organizations to leverage some enforcement of the CBD provisions, including the intellectual property of Indigenous people. International UN workshop on free, prior and informed consent and Indigenous people in 2005 in New York at <http://www.docstoc.com/docs/11988916/The-concept-of-free-prior-and-informed-consent-in-the-ILO> More recently, the UN is acknowledging the the significance of work across the globe to establish databases and repositories in the protection of traditional knowledge and the potential for their commercial development. Contribution to the workshop from CBD on principle of prior and informed consent at [www.un.org/esa/socdev/unpfii/.../workshop\\_FPIC\\_CBD.doc](http://www.un.org/esa/socdev/unpfii/.../workshop_FPIC_CBD.doc)

Protocol	Focus and responsibilities	Standards for best practice	Key compliance points	Checkpoints
			<p>in plain English, and to use appropriate formats for intended audiences or tasks</p> <p>Particular care needs to be taken with content and language of Information Sheets and Consent Forms, also with approaches to achieving prior and informed consent, and be satisfied that participants have opportunities to withdraw at an time without penalty</p>	at the completion of projects that ethical practices were followed
	Respect privacy of both parties	Australian Privacy Act, NHMRC, AIATSIS, HRECs	<p>Proposed project must clearly accept the conditions of the Act and researchers must sign the section in the application form that commits to the Australian Privacy Act</p> <p>Details in the grant application on the treatment of Indigenous sensitivities</p>	TSSAC will assess level of privacy, special measures for confidentiality, treatment of secret-sacred areas, anonymity, refusals, family and traditional commitments, independence of researcher, etc.
	Access to sites, resources and knowledge holders	AIATSIS, HRECs, UN CBD on approaches to	Proposed projects must negotiate and supply permissions	TSSAC Committee will require Permissions/cleara

Protocol	Focus and responsibilities	Standards for best practice	Key compliance points	Checkpoints
		knowledge holders	and clearance forms from relevant organisations before undertaking fieldwork	nce forms before releasing funds for projects
	Benefit-sharing arrangements	UN CBD	Proposed projects must clearly make a commitment in the application to attribute all knowledge and information gathered from Islanders	TSSAC Ethic Committee to assess processes for attributing information and knowledge sources
	Training, education & employment	ILO 169, Australian Equity & Reconciliation agendas  TSSAC to identify training budgets and allowances for projects	Proposed projects will be advantaged if opportunities for ongoing knowledge development and training for Islanders in fisheries is prioritized	TSSAC will assess funding application for the opportunities for Islander employment, education, or training
	Schedules & activities	TSSAC to increase funding budget for establishing sites for study	Proposed project must include details of schedules and fieldwork that allow for extra lead-time, longer engagements in the community and limited response times to gaining feedback on drafts	TSSAC will asses commitments to field arrangements that ensure project timelines can be met
	Information dissemination	UN, NHMRC, Jones & Barnett toolkit	Proposed projects must make a commitment to the	TSSAC committee will assess commitments in the

Protocol	Focus and responsibilities	Standards for best practice	Key compliance points	Checkpoints
			Torres strait communities to inform, update and publish findings of their project in a language that is accessible to Islanders	application to information dissemination of materials
<p><b>A central repository</b></p> <p>Commitment to make information accessible to Torres Strait Islanders and future researchers</p>	<p>Recognition of the need for copies of all research materials to be deposited in a central location</p> <p>Recognition of the need for all materials deposited to have clearly stated access and use conditions</p>	<p>Digital online repositories are fast becoming the preferred method for accessing information and decreasing research and development phases, and world best standards are already in place for ensuring their content is discoverable in the online environment</p>	<p>Proposed project must commit to depositing their research materials in a single location, and detail the levels of access and use required by Islanders and/or the level of access to safeguard commercial IP interests</p>	<p>TSSAC will nominate a central repository for projects funded and require the deposit of materials from the study and for future access and use</p>

## THE PROTOCOLS | FIVE

### Torres Strait Fisheries Protocols Research: A Guide for Scientific Researchers

Torres Strait environmental and marine resource knowledge has developed over thousands of years and is an interwoven component of ongoing tradition and custom as vital to the lives of Torres Strait Islanders today as it ever was.

