

Guidelines for Ethical Research in Australian Indigenous Studies

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Introduction

Indigenous peoples have inherent rights, including the right to self-determination. The principles in these *Guidelines for Ethical Research in Australian Indigenous Studies* are founded on respect for their rights. These include rights to full and fair participation in any processes, projects and activities that impact on them, and the right to control and maintain their culture and heritage. AIATSIS considers that these principles are not only a matter of ethical research practice but of human rights.

It is essential that Indigenous people are full participants in research projects that concern them, share an understanding of the aims and methods of the research, and share 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 Indigenous people. It should also be recognised that there is no sharp distinction between researchers and Indigenous people. Indigenous people are also researchers, and all participants must be regarded as equal participants in a research engagement.

This new edition of the *Guidelines* embodies the best standards of ethical research and human rights. The guidelines have been revised to reflect developments in critical areas that have emerged since the previous edition in 2000. These include changes to intellectual property laws, and rights in traditional knowledge and traditional cultural expressions, and the establishment of agreements and protocols between Indigenous people and researchers. These guidelines also take into account emerging developments in digitisation, and data and information management, and the very significant impacts this has on research and other aspects of Indigenous studies.

These guidelines are primarily intended for research sponsored by AIATSIS. However, AIATSIS recognises that it has responsibility as a leading institution in Australian Indigenous studies and that its ethics guidelines inform all research in this area.

Principles of ethical research

The *Guidelines* comprise 14 principles grouped under the broad categories of rights, respect and recognition; negotiation, consultation, agreement and mutual understanding; participation, collaboration and partnership; benefits, outcomes and giving back; managing research: use, storage and access; and reporting and compliance.

Rights, respect and recognition

Principle 1: Recognition of the diversity and uniqueness of peoples, as well as of individuals, is essential.

Research in Indigenous studies must recognise the diversity of Indigenous peoples, including their different languages, cultures, histories and perspectives.

It is also important to recognise the diversity of individuals and groups within communities.

Applying the principle

Recognise the diversity of individual Indigenous groups and communities and the implications in planning, carrying out and reporting their research.

Recognise that Indigenous individuals or communities may have more pressing priorities, that may impinge on the research time frames.

When extrapolating from research, do not generalise from understandings of one Indigenous community to others or to all Indigenous peoples.

Do not apply stereotypes to communities and individuals.

Identify diversity within a community; for example, on the basis of gender, age, religion, family grouping and community interest.

Do not presume that the view of one group represents the collective view of the community.

Differentiate between individual, group and / or collective rights, responsibilities and ownership.

Undertake research only if it does not conflict with individuals' rights, wishes or freedom.

Respect individuals' rights to participate in research and in the disposal of research material.

Principle 2: The rights of Indigenous peoples to self-determination must be recognised.

Research projects must be conducted in accordance with the United Nations *Declaration on the Rights of Indigenous Peoples*, including principles of Indigenous peoples' rights to self-determination and to full participation (appropriate to their skills and experience) in developments that impact on their lives.

Applying the principle

Understand the meaning of self-determination in relation to Indigenous peoples and their rights to maintain, control, protect and develop their cultural heritage, including their traditional knowledge, traditional cultural expressions and intellectual property.

Article 3 of the *Declaration on the Rights of Indigenous Peoples* states, 'Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development' (UN 2007).

Principle 3: The rights of Indigenous peoples to their intangible heritage must be recognised.

Research projects should be conducted in accordance with the principle of Indigenous peoples' rights to maintain, control, protect and develop their intangible heritage, including their cultural heritage, traditional knowledge, traditional cultural expressions and intellectual property.

Applying the principle

Understand intangible heritage in terms of Indigenous peoples' definitions and perspectives.

Article 31 of the *Declaration on the Rights of Indigenous Peoples* states:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts (UN 2007).

Understand the relevant laws and policies for the protection and maintenance of Indigenous intangible heritage, and international standards such as *The Protection of Traditional Cultural Expressions/Expressions of Folklore: Revised objectives and principles* (WIPO 2006a) and *The Protection of Traditional Knowledge: Revised objectives and principles* (WIPO 2006b), as well as the UNESCO (2003) *Convention for the Safeguarding of the Intangible Cultural Heritage*.

Principle 4: Rights in the traditional knowledge and traditional cultural expressions of Indigenous peoples must be respected, protected and maintained.

Indigenous traditional knowledge and traditional cultural expressions are part of the heritage that exists in the cultural practices, resources and knowledge systems of Indigenous peoples, and that are passed on by them in expressing their cultural identity.

