

# **Cultural Protocols**

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# **A Framework**

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2006

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# Introduction

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Over the last ten years there has been a steady increase in the development of protocols to deal with issues of access, control and ownership of Indigenous knowledge. Protocols have played an important role in establishing new kinds of relationships between Indigenous people working with both organisations and non-Indigenous people and researchers.

Protocols are context driven policy. They can be developed to address problems where guidance is required. They can incorporate specific community perspectives, and be targeted to particular issues. For example, protocols have been developed for libraries and archives, for visual artists, and, for collaboration between film-makers.<sup>1</sup> Protocols have become an important tool for changing attitudes and behaviour around Indigenous knowledge access, use and management.

## **Protocols make new kinds of negotiation possible.**

In the influential 1998 *Our Culture: Our Future - Report on Australian Indigenous Cultural and Intellectual Property Rights* a key recommendation was that in the absence of new laws to deal with Indigenous interests in intellectual property, policies and protocols could be used to “assist governments, cultural institutions and professional bodies to manage store and deal with Indigenous cultural material.”<sup>2</sup> In the main, such policies and protocols have been developed within an institutional setting and for an institutional audience.

There is an urgent need for community focused protocols. These can be adapted and made to suit specific local needs. Some of these needs include: negotiations around types of research, bio-discovery, tourism,

repatriation of cultural materials, and establishing digital archives. As each community is different, there are different problems that are being experienced. This framework recognises the diversity of needs and provides necessary information for the development of community specific protocols.

To date most of the protocols have been created by external bodies or agencies (such as SBS, Australia Arts Council, National Association for the Visual Arts and the Federation of Aboriginal and Torres Strait Islander Languages) wishing to encourage more reflexive and positive engagement with Indigenous and local communities.<sup>3</sup> While these are important there is also a need for communities to develop their own protocols to determine when and how they interact with people outside the community. The Australian Institute of Aboriginal and Torres Strait Islander Studies *Guidelines for Ethical Research in Indigenous Studies* suggests that where practical, a protocol should be established between the community and those interacting, whether it be through research, or trading with the community.<sup>4</sup>

**A protocol can be used to:**

- **Recognise continuing Indigenous interests in intellectual property,**
- **Set community standards for how research should be conducted,**
- **Establish new kinds of controls in how cultural materials can be accessed,**
- **Build better relationships between communities and other Indigenous organisations.**

## ***Why a Framework for Cultural Protocols?***

The aim of this framework for cultural protocols is to help clarify what protocols are, what they can be used for, and how they can be developed. This framework aims to help in the development of local protocols by Indigenous communities and local organisations. It sets out some the questions that a community should ask in the process of developing a protocol. These questions will help in guiding the direction and purpose of the protocol - making it a tool that comes from the community, or organization.

**The framework is about enhancing locally developed and developing practices and expectations rather than relying on something that is imposed by a governmental agency.**

The framework sets out some of the issues that might be included in a community developed protocol. It is designed so that protocols can be done relatively easily, without having to seek legal or expert advice. For example, many communities and organisations are now in the process of developing their own protocols that provide guidance for cultural materials within a community such as use within a digital archive or for researchers working with communities on language materials or archaeological fieldwork. In these contexts, as well as others that are developing around other forms of research, locally articulated expectations for research and/or access to the community are legitimate issues. This framework encourages local knowledge management strategies to form the basis for future protocols. It provides guidance for local and regional oriented protocol making.

# What is a Protocol?

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A protocol is a code of conduct, a guideline, or a set of manners that explains or helps people know how to behave in certain circumstances.

For example, a protocol can help an outside researcher understand the kinds of questions that are appropriate to ask within the community, how the research is to be explained, how research results should be shared and conveyed, how collaboration is to be developed and what kinds of benefits from the research should be shared with the community, and with whom specifically within the community.

Generally, protocols are flexible and can change over time. It is important to see them as a tool to help you achieve what you want. It is also important that you realise the limitations of a protocol and what they cannot do.

## *Role*

**Protocols can help build relationships and make new ones possible.**

Protocols are guidelines for behaviour. They can be used to establish appropriate codes of conduct. Protocols are not dependent upon bureaucracies or government.

Protocols can establish new pathways that can help guide people around important issues. A protocol responds to community or local needs – it is not a ‘top down’ approach. They are flexible and can change over time. This means that they can incorporate community and/ or more localised practises and expectations of behaviour. It also means that as these practises change, so too can the protocol.

