7. INDIGENOUS ENGAGEMENT

7.1   Introduction

This Chapter examines the existing resources to support Indigenous engagement in the NESP. This examination was carried out by reviewing over 50 agreements, guidelines, protocols and other resources from international and domestic sources. This is followed by a discussion of the definitions of 'engagement' and 'effective engagement' and the notion of co-design and co-production of research projects as a form of deeper engagement. The Chapter also explores the opportunities for integration of Indigenous knowledge and Western science that arise from collaborative engagement in environmental and climate science research between Indigenous peoples and western science researchers and a brief retrospect on the origins of the Department's expectations for Indigenous engagement in environmental and climate science research at the conclusion of NERP and the commencement of NESP.

The NESP Hubs were also asked to provide copies of agreements or protocols they use for Indigenous engagement, and these are discussed. The role of the AIATSIS *Guidelines for Ethical Research in Australian Indigenous Studies* (AITSIS, 2012) and its continuing relevance as a key resource is discussed, as it is in the process of being upgraded to a Code of Ethics. Our consultations with various stakeholders also cast a spotlight on issues around protection of Indigenous cultural and intellectual property rights and Indigenous data sovereignty.

7.2   Indigenous Engagement Resources

The brief required SGSEP to review the various engagement resources that are of relevance to environmental and climate science research activities. SGSEP was able to locate over 55 Indigenous engagement resources from International and Australian sources. We narrowed that list to 44 resources that we believe have relevance to the NESP Hubs undertaking environmental and climate science research in Australia, as follows:

- International (10 Resources);
- Australian Research Institutions (7 Resources);
- Australian Government (13 Resources);
- Aboriginal and Torres Strait Islander Organisations (7 Resources); and
- NESP Hubs (7 Resources).

SGSEP ranked the resources using the following criteria:

A. **Must Conform** – meaning 'to act in accord or harmony with...' the principles or protocols in relation to Indigenous engagement.

B. **Highly Applicable** – meaning the resource represents best practice and therefore should be taken into consideration in the development of policy and practice or guidance documentation in relation to Indigenous engagement.

C. **Moderately Applicable** – meaning the resource has some sound advice that is worth considering in the development of policy or guidance documentation and practice in relation to Indigenous engagement.

D. **General Relevance** – meaning the resource may provide some useful tips, information or advice about engagement generally and may be of relevance to Indigenous engagement.

The results are presented in **Table 7.1**. The full analysis is presented in **Appendix M**.

Table 7.1: Resources supporting Indigenous engagement and their applicability to NESP research activities

Agency	Short Title and Year of Publication	A. Must Conform	B. Highly Applicable	C. Moderately Applicable	D. General relevance
International Indigenous Engagement Resources					
CBD	*Convention on Biological Diversity Voluntary Guidelines – 2016*	A			
CBD	*The Nagoya Protocol and Bonn Guidelines relating to access, benefit-sharing and compliance of genetic resources – 2011 and 2002*	A			
FAO	*Free, Prior and Informed Consent – Guide to good practice – 2016*		B		
GIDA	*CARE Principles for Indigenous data Governance – 2019*		B		
ICEC	*Brisbane Declaration on Core Principles in Community Engagement – 2005*				D
IUCN	*ESMS Standard on Indigenous People – 2016*			C	
UN HBRA	*Applying HRBA to Development Cooperation and Capacity – 2006*			C	
UN DRIP	*Declaration on the Rights of Indigenous Peoples – 2007*	A			
UNDG	*Guidelines on Indigenous Peoples Issues – 2009*				D
WIPO	*Protection of Traditional Cultural Expressions, Traditional Knowledge and Intellectual property and Genetic Resources – 2019*		B		
Australian Research Institutions Indigenous Engagement Resources					
AIATSIS	*Guidelines for Ethical Research in Australian Indigenous Studies – 2011*	A			
AIATSIS	*Revision of the AIATSIS Guidelines for Ethical Research in Australian Indigenous Studies - Consultation Draft – 2019*	A			
ARC, NHMRC, UA	*National Statement on Ethical Conduct in Human Research – 2007 (updated 2018)*	A			
ARC, NHMRC, UA	*Australian Code for the Responsible Conduct of Research – 2018*	A			
NHMRC	*Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders – 2018*	A			
NHMRC	*Keeping research on track II: A companion document to Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders – 2018*		B		
Lowitja Institute	*Engaging First Peoples: A Review of Methods. Discussion Paper – 2016*			C	

Agency	Short Title and Year of Publication	A. Must Conform	B. Highly Applicable	C. Moderately Applicable	D. General relevance
	And *Researching Indigenous Health: Practical Guides for Researchers and Supervisors* – 2011 and 2009.				
Australian Government Indigenous Engagement Resources					
AG	*Engaging: A Guide to Interacting Respectfully and Reciprocally with Indigenous Peoples* – 2015				D
ACA	*Protocols for producing Indigenous Australian Music, Writing, Visual Arts, Media Arts, Performing Arts* – 2007.	A			
AHRC	*Aboriginal and Torres Strait Islander Engagement Toolkit* – 2012			C	
AIHW & AIFS	*Engaging with Indigenous Australia* – 2013		B		
AIHW & AIFS	*Engagement with Indigenous communities in key sectors* – 2013		B		
DoE	*Principles of Engagement with Indigenous Peoples* – 2015		B		
DoE	*Engage Early. Guidance under for assessments under the EPBC Act* – 2016			C	
DEE	*Guidance on Partnering with Indigenous organisations for a sustainable environment* – 2019.		B		
PM&C	*Communicating with Aboriginal and Torres Strait Islander Audiences* – 2017			C	
TSRA	*Guidelines for ethical and effective communication for researchers working in the Torres Strait* – 2006		B		
TSRA	*Cultural Protocols for TSRA Staff* – 2011		B		
WTMA	*Scientific Research Protocol for working with Aboriginal Rainforest People* in the WTWHA– 2018	A			
Aboriginal and Torres Strait Islander Organisations Indigenous Engagement Resources					
APY lands	Permits	A			
CLC	Permits – 2020	A			
CLC	*CLC Protocols for research in CLC Region* – 2005		B		
KLC	*Intellectual Property and Traditional Knowledge Policy* – 2011	A			
KLC	*KLC Research Protocol* – 2011	A			
Kimberley Saltwater Country	*Collaborative Science on Kimberley Saltwater Country – A Guide for Researchers* – 2017	A			
MAC	*Murujuga Research Protocol* – 2015	A			
NESP Hub Indigenous Engagement Resources					

Agency	Short Title and Year of Publication	A. Must Conform	B. Highly Applicable	C. Moderately Applicable	D. General relevance
CAUL Hub	*Three Category Workbook and Workshops* – 2019		B		
ESCC Hub	*Co-design, cross-cultural communication and climate change: considerations for engaging with First Nations peoples. Workshop Summary* – 2020		B		
MB Hub	Template Agreement			C	
NAER Hub	*Our Knowledge, Our Way in Caring for Country.* Best Practice Guidelines – 2020	A			
NAER Hub	Cooperative Research Agreement – 2018			C	
TSR Hub	*Indigenous Engagement Protocols for Threatened Species Researchers* – 2020		B		
TWQ Hub	The Three Category Approach		B		
Totals per Category		**17**	**15**	**9**	**3**

Table 7.1 shows that there are:

- 17 Must Conform resources;
- 15 Highly Applicable resources
- 9 Moderately Applicable resources; and
- 3 Resources of General Relevance.