To respect, protect and maintain these rights, researchers must have a good understanding of the nature of Indigenous traditional knowledge systems, traditional cultural expressions and intellectual property.

Applying the principle

Rights in Indigenous traditional knowledge and cultural expressions are imperfectly reflected in Australian law, but must be respected. Ensure that all participants in research projects are aware of the inclusive nature of Indigenous traditional knowledge and cultural expressions as well as intellectual property.

It is a fundamental principle of research to acknowledge the sources of information and those who have contributed to the research. If Indigenous knowledge contributes to intellectual property, recognise the contribution, where appropriate, by transferring or sharing intellectual property and any benefits that result from the research.

Ensure familiarity with laws, administrative arrangements and other developments relevant to Indigenous traditional knowledge and cultural expressions as well as intellectual property rights. Include attention to actual and/or potential implications of digitisation on research processes and outputs.

Discuss co-ownership of intellectual property, including co-authorship of published and recorded works and performances, shared copyright, future management of the resources collected, and proper attribution and notices.

Give Indigenous contributors the opportunity to share in any intellectual property rights that vest in the researcher: it is the researcher's responsibility to negotiate with any institution (for example, a university) that has contractually transferred their intellectual property rights.

Agree in writing on the sharing of intellectual property rights and moral rights between the researcher and individual contributors, and a community representative organisation, if applicable.

In the design of a research project, recognise and acknowledge continuing Indigenous ownership of the traditional knowledge, traditional cultural expressions and intellectual property rights in the materials on which the research is based, and protect the privacy, integrity and wellbeing of participants.

Include all possible measures in research projects to ensure protection of Indigenous peoples' communal rights in cultural expressions, designs, and knowledge and performances, as these (or aspects of these) may be produced or included in such projects.

In any publication, acknowledge information obtained from Indigenous peoples.

Indigenous traditional knowledge and cultural expressions are not static and extend to things that may be created based on that heritage. Be aware of copyright laws regarding moral rights and attribution and the various forms of protection for different research products, including performances and other elements of Indigenous cultural expressions. Where necessary seek appropriate expert advice on intellectual property issues.

Be aware of current laws and standards, both internationally and in Australia, that relate to specific areas of research (for example, biology, genetics, ethnobotany).

Base research projects on an understanding, in equal terms, of Indigenous peoples' perspectives and definitions of Indigenous traditional knowledge, cultural expressions and intellectual property, and on current non-Indigenous approaches to understanding them.

Principle 5: Indigenous knowledge, practices and innovations must be respected, protected and maintained.

Acknowledging and respecting Indigenous knowledge, practices and innovations is not only a matter of courtesy but also recognition that such knowledge can make a significant contribution to the research process.

Once Indigenous knowledge is recorded, it becomes 'property' as defined under Western laws and concepts. It is therefore essential that the rights and interests of Indigenous people, whose knowledge it is, are recognised and protected throughout the project, and in regard to research products and outcomes after the life of the project.

Applying the principle

Recognise and protect Indigenous knowledge in accordance with Indigenous peoples' perspectives, protocols and cultural values.

Take steps to ensure awareness of the scope of the subject matter of Indigenous knowledge in relevant standards such as *The Protection of Traditional Knowledge: Revised objectives and principles*.

Respect the rights of Indigenous peoples in relation to their knowledge, ideas, cultural expressions and materials, and their rights to maintain secrecy of Indigenous knowledge and practices.

Show or distribute restricted material only with express permission from those who provided or are responsible for it. Consider the impact of disclosure on the wider cultural source group, and whether wider consultation is required prior to disclosure. This is particularly relevant where first disclosures and publications are likely.

Aboriginal and Torres Strait Islander peoples have distinctive languages, customs, spirituality, perspectives and understandings that derive from their cultures and histories. Research that has Indigenous experience as its subject matter must reflect those perspectives and understandings.

Incorporate relevant Indigenous knowledge, learning and research processes into all stages of research, including project design and methodology.

Negotiation, consultation, agreement and mutual understanding

Principle 6: Consultation, negotiation and free, prior and informed consent are the foundations for research with or about Indigenous peoples.

Researchers should understand the meanings of free, prior and informed consent (FPIC), and the steps that must be taken to ensure that the process is followed properly.

Free, prior and informed consent means that agreement must be obtained free of duress or pressure, and ensuring that Indigenous people are fully cognisant of the details and risks of the proposed research. Informed consent of people as a group, as well as individuals within that group, is important.

Applying the principle

Conduct all research on the basis of free, prior and informed consent.