## **Protocols are about:**

- **respecting certain ways of behaving,**
- **establishing new kinds of relationships**
- **creating new forms of negotiation**
- **fostering better understanding**
- **sharing ideas and experience**
- **establishing community driven terms of ownership**

Protocols can be used to set community standards around knowledge circulation and use for others outside the community, especially those individuals or organizations that are wishing to establish research relationships with a community. They can help change attitudes and set new standards.

## *Type*

The structure that protocols take can vary depending on what you want them to do and who they are aimed at. They also vary depending on the things that you want to talk about, for example products of research or access to knowledge about plants.

Protocols tend to be written *but they do not need to be*. For example, they could be put on video, taped or put online. A written protocol is often helpful when dealing with people from outside the community, but this may not be the case when a protocol is used within a community or even between communities.

## What a Protocol is Not?

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On its own, a protocol may not be legally binding. This means, for example, if a researcher promised to follow a protocol that prohibited them from taking plants from a community, there might not be legal recourse if the researcher actually removed plants from the community.

However, because protocols are articulated and negotiated with specific regard to practical detail within community contexts, they are a source and form of private law.<sup>5</sup> This means that they can have legal standing. **If implemented as private law, trust law and contract law can be used to help with the specifics of the protocol and enhance its status.**

Depending upon the issue and the context behind a protocol, it may be useful to increase the status of the protocol. This could be done, for example, by entering into an agreement (contract) with a researcher or that researchers university, that said that the researcher had to follow the terms of the protocol. If they did not, this would be a breach of the contract.

A limitation of a protocol is that they will ordinarily only apply between the community and the person that community has been negotiating with. This means that if material becomes available to a third party, there is little the community could do. This applies even if there has been a contract between the parties.

# Key questions to ask when you are creating a protocol

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In thinking about whether to develop a protocol and if so what shape it should take there are a number of important questions that need to be considered. These include:

Do you need a protocol?

What do you want the protocol to do?

What do you want to put in the protocol?

What problem do you want the protocol to address?

Do you want to call it a protocol?

What can a protocol do for you?

Who is the protocol aimed at?

What form should a protocol to take?

Do you want it be written?

What language should it be in?

Do you want to increase the legal status of the protocol?

How and when to deal with intellectual property?

## Do You Need a Protocol?

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The question of whether you need to develop a protocol will depend on what you and your community want to achieve. A protocol is useful when you are trying to educate outsiders, particularly where people want to do the correct thing, but may not know how to behave.

A large music recording project is taking place in Central Australia. It will involve a variety of communities. All the communities are very excited, and hope the project will increase interest into the many different music forms across this part of Australia. One community has specific concerns about the ownership of the recordings that will be made during this project. The community wants to be acknowledged as the cultural custodians and legal owners of their recordings in any later projects. They also want copies of all the recordings to be provided to their local archive. Community representatives decide that they should develop a protocol between themselves and the researchers about the ownership and storage of the recordings. The protocol sets out key needs and lets the researchers know how the community expects them to behave. Such a protocol could be adapted to deal with issues that arise in the future. The protocol expresses one community's specific needs and terms of control and ownership. It is a localised articulation of their terms of engagement with the research project.

If you and your community decide that you would like to develop a protocol there are a number of questions you should think about.

## What to Call Them?

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In some cases the term 'protocol' may not be the right term. If so, it is worth changing the name to something that is more appropriate - guidelines or codes of conduct could be used as an alternative. A word in your local language could also be used.

In a meeting between senior women about using photographs of the community, it was decided that a protocol would be useful. The intention of the protocol was to let outsiders know how they should use the photographs, and how the photographs and women should be treated and respected. A few women didn't like the word protocol. They said it was not easy to understand, that guidelines of codes of conduct would be better. A suggestion was made that a local language word that meant 'right behaviour' be used. There was nodding from all around the room. The change was made. It was a protocol by another name - the intention was the same.

# **What Can a Protocol Do For You?**

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One of the advantages of protocols is that they are flexible. This means that you can change them to suit your needs. You can also change them over time. It is also possible and may be helpful to have a number of different protocols to deal with different situations, different people and so on. For example, it might be useful to have a protocol to deal with people who wish to do research in your community and a separate protocol where art is made or sold.

