ADDITIONAL MATERIAL

Decolonising Aboriginal and Torres Strait Islander research

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There is an important but unwieldy research policy infrastructure designed to engage with Aboriginal and Torres Strait Islander research and researchers. This framework links the key performance indicators and policies of funders and institutions to researchers and communities. In this article, we explain the relevant policies and targets, with a view to showing how sector regulation interconnects in practice and identifying ways to strengthen institutional commitments to meaningful engagement with, and implementation of, Aboriginal and Torres Strait Islander research policy. We suggest next steps that are needed to help researchers comply with funder and institution-mandated obligations and to empower Indigenous Peoples to make informed decisions about the benefits of research collaboration with universities.

Keywords: Aboriginal and Torres Strait Islander peoples, research policy, research integrity, authorship, ethics, social engagement and impact, research collaboration, neo-colonialism

There has been a great deal of policy activity in the Aboriginal and Torres Strait Islander research space. This has come about in response to criticism of existing frameworks that perpetuate injustice and marginalisation of First Peoples' self-determination, in recognition of potential benefits that could flow from respectful collaboration and more ethical research, and in response to, as a minimum requirement, initiatives such as the United Nations *Declaration on the Rights of Indigenous Peoples* (United Nations, 2007). Policy reform has created new opportunities to better support researcher and community collaboration. The ideal is projects that are First Nations-led, rather than the pursuit of agendas that emanate from contexts that are disconnected from Aboriginal and Torres Strait Islander participants and the intended beneficiaries of research. There are many moving parts in this policy space: dedicated National Health and Medical Research Council (NHMRC) and Australian Research Council (ARC) funds, NHMRC and Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Research Integrity Policies and Guidelines that apply to publicly funded research, institutional policies and ethics processes that also regulate the conduct of research and IP ownership, ARC Excellence for Research in Australia (ERA) and Engagement and Impact (EI) Assessment exercises that will, in future, link in with the introduction of new Field of Research Codes to better capture research conducted, and data sovereignty initiatives. We provide an overview of these initiatives and show how they interconnect in practice and, in the context where Australia-wide mandatory research policies are a useful tool, identify pathways to strengthen institutional commitments.

There is already a large body of scholarly research about the aspiration to decolonise the Australian university landscape and improve meaningful First Nations Peoples' participation within the learned academies. This paper has a more practical orientation.

Concerning the authors, Professor Watson is well-known from her professional work with the South Australian Aboriginal Legal Rights Movement in the 1970s and for her pro-bono working for Aboriginal Nations across Australia. While she is currently a member of the Senior Management Group at the University of South Australia as Pro-Vice-Chancellor Aboriginal Leadership and Strategy, she came to this position having worked through the ranks. Her career spans the last twenty years of Australian university institutional policy development in research and education portfolios to improve Indigenous outcomes. Watson served on the ARC Engagement and Impact Aboriginal and Torres Strait Islander Research Panel 2018, and is currently a member of the Universities Australia DVC/PVC Indigenous Group and Indigenous Member of the Universities Australia Research Committee. Bowrey and Watson have engaged in discussions about decolonisation and institutional strategies since 2006.

The research presented in this paper was supported by extensive interviews with senior management and researchers across Australian universities, as part of an ARC Discovery project that seeks to understand the tension between research impact and the legal and policy framework that governs the ownership, management, and dissemination of research outputs in Australian research institutions. The project investigates the impact of laws, policies and research practices upon factors such as authorship, open access, and licensing agreements with publishers and libraries, and the way in which researchers and managers make decisions around competing imperatives. This paper seeks to draw together our collective insights and recent research to improve understanding of the opportunities that currently exist to improve practice.

While there has been some improvement in the Indigenous Policy space in the last 20 years, responsibilities lie across several management portfolios with policy connections with external agencies. Policy fragmentation also presents an obstacle to achieving some objectives. There has also been a marked increase in Indigenous leadership in universities in recent years, however, many new appointments have large unwieldy portfolios and limited experience and authority within universities. This paper offers a map of the status quo and suggests pathways to further develop. To decolonise and better centre Indigenous Knowledge there is a need to advance the benefits to Aboriginal and Torres Strait Islander Peoples in view of the existing policy settings and continue to improve the infrastructure that facilitates First Peoples' self-determination and participation in research and control over research outcomes.