Ensure that Indigenous people are equal participants in the research process.

Ensure appropriate negotiation and consultation about the aims and objectives, and to ensure meaningful negotiation of processes, outcomes and involvement.

Ensure the research project has FPIC informed consent and plain English statement signed by participants.

Identify appropriate individuals and communities to consult - there is almost always someone to speak for a particular place or area.

For more general research, identify and consult individuals or communities who have made an important contribution in relation to the research topic.

Allow appropriate individuals for the area/topic to be identified from within the community.

Involve the Traditional Owners who speak for the Country.

Identify Indigenous regional, local and community and/or other organisations.

Identify any written research protocols or other protocols that need to be followed.

Observe appropriate community values, norms and protocols.

Identify potential political issues that may be affected by the research or the outcomes of the research.

Communicate with relevant individuals and organisations by appropriate means (face-to-face meetings are always desirable), and consider the budgetary and funding implications of such visits for the individuals and organisations.

In introductions to individuals and communities, clearly identify the researchers and any other participants, any institutional affiliations and key stakeholders, and sources of financial support.

Clarify objectives from the outset, but maintain flexibility and a willingness to modify goals and ways of working.

Agree about the involvement of individuals in the interpretation of the results and the preparation of any publications (including whether they should be co-authors).

Agree about identification or otherwise of individuals involved in the research, and whether those who take part in research should be acknowledged in any publication.

Principle 7: Responsibility for consultation and negotiation is ongoing.

Consultation and negotiation is a continuous two-way process. Ongoing consultation is necessary to ensure free, prior and informed consent for the proposed research, and to maintain that consent.

Community representatives, individual participants including Traditional Owners, and the wider Indigenous community may need time to consider a proposed research project and to discuss its implications, both before it begins and at various stages of the project. Research projects should be staged to allow continuing opportunities for consideration of the research by the community.

Applying the principle

Phase research according to community as well as research needs.

Hold preliminary meetings to discuss the proposed research and reach agreements.

If necessary, reformulate the outline of the research proposal and provide new materials generated from the discussions to the community for review.

Ensure that all potentially interested individuals are present at preliminary meetings and/or are informed of the scope of the proposed research.

Explain research methods and processes to individuals, and at community meetings where appropriate, and reach agreement on their cultural appropriateness.

Rights to record and/or film require clearance from participating interviewees/subjects.

Negotiate agreement in relation to the rights and responsibilities in ownership of, and access to, recordings of Indigenous performances and activities, especially where those recordings are likely to be distributed and shared in ways such as digital audio and visual methods, DVD and the Internet.

Report during the project in accordance with any agreement.

If necessary, consult further about unforeseen matters that might affect the research process.

Be willing to renegotiate objectives in light of new factors and considerations and to modify the scope, aims and methods of the proposed research.

Allow time in the research project for continual review, feedback and discussion.

Ensure that Indigenous people have the right to decline or withdraw their involvement in a research project at any stage. Agree what will happen to material provided to the researchers, where the person who provided that material withdraws from the project.

Make provision for a final meeting to consider the results of the research. Further consultation may also be required about details of reports and any publications.

Obtain (do not assume) invitations to visit the community for the time necessary to conduct the research and to report upon results.

Principle 8: Consultation and negotiation should achieve mutual understanding about the proposed research.

Consultation involves an honest exchange of information about aims, methods and potential outcomes (for all parties). Consultation is not merely an opportunity for researchers to tell the community what they, the researchers, may want.

Being properly and fully informed about the aims and methods of a research project, and its implications and potential outcomes, allows Indigenous people to decide for themselves whether to oppose or embrace the project.

Applying the principle

Identify appropriate Indigenous communities and individuals to consult before discussing research aims, methods and outcomes.

Clearly define and explain the purpose and nature of the study, who is carrying it out and funding it, the objectives of the research, and the likely impacts and consequences of the study, including production of research outputs, publication and commercialisation.

Explain methods of collecting information clearly and comprehensively, including how and where the information is to be kept.

Reach agreement on how the research should proceed, including processes and timing for informing representatives of the community of the progress of the research and reporting any interim results.

To conduct research appropriately and sensitively, discuss relevant cultural and political circumstances.

Be clear about the community or individual participation sought and what it may entail.

Provide an honest assessment of the risks or potential adverse impacts of the research.

Develop strategies to handle disputes that may arise. These may include mediation and other approaches where, for example, participants withdraw from a project, or the nature of the project changes after commencement.

Provide any environmental and social/cultural impact assessment studies and their outcomes as they impact on the research.