The 'Must Conform' Indigenous engagement resources include several codes, protocols or guidelines that researchers engaging in research either with Indigenous Australians or more generally, must conform with.

Any research involving humans is governed by a set of ethical principles to ensure research is safe, respectful, responsible, high quality, and of benefit to research. All Aboriginal and Torres Strait Islander research in Australia must therefore conform with the ethical research framework comprising the following three documents:

- The National Statement on Ethical Conduct in Human Research (the National Statement) (NHMRC *et al*, 2018a) and
- The Australian Code for the Responsible Conduct of Research (the Code of Conduct) (NHMRC *et al*, 2018b); and
- The AIATSIS Guidelines for Ethical Research in Australian Indigenous Studies (GERAIS) (AIATSIS, 2012).[33]

The National Statement, the Code of Conduct and the AIATSIS GERAIS (Code of Ethics – see discussion below) should be seen in the broader context of the overall governance of research. The three documents not only provide guidelines for researchers, Human Research Ethics Committees (HRECs) and others conducting ethical review of research, they also emphasise institutions' responsibilities for the quality, safety and ethical

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[33] The overall research ethics framework also includes the following elements, but these are not considered within the scope of this assessment:

- *The Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders* (NHMRC, 2018) for researchers undertaking research in health matters;
- *The Ethical considerations in quality assurance and evaluation activities* (NHMRC, 2014) for researchers undertaking evaluation and quality assurance; and
- Other specific codes and guidelines apply to research involving animals, and certain biomedical and clinical research, See https://www.nhmrc.gov.au/research-policy/ethics-and-integrity.

acceptability of research that they sponsor or permit to be carried out under their auspices. It is important to note however, that AIATSIS has instigated a review of GERAIS with a view of upgrading the guidelines to a code. This is discussed in more detail later in this Chapter. This framework generally requires all research institutions to have human research ethics committees in place to assess research projects for their compliance with the framework as outlined in the three key documents.[34] Hence, these three resources are categorised by SGSEP as 'Must Conform' for NESP Hubs undertaking research involving Aboriginal and Torres Strait Islander peoples or on matters that may affect them.

While the NHMRC's *Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders* (NHMRC, 2018) applies to researchers undertaking research in health matters, the NHMRC's Guidelines are intended to ensure that research is of benefit to Aboriginal and Torres Strait Islander people and communities. The Guidelines define six core values — spirit and integrity, cultural continuity, equity, reciprocity, respect, and responsibility. Applying these values and other ethical principles will ensure that research conducted with or for Aboriginal and Torres Strait Islander people and communities, or their data or biological samples, is ethically conducted. The Guidelines apply to all health researchers, whether they are Aboriginal or Torres Strait Islander people, other Australians or international researchers. Hence, they are categorised in this assessment as Must Conform.

The 'Must Conform' Indigenous engagement resources also include three international documents. The Voluntary Guidelines for complying with Article 8j of the *Convention on Biological Diversity* (the CBD) (Secretariat of the Convention on Biological Diversity, 1992), the *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization* (the Bonn Guidelines) (Secretariat of the Convention on Biological Diversity, 2002) and the UN *Declaration on the Rights of Indigenous Peoples* (UNDRIP) (UN, 2007). The first and third of these international instruments are cited in the Department's IEPS for the NESP and by the NESP Hubs in their documentation about Indigenous Engagement. If not the Declaration itself, the NESP Hubs refer to the principle of free, prior and informed consent which appears in several Articles of the Declaration.[35] As a signatory to the CBD and having endorsed the UNDRIP, there is an expectation both internationally and domestically, that Australia will conform with their provisions.

The UNDRIP carries considerable normative weight and legitimacy for several reasons: It was adopted by the UN General Assembly,[36] it was compiled in consultations with, and the support of, Indigenous peoples worldwide,[37] and it reflects 'an important level of consensus at the global level about the content of Indigenous peoples' rights' (UN, 2013:16). It also reflects the needs and aspirations of Indigenous peoples (Eide, 2006:157) as well as the concerns of states.[38] The UNDRIP does not create any new or special human rights, but rather it elaborates general principles and human rights as they relate to 'the specific historical, cultural and social circumstances of indigenous peoples' (UNHRC, 2008:24). (Wensing, 2019:263). As argued

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[34] The current NESP Hubs have been hosted by universities or research institutions, all of which have such committees in place. Any new consortiums for NESP2 will have to have human research ethics committee in place if it is to conform with Australia's human ethics research framework.

[35] In particular, Articles 10 (relocation), 11 (cultural property), 19 (regulatory measures), 28 (land and territories), 29 (environment) and 32 (development and use of land/territories).

[36] The UN General Assembly has a long history of adopting declarations on various human rights issues including the *Universal Declaration of Human Rights* in 1948. Such declarations are adopted under Article 13(1)(b) of the UN Charter and are generally reserved by the UN 'for standard-setting resolutions of profound significance' (UN, 2013:16).

[37] Erica-Irene Daes was the Chairperson of the Working Group on Indigenous Populations (WGIP) and Special Rapporteur of the UN Sub-Commission on Human Rights from 1984 to 2001 and was instrumental in the preparation of the UNDRIP. Daes (2008:24) maintains that 'no other UN instrument has been elaborated with such an active participation of all parties concerned'.

[38] Article 46 has been interpreted by Engle (2011: 147) as sealing the deal that 'external forms of self-determination are off the table for Indigenous peoples' and by Woons (2014:10) as 'the ability of Indigenous nations to use UNDRIP to challenge the power imbalance they are locked into with states has been truncated' with the territorial integrity of the former being maintained at the expense of the latter (White Face and Wobaga, 2013). Furthermore, the then UN Special Rapporteur on the Rights of Indigenous Peoples, James S. Anaya, also disagrees that any imputation that the right to self-determination sets Indigenous peoples apart from the right to self-determination that peoples generally enjoy under international law (UN, 2013:19; see also Daes, 2008:22-24; Anaya, 2009:184-198).

earlier, the UNDRIP expresses rights and by doing so, explains how Indigenous peoples want nation states (and others) to conduct themselves about matters that may affect their rights and interests (Wensing, 2019:266).

The CBD is an international legally-binding treaty with three objectives: the conservation of biodiversity; the sustainable use of its components; and the fair and equitable sharing of the benefits arising from the use of genetic resources. Australia has been a Party to the CBD since 1993 and the Department's website[39] notes the Australian Government's commitment to implementing its obligations in accordance with its national priorities. Article 8j of the CBD states that each contracting Party shall, as far as possible and as appropriate:

> *'Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices* (Secretariat of the Convention on Biological Diversity, 1992),

The *Bonn Guidelines* serve as inputs when developing and drafting legislative, administrative or policy measures on access and benefit-sharing with particular reference to provisions under Article 8(j) of the CBD. The *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity* (Secretariat of the Convention on Biological Diversity, 2011) is a supplementary agreement to the *Convention on Biological Diversity* and sets out core obligations for its contracting Parties to take measures in relation to access, benefit-sharing and compliance of genetic resources. To the extent that NESP Hubs engage in research that involves access, benefit-sharing and compliance of genetic resources, the Hubs must conform with Nagoya Protocol and the Bonn Guidelines will apply.