The policy frameworks

The invasion and colonisation of Australia began in 1788. 1788 marked the beginning of the introduction of another way of knowing and recording Australian research. The ancient Aboriginal ways of knowing the continent of Australia became supplanted by another way of telling the story of Australia. 1788 marked the time at which a two-way story of Australia came into being, but universities have not given space to Aboriginal voices in education, research and governance, and to connect with Aboriginal communities, as equal research partners. The *Partnership Agreement on Closing the Gap 2019-2029* (Council of Australian Governments *et al.*, 2019) has led to clearer baselines and targets for socio-economic improvement to be pursued through shared decision-making. Aboriginal and Torres Strait Islander peak bodies and governments are expected to work together to overcome the ongoing colonial legacy experienced by Aboriginal and Torres Strait Islander Peoples and achieve life outcomes that give 'proper' recognition to the rights of First Nations.

Heralded in the Preamble to the *National Agreement on Closing the Gap* is 'an unprecedented shift in the way governments work, by encompassing shared decision-making on the design, implementation, monitoring and evaluation of policies and programs to improve life outcomes for Aboriginal and Torres Strait Islander people' (Joint Council, 2020, p.2)..In the absence of major recognition and reform, the United Nations *Declaration on the Rights of Indigenous People*s (United Nations, 2007) provides minimum standards as a guide to how we might proceed.

Many provisions are potentially relevant to university activities. Article 4 provides for the right of autonomy in matters relating to internal and local affairs as part of the exercise of the right to determination; Article 5 provides for the right of Indigenous Peoples to maintain and strengthen their distinct legal, economic, social and cultural institutions; and Article 31 provides that Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions (and associated intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions), as well as the manifestations of their sciences, technologies and cultures. In the context of research, such provisions inform minimal standards that set expectations for best practice, feeding into the work of various bureaucracies whose workload impacts Aboriginal and Torres Strait Islander lives.

Universities have started to acknowledge the colonial legacy. Universities Australia's ('UA') *Indigenous Strategy 2017-2020* (Universities Australia, 2017) establishes important targets on Aboriginal and Torres Strait Islander student participation and employment in 39 Australian universities. Institutional Reconciliation Actions Plans have provided a focus for discussion and implementation of positive actions that could be taken with the support of management and the broader university community. New senior executive management positions have led to the development of Indigenous Strategies in some institutions which set out shared responsibility to make our universities culturally safe places for Indigenous staff, students and communities.

Universities Australia (UA) Indigenous Strategy 2017-2020

In 2017 UA launched a sector wide three-year *Indigenous Strategy* with annual reportable targets for members. This is an important initiative stimulating reform across university management portfolios. The UA DVC Academic Committee subsequently developed agreed sector initiatives. This has led to significant activity with improving Aboriginal and Torres Strait Islander participation and retention in education and training, and Indigenous employment targets. There has been no corresponding action plan developed by the UA DVC-Research Committee. After three years only 14 universities have an Indigenous research strategy, despite the UA target for all to have one by 2018. Further seven universities only included Indigenous research within the overarching (not Indigenous-specific) research strategy. Eighteen universities stated their research strategy was under development (Universities Australia, 2021, p.11).

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University annual reports routinely profile glossy examples of Indigenous researchers and community partnerships, without providing information that breaks down the financial commitment or targets for supporting Indigenous research, researchers or broader community benefits, as the NHMRC and ARC do. The UA report notes that 'member universities state the importance of building relationships with Aboriginal and Torres Strait Islander communities. However, the degree to which these relationships are meaningfully developed varies. Further work is required by some members to meet a standard that would be considered 'robust, respectful and collaborative' (Universities Australia, 2021, p.12).

In 2021 UA established a PVC/DVC Indigenous sub-committee. A review of institutional governance structures shows only 56 per cent of institutions have an identified Indigenous PVC/DVC role. At the time of writing in October 2021, five universities or 13 per cent were seeking to employ an Indigenous-identified senior manager. Thirty-one per cent have no Indigenous-identified senior-level management role. Where there is no provision for a PVC/DVC level position, Indigenous-identified roles as Directors or Managers of Aboriginal education centres are named as providing leadership.

In any institutional setting reporting lines impact the ability to influence agendas, set important key performance indicators and allocate significant resources. In many institutions it is difficult to determine reporting lines that create a direct capacity for Indigenous leadership to influence senior management decision-making. Only 36 per cent of Indigenous leadership positions are full members of the senior executive management team. Others report directly to

the Vice-Chancellor, DVC-Academic or Academic Board. A secondary or lower hierarchical placement probably reflects the broad and packed agenda at senior level. However, with many institutions without any Indigenous Research Strategy and for those that do providing uncertain access to key portfolio leaders, there is limited direct capacity to influence what is considered an institutional priority, and especially so without adequate resourcing with skilled personnel and sufficient funds to drive necessary change in practice. As a result, what the principle of shared decision-making and Aboriginal-led research means in practice is largely left to be interpreted by the grassroots research community.