The Protected Zone Joint Authority (PZJA) is responsible for management of commercial and traditional fishing in the Australian area of the Torres Strait Protected Zone (TSPZ) and designated adjacent Torres Strait waters. The Australian Fisheries Management Authority (AFMA) is responsible for the day to day management of Torres Strait fisheries on behalf of the PZJA.

The Torres Strait Scientific Advisory Committee (TSSAC) provides strategic advice to the PZJA with regard to research priorities for the Torres Strait region and provides AFMA with recommendations for research funding. The Torres Strait Regional Authority (TSRA) is a member of the Protected Zone Joint Authority and is responsible for representing the interests of Torres Strait Islanders in PZJA decisions in accordance with its legislative responsibilities. The TSRA also coordinates Torres Strait Islander representation on PZJA consultative groups as well as facilitating communication pathways for PZJA research information.

AFMA, TSRA and TSSAC recognise that Torres Strait Islander knowledge of the waterways and ecology of the marine resources is vital for the effective management of Torres Strait fisheries resources. The role of Torres Strait Islanders in caring for marine resources has sustained them for thousands of years.

These guidelines for fisheries research in Torres Strait are based on the shared interests of Torres Strait Islanders, AFMA and the TSRA in the sustainability of the Torres Strait marine environment, its resources and in providing economic development opportunities for Torres Strait Islanders.

In publishing these guidelines we embrace a spirit of cooperation and mutual respect for Torres Strait Islander environmental and marine resource knowledge and practices and for fisheries research, knowledge and practice.

## OUR SHARED VISION | ONE

Sustainability of the marine resources of the Torres Strait Islands

## OUR SHARED PURPOSE | TWO

To achieve world-class standards for ethical practices in fisheries research and for effective communication with participants of research projects in the Torres Strait community

### Our Shared Vision

Commitment to and understanding of long-term sustainability issues

#### GOAL

- Commitment to, and understanding of, long-term sustainability issues
- Mutual recognition and respect for Torres Strait Islander and scientific knowledge, methods, practices, goals, and realities
- Recognition of connections between Islander marine knowledge, ongoing custom, and social, economic and political futures.

### Torres Strait Knowledge and Intellectual Property

Commitment to safeguard interests of both parties

#### GOAL

- Recognition and respect for Torres Strait Islander knowledge and customs that have developed over thousands of years in the grant application
- Recognition that Western sciences and researchers have a long tradition of evidence-based knowledge practices
- Ensure Torres Strait Traditional Inhabitant interests are considered as part of the assessment of the project

### A Central Repository

Commitment to make relevant information accessible to Torres Strait Islanders and future researchers

#### GOAL

- Recognition of the need for copies of all relevant research materials to be deposited in a central location
- Recognition of the need for all materials deposited to have clearly stated access and use conditions.

## RECOMMENDATIONS FOR RESEARCHERS

- Submit pre-proposals to TSSAC for in-principle approval
- Negotiate with a central contact person regarding possible sites and participants and ensure that the community is aware
- Negotiate fieldwork arrangements with recommended contacts at your chosen site
- Submit full research proposal including relevant ethic applications to TSSAC if requested
- Detail ethical practices that will be used in the study in the research proposal
- Include details on the treatment of Indigenous sensitivities if applicable in your research proposal
- Include a clear commitment to attribute all knowledge and information gathered from Torres Strait Islanders to those Islanders in your research proposal
- Include clear commitment to Torres Strait communities to inform, update and publish findings of their project in a language that is accessible to Islanders in your research proposal
- Opportunities for ongoing knowledge development and training for Islanders in fisheries should be clearly stated in the research proposal
- Include details of schedules and fieldwork that allow for extra lead-time, longer engagements in the community and appropriate response times
- Conduct fieldwork when approval, clearances and permissions have been finalised if appropriate
- Make commitment to respect traditions and customs
- Communicate research elements in plain English, and use appropriate formats for intended audiences or tasks
- Take care with content and language of Information Sheets and Consent Forms, also with approaches to achieving prior and informed consent, and be satisfied that participants have opportunities to withdraw at any time
- Commit to respect the Australian Privacy Act in research activities