Several documents generated by Aboriginal and Torres Strait Islander organisations are also included in the 'Must Conform' category because the organisations have their own protocols and require researchers to apply for permits to access Aboriginal or Torres Strait Islander lands and/or communities and to obtain the prior consent of the relevant people before undertaking research that will involve them or accessing their IK.

However, there is one resource that has been developed within the Kimberley Indigenous Saltwater Science Project (KISSP) that stands out for particular mention (see **Case Study 9**).[40]

The Kimberley Indigenous Saltwater Science Project (KISSP) was a collaboration funded by the Western Australian Marine Science Institution (WAMSI) as part of their Kimberley Marine Research Program (KMRP). The KISSP was developed to improve the way natural and cultural resource management and research, involving TOs and the science community, is planned, assessed and undertaken on Kimberley Saltwater Country. The KISSP was guided by a Working Group comprised of representatives from seven Kimberley saltwater groups (Balanggarra, Wunambal-Gaambera, Dambimangari, Bardi-Jawi, Nyul Nyul, Yawuru and Karajarri) and a project team, comprised of the University of Western Australia (UWA), Charles Darwin University (CDU), Kimberley Land Council (KLC) and Mosaic Environmental.

The Working Group was concerned about the challenges between researchers and TOs and the mismatch between western science research and Indigenous ecological and traditional knowledge and the need for better integration of Indigenous ecological knowledge into marine conservation and management in the Kimberley region. The Working Group found that achieving good collaborative research has not always been easy for Kimberley researchers, particularly those new to working with Indigenous land and sea managers and while there have been some success stories, there have also been significant challenges to overcome (Lincoln *et al* 2017:5).

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[39] https://www.environment.gov.au/biodiversity/international/un-convention-biological-diversity
[40] https://www.wamsi.org.au/research-site/indigenous-knowledge and https://www.klc.org.au/the-kimberley-indigenous-saltwater-science-project

The *Collaborative Science on Kimberley Saltwater Country – A Guide for Researchers* (Lincoln *et al* 2017) was developed to address shortfalls in existing research processes and to provide some consistency to researchers embarking on Kimberley coastal or marine research projects. The Guide steps land and sea researchers through the process of doing research projects with Indigenous Kimberley saltwater people, providing access to an established network of Indigenous land and sea management processionals, deeply knowledgeable elders and Indigenous Rangers with research and monitoring experience (Case Study 9).

While the Guide applies only to natural and cultural resource management research proposed in land or waters belonging to the following Kimberley Indigenous saltwater peoples: Balanggarra; Wunambal Gaambera; Dambimangari; Bardi Jawi; Nyul Nyul; Yawuru; and Karajarri Aboriginal Corporations, The organisations involved in its development believe that it has the potential to include a larger number of TO groups and more inland areas as the processes are tested and refined (Lincoln *et al* 2017:7).

Case Study 9: Collaborative Science on Kimberley Saltwater Country – A Guide for Researchers

Kimberley Indigenous Saltwater Science Project (KISSP): Collaborative Science on Kimberley Saltwater Country – A Guide for Researchers

Indigenous Kimberley land & sea managers value the contribution of western science to management of their saltwater County in contemporary Australia, just as researchers with Kimberley experience value the contributions of Indigenous knowledge to scientific research.

Over time researchers have found that the western science they bring to their research projects is only one side of the equation, with Indigenous knowledge providing the balance. Experienced researchers place high value the input of Traditional Owners, Indigenous Rangers and other traditional knowledge holders to research projects. They also make good use of the network of Indigenous people with skills, knowledge, expertise, resources and interest in land and sea management and research. In essence, they do collaborative research on Kimberley Country.

Collaborative research (working 'two-ways') is the best-practice approach supported by Indigenous people in this region. It works because it respects both types of knowledge and culture, meets the research needs of all research partners and makes best use of available resources.

The *Collaborative Science on Kimberley Saltwater Country – A Guide for Researchers* has been developed to address shortfalls in the existing processes and to provide some consistency to researchers embarking on Kimberley coastal or marine research projects.

This Guide steps land and sea researchers through the process of doing research projects with Indigenous Kimberley saltwater people, providing access to an established network of Indigenous land & sea management processionals, deeply knowledgeable elders and Indigenous Rangers with research & monitoring experience.

It explains the requirements of researchers planning natural & cultural resource management on Kimberley traditional land and is linked to a new online research proposal form. It also acts a database of information, helping researchers to learn about Indigenous people and Country and supporting them as they plan for remote research.

Source: Lincoln *et al*, 2017.

The KISSP has produced a range of complementary products that seek to build capacity for collaborative management of Kimberley Saltwater Country. The key products include:

1. Mobilising Indigenous Knowledges for Collaborative Management of Kimberley Saltwater Country (Austin *et al,* 2018);
2. Guidelines for Collaborative Knowledge Work in Kimberley Saltwater Country (Austin *et al,* 2017);

3. Collaborative Science on Kimberley Saltwater Country, A Guide for Researchers (includes links to Kimberley Saltwater Country Research Proposal (Natural & Cultural Resource Management)) (Lincoln *et al,* 2017);
4. A Regional Framework for Saltwater Monitoring in the Kimberley (Dobbs *et al*, 2017a);
5. A Toolbox for Saltwater Monitoring in the Kimberley (Dobbs *et al*, 2017b);
6. Pilot training package: Monitoring for Management – A Learning Package for Kimberley Indigenous Rangers.

The relationship between the various products is show in **Figure 7.1**. Each of these products has been developed in a manner that creates space for multiple knowledges to be mobilised to support decision-making, management, monitoring and research, and contributes directly to building the collaborative capacity of Indigenous people and their partners to look after Kimberley Saltwater Country. The partner organisations maintain that by adopting this approach and implementing these tools, the natural and cultural assets of Kimberley Saltwater Country can be protected and/or leveraged to produce social, economic, cultural and environmental benefits for all (Lincoln *et al* 2017)
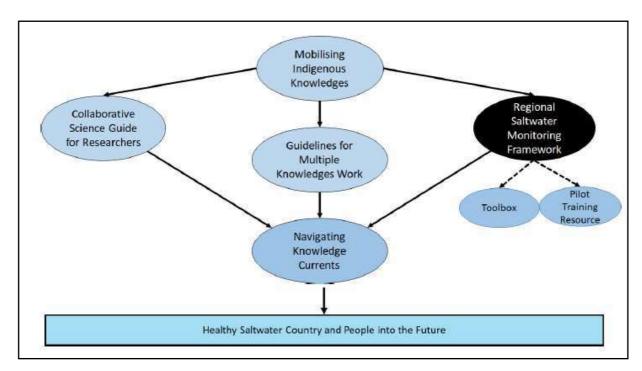

Figure 7.1: How the complementary products of the Kimberley Indigenous Saltwater Science Project relate to one another

Source: Austin *et al,* 2018.

The KISSP amply demonstrates what is possible when collaboration is placed at the forefront of engagement between two distinctly different cultures. While these resources apply to a particular group of TOs in a particular geographic area, the creators also note that the principles embedded in the Guide and in the project as a whole are worth considering elsewhere in the Kimberley. SGSEP believes the framework could also be applied in other parts of Australia with the cooperation of neighbouring TO groups with similar interests, and is something that NESP2 should explore.