With the current difficulties in advancing Indigenous research policy at DVC level, other pathways to change need to be considered. Australia-wide mandatory research policies are one useful tool. With a growing financial commitment, meaningful targets, and policies and guideline to achieve them, the NHMRC and ARC can play a major role as a driver of real institutional change.

NHMRC and ARC funding opportunities and targets

The two major Australian public research funders, the NHMRC and ARC, have funded research relevant to Aboriginal and Torres Strait Islander Peoples and by Indigenous researchers. Until relatively recently, the extent of the expenditure and outcomes have not been reliably tracked, beyond reporting the allocation of the Indigenous Discovery scheme. The tracking of Aboriginal research does not measure research from a self-determining perspective of First Peoples. Instead, a population analysis is applied. Relative to population parity, the level of support for Aboriginal and Torres Strait Islander research has grown considerably in the past decade. The goal is to advance self-determination and impact outcomes to improve Indigenous health and well-being, not to achieve parity in funding. In the 2016 census 2.8 per cent of the population identified as Aboriginal or Torres Strait Islander. Since 2008 the NHRMC has dedicated 5 per cent of funding to Indigenous health and in 2017, 6.1 per cent of funding was allocated (NHMRC, 2020, p.34). This latter figure resulted, in part, from targeted calls for research priority areas in light of the significant health challenges affecting peoples and communities and poor progress in improving outcomes (NHMRC, 2020). The ARC spend has grown more slowly but also significantly, from approximately 1.3 per cent in 2008 to 3.5 per cent in 2018 (ARC, 2018a, Fig.3).

Until recently there have been no dedicated Field of Research (FOR) codes to assist tracking funding allocations or Indigenous participation in grant activity involving Indigenous research. In 2021 Australian universities reported

1 per cent of staff were Indigenous (Universities Australia, 2021). The NHMRC has key performance indicators to monitor improvements in research participation. Where a funding request involves research or capacity building with 20 per cent or more Indigenous Engagement, the NHMRC assessment process includes an Indigenous Research Advisory Committee member assessment of the relevance of the research.

The number of NHMRC grant recipients including at least one Indigenous chief investigator (CI) has risen by approximately 1 per cent of the total recipient number in the past five years, with 4.55 per cent of successful grants in 2020 involving at least one Indigenous CI (NHMRC, 2021). There are Indigenous members of the College of Experts and recently flags were added to the ARC database to make it easier for College members to identify Indigenous expert assessors. Nonetheless, the extent to which there is any Indigenous involvement in assessment in ARC schemes, outside of Indigenous Discovery, remains unclear. Approximately 1 per cent of ARC grant recipients identified as Aboriginal or Torres Strait Islander in 2020 and this figure has been relatively constant over the past three years (ARC, 2020, p.35).

NHMRC and AIATSIS research integrity policies and guidelines

The *Australian Code for the Responsible Conduct of Research* ('Australian Research Integrity code') (NHMRC, ARC & UA, 2018), *Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders* (NHMRC, 2018a) and *AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research* (AIATSIS, 2020a) explicitly and implicitly govern the conduct of researchers with respect to Aboriginal and Torres Strait Islander knowledge and culture. Explicitly, research agreements translate code provisions into contractual undertakings by CIs and their institutions, where non-compliance with the code entails a breach of the funding agreement by the researchers and their institutions. Implicitly, provisions also bind researchers who are not grant recipients because institutional research integrity codes also mandate compliance with the Australian code and subsidiary related codes. Thus, whether or not research is publicly funded by their schemes, NHMRC and ARC policies with respect to Indigenous research apply to the entire research community.

Both NHMRC and AIATSIS codes for Indigenous research have implementation guides. Codes share normative values such as reciprocity, responsibility, equity, cultural continuity, reflecting the shift in research culture 'from a model of consultation and participation to an engagement model' (AIATSIS, 2020b, p.8). These policies aim to

support research about Aboriginal and Torres Strait Islander Peoples being Indigenous led, benefit those participating, and minimise harms. They acknowledge that Aboriginal and Torres Strait Islander leadership can be expressed in various ways, through participation in design of research questions and methodology, contributing knowledge, analysis and interpretation of results, expressed in authorship and involvement in research dissemination.

Under the Research Integrity Code and related subordinate policy documents there is an explicit requirement that Aboriginal and Torres Strait Islander Peoples be consulted about their right to assert and retain ownership of cultural and intellectual property and researchers are advised that agreements about the conduct of the research should be recorded. Policies suggest this would normally include an intellectual property clause or agreement, yet there is some ambivalence communicated in policy documents about the appropriateness and value of these agreements.