Provide examples of other research done by the people/groups seeking access, and discuss how the projects went and any problems that were encountered and how they were addressed.

Explain, but do not overstate, the potential benefits of the study.

Explain the potential usefulness of the research to Indigenous peoples in general.

Provide sufficient time for discussion and consideration of proposals.

Where a research project will result in joint authorship of a publication (where the contribution is significant), negotiate for shared copyright if appropriate.

Principle 9: Negotiation should result in a formal agreement for the conduct of a research project.

The aim of the negotiation process is to come to a clear understanding that results in a formal, negotiated agreement (preferably written) about research intentions, methods and potential results.

Good faith negotiations involve a full and frank disclosure of all available information and are entered into with an honest view to reaching an agreement. In designing and commencing a research project, all participants should negotiate and reach agreement on a process for managing the Indigenous traditional knowledge and intellectual property that exists prior to commencement, how this relates to all those components of Indigenous traditional knowledge, cultural expression and intellectual property that result from the research and throughout the project, and the potential implications for all these components in research products and outcomes.

To protect the community and the researcher, and to clarify the understandings that have been reached, a written agreement (a protocol, memorandum of understanding or contract), where practical, should be the end result of the consultation and negotiation. Such agreements may have legal implications.

Applying the principle

Get a letter of support for the research project.

Identify who should enter into the agreement, and on whose behalf the agreement is made.

Base the agreement on good faith negotiations and free, prior and informed consent.

Consider whether independent legal advice is required.

Consider any permits or permissions that may be required from Indigenous organisations and from state, territory or local authorities.

Determine the information to be included in the agreement, based on discussions and negotiations; the agreement should reflect the mutually agreed aims, processes and outcomes, community participation and collaboration.

In the agreement:

- provide a detailed and clear description of the ownership and licensing of intellectual property rights;
- include the joint ownership or allocation of the results of the project;
- where possible, take into account the research needs of the local Indigenous people and the appropriate Traditional Owners;
- recognise that an individual or a community has the right to withdraw from a research project;
- include processes for resolving conflict, such as mediation by an outside party;
- refer to specific Indigenous community protocols and ensure that these are respected and upheld; and
- include negotiated arrangements for benefits to be made to Indigenous people.

Participation, collaboration and partnership

Principle 10: Indigenous people have the right to full participation appropriate to their skills and experiences in research projects and processes.

Research projects should be based on an awareness of the rights of Indigenous peoples to full participation in decision making in matters that affect their rights.

Research on Indigenous issues should incorporate Indigenous perspectives. This is often most effectively achieved by facilitating direct involvement in the research from the start of a project.

If a participant withdraws, then he or she should agree what should be done with the contributions made to the research project up to the date of the withdrawal.

Applying the principle

Indigenous communities and individuals have a right to be involved in any research project focused upon them and their culture. Apply the relevant provisions in the United Nations *Declaration on the Rights of Indigenous Peoples* (see Article 2).

At the beginning of a project identify the appropriate people - Traditional Owners, custodians, Elders, and others with rights and interests - who are responsible for the Indigenous knowledge and/or practices that may be involved, and facilitate direct involvement as appropriate.

Recognise the specialist knowledge of particular community members and their potential contributions to the research endeavour, and involve such persons wherever possible and appropriate.

Encourage and support community members, Traditional Owners and others as appropriate to be involved in the research as collaborators, advisers or assistants.

Continue Indigenous involvement, where possible, beyond the period in which the research is conducted (to later stages such as compiling the research and presenting it).

Benefits, outcomes and giving back

Principle 11: Indigenous people involved in research, or who may be affected by research, should benefit from, and not be disadvantaged by, the research project.

Research in Indigenous studies should benefit Indigenous peoples at a local level, and more generally.

Indigenous people who contribute traditional knowledge, practices and innovations, cultural expressions and intellectual property, skills, know-how, cultural products and expressions, and biological and genetic resources should receive fair and equal benefits.

A reciprocal benefit should accrue for allowing researchers access (often intimate) to personal and community knowledge.

Applying the principle

Discuss openly and negotiate with the community any potential benefits. Benefits may include financial payments such as royalties, as well as other benefits such as training, employment and community development.

Aim to make the benefits to the community or individual participants proportionate to the demands of their participation.

Where the benefits are not general (for example, employment opportunity or financial compensation), allocate benefits in cooperation with the group. Be prepared to pay those contributing to the research in recognition of the value of their contributions, particularly where significant time is given outside normal personal or community commitments.