It is important that you and your community decide what the problems are, or might be, that you want the protocol to address.

## **A protocol can be used to:**

- **create new relationships between people who come to the community**
- **control how cultural materials will be accessed and used**
- **communicate community practice to others**
- **establish boundaries in the use of knowledge**
- **establish terms for negotiation around an issue**
- **establish terms of ownership of knowledge or knowledge material**
- **establish rules for accessing community knowledge or material**

A community has a new digital database where historical cultural material - photographs, films, sound recordings - are being returned and stored. There is some concern about the ownership of this material. There is some concern about all the material that is currently being made in the community - who owns it, who can use it, for what purpose, where will it all go. Representatives from the community decide to create a guideline for what happens to the material once it is created. They want something that is clear and can be translated for all the community. They don't want it to just be in English. A protocol is developed that explains who can access different parts of the database. The restrictions are community specific and outsiders to the community may not know these. The protocol helps to let people who want to come the community know how the community expects them to behave.

## **Who is the Protocol Aimed At?**

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There are many protocols that have been developed for non-indigenous people from different sectors. Protocols have also been used by organisations who want to engage with communities. For example, some organizations in the US, Australia and Canada have guidelines for ethical research. Other industry sectors have guidelines for the making of films with Indigenous content.

It is less common for communities to have their own protocols. But there is no reason why communities can't have their own protocols. These would actually help institutions and individuals interacting with Indigenous communities. They would help clarify individual, family and community expectations of researchers and other people working within communities. They have the scope to enable new rights and responsibilities for the access, control and management of Indigenous knowledges.

There are many contexts where a community specific protocol could be useful. For instance, in contexts where an outsider comes to a community, a protocol could be developed where part of the obligation upon entering the community was that material that is recorded during the visit is duplicated and copies left with the community.

It is possible for a community to internally develop its own protocol for how to engage with external people or bodies who wish to interact or work with a community. For example, a community might wish to develop protocols that explain what is to happen to research results, whether or not someone can take photographs and if so what is done with them, for example when and how a photograph can be reproduced. A protocol would also be helpful in situations where a

research agency wishes to use knowledge about plants for drug discovery and so on.

It is important to make decisions about who the protocol is for – for example researchers, community workers or other Indigenous organisations. Thinking about who the audience for the protocol is, makes the protocol more targeted to the problem that the protocol is seeking to address.

In some instances, it might be useful to have a protocol between a community and a bigger regional organisation, such as a land council. This protocol might deal with cultural material that was collected in the course of land claims or native title. It might address the terms under which people enter the community. In some contexts it might be appropriate for the protocol to accompany the permit that is required before entering the community.

## What Form Should a Protocol Take?

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While many protocols are written, there is no reason why you can not change them to suit your purposes. For example, **they do not need to be written in English.** It is also possible to include drawings, pictures or art. **There is no need for a protocol to be written at all - they can be videoed, spoken or taped.**

One community in South Australia has just had some language materials returned from an overseas institution. The materials are very important, and the community wants to design a protocol for who can access them. Several of the people working on the protocol suggest using some art and some photographs of people and country to make it more friendly and familiar. The finished protocol is a combination of text and images. It is unique and is obvious that it is from this community in South Australia. The community likes that it is different from other people's protocols.

# Do You Want to Increase the Legal Status of the Protocol?

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It is often wrongly assumed that a protocol does not have any special legal standing. If someone doesn't follow it, there is little that a community can do. This is not a correct assumption. **Protocols are a form and source of private law.** This means that they can be legally recognised. However, there may be some situations where you wish to increase the legal status of your protocol. This might be helpful when you think that a person or organisation may not follow the spirit of the protocol, or that the issues that the protocol deals with are of great importance. To increase the legal status and enforcement of the protocol, other areas of law may be useful. In particular trust law and contract law.

When thinking about whether to increase the legal status of the protocol it is important to consider questions such as:

- Who will be responsible for monitoring the protocol?
- Can it be policed?
- Who will be doing that?
- Is legal advice easy to get?
- How much would it cost to get help?

A scientific research group contacts a community in Peru. The researchers are interested in getting knowledge about a local plant and would like to talk to people throughout the community. The community has already developed a protocol for these situations. The protocol sets out the correct behaviour for the researchers when they come into the community, as well as what rights the community want to have in relation to the research results. The protocol also has a supplementary contract that the community asks the researchers to sign. This contract sets out the terms of the research and what benefits will flow back into the community if the research on the plant turns out to have some financial benefit. Because the protocol has a supplementary contract, it's legal status and scope for enforcement is increased. This means that if the researchers do not behave in the way that they have agreed they would, the community can pursue legal actions for breach of contract.