The other document that SGSEP has also categorised as 'Must Conform' is the '*Our Knowledge Our Way in Caring for Country Best Practice Guidelines*' produced under the auspices of the NAER Hub (see **Case Study 10**).

The Guidelines were developed by an Indigenous-led Project Steering Committee that sought to document Indigenous peoples approaches to land and sea Country management. The Guidelines incorporate IUCN approaches to best practice and include references to the UN *Declaration on Rights of Indigenous Peoples*,

the *Nagoya Protocol* under the Convention on Biological Diversity, and the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES).

Case Study 10: OUR KNOWLEDGE OUR WAY in caring for Country Best Practice Guidelines

Indigenous-led approaches to strengthening and sharing our knowledge for land and sea management

An Indigenous-majority Project Steering Group was established by the project co-leaders – the North Australian Indigenous Land and Sea Management Alliance and CSIRO – to lead the development of the guidelines. The Project Steering Group asked "who decides what is best practice and how?" and provided the critical direction that: *Indigenous people must decide what is best practice in working with our knowledge.*

The Project Steering Group decided to adopt the International Union for Conservation of Nature (IUCN) approach to best practice guidelines and therefore invited the Australian Committee for IUCN to partner in their development. NAILSMA led the call for case studies, seeking feedback from Indigenous groups and their partners involved in land and sea management and related enterprise development across the country. Indigenous authors of these case studies, together with other Indigenous experts invited as highlight chapter co-authors, are the foundation of the Indigenous voice throughout the Guidelines. *Our* and *we* in these Guidelines refer to Australian Aboriginal and Torres Strait Islander people.

Several non-Indigenous staff from NAILSMA and CSIRO provided significant support to the Indigenous case study authors and drafted much of the text for subsequent checking and summarising by Indigenous lead co-authors. The non-Indigenous staff position themselves in this role as allies working for and with Indigenous people: diligent, conscientious, skilful and respectful followers of Indigenous leadership. They have written what they have heard Indigenous people saying, and carefully checked with Indigenous people to make sure that what is written is correct.

Each chapter was independently checked by expert Indigenous *highlight co-authors*, who provided critical reflections distilled as highlights at the beginning of each chapter. In the attributions, highlight co-authors then became lead author of each chapter, followed by case study co-authors in the order the case studies appear in the chapter, and the NAILSMA and CSIRO staff co-authors. Case study co-authors gave permission for both co-authorship of their case study, and the chapter. Face-to-face discussions were held with Indigenous land and sea rangers through five workshops at the Northern Territory Indigenous Ranger Forum held at Charles Point near Darwin in August 2019. Some 60 individual Indigenous rangers provided high level input, identifying critical considerations about forming new partnerships or engagements involving Indigenous knowledge. The draft document was further reviewed by eight expert reviewers invited by the Australian Committee of the IUCN and a further two Indigenous expert reviewers invited by CSIRO.

The content of the Guidelines is based on principles of respecting Indigenous ownership of Indigenous knowledge and ensuring free, prior and informed consent (FPIC) for its publication. The case study co-authors provided FPIC to CSIRO and NAILSMA for release of their material as part of this document, while retaining the intellectual property in the copyright of their original production of the case studies, as well as ownership of their Indigenous cultural and intellectual property (ICIP). CSIRO and NAILSMA hold the copyright of other material and the rights to release the case study material within this report. The Guidelines are publicly released under a Creative Commons Attribution-Non-Commercial-No Derivatives Licence 4.0 Australia (CC BY-NC-ND 4.0), which means [you] can share the share the document provided [you] do not use it commercially, and [you] acknowledge the source. If [you] mix, transform or change the material, it cannot be shared with others without further permission.

Source: Woodward *et al*, 2020.

As Peter Cochrane, the IUCN Councillor, Australian Committee for IUCN notes, the *Our Knowledge Our Way* Guidelines are a vitally important document because the they distil the knowledge, lessons and understandings of Indigenous land and sea managers from across Australia through diverse case studies to present a set of guidelines for current and future managers and policy-makers (Woodward *et al*, 2020:x).

And as the Traditional Owner members of our Project Steering Group state, the Guidelines are a good way of getting concepts across to people:

> *It's good for non-Indigenous people to see what we're doing and how we do it. We're not one mob, we are all from different areas, with different languages, and different views. The Guidelines bring that all together in one place, so people can learn about that … and understand that we all have different ways, and we have different knowledge.* (Woodward *et al*, 2020:xi).

The Project Steering Group also note that the case studies in the Guidelines demonstrate that partnerships founded on trust between partners and mutual respect for Indigenous knowledge and country can work very well, but researchers need to be aware of the cultural protocols that govern who can access and share Indigenous knowledge, including the unique governance arrangements that exist for each different language group, community, and family group (Woodward *et al*, 2020:xi).

The engagement resources referred to in **Case Studies 9 and 10** are vitally important for developing partnerships based on trust and mutual respect and therefore provide key resources for the next iteration of NESP. While both resources relate to particular geographic locations, the principles and frameworks embodied within them have much wider applicability, and there is an opportunity for NESP2 to build on these resources with other groups of TOs around Australia.

The 'Highly Applicable' resources include several International and Australian Government resources, while not mandatory or obligatory on researchers or their institutions, the resources nevertheless provide helpful information or practical advice about engagement practices in relation to Engagement with Indigenous peoples. SGSEP culled several documents from this category because they were not particularly relevant to the field of environmental or climate science research and Indigenous peoples *per se*. However, we have retained 15 documents in this category for their usefulness in raising awareness about Indigenous engagement techniques or practices that work. For example, the Department's own resource documents and those prepared by the TSRA in relation to engagement with Torres Strait Islander people and communities.

The 'Moderately Applicable' resources includes several resources contain useful information or resources that may be of assistance with Indigenous Engagement and further advice or experience is necessary.

There are only three resources in the 'General Relevance' category that SGSEP thought be of general interest. There are many more resources we could have included on community engagement generally, but we saw little value in extending this list beyond the three that are included in **Appendix M**.

What this analysis demonstrates is that there are numerous international and domestic resources readily available for understanding the ethical requirements for engaging with Indigenous peoples in Australia in any context.

As stated above, there are three resources that form the framework for ethical research in Australia, and all researchers must conform to these documents when conducting research with Aboriginal and Torres Strait Islander peoples (The National Statement, the Code of Conduct and the GERAIS). The three documents not only provide guidelines for researchers, Human Research Ethics Committees (HRECs) and others conducting ethical review of research, they also emphasise institutions' responsibilities for the quality, safety and ethical acceptability of research that they sponsor or permit to be carried out under their auspices. And the third element of that framework is in the process of becoming a mandatory Code of Ethics (discussed in part 7.6 below).

With respect to Indigenous peoples and their ICIP (including IK in all its forms), there are two international documents that researchers must also conform to when conducting research that involves Indigenous peoples' ecological knowledge, traditional knowledge and/or genetic resources. These are the Guidelines under the *Convention on Biological Diversity* and the *Declaration on the Rights of Indigenous Peoples*. While these documents are not binding in Australian law, they are binding in international law, so they must be

taken into account by researchers when undertaking environmental and climate science research on matters that may affect or involve Aboriginal and Torres Strait Islander peoples.