The language of Indigenous Peoples' rights as used in the United Nations *Declaration on the Rights of Indigenous People*s is adopted, acknowledging respect for Aboriginal and Torres Strait Islander empowerment by way of self-determination, however, in regard to intellectual property the NHMRC implementation guide editorialises with vague statements about the limitations of Australian law. Keeping Research on Track (NHMRC, 2018b, p.15) advises that:

> Western law may establish different forms of intellectual and cultural property or protect it in different ways to how Aboriginal and Torres Strait Islander Peoples conceive and recognise their cultural and intellectual property. For example, copyright law's conceptions of individual authorship, or the requirement for artistic and literary works to be 'fixed' in a material form, may not guarantee the appropriate recognition or protection of communal or oral forms of knowledge. Copyright law may also not provide sufficient protection for secret or sensitive cultural knowledge and practices from its secondary use by individuals other than the research team ...
>
> Aboriginal and Torres Strait Islander Peoples have the right to discuss co-ownership or to retain ownership of intellectual property. They also have the right to discuss co-authorship and any shared copyright of published and recorded works and performances where this is applicable.

This information sets up a disconnect between western authorship and (anticipated) Aboriginal and Torres Strait Islander expectations surrounding ownership, culturally sensitive knowledge and authorship of the research. It provides no practical guidance about how Aboriginal and Torres Strait Islander interests could be asserted in discussions about information sharing, co-ownership or shared copyright. The Authorship Guide (NHMRC, ARC & UA, 2019) highlights the important principle of crediting contributions of Indigenous people to research but there is

no further mention of how this applies in the context of sector authorship criteria.

The AIATSIS code is more helpful in setting out how rights could be meaningfully asserted by Indigenous research participants. Section 2.6 of the AIATSIS code advises that joint authorship should be considered in partnership agreements with particular communities or organisations mindful that 'the threshold for intellectual and scholarly contribution that warrants authorship and specifically includes contribution to design and contribution of Indigenous knowledge'. Section 3.1 of the AIATSIS Guide (2020b) more explicitly informs readers that 'Authorship is of particular ethical concern given the history of Aboriginal and Torres Strait Islander research, where knowledge holders who shared their knowledge were relegated to the role of "informant"'. The advice on publication also explains the significance of open access publishing and promotes its use in the context where the implications of the research being in the public domain is understood. However, none of the information explains that it is only the status as author that provides Aboriginal and Torres Strait Islander research participants with a direct means to hold researchers and third parties to account for the content of publications, influence choice of publication outlet, determine whether the research should be open access or have publications withdrawn from public circulation.

Funder policies are helpful in highlighting the importance of considering how Aboriginal and Torres Strait Islander intellectual and cultural rights are treated in research. However, much of the information does not map well onto university processes. For example, Indigenous collaborators are advised it is normal to have an intellectual property agreement. However, agreement to participate in a research project would normally be sought and field work participation budgeted for in a request for funding from the NHMRC and ARC without any significant formalisation of IP terms with external participants, because without securing funding, the project may not proceed. Even post grant success, universities do not generally formalise any arrangement or issue contracts with external research participants containing intellectual property clauses outside of Linkage partners and commercialisation contexts. Authorship is treated as a matter for the lead or executive author to determine, with negotiations and consent to be included recorded without formality, and no requirement to document why there was non-attribution of Indigenous authorship.

It is routine for research relationships that do not anticipate immediate commercialisation to proceed without any formal enforceable agreement that clarifies IP ownership of research outputs and research data or authorship of publications. Section 196(3) *Copyright Act 1968* (Cth) requires copyright assignments be in writing. Informal agreements as to ownership of copyright may not always be

unenforceable under the *Copyright Act 1968* (Cth) because there may be sufficient evidence of an implied agreement as to ownership, but vagueness creates real vulnerabilities for Indigenous research participants. When creative, educational, and commercial activity operates without recourse to clear intellectual property rules of exchange, the legal default position is that all knowledge is public property or part of the commons of humanity. A loss of Indigenous control over knowledge and loss of authority over research outputs, such as data, publications and wording of key recommendations, is likely to follow.

Funder policy development to date has not been matched by attention to implementation in practice, because the latter is reliant on university process. There are also no independent mechanisms for verification or auditing of sector policy compliance. Institutional ethics processes and research integrity complaints mechanisms are looked to as the primary sites for regulation of research conduct. This can contribute to a more relaxed attitude toward compliance than is perhaps intended, where funder policy obligations are generally perceived to be voluntary and arising indirectly out of ethics processes, masking the essential legal character of all research agreements.