# How and When to Deal with Intellectual Property?

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One question that should be considered is whether the protocol should deal with intellectual property or the protection of locally derived knowledges.

In western legal terms, intellectual property is an umbrella term for a range of separate laws, for instance copyright, designs, patents, trademarks, confidential information. In general they all set specific controls on the use and management of different kinds of knowledge. One of the most familiar areas of intellectual property law is copyright. Copyright involves a broad range of creative works including artworks, books, films, sound-recordings, photographs. For example, if your community has an art centre – the art within the art centre will have copyright protection. If your community has a digital archive, most of the photographs or films or sound recordings will have copyright protection.

Another important area of intellectual property is patents. A patent provides protection over inventions for a limited amount of time. Patents have become particularly important in some communities as a result of increased reliance on individual, familial or community knowledge about the medicinal or other properties of plants and animals as the basis for drug discovery and other research.

Intellectual property protection is becoming a big issue within communities. Whether or not you want to deal with intellectual property within the protocol will depend on how you want to protect your individual, family or community knowledge. It will also depend on what the issue is – for example if there is a problem developing in

relation to art and digital databases, you may need to deal with copyright. But for research occurring in the community on plants or bio-discovery, you may need to deal with both patents and copyright. To deal with these intellectual property laws within a protocol, it will probably be best to also create an agreement or contract. In some circumstances, it will be better to get some specific legal advice about how to deal with specific intellectual property law questions.

But it is important to remember that intellectual property does not protect everything. There may be certain cultural information, symbols or ceremonies that will not be protected by intellectual property. In some instances this can be a good thing, as intellectual property is not always the right tool. But a protocol can be used as a way of letting people know about how something special or a particular kind of knowledge should be treated **without** relying on western intellectual property law. This is the resort to private law which is where a protocol functions.

As with all protocols, what is needed will change from community to community and over time. In all cases it is important that the community ensure that the protocol deals with the information, knowledge and creations in such a way that suits the community. It is not necessary to use formal legal language nor is it necessary to deal with all issues within a single protocol.

**Issues that you might want to consider:**

- **Are you willing to grant access to knowledge?**
- **If so on what conditions?**
- **Who within a community who has the authority to grant access?**
- **How will the material be used?**
- **Where will it be stored, who will have access?**
- **Who will represent the interests of the community?**
- **If intellectual property protection is sought, does the community have a say?**
- **Are you clear on what intellectual property in a legal sense is?**

Many interested parties have historically developed maps of Indigenous land and country. With new technology, new map making techniques are being utilised for land claims and natural resource management. For example GIS mapping is now very popular. The process usually involves getting together a range of community and non-community speakers for different parts of the country. A trip is organised to outstations or to other parts of the country that haven't been visited for a long time and as stories are told about the land and about its resources and management, mapping is completed using the new GIS systems. The recordings made during these visits are automatically legally protected (under copyright). Nevertheless it is not clear within the community who owns these recordings, what purpose they will be put to in the future, and where they will be stored. A protocol could be used to clarify how these issues are dealt with in the future. For instance, that copies are left with the community and housed in the local cultural centre or that permission for reuse of the recordings outside the current terms of use is renegotiated.

It is important when a community negotiates with someone wishing to make use of community knowledge and resources that the party external to the community has the authority to make decisions. This will particularly be the case where the person is the employee of an organisation or government agency or a researcher from a university or other research institutions. This is because, in many cases, the ownership of the results of the research will be owned by the organisation that the researcher works for.

A researcher from a university has been doing work with the San community in the central western desert for several years. She has been documenting the growth of a certain plants in relation to changing climactic conditions. In the course of her research she has worked closely with several elderly women. They have all shared the research process. The researcher has had a very good relationship with the women and the community in general - and she has made sure that she references and acknowledges the collaborative nature of the project. Whilst the researcher has acted ethically, she is unaware, as is the community that all the intellectual property from this project rests with the university. The researcher did not know this was the case, and therefore the women she worked with, as well as the community, were also unaware of these ownership issues. The local community governing council has now decided that these issues need to be negotiated **BEFORE** any future research is conducted within the community and they have developed a protocol that explicitly deals with this.