The analysis also shows there are a suite of other documents that researchers can use to guide their research and/or to develop localised protocols in collaboration with Aboriginal and Torres Strait Islander peoples to ensure the research is safe, respectful, responsible, high quality, protects their knowledge and will be of benefit to them. These matters are explored in more detail in the remainder of this Chapter.

7.3 Defining 'engagement' and 'effective engagement'

Engagement between individuals and governments can be viewed as occurring on a spectrum from tokenism to control (Arnstein, 1969),[41] with policy makers having to select the point along the spectrum at which they need to engage (Hunt, 2013a). The high end of the spectrum is seen as being particularly relevant to 'wicked' or complex and difficult problems where collaboration between the people and their governments are seen as essential to finding workable solutions (Hunt, 2013a).

A significant consideration for governments is that our modern democratic states are highly complex and our societies are increasingly pluralistic in terms of race, religion, ethnicity and cultures, and which makes the design of citizen involvement in the development of policies and programs complex and challenging (Holmes 2011:4). Hunt (2013:5) maintains that engagement can be seen as 'an interaction between groups of people working towards shared goals' (Hunt, 2013). Holmes concludes that engagement is not a single event or set of activities, but is rather a 'relatively sustained and systematic interaction' (Holmes, 2011:13) and 'an ongoing process or conversation that builds trust and relationships' (FaHCSIA, 2012:1).

At a major international conference on community engagement in Brisbane in 2005, the participants issued a Declaration that endorsed the following four core principles for community engagement:

- Integrity – when there is openness and honesty about the scope and purpose of engagement;
- Inclusion - when there is an opportunity for a diverse range of values and perspectives to be freely and fairly expressed and heard;
- Deliberation – when there is sufficient and credible information for dialogue, choice and decisions, and when there is space to weigh options, develop common understandings and to appreciate respective roles and responsibilities;
- Influence – when people have input in designing how they participate, when policies and services reflect their involvement and when their impact is apparent (ICEC, 2005).

Research in Australia has found that Indigenous engagement works best in a framework that respects Indigenous control and decision making and supports development towards Indigenous aspirations, early engagement to enable deliberation about shared goals, and supports the development of Indigenous governance development and capacity to engage (Hunt, 2013a:33). The development of respectful and trusting relationships is key to success. 'This takes time, people with the right skills and approaches, good communication and leadership by all parties. Clarity about processes, roles and responsibilities, mutually agreed outcomes and the steps to achieve them and a willingness to share responsibility for progress are essential.' (Hunt, 2013a:33). The research evidence shows that engaging successfully with Indigenous communities requires:

- An appreciation of the historical, social, cultural and political complexity of specific Indigenous contexts;
- Active Indigenous participation from the earliest stage of defining the problem to be solved and defining aspirations, through to implementing the program and evaluating the results;
- Long term relationships of trust, respect and honesty, as well as accessible and ongoing communication and clarity about roles and responsibilities;

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[41] Despite the passage of time, Arnstein's ladder of citizen participation still stands as a benchmark in planning and citizen participation theory.

SGS
Economics
& Planning

- Genuine efforts to share power, including through negotiated agreements;
- Clarity about the purpose of and scale for engagement and appropriate timeframes;
- Attention to strengthening governance and capacity within both the Indigenous community and governments themselves, and good leadership; and
- Negotiation of clear and agreed outcomes and indicators of success with monitoring and evaluation processes that meet each parties' needs (Hunt, 2013a).[42]

'Effective engagement' is therefore seen as 'a sustained process that provides Indigenous people with the opportunity to actively participate in decision making from the earliest stage of defining the problem to be solved … continues during the development of policies/programs/projects … and the evaluation of outcomes' (Hunt, 2013a:3).

Our discussions with the Knowledge Brokers in the NESP Hubs emphasised the notion of co-design and co-production of research projects as a form of deeper engagement. As reported in Part 3.4 of **Chapter 3**, our review of over 100 nominated NESP Hub research projects could only identify less than 30 projects that were genuinely co-designed and co-produced from start to finish. This is not a criticism of the Hubs' performance, but rather an acknowledgement that co-design or co-production takes time and effort. Holmes (2011:21) notes that 'co-production' or 'co-creation' expresses 'a distinctive commitment to collaboration in policy and services [research] design, with public servants, citizens and relevant stakeholder groups [researchers] working as partners across the spectrum of activity—from diagnosis and analysis of issues through to tactical and strategic considerations in pursuit of jointly devised outcomes.'

Although well-intentioned, researchers in the past have not always recognised the importance of consulting TOs when working on country, collaborating to deliver mutual benefits, and acknowledging the value of traditional knowledge and its ownership. There are many benefits for western science by incorporating traditional knowledge in efforts to understand the past and current changes. At the same time, First Nations peoples can benefit from incorporating the understanding of climate change from western science in planning for the future and while the benefits of bringing these two knowledge systems together are obvious, the steps for doing so are not always clearly laid out.

Co-design of research – that is, including Traditional Owners in research inception, development and delivery with a view to mutually useful and useable research outputs – offers a framework for ensuring that the oversights of the past are not repeated in the future. However, co-design and co-production approaches to engagement are not without their challenges. Including:

- the need for leadership and trusting relationships and willingness to share power;
- the requirement to reshape accountabilities and align organisational structures;
- the need for an organisational culture that supports such ways of working; and
- better evaluation of what works (Holmes, 2011:22-26; Hunt, 2013a:6).

From the outset of NESP, the Department's IEPS required the NESP hubs to develop their own IEPS's (Reviewed in Part 3.3 of **Chapter 3**). The Department's IEPS (DoE, 2015a) included guidance on a number of matters to assist the NESP Hubs with the development of their IEPS, including:

- Information about performance indicators (which at that time were yet to be developed);
- Advice about the need for effective and respectful relationships and cultural sensitivity;
- Advice about the need for consultation, negotiation and consent with Indigenous people and that there must be understanding and mutual agreement to the research that is to be undertaken (including ensuring that free, prior and informed consent is obtained in a culturally appropriate manner from all research participants and stakeholders before the research can be undertaken with and about Indigenous peoples and to refer to the AIATSIS Guidelines (AIATSIS, 2012) for further information);

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[42] See also: https://www.aihw.gov.au/news-media/media-releases/2013/october/trust-integrity-and-respect-confirmed-as-cornerst

- Advice about engagement and participation not stopping at consultation, but also including opportunities for engagement at deeper levels through membership of the Hub's steering committee, membership of projects steering committees or reference groups, and direct participation in research projects to help embed cultural perspectives, build Indigenous capacity and establish partnerships between researchers and Indigenous communities;
- Advice about ensuring appropriate acknowledgement of the contribution of resources, knowledge and access to other information made by Indigenous peoples, that research outcomes are made available to them in a form that is useful and understandable, that Indigenous co-researchers are recognised in publications to which their knowledge and endeavours have contributed and that researchers commit to the equitable sharing of benefits derived from the utilisation of Indigenous knowledge.

The Department's IEPS also advised that Indigenous people have a reasonable expectation that research involving them or their traditional land and sea Country will be of benefit to Indigenous people, for example through payment for research work, capacity building, knowledge sharing, training, and the development of livelihoods, opportunities and joint publications, as well as real, on-ground outcomes (DoE, 2015a).