Nevertheless, a researcher who fails to consult with Aboriginal and Torres Strait Islander Peoples about their right to assert and retain ownership of cultural and intellectual property and enter into an agreement with them about ownership of research outputs and authorship, is not only in breach of the Australian Research Integrity and subsidiary codes but of the research agreement. However, at present it is not clear how a breach could be identified by the funder. For example, there is no mandatory requirement to address how the rights of Aboriginal and Torres Strait Islander research participants were ascertained, what was determined in research agreements or with respect to authorship of publications in a final report to the funder.

Institutional research policies

Aboriginal and Torres Strait Islander participation in research as envisaged by the Australian Research Integrity code and associated policies is held back due to the way the code operates within institutions. There are no institutional pathways to help Indigenous research collaborators and participants understand local governance processes within universities and there is no help available to have policies explained. Indigenous research participants are usually referred back to the sector policy documents and general third party material on protocols such as those produced for the Australia Council and other government bureaucracies. There is also a very helpful general education book, Terri Janke's *True Tracks* (Janke, 2021). However, there is nowhere to seek specific advice about appropriate agreements suitable to a particular community and research context, outside of reliance on *ad hoc* pro-bono assistance from intellectual property academics and lawyers already known to communities. In similar circumstances of transacting with vulnerable parties who lack expertise, some funders, such as the Australia Council, set aside a payment so the individual can pay for an independent legal consultation about agreement terms and implications before the project begins.

A relatively modest improvement to existing procedures, with low resource implications, would be to require researchers to produce appropriate documentation of Indigenous participant engagement and expectations pre-grant and pre-ethics approval, and before any significant information is shared. For example, recording discussion with Indigenous participants about why they were approached and their authority to act on behalf of others; recording their understanding of the project; anticipated benefits and outcomes; authority over publications; arrangements for data and privacy; and local identification of the likelihood of the project to impact on other Aboriginal and Torres Strait Islander Peoples. Whilst it is difficult to determine entitlement to authorship of specific publications in advance, it would be helpful to clarify upfront with participants that Indigenous authorship can arise based on standard criteria in institutional authorship policy, due to Aboriginal and Torres Strait Islander leadership in establishing the research agenda, knowledge contributions, recommending writing revisions and other substantial oversight roles, as noted in the AIATSIS Code (2020a) and NHRMC, ARC, UA (2019) Authorship Guide statement of authorship criteria.

This original documentation and where relevant, additional more detailed and considered discussion of intellectual property arrangements, could be integrated into ethics clearance processes. In ethics clearance there are three separate interests at stake: the research participants, the lead investigator and team, and the university. Each of these parties has a different status and interests under Australian law. There is recognition of a potential conflict of interest, which is managed by Ethics Panel review. Often Indigenous Panel members will be positioned as independent authoritative interpreters of Indigenous best interests, whether or not they possess any relevant community knowledge or authority. Better documentation practice would help alleviate some of the pressure on Indigenous Panel members to do the impossible in making assessments without hearing from the Indigenous participants in person. Additional institutional and researcher benefits could flow from this. Alongside enhancing accountability in terms of documenting compliance with funder ethics policy, recordings of Aboriginal participants may be of value later in compiling a social engagement and impact case study.

The need for better documentation about the terms of cultural inclusion is starting to be required in some publication policies. For example, alongside requiring full disclosure of all ethics boards, governmental organisations, community leaders or other bodies that provided approval for the study, the Public Library of Science's PLOS Policy on Inclusion in Global Research 2021 (PLOS, 2021) requires authors to submit information about: written informed consent from a representative of the local community or region before the research took place; details about how authors establish who speaks for the community; how members of the local community provide input on the aims of the research investigation, its methodology, and its anticipated outcomes; the process to ensure that the informed consent documents and other materials could be understood by local stakeholders; and details of how the findings of the research will be made available in an understandable format to stakeholders in the community where the study was conducted. This information is published in the author-approved manuscript, with potential reputational consequences for poor practice.

While the PLOS cultural inclusion policy has a stated political motivation to address the perpetuation of neo-colonial research agendas, it is also a development that is in line with provisions in the United Nations Convention on Biological Diversity ('CBD') (1992). A supplementary agreement, the *Nagoya Protocol on Access and Benefit Sharing* (United Nations, 2010) requires free, prior and informed consent and access and benefit sharing agreements with respect to the use of traditional knowledge associated with genetic resources with the expectation that mutually agreed terms are satisfied. Research centres and patent offices worldwide are starting to require disclosure of the source of information about biological and genetic material and methods. Failure to disclosure the use of traditional knowledge, document informed consent and provide for access and benefit sharing could mean material cannot be exported, for example, to permit research with respect to a sample of plant material. It can also affect the validity of a patent.