# Appendix

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## Protocol Templates

This section provides an outline of three scenarios where a protocol could be a useful tool for setting out community standards and expectations of behaviour.

It makes suggestions for how a protocol might be put together - including what it might seek to address given each scenario.

The point of these templates is to show how a protocol might be put together to address a particular problem being faced in your community. Once created, a protocol may be used to cover similar issues that arise in the future or adapted to deal with new problems. The three templates should be seen as only guides. However, they will be useful in helping decision-making within the community. Once the problem has been identified and decisions have been made about the best way of dealing with the issue, a protocol becomes a tool to establish terms of ownership, terms of negotiation and future equitable relationships.

Each community protocol will vary depending on the situation, and the different kinds of requirements negotiated between individuals within the community and external parties. It is impossible to provide detailed guidance about the terms that should be incorporated into the protocol. A model protocol would be unhelpful as it would suggest inflexibility and perhaps ignore the specific needs of the community by prioritising certain ends over others.

Remember:

- **Protocols are context driven policy**
- **Protocols are not dependent upon bureaucracies or government for implementation**
- **Protocols are forms and sources of private law**
- **Protocols are about local and/or community practise or custom**

These templates are meant as **general guides**.

## **Scenario One – Biodiversity**

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In this scenario, the key issue is about access to knowledge around biodiversity - that is access to knowledge about medicinal properties of plants and seeds, and collection of samples of these plants by visiting researchers.

A Danish based company that collects and screens biological resources contacts a regional government about doing some research in a specific region in north-west Costa Rica. The company often makes use of Indigenous knowledge in targeting biological resources for collection. The regional government puts the Danish company in contact with a specific community through the community council and the local NGO.

A meeting between representatives of the company, the regional government representatives and several community members is organised. The company explains that it wants to collect and use samples, including bark, flowers, roots and seeds from a range of plants that grow on the land around the community. The company would also like to talk with some members of the community about the plants that they are collecting. There is a suggestion that there could be some collaboration between the company and the community. The company would like to record the stories about the country and the plants.

Following discussions with the company, another meeting within the community is held to discuss what might be the best way to work with the company, whilst retaining ownership and control of the knowledge that the community will be sharing with the researchers. It is decided that it might be useful to develop a protocol. The protocol will be quite

specific to this situation and help establish a good future relationship with the Danish company.

Do you need a protocol?	Yes
What do you want the protocol to do?	<ul style="list-style-type: none"> <li>• Manage the relationship between the Danish company and the community</li> <li>• Guide the company in how it will access knowledge and information that the community holds</li> <li>• Establish the terms of ownership and access</li> <li>• Protect the recorded material that will be made in the course of the research</li> <li>• Create a relationship so that future benefits can be negotiated</li> <li>•</li> </ul>
What do you want to put in the protocol?	<ul style="list-style-type: none"> <li>• How the community feels it should be treated, including how the progress of the research will be conveyed</li> <li>• Guidance for what will happen to the recorded materials</li> <li>• Guidance for who can access the material in the future</li> <li>• Guidance for who the company should be speaking with</li> <li>• What the community expects from the company</li> </ul>
Do you want to call it a protocol?	Yes
Who is the protocol aimed at?	The Dutch company
What form should the protocol take?	Written

Do you want to increase the legal status of the protocol?	Yes Through a supplementary contract Through establishing a trust between the company and the community
How to deal with intellectual property?	An additional contract between the company and the local council that sets out exactly and clearly who owns which knowledge, and how this is to be used in the future.

The aim of this protocol is to establish a relationship with the Dutch company that respects and reflects the needs and expectations of the local community. This is in relation to:

- How the community shares their knowledge
- Who will be responsible for making decisions and negotiating with the company representatives and the regional government
- How the knowledge will be documented in the process of the research
- Where the material will be stored
- Who will be able to access the knowledge that the community will share about the plants in the future
- What are the culturally correct ways for accessing and sharing knowledge
- Where the plant material and related stories can be collected
- If there are any areas where it would be culturally inappropriate to collect material
- How much material is going to be collected
- How many vehicles will be used in collecting the material

The point of this protocol is to let the Dutch company know they have obligations to the community **if** the community decides to share their knowledge and work with the company. The protocol allows important community practices and regulations to be conveyed. Many of these expectations could not be secured legally. The protocol provides a basis for new kinds of negotiations around future benefits from the research. In this context, it would be useful to have, in addition to the protocol, a separate contract between the company and the relevant representative body for the community. This would ensure that all relevant intellectual property rights – those of the community and those of the company are recognised and protected.