The Department's IEPS came off the back of significant lessons learnt from the approaches to Indigenous engagement adopted by the TRaCK program (Jackson and Douglas, 2015). The TRaCK (Tropical Rivers and Coastal Knowledge) research program was established to provide the science and knowledge needed by governments, industries, and communities to sustainably manage northern Australia's rivers and estuaries. The TRaCK program placed a strong emphasis on ethics in relation to the involvement of Indigenous peoples, especially on participatory methods and respecting Indigenous cultural and intellectual property rights. In order to ensure the needs of Indigenous peoples were addressed and to enhance the benefits they might derive from participating in the research, TRaCK developed an Indigenous engagement strategy to provide guidance on matters relating to the protection of intellectual property, negotiation of research agreements, remuneration for Indigenous expertise, and communications standards. At the conclusion of the TRaCK program, its Indigenous engagement strategy was evaluated, and in the interests on building on its success, it is worth reflecting on the key recommendations made by Jackson *et al* (2013:) at that time. Their recommendations were:

a) Provide more support for Indigenous leadership of research projects;
b) Explore ways of retaining flexibility to respond to Indigenous research priorities that may emerge during the course of the research;
c) Allow plenty of time for research protocols to be negotiated and finalised with potential Indigenous partners;
d) Ensure ethics approval is granted before the research starts and allow time and funds for communities to influence research design;
e) Investigate and support opportunities for longer term employment and skills development; and
f) Insist that cultural training for researchers is an essential part of future research programs and where possible, be delivered by local Indigenous groups involved in the research.

7.4   Opportunities for integrating IK and Western Science

Research in environmental and climate science with Indigenous peoples also involves opportunities for integrating IK and western science 'to promote cultural diversity in the management of social-ecological system sustainability' (Hill *et al*, 2012:23).[43] Hill *et al*, (2012) undertook a study of the types of engagement in environmental management and differentiated the following four types of collaborations:

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[43] Adopting Dawson *et al*'s (2010:2845) definition of definition that 'a sustainable social-ecological system is one that, over the normal cycle of pressures and disturbance events, maintains its characteristic diversity of major functional groups, processes, services and utility thereby ensuring its capacity to endure'.

SGS
Economics
& Planning

- Indigenous-governed collaborations (IG). IGs are formulated through Indigenous initiatives, and bring Indigenous peoples together to focus on common environmental issues, actions, and policy agendas.
- Indigenous-driven co-governance (ICoG). ICoG approaches are frequently formulated in response to government initiatives. The authors of the study identify IPAs as an example of how the power sharing, participation, and intercultural purposes have respected and empowered Indigenous interests and authority and not undermined them (see Bauman and Smyth, 2007).
- Agency driven co-governance (ACoG). ACoG approaches usually arise from formal processes to recognize and define Indigenous rights, such as through native title determinations or recognition of Aboriginal joint management of protected areas. Agency-driven models require the power to sit within the organisation, through mechanisms such as boards or committees of management. In the ACoG types, the agency seeks to meet the expectations of a wide array of stakeholders, and the complexity and competition within such arrangements risk crowding out Indigenous perspectives.
- Agency governance (AyG) AyG approaches regard Indigenous people as a stakeholder sector, similar to farmers or industry actors, rather than as a group requiring a different approach associated with their claims to a distinct political status within the nation-state (Hill *et al*, 2012:27-28).

The analytical framework was based on three axes:

- Power sharing (incorporating decision making, rules definition, resource values and property rights;
- Participation (incorporating participatory processes, organizations engaged, and coordination approaches);
- Intercultural purpose (incorporating purposes of environmental management, Indigenous engagement, Indigenous development and capacity building).

The researchers found that in the IG and AyG types, Indigenous peoples and agencies retain power respectively, whereas the ICoG type promotes Indigenous governance, and the ACoG type promotes negotiated agreement. The researchers also found differences between the types of governance and the extent of cross-cultural integration between IK and Western science, as follows:

- methods for integration between IK and western science;
- appearance of amalgams representing new, converged forms of IK and Western science knowledge;
- means for managing the integrity of IK; and
- means for integration of IK and Western science into environmental management (Hill *et al*, 2012:32).

The results are shown in **Table 7.2** (reproduced from Hill *et al,* 2012:32).

The study's results are worth dwelling on:

> 'IG and ICoG pay great attention to Indigenous methods for ensuring the integrity of IEK. For example, NAILSMA is engaged in advocacy for Indigenous rights and titles over IEK. Yolngu specify in the Dhimurru IPA that all decisions must be made by those who own knowledge under customary law. This concern for integrity is reflected in recognition that both knowledge systems need to be applied to environmental management. MLDRIN, for example, expresses a specific principle: "that Indigenous science and Western science each have their own value and role in caring for country" (Weir, 2009:116).

> 'ACoG and AyG types typically maintain the distinction between IEK and western science, through separate documentation initiatives, and clearly specified interactions, such as "validation" of IEK by science (Evans et al 2009). New amalgams, where they do appear, are more clearly in the western science domain, for example jointly authored papers or reports written to target both technical and Indigenous audiences. The AyG and ACoG types do not focus as strongly on ensuring the integrity of IEK; where respect for Indigenous law is articulated, practical means of enabling this are often unclear. The emphasis is on agreements about IEK utilization, rather than customary law maintenance and

enhancement. The collection of IEK often does not feed into the agency environmental management strategies.' (Hill *et al,* 2012:32-33).

Table 7.2: Analysis of manifestations of IEK and Western science integration according to governance types

| Governance type | Dimensions of knowledge integration | | | |
	Means of integration between IEK and science	Appearance of amalgams representing new, converged forms of IEK and science knowledge	Means of managing the integrity of IEK	Means of integration of IEK and science into environmental management
Indigenous-governed collaborations (IG)	Collaboration between IEK and science; distinction between the two blurred.	Amalgams emphasized, e.g., ethno-ecology, ethnoscience; digital data-bases with both IEK and science.	Indigenous law and custom; exercise of traditional authority; tight contemporary governance structures specified.	Combination of western science and Indigenous knowledge tools, principles of application specified.
Indigenous-driven co-governance (ICoG)	Collaboration between IEK and science; joint projects as means of integration.	Amalgams utilized, e.g., maps that amalgamate painting of Indigenous knowledge with western scientific data.	Same as above.	Simultaneous application of both into environmental management; principles sometimes specified.
Agency-driven co-governance (ACoG)	"Validation" of IEK by science; separate documentation of IEK and science.	Jointly authored scientific papers; reports targeting both scientific and Indigenous audiences.	Protocols; agreements; respect for Indigenous law; informed consent.	Negotiated approaches; Indigenous emphasis on preventing cultural appropriation.
Agency governance (AyG)	Separation of IEK and science; little or no documentation of IEK.	No amalgams identified.	Loose, not specified; e.g., involvement of elders in on-country knowledge transfer.	Management based on western science; IEK present but its utilization kept separate

Source: Hill *et al,* 2012:32.

Hill *et al*'s (2012) study shows that the processes of combining IK with Western science are diverse and are affected by numerous factors, including the adaptive co-management context, the intrinsic characteristics of the natural resources, and the many different governance systems for different components. The study also demonstrates that the general characteristics of 'public' engagement do not apply and that different approaches to Indigenous engagement are required depending on the particular circumstances of a research project, its proposed scope, the locality or localities involved, and the levels of engagement required in order to satisfactorily achieve the multiple outcomes anticipated by seeking to integrate IK and western science objectives and realities (Hill *et al,* 2012:23).