The Nagoya protocol has 133 ratifications including the UK and the majority of EU nations. Japan and China have acceded to it. Regardless of the failure of Australia, New Zealand, Canada and the US to ratify the protocol, failure to comply with its provisions is already impacting international research collaboration. In certain situations, there is already an obligation on Australian researchers to be Nagoya compliant such as when they want to export to a country that has adopted Nagoya, or they are working with an institution (university, journal, funding agency) that has decided to only work with people who are Nagoya compliant. Inadequate documentation of compliance impacts the potential for investment in research commercialisation by industry partners.

There is a current IP Australia (2021) Indigenous Knowledge consultation investigating how to best implement access and benefit sharing terms. However, Australian law is not necessarily what will impact on Australian researchers. Failure to comply with best international practice in Indigenous research policy will increasingly impact publication, assessment of research quality and impact, and global commercialisation prospects. This alone should give pause to researchers and universities to reconsider how to support and engage with global Indigenous research integrity best practice.

Open Access

The Australian Government is increasingly looking for more effective research translation and uptake of taxpayer funded university research. There are multiple government initiatives underway that seek to improve Australian performance with respect to open access publication, engaging and potentially extending the current open access mandates of the NHMRC and ARC. Open access is also a current priority of the Chief Scientist, Dr Cathy Foley. Increased accessibility to knowledge through an open access publication strategy has some potential benefits for Indigenous communities and enterprises, for whom the cost of accessing research publication databases is typically prohibitive. However, even where access is secured, this is no substitute for producing information in diverse formats for different audiences. Moreover, the principle of self-determination and the objective of sector policies with respect to Indigenous research seek to counteract the presumption that Aboriginal and Torres Strait Islander Peoples have no right to be consulted about uses of their knowledge and other resources. This means that a mandatory requirement of open access for Aboriginal research, where there are already recognised problems with research agreements and a lack of attribution of Indigenous authorship and agency, would be counterproductive. This requires more than restriction on circulation of culturally sensitive and confidential information. Advancing an Indigenous open access agenda needs to proceed alongside implementation of a more empowering and decolonising research practice, with intellectual property ownership agreements that allow for decisions identified as being of key importance remaining in the hands of Indigenous participants.

ERA 2023 and EI 2024

In ERA 2018 (ARC, 2018b) the lack of a coherent approach to reporting Indigenous research and dedicated FOR codes made it hard to meaningfully unpack what might be considered relevant to an assessment of excellence in Indigenous research publication. Discipline assessment that

involved peer review had some indirect capacity to consider Indigenous perspectives in assessing research quality, however there was no Indigenous Research Evaluation Committee. It is not clear if there were any Indigenous Committee members of the Humanities and Creative Arts or Education and Human Society Panels where peer review was a significant workload, and no data made public on the use of Indigenous researchers as assessors.

Following the ERA EI review (ARC, 2021a) a working party has been established to review the ERA rating scale, standards for benchmarking and peer review, including what quality means for Indigenous research. There is one Indigenous member of this review. ERA 2023 will adopt the new Indigenous FOR codes, with a review to follow (ARC, 2021b).

The inaugural Engagement and Impact Assessment, EI 2018 (ARC, 2018c), did include research assessments by an Indigenous Panel but universities could only submit one Aboriginal and Torres Strait Islander research impact study for impact assessment. The work of the Indigenous Panel was articulated with that of other panels to some degree, which ensured some Indigenous review of impact claims about Aboriginal and Torres Strait Islander research of some case studies not submitted to the Indigenous Panel. Research assigned Indigenous FOR codes will be assessed for the first time in EI 2024. At time of writing, although the ARC has not yet finalised arrangements for ERA 2023 and EI 2024, it is anticipated that there will be cross-panel assessment, where the case study sits across Indigenous research and another disciplinary area. As the number of impact studies to be submitted is related to the proportional use of FOR codes in ERA 2023, there may be considerable gaming to avoid using these codes where research projects have little connection to Aboriginal and Torres Strait Islander researchers or community engagement where it is anticipated that research might be viewed negatively by the Indigenous Panel.