## **Scenario Two – A Digital Archive**

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For over forty years, numerous anthropologists have come and conducted research with a range of individuals within a community in the northern part of Australia. This research has included matters relating to kinship structures, religious ceremonies and conceptions of land ownership. There is a wealth of recorded material that has been generated from these encounters. The form that the material takes includes photographs, films, sound recordings and some written manuscripts.

The community has established a local digital archive and is in the process of negotiating access to the material. Negotiations are occurring with cultural institutions where the bulk of material is held, but also with individual researchers and other people who have historically worked in the community. Most of the material is not

legally owned by the community, but by the person who made the recordings (the copyright owner). Nevertheless, the community would like to make reproductions of the material for their archive, and to be able to use the recordings in particular ways - for example by making DVD compilations for community use.

The digital archive is a database. In terms of copyright, the creation of a database, as a compilation, is an act of originality and authorship and is thus protected under the relevant Copyright Act as a literary work. The content of the database can be owned by individuals other than the creator of the database, however, unless otherwise stated, the act of compiling information confers copyright. In copyright law, communal ownership of the content of the database is not recognised. However, the law does recognise joint-ownership that is where the labour exerted on making the work is equally distributed between the parties.

There are three main problems that the community would like to use a protocol for.

The first is managing access to the digital archive.

The second is the ownership of the archive and the database.

The third is how future researchers engage with the community - and whether it is possible to establish the obligation upon researchers and other workers to leave copies of their photographs, films and sound-recordings with the archive for future use within the community.

Do you need a protocol?	Yes
What do you want the protocol to do?	<ul style="list-style-type: none"> <li>• Help manage the collection of material for the archive</li> <li>• Help inform people about the different kinds of material and the different kinds of access that exist</li> </ul>

	<p>for the archive</p> <ul style="list-style-type: none"> <li>• Provide a standard for material that is returned in the future</li> <li>• Let people external to the community know about the different cultural concerns that the community has around this material</li> <li>• Let people know how important the material in the archive is to the community</li> </ul>
What do you want to put in the protocol?	<ul style="list-style-type: none"> <li>• Some background history about the community</li> <li>• How people in the community feel about the material</li> <li>• Some photographs from the archive</li> <li>• Some photographs of important individuals in the community</li> <li>• Information about how to view the archive</li> <li>• Information about who can access the archive and under what conditions</li> <li>• How the material can be used by people external to the community</li> <li>• Who should be consulted about using the material</li> </ul>
Do you want to call it a protocol?	No. Would rather use a word that everyone in the community can understand
Who is the protocol aimed at?	People who will come and use the archive Future researchers
What form should the protocol take?	Written and taped. This is so that people can watch the information as well as read it. Want the protocol to be accessible to everyone, not just people who can read English well.
Do you want to increase the legal status of the protocol?	No. But would like to use some agreements to deal with ownership of the database.

<p>How to deal with intellectual property?</p>	<p>In this case if the community wants to deal with IP - a contract or licence agreement will be needed because the ownership of the material will be with third parties.</p> <p>For the archive, and the development of any future databases, it would be useful to clarify the ownership of this from the outset. This could also be done contractually if the database is being developed by someone external to the community. Ownership could be vested with the appropriate local community representative organisation.</p> <p>For material that will be created by future researchers, ownership will still remain with either the individual researcher or the company/university that the researcher works for. This can be negotiated however by a contract. Negotiation could be about joint ownership of the material, or that the researcher provides copies of the research material for community use - and this includes digital reproduction into the future.</p>
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## **Scenario Three: Research**

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There may be some circumstances where it is appropriate to develop a protocol for how researchers conduct their work within a community. This may include how the research is undertaken as well as the behaviour of the researcher whilst working with or in the community.

This protocol may relate to:

- How initial contact with the community is made,
- Negotiation around the nature of the research,
- Who will benefit from the research
- Who will have copies of the research material and results
- How the research results will be conveyed to the community
- What will happen with the research results.