More significantly, the researchers concluded that 'Indigenous governance and Indigenous-driven co-governance provides better prospects for integration of IK and western science for sustainability of social-ecological systems' (Hill *et al,* 2012:23).

7.5   NESP Hub Research Agreements and/or Protocols

The purpose of a research agreement is to have a negotiated agreement with Aboriginal and Torres Strait Islander peoples and/or organisations so that each party fully understands what is expected from them and

each other. Research agreements are important because they provide protection for the people and organisations involved in the research and for researchers and research institutions. Agreements should be a collaborative and co-designed process with all parties working together in the development of the agreement. Agreements should include how researchers, organisations and Aboriginal and Torres Strait Islander peoples will work together respectfully, define roles and responsibilities throughout the research process, identify conflict resolution and complaint processes, outline communication and dissemination strategies and provide adequate protection for any intellectual property (NHMRC, 2018d).

Such agreements will vary in format, formality and complexity, depending on the characteristics of each research project. However, the agreement should be comprehensive and cover all aspects of the research, incorporating ethical standards appropriate when working with Aboriginal and Torres Strait Islander Peoples, including free, prior and informed consent. In some cases (such as research resulting in commercial products), legal documents will likely be required. When more than one research institution is involved, then multi-institutional agreements may be necessary (NHMRC, 2018d).

Therefore, formal agreements are generally the mechanism through which the parties negotiate the terms of the arrangements between them. It was assumed that all of the NESP Hubs used formal agreements as a basis for embarking on a research project and that these were negotiated in good faith.

SGSEP therefore invited the NESP Hubs to provide copies of research agreements or protocols they use to secure Indigenous engagement in their research projects, either as templates or examples of the instruments they use. Only two of the Hubs provided examples of formal agreements they had signed with Aboriginal or Torres Strait Islander organisations, and these are identified in **Table 7.1**.

SGSEP was advised by three of the NESP Hubs that formal written agreements are not used for every research project involving Indigenous people, but only where it was felt necessary to enter into such formal contractual arrangements as a basis for governance of the arrangements for the duration of the research project. SGSEP was told by another NESP Hub that such formal contractual arrangements are rarely necessary, and the parties may settle the arrangements through an exchange of letters or an MoU. But no copies of such arrangements were provided by the NESP Hubs. We were not provided with a sufficient quantity of formal agreements from the NESP Hubs to draw any particular observations or conclusions, suffice to say that we requested such information several times.

Protocols are seen by the World Intellectual Property Organisation (WIPO, 2019a:37) as legal agreements, codes of conduct, guidelines or sets of manners that explain how people should behave in certain circumstances. Anderson (2010:28) views protocols as being context-driven, because they can be developed to address specific problems and provide guidance in relation to appropriate behaviour when it is required. They can be used to set community standards around knowledge circulation and use for outsiders, as well as help change attitudes and set new standards, incorporate community perspectives and be targeted to particular issues (WIPO, 2019a:37; Anderson, 2010:28). Protocols are not necessarily dependent upon governments – they are not a 'top-down' approach – as they can be developed locally and can be tailored to respond to community or local needs. Protocols are also flexible and can change over time and they can be used as tools to help achieve certain goals that other areas of law have been unable to fulfill (Anderson, 2010:28). As such, protocols can help build relationships and make new ones possible (WIPO, 2019a:37).

Anderson (2010:29) also notes that they are more suitable in situations where there may not be a real need for more formal and conventional legal mechanisms. For example, where Indigenous people might feel more comfortable articulating customary law or local laws specific to the context. 'Protocols provide conditions for indigenous peoples' agency in the sense that they can embolden already existing practices rather than imposing new ones' – one of the reasons why they are increasingly found across all areas involving negotiations around indigenous knowledge use (Anderson, 2010:29).

Two of the NESP Hubs provided copies of protocols they had developed.

To support TSR Hub researchers to have more effective working relationships with Indigenous research partners, the TSR Hub has developed *Indigenous Engagement Protocols for Threatened Species Researchers*

and should be read in conjunction with the TSR Hub's IEPS. While the TSR Hub's IEPS sets out high level aims and vision, these protocols are designed to be a more practical guide to Hub researchers seeking to collaborate with Indigenous partners. These Protocols have been endorsed by the TSR Hub's Indigenous Reference Group (IRG). (See **Appendix M** for more details).

The ESCC Hub has produced key resources for the co-design of research projects from inception through to development and delivery with a view to mutually useful and useable research outputs. The ESCC Hub has found that important considerations for co-design include:

- Understanding that there are many peoples and many cultures;
- Including Traditional Owners from the start (and all the way through);
- Building (and being prepared to maintain) trusted relationships;
- Appreciating different timelines;
- Ensuring free, prior and informed consent;
- Respecting the provision and ownership of traditional knowledge;
- Identifying benefits to country and community;
- Ensuring you are giving as well as taking; and
- Remembering that connection to country is forever.[44]

In our discussions with various stakeholders outside of the NESP Hubs, three issues emerged in relation to the informality or even the formality of research agreements.

- Firstly, the lack of clear dispute resolution processes in the event of a breakdown in relationships between the parties. The non-existence of an agreed dispute resolution process can lead to further barriers between the parties to arrive at a solution early enough to prevent yet further escalation of difference (Bauman, 2019);
- Secondly, the lack of clear agreement about protection of IK or ITK (Janke and Sentina, 2018); and
- Thirdly, lack of clear guidelines around benefit sharing of the outcomes of the research (Jackson, 2018).

While no specific NESP Hub examples were raised with SGSEP in those discussions, SGSEP is nevertheless concerned that the lack of formal written agreements or protocols setting out the arrangements agreed between the parties creates the potential for disputes to arise, and therefore issues around dispute resolution and protection of IK warrant further attention. Among the 108 NESP Hub projects that SGSEP examined, we found plenty of evidence of return of findings and research outcomes and outputs back to the Indigenous peoples/communities that were involved in the research, including training and ongoing monitoring practices, and a high level of acknowledgement of Indigenous input and co-authorship of reports and/or journal articles.

All of the NESP Hubs however, invariably referred to the AIATSIS GERAIS (AIATSIS, 2012) as the key resource they relied upon for guidance in their engagement with Aboriginal and Torres Strait Islander people. How well the NESP Hubs perform against the GERAIS is not systematically recorded or reported.

7.6 The AIATSIS GERAIS is to become a Code of Ethics

AIATSIS created the *Guidelines for Ethical Research in Australian Indigenous Studies* (GERAIS) to ensure that research with and about Aboriginal and Torres Strait Islander peoples follows a process of meaningful engagement and reciprocity between the researcher and the individuals and/or communities involved in the research (AIATSIS 2012).

The GERAIS was primarily intended for research sponsored by AIATSIS. However, AIATSIS recognised its responsibility as a leading institution in Australian Indigenous studies and that its ethics guidelines inform all

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[44] http://nespclimate.com.au/co-design-cross-cultural-communication-and-climate-change/

SGS
Economics
& Planning

research in this area. Hence, the GERAIS has become the expected standard when research involves Aboriginal and Torres Strait Islander peoples or on matters that may affect them.