One of the UA Indigenous Strategy (2017) goals yet to be meaningfully actioned was to develop a platform or mechanism to identify and share good Indigenous research practices. However, in addition to needing examples of good practices, there is a need for clearer communication of normative criteria that allow for meaningful discrimination between kinds of research practices where Indigenous researchers, and projects or publications with the capacity to harm or benefit Aboriginal and Torres Strait Islander Peoples are involved. There is a new UA DVC/PVC Indigenous Committee, comprised of senior Indigenous and non-Indigenous research managers,

who will be consulted on relevant assessment criteria for ERA 2023 and EI 2024 as these evolve. There will also be targeted consultation with Indigenous researchers. At time of writing, the criteria for identifying good Indigenous research practice remains very uncertain.

There are Māori Research Ethics criteria that could be adapted to an Australian research assessment context. Whilst designed with a view to assisting ethics approval, they share a common goal with Australian research policy of shifting community practice from inclusion through consultation with Indigenous informants to best practice engagement of Indigenous Peoples' research agendas.

The *Te Ara Tika Guidelines for Māori research ethics* (Hudson *et al.*, 2010) are informed by the Treaty of Waitangi principles of partnership, participation and protection and identify levels of Indigenous participation in research. These provide useful baseline normative criteria for assessing research impact on and engagement with Māori. The Guidelines identify three levels of involvement (1) low-level consultation; (2) a good practice of positive engagement (3) best practice or Kaitiaki, that is, forming a relationship with Māori. The Guidelines establish relevant considerations and minimum evidence requirements for each level, applicable to a range of research contexts. This means that good practice requires researchers going beyond simply consulting with Māori research participants and advancing a research agenda without any direct relevance to Māori. Substantial and positive engagement with Māori communities is required, 'Where research is clearly Māori centred and displays a focus on generating answers to questions that are of particular relevance and importance to Māori' (Hudson et al, 2010, p.7). Here Māori would be identifiable as significant participants in the research team and as research participants, with the capacity to influence research design, and as appropriate, analysis, outcomes and dissemination. Best practice 'empowers Māori to take a Kaitiaki role within the research project with a view to ensuring that tangible outcomes are realised within Māori Communities' (Hudson *et al.*, 2010, p.7).

Thus, under the *Te Ara Tika Guidelines*, the primary interest of Māori is identified through co-construction of the project, research that is supportive of Indigenous worldviews, and using Māori research methodologies. The Guidelines also provide a comparative consideration of governance structures and relationships with the capacity to cause harm or benefit across the scale from consultation, engagement to relationship. This draws attention to research design that enables meaningful power sharing and control,

> *Failure to comply with best international practice in Indigenous research policy will increasingly impact publication, assessment of research quality and impact, and global commercialisation prospects.*

and a judgement of whether the research advances equity and distributive justice, for instance, through access and benefit sharing agreements.

The development of clear normative criteria for ARC research assessments needs to draw out the governance implications of research practices to continue to drive Indigenous empowerment at all levels of the research process. Assessment processes offer a significant opportunity to reinforce the values nascent within existing policy frameworks, particularly if combined with institution-led best practice examples illustrating how the policy framework can drive excellence in Indigenous research. Whilst there is always a significant management concern for an additional resource burden on institutions in producing evidence data and portfolios, financial accounting also needs to factor in the waste of resources that flows from historically poor practice, which has led to the policy development in the first place.

Indigenous Data Sovereignty

The least developed area of sector policy relates to management of research data relevant to Aboriginal and Torres Strait Islander Peoples. Poor historic practices have seeded considerable mistrust. There are ongoing tensions created by the enormous research interest in data projects involving mining, matching, machine learning and automated decision making. All have potential to cause harm and discriminatory effects and there is little communication of potential benefits to Peoples. New uses of old data sets and generating new data about Indigenous People has a particularly troubling resonance:

> Positioning 'data' as a resource from which insight can be 'mined' perpetuates the conceptual model that economic value can be extracted from data, leveraging the culturally embedded analogy that gold ore mined from the earth (for example, in the American Midwest) delivered untold wealth for colonialist settlers and ignores the unequal power dynamics of the extractive practices that underpin these narratives …

> Following existing metaphors like oil and mining, the natural world remains a good conceptual foundation to develop alternative metaphors. One option is to see data as a greenhouse gas, where its uses create harmful by-products that must be limited (Ada Lovelace Institute, 2021, p.27).