## RECOMMENDATIONS FOR TSSAC

- TSSAC will assess whether adopted procedures and clearances for AFMA-funded projects have been fulfilled
- TSSAC must be satisfied that an appropriate ethics committee has assessed the grant application and is satisfied that the ethical aspects of the proposed research meets best practice standards
- TSSAC will assess the level of privacy, special measures for confidentiality, treatment of secret/sacred areas, anonymity, refusals, family and traditional commitments, independence of researcher, etc.
- TSSAC will request that permissions/clearance forms before releasing funds for project submissions
- TSSAC will assess processes for attributing information and knowledge sources
- TSSAC will assess funding application for the opportunities for Islander involvement, employment, education, or training
- TSSAC will assess commitments to agreed field arrangements that ensure project timelines can be met
- TSSAC committee will assess commitments in the application to the appropriate level of dissemination of information and materials

## CONTACTS:

Australian Fisheries Management Authority

38 Victoria Parade. PO Box 858, Thursday Island Q4875.  
Ph 07 40691990 Fax 07 40691277email: annabel.jones@afma.gov.au  
Torres Strait Regional Authority

Torres Haus, 46 Victoria Parade. PO Box 261, Thursday Island. Q4875.  
Ph 07 40690700 Fax 07 40691879email info@tsra.gov.au Web www.tsra.gov.au  
Torres Strait Scientific Advisory Committee  
Executive Officer, C/o AFMA

38 Victoria Parade. PO Box 858, Thursday Island Q4875.  
Ph 07 40691990 Fax 07 40691277web: www.pzja.gov.au

## MORE INFORMATION:

TSRA website for general Islander priorities and goals at [www.tsra.gov.au](http://www.tsra.gov.au)

PZJA website for information on PZJA fisheries at [www.pzja.gov.au](http://www.pzja.gov.au)

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*Protocols for producing Indigenous Australian performing arts*

*Protocols for producing Indigenous Australian media arts*

*Protocols for producing Indigenous Australian visual arts*

*Protocols for producing Indigenous Australian music*

*Protocols for producing indigenous Australian writing*

Australian Film Commission: Indigenous Cultural and Intellectual Property Rights and Protocols: Protocol for Filmmakers Working with Indigenous Content and Communities

<http://www.afc.gov.au/funding/indigenous/icip/default.aspx>

Australian Film Commission Indigenous Filming Protocol

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The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples <http://aotearoa.wellington.net.nz/imp/mata.htm>

### **United Nations Convention on Biological Diversity**

UN CBD website at <http://www.cbd.int/>

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UN CBD Article 8(j): *Traditional knowledges, innovations and practices* at <http://www.cbd.int/traditional/>

UN CBD Article 10 biological resources 10c at <http://www.cbd.int/convention/articles.shtml?a=cbd-10>

UN CBD Article 15 on access to genetic resources at <http://www.cbd.int/convention/articles.shtml?a=cbd-15>

UN CBD Article 16 access to and transfer of technology at <http://www.cbd.int/convention/articles.shtml?a=cbd-16> see also Queensland government model for benefit sharing of biotech <http://www.wipo.int/tk/en/databases/contracts/texts/html/queensland.html> and Canadian certified see variety license agreement on contractual agreements for access to genetic resources and benefit sharing at <http://www.wipo.int/tk/en/databases/contracts/texts/html/varietylicence.html>

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WIPO database on Contracts of biodiversity-related Access and Benefit-Sharing Agreements, with a particular emphasis on the intellectual property aspects of such agreements at <http://www.wipo.int/tk/en/databases/contracts/index.html>

WIPO database “comprises examples of codes, guides, policies, protocols and standard agreements relating to the recording, digitization and dissemination of intangible cultural heritage, with an emphasis on intellectual property issues” at [http://www.wipo.int/tk/en/folklore/creative\\_heritage/](http://www.wipo.int/tk/en/folklore/creative_heritage/)

WIPO's work on IP and genetic resources including relatedness to TK at <http://www.wipo.int/tk/en/genetic/>