### **An Example of a Protocol for Research in the Torres Strait in Northern Australia**

Protocols have been developed for research by some organizations like the Australian Institute of Aboriginal and Torres Strait Islander Studies and by communities themselves.<sup>6</sup> What follows is an example of a research protocol developed for the Torres Strait. You can decide whether this kind of protocol would be useful for your community and design it so that it is appropriate for your needs.

## **Protocols for Research in the Torres Strait**

Torres Strait Islanders welcome researchers to the region in anticipation of the benefits expected to result from the research.

To ensure that Torres Strait Islanders do benefit from the research, the Island Co-ordinating Council and the Torres Strait Regional Authority have developed a set of protocols for people wanting to conduct research in the Torres Strait.

The protocols are designed to ensure communities obtain the information necessary for them to make informed decisions as to whom they will allow to conduct research in their communities and on their lands and waters.

It is assumed that researchers will at all times comply with statutory requirements and the professional, ethical codes pertaining to their discipline.

To allow the research proposal to proceed in a timely manner, we ask the proponent to provide the Torres Strait Regional Authority with answers to the following questions:

What are the sources of your funding? Please provide references indicating these sources.

What are your institutional affiliations?

Who is your project supervisor?

Please provide a letter of support for your project from your supervisors.

Please provide a complete copy of your research proposal.

Please provide copies of permits from relevant State and/or Federal agencies.

In what ways will Torres Strait Islanders benefit from your research?

Subject to approval, how will you accommodate yourself while in Torres Strait?

On receipt of information in respect of the research, the proposal will be sent to the appropriate committees and government agencies for their comment.

The proposal may be sent, when necessary, to other referees chosen by the Island Co-ordinating Council and Torres Strait Regional Authority.

The community impacted by your research will be presented with copies of the research proposal and offered advice by Island Co-ordinating Council / Torres Strait Regional Authority staff or other relevant experts. The community will then make a decision whether to support or contest the proposal.

On completion of the research it is required that copies of all results and publications be provided to the Island Co-ordinating Council / Torres Strait Regional Authority and the relevant community.

A 500 word, plain English explanation of the results must also be provided.

## References and Further Reading

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*Protocols for Research in the Torres Strait*, Torres Strait Regional Authority and The Island Co-ordinating Council

# Acknowledgements

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This Framework for Community Protocols was initially conceptualised and developed by Jane Anderson at the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). It was produced by AIATSIS in collaboration with IPRIA for the research project *Indigenous Knowledge and Intellectual Property: Access, Ownership and Control of Cultural Materials 2003-2006*. Many thanks to the following people for advice and suggestions: Luke Taylor, Brad Sherman, Peter Veth, Kathy Bowrey, Bronwyn Nimmo, Dianne Hosking, Barry Cundy, Kirstie Parker, Craig Greene, Steve Kinnane, Caroline Carmody, Marissa Harris, Emily Hudson, Elizabeth Landford and Andrea Geyer.

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<sup>1</sup> See for example: Australian Broadcasting Commission, Indigenous Programs Unit (2003) *Cultural Protocols for Indigenous Reporting in the Media*.

<sup>2</sup> Janke, T. (1998) *Our Culture: Our Future. Report on Australian indigenous cultural and intellectual property rights* (produced for Australian Institute of Aboriginal and Torres Strait Islander Studies [AIATSIS] and the Aboriginal and Torres Strait Islander Commission [ATSIC]) Michael Frankel and Company Solicitors: Surry Hills at page 240.

<sup>3</sup> Federation of Aboriginal and Torres Strait Islander Languages Corporation (FATSIL) (2004) *FATSIL Guide to Community Protocols for Indigenous Language Projects*; Mellor, D. and T. Janke (2001) *Valuing Art, Respecting Culture. Protocols for Working With the Australian Visual Arts and Crafts Sector*, National Association for the Visual Arts; Australian Broadcasting Commission, Indigenous Programs Unit (2003) *Cultural Protocols for Indigenous Reporting in the Media*; Janke, T. (2002) *New Media Cultures: protocols for producing Indigenous Australian new media* The Australia Council: Sydney.

<sup>4</sup> Australian Institute of Aboriginal and Torres Strait Islander Studies, *Guidelines for Ethical Research in Indigenous Studies*.

<sup>5</sup> Bowrey, K. (2006) 'Alternative intellectual property?: Indigenous protocols, copyleft and new juridifications of customary practices', (2006) 6 *Macquarie Law Journal* (forthcoming)

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