Indigenous data sovereignty involves an assertion of self-determination and control over data projects, but how this agenda can meaningfully advance is unclear. The tools of the dataverse are not Indigenous authored and data governance models are underdeveloped. There are considerable problems with transparency and manipulative extractive agendas under the guise of data sharing (Rainie *et al.*, 2019; Walter, Lovett *et al.*, 2020). However, there is also an increasing body of work that centres civil society stewardship, control and agency and examples of models that facilitate empowerment and active management in decision-making about data governance (Kukutai & Taylor, 2016; Walter, Kukutai *et al.*, 2020). In an Indigenous context, there is a need to develop frameworks for participatory data stewardship. This involves fostering the 'responsible use, collection and management of data in a participatory and rights-preserving way, informed by values and engaging with questions of fairness' (Ada Lovelace Institute, 2021, p.4). Governance models that empower civil society actors provide an avenue for extending existing values embedded in Indigenous research policy into data management practice. The CARE Principles for Indigenous Data Governance also provide a normative foundation to inform data governance in practice (GIDA, 2018). International standards such as the CARE principles inform international research collaborations with Australian researchers and affect industry partners, as well as impacting the practices of international publishers. It is likely that in the future issues of compliance and international provenance assurance will arise in relation to other research materials such as Indigenous data, similar to developments arising around the Nagoya Protocol as discussed above.

HERC IP commercialisation

In September 2021, the Morrison Government released the *Higher Education Research Commercialisation IP Framework* (HERC IP, 2021). It seeks to incentivise knowledge transfer between universities and business partners. This includes the requirement that grant recipients receiving public money under numerous schemes, including the new Trailblazer University Program, use mandatory template legal agreements in negotiation with external collaborators. The proposed agreements do not address Indigenous IP issues at all.

This oversight will impact research in the Government's Priority Manufacturing areas, in particular Food and beverages and Medical products, where Indigenous knowledge is frequently used. Consideration should be given to developing model benefit sharing agreements that can be used within the Food Industry that comply with the Nagoya protocol and other mandatory sector policies such as the *Australian Code for the Responsible Conduct of Research* (NHMRC, ARC & UA, 2018); the *NHMRC Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders* (NHMRC, 2018a) and the *AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research* (AIATSIS, 2020a). At time of writing, it is unclear whether or not the government will amend the templates to address this impediment to Indigenous research collaboration.

Neo-colonialism or a shared commitment?

Today there is an embryonic framework that is supportive of beneficial research engagement of Aboriginal and Torres Strait Islander researchers and collaborations with communities. However, implemented insensitively, policies can also create a lot of unpaid work for those with the least resources and experience with navigating university bureaucracy; taxed by the need to interpret and translate the good intentions set out in guiding documents into desirable clauses in research agreements in exchange for the promise of material benefits that may or may not eventuate. Well executed and with a shared commitment amongst all institutional actors, the goals behind a number of related initiatives can advance in step with meaningful Aboriginal and Torres Strait Islander research engagement. Whilst there is no utility in a one size fits all approach, there is more that universities can do to support policy implementation and to assist researchers seeking to collaborate with communities. Processes and support material could be designed to also help individuals and institutions comply with other research reporting obligations in view of the increasing importance placed upon documentation of engagement and impact case studies in sector research assessment exercises.

The self-determination and advancement of Aboriginal led research is everyone's business and responsibility. However, institutional policies establish the researcher as the party with primary responsibility to abide by relevant policies. At the researcher interface there is considerable policy fragmentation, a confusion of law and ethics, conflicting sources of authority, and little assistance in understanding what is best practice and how to implement it. The national policy frameworks are sound, but there is a need for policy harmonisation at the institutional level, a reform to ethics processes and research reporting, and best practice guides for researchers and external research participants to assist with implementation and compliance. Some tuning of ERA and EI assessment criteria and practice could also help influence cultural change and draw researcher attention to positive steps they can make to decolonise Australian research.

Development of a sector wide standardised process, an agreed terminology and checklists for collaboration discussion need to be integrated into all stages of the research cycle and integrated into institutional processes and reporting – pre-grant, preliminary ethics approval, ethics approval, publication reporting, and final reports to external funders. This should not be difficult given that the NHMRC and AIATSIS Research Integrity policies are already the authoritative documents referred to by most institutions, whether or not the research is ARC or NHMRC funded. Resources that facilitate clearer communication with potential community participants of what might be within possible scope of discussion matters would assist knowledge and experience sharing about possibilities, and, in time, feedback on what has and has not worked. Producing community resources that centre Indigenous knowledge ways of ethical research conduct and examples of best practice need to be a priority to effect meaningful cultural change, build trust and build lasting relationships and benefits. Without these investments, the default could be to an institutional driven transactional framework that will likely only serve communities with significant prior experience and support in negotiating productive research relationships. The infrastructure for more meaningful research engagement with Aboriginal and Torres Strait Islander Peoples is now there. The opportunity to develop it and maximise its potential is in our hands.

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