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<http://www.wipo.int/tk/en/folklore/culturalheritage/surveys.html>

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<http://www.wipo.int/tk/en/folklore/culturalheritage/casestudies.html>

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## APPENDIX 1 | SEVEN

### Islander interviews and workshop sessions

- Identification and clarification of protocols and what they are designed to do
- Concerns and areas where Islanders seek input or commitments from researchers and/or policy bodies, advisory committees
- Discussion of where, how, and what concerns can be dealt with at different levels and avenues for community and individual feedback
- Identification of items relevant to the conduct of engagement on the ground in the community
- Clarification of the roles and responsibilities of Islanders and researchers for each item
- Identification of community education required (e.g. community protocol or resource) or community and other contacts/reference points necessary to determine this project by project
- Identification of the levels of appropriate background education for researchers

There were also discussions on broader operations and organisational processes and challenges:

- What is the best management option for ensuring safe conduct in the engagement?
- How to get beyond a protection/appeasement/patronage agenda to ensure more mutual understanding and respect for both scientific and Islander agendas?
- Who/where/what is the best process to check proper conduct of engagement?
- When to set review points to ensure currency of protocols?
- Designing protocols to facilitate agreements about roles and responsibilities by both parties
  - Generating mutual understanding of commitments to long-term sustainability issues from both parties – policy and local agendas
  - Safeguarding interests of both parties – attribution and IP issues from both perspectives
  - Ongoing knowledge development of both parties – degrees of involvement, dissemination of progress and outcomes
  - Training, education and employment for both parties – each party’s contributions to the other, as appropriate to project
  - Investments from both parties to meet timelines – schedules and activities plans
  - Disseminating findings to benefit both parties – forms and scheduling of dissemination
  - Making information accessible from the Torres Strait – deposit, ongoing access and use agreements

- Respect, privacy and associated issues for both parties - confidentially, secret-sacred areas, anonymity, refusals, family and traditional commitments, independence of researcher, issues and levels of informed consent for participants

## APPENDIX 2 | EIGHT

### PROTOCOLS SURVEY

Colleagues,

My Name is Dr N Martin Nakata (PhD). I am currently Director of Jumbunna Indigenous House of Learning and Professor of Australian Indigenous Education at University of Technology, Sydney (UTS). I have worked as a researcher for over two decades and my current research work is focused on the intersection of Indigenous Knowledge, digitisation and protocols. You can see a list of my work at

<http://www.jumbunna.uts.edu.au/staff/martin.html>

I have been commissioned by the Torres Strait Scientific Advisory Committee (TSSAC) to

- a) review the current protocols used to guide researchers undertaking projects in the Torres Strait supported by the Australian Fisheries Management Authority's (AFMA) Research Fund; and
- b) to develop a plain-English, practical, single source, web-based document that provides guiding protocols specific to AFMA-funded researchers working in the Torres Strait.

TSSAC, as you are aware, is responsible for soliciting, reviewing and advising research providers working in the Torres Strait on commercial and traditional fishing research projects, and particularly those who are seeking funding, wholly or partially, from AFMA.

So far, I have undertaken a review of protocols development in Australia and internationally as well as their underlying principles related to field of research work. I have also undertaken site visits and consults with fishermen, freezer operators, community members, council employees, managers and leaders across the Torres Strait for their views.

Your input into the survey below will add further content to guide the ways forward, and will be invaluable to achieving a workable process for undertaking fieldwork in the Torres Strait.

### SURVEY QUESTIONS

From your knowledge and/or experience of current processes:

How would you describe the current approach to gaining permissions, clearances and approvals for research work in the Torres Strait?

Did this approach assist the conduct of your fieldwork in the community?

What process do you think is best for protecting the IP of your participants?

What process do you think would be best to ensure safe and ethical practices are undertaken throughout the research project?

What process do you think is best for returning research findings to the community?

Overall, what would you say are the aspects that are working well?

Overall, what would you say are the difficult aspects?

In your opinion, how are the current arrangements relevant to scientific fieldwork in the Torres Strait?

What recommendations would you make to improve the current process for gaining permissions, clearances & approvals?

APPENDICES