Recognise that certain cultural information is owned and may need to be paid for.

Ensure that payments or financial benefits accruing to the participants are considered by an ethical review panel.

Provide all relevant information to Indigenous participants and communities to weigh potential benefits against possible risks or disadvantages.

Do not create or contribute to circumstances where exploitation of an economic, cultural or sexual nature can occur.

Consider benefits to Indigenous communities such as support for the archiving of materials relating to intangible cultural heritage, including (but not limited to) field notes and recordings that document language, cultural practices and ethnobotanical knowledge. Ensure that, if such benefits are provided, appropriate measures are in place to protect secrecy and confidentiality of materials.

Principle 12: Research outcomes should include specific results that respond to the needs and interests of Indigenous people.

Research outcomes should respond to the needs and interests of Indigenous people, including those who participate in the project and others in the community who may be affected by the research. Among the tangible benefits that a community should be able to expect from a research project is the provision of research results in a form that is useful and accessible.

Researchers should be aware that research outcomes of interest to Indigenous peoples, including any community and individuals directly involved, may differ from those envisaged by researchers.

Applying the principle

Ascertain, during early consultations, the research needs of the community, if any, and opportunities for collaboration in research.

Be sure to build in the specific viewpoints of Indigenous people.

Incorporate research outcomes specific to the needs of Indigenous participants, the local community, Traditional Owners and other individuals as appropriate.

Recognise the broad range of educational backgrounds and experiences of Indigenous peoples and produce materials in accessible forms.

Provide an opportunity to discuss the significance of the results for the community with representatives and participants.

Be prepared to assist in the formulation of proposals for further research or related action by Indigenous participants, the local Indigenous community, other Indigenous individuals and local Indigenous organisations.

Managing research: use, storage and access

Principle 13: Plans should be agreed for managing use of, and access to, research results.

Indigenous peoples make significant contributions to research by providing knowledge, resources and access to data. These contributions should be acknowledged by providing ongoing access for Indigenous people to research results, and negotiating rights in the research at an early stage.

The community's expectations, the planned outcomes and access to research results should be agreed. Written agreements are encouraged.

Applying the principle

Identify at the start of a research project all Indigenous people, organisations and communities who will need to be involved in determining strategies for access to research results.

Agree on the rights to research results, their forms and presentation, and individual or community use of them. This may involve ongoing access to data or representations of the results of research through digital media.

Agree at the outset on the ownership of research results, including institutional ownership of data, individual rights of researchers and Indigenous participants, and collective rights of Indigenous community groups.

Agree when and how results of research will be fed back to and discussed with relevant individual community members and/or appropriate community organisations.

Make clear the level of community control over access to, and use of, any research results, including print, pictorial, audio and video, and digital materials. Discuss making these available online and/or depositing in libraries and archives.

Report research results to the community before publication and before discussion with the media.

Negotiate with the community any discussion with the media of the research project and its results.

Agree on the disposition and storage of results of research, including primary data.

Try to anticipate the evolving use of technology and the impact it could have on research results and their storage.

Discuss thoroughly matters of confidentiality and agreed restrictions on use of information.

Explain fully any limits on confidentiality (for example, where field notes or research data might be subpoenaed for legal proceedings).

Be willing to make results known to appropriate local, state or territory, and national authorities if requested.

Reporting and compliance

Principle 14: Research projects should include appropriate mechanisms and procedures for reporting on ethical aspects of the research and complying with these guidelines.

Researchers and research funding bodies should ensure that there are appropriate, ongoing processes in place for reporting research progress, especially with regard to any actual or potential changes in the ethical conditions/contexts.

Applying the principle

Take appropriate measures in the design, implementation and monitoring of a research project to ensure it complies with these guidelines and the principles they contain at all stages of a project.

Be aware of the risks (including any penalties) that may result from breaches of these guidelines (for instance, where they are part of a funding contract).

References

UN (United Nations) 2007 *United Nations Declaration on the Rights of Indigenous Peoples*, <www.un.org/esa/socdev/unpfii/en/drip.html> accessed 12 August 2010.

UNESCO 2003 *Convention for the Safeguarding of the Intangible Cultural Heritage*, UNESCO, Paris <<http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>> accessed 12 August 2010.

WIPO (World Intellectual Property Organization) 2006a *The Protection of Traditional Cultural Expressions/Expressions of Folklore: Revised objectives and principles* (Document Code WIPO/GTRKF/IC/9/4), WIPO, Geneva <www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_9/wipo_grtkf_ic_9_4.pdf> accessed 17 August 2010.

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