The guidelines were revised in 2011 to reflect developments in critical areas that have emerged since the previous edition in 2000. The current edition embodied the best available standards of ethical research and human rights at the time they were published in 2012. The revisions included changes to intellectual property laws, rights in traditional knowledge and traditional cultural expressions, and the establishment of agreements and protocols between Indigenous people and researchers as well as emerging developments in digitisation, data and information management, and the very significant impacts this has on research and other aspects of Indigenous studies.

The GERAIS comprises 14 principles grouped under the following six categories:

- Rights, respect and recognition;
- Negotiation, consultation, agreement and mutual understanding;
- Participation, collaboration and partnership;
- Benefits, outcomes and giving back;
- Managing research: use, storage and access; and
- Reporting and compliance.

The GERAIS is accompanied by support materials, including a guide to informed consent, a letter of support, a sample survey form, and a distress protocol.

While the NESP Hubs claim that GERAIS is applied to all of their research activities, the extent to which the GERAIS is applied is unknown because no specific records are generated by the NESP Hubs to actively demonstrate how the guidelines have been applied. And, as stated above, the GERAIS has also become one of the three central documents that comprise the ethical research framework that researchers working with Indigenous peoples in Australia must comply with. But without a reporting requirement, it is not clear how well the GERAIS has in fact been applied and with the desired outcomes.

As a reflection of AIATSIS's commitment to improving the standards of engagement and the benefits that research can offer Aboriginal and Torres Strait Islander peoples, in 2019 AIATSIS instigated a review of GERAIS and released a *Consultation Draft of the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research* (AIATSIS Code of Ethics) (AIATSIS, 2019a).

The consultation draft of the Code was structured in two parts:

- Part A constitutes the AIATSIS Code and outlines the four principles that underpin ethical Australian Indigenous research (Indigenous self-determination; Indigenous leadership; Impact and value; and Sustainability and accountability). Each principle includes a set of responsibilities when conducting Aboriginal and Torres Strait Islander research.
- Part B is a practice guide to implementing the Code and includes advice for applying the principles discussed in Part A and is structured by research practice stages (Getting started; Project implementation; Communicating research results; Post-project).

The consultation draft was supported by online case studies, guides, tools and templates that will be available on the AIATSIS ethics website once the Code is finalised.

AIATSIS states in the Draft that the *Code of Ethics*, when finalised,[45] will become a formal part of the Australian framework for ethical and responsible conduct of research, and that the Code of Ethics should be read in conjunction with the *National Statement on Ethical Conduct in Human Research* (NHMRC 2018a), the

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[45] AIATSIS is planning to release a new *Code of Ethics* in September 2020 with a 12-month implementation period. Other supporting resource material will be developed and released across the length of the implementation period. https://aiatsis.gov.au/research/ethical-research/aiatsis-code-ethics?utm_medium=email&utm_campaign=AIATSIS%20News%20July%202020&utm_content=AIATSIS%20News%20July%202020+CID_a316994b584e505636ac9907de2edb48&utm_source=Email%20marketing%20Campaign%20Monitor&utm_term=Find%20out%20more

Australian Code for Responsible Conduct of Research (NHMRC *et al* 2018b) and the *United Nations Declaration on the Rights of Indigenous Peoples 2007* (the Declaration). It is also anticipated that when the Code of Ethics is finalised, it will supersede and replace the GERAIS and that all references to GERAIS in Australian research codes and guidance will be taken to refer to the new AIATSIS Code (AIATSIS, 2019a).

AIATSIS advises that it has received around 70 submissions from Indigenous organisations, national and international Universities, research organisations, government departments, HRECs; and individuals. The responses generally supported the following key points:

- The draft Code retains a clear link to UNDRIP.
- The change from guidelines to a code demonstrates the authority of the document and the importance of the standards it contains.
- The draft Code reflects the perspectives and expectations of Indigenous communities engaging with research.
- The changes address the major issues that organisations, researchers and HRECs have experienced (AIATSIS, 2019a).

While feedback on the guidelines has generally been positive, there were a number of suggestions for improvements or concerns over the implementation of the Code that AIATSIS is considering, including such matters as compliance and enforceability; institutional responsibilities; the relationship with other codes and guides and some issues in relation to specific applications in fields such as native title.

The intention is that once the Code is finalised, AIATSIS will continue working closely with the NHMRC, the ARC and Universities Australia (UA) to ensure that the Code is successfully integrated with the broader framework for ethical and responsible conduct of research in Australia. AIATSIS has announced that it will be releasing the Code of Ethics in September 2020, which will be followed by a 12-month implementation period, including the release of supporting resource material across the length of the implementation period.

While the GERAIS has come in for some criticism as not providing sufficient protections for ICIP, the new *Code of Ethics* will be a significant improvement and its effectiveness will need to pass the test of time. Indeed, the design of NESP2 should include compliance with the Code as a mandatory requirement, and regular monitoring and reporting of its application should become a key KPI for the new Hubs.

7.7   Protecting Indigenous Knowledge and Data Sovereignty

SGSEP found that a recurring issue was the protection of Indigenous knowledge (IK) and data sovereignty accessed/obtained or generated by the NESP Hubs.

There are two broad approaches to protecting Indigenous Knowledge (IK): legally enforceable instruments; and voluntary arrangements. In Australia, legally enforceable instruments include:

- Recognition of IK as intellectual property (IP), including certification and collective trade-marks and geographical indications (GIs);
- *Sui generis* laws for particular contexts;
- Enforceable private agreements; and
- Actions against the misuse of IK under the Australian Consumer Law (ACL), in tort or in equity. (Stratton *et al*, 2019).

Stratton *et al* (2019:17) have found that legally enforceable instruments grant holders of Indigenous Knowledge rights to use or control that knowledge or to undertake action against inappropriate use of that knowledge.

Voluntary arrangements include voluntary protocols, codes of conduct and certification schemes, which 'encourage, but typically do not mandate, appropriate treatment of and compensation for the use of IK.' (Stratton *et al,* 2019:27). These include for example, the GERAIS (AIATSIS 2012), the NHMRC *Guidelines for Ethical Conduct in research with Aboriginal and Torres Strait Islander Peoples and Communities* (NHMRC,

2018), and the Desert Knowledge CRC's *Protocol for Aboriginal Knowledge and Intellectual Property* (DKCRC, 2007). The discussion below focuses on the voluntary arrangements.

Indigenous Ecological Knowledge (IEK), *Indigenous Traditional Knowledge* (ITK) and *Traditional Ecological Knowledge* (TEK) are referred to in several places in this report recognising that Indigenous societies are the holders of that knowledge.[46] And indeed, all of the Hubs have in their engagement with Indigenous peoples, been in receipt of Indigenous Knowledge in one form or another through their research activities.

The term *Indigenous Cultural and Intellectual Property* or 'ICIP' is also widely used in Australia, including by the Productivity Commission (2016:58) in the context of its Inquiry into *Intellectual Property Arrangements*. The Productivity Commission (2016:58) Inquiry Report identified that ICIP has a very different set of economic characteristics compared with standard IP, particularly where it is created from community traditional knowledge or cultural expressions:

> *The Indigenous people would like to see a stronger regime that actually protects their traditional cultural expressions and their traditional knowledge, which are embodied in work that they create. … it comes at intellectual property from sort of a different perspective [which is] very communal in its nature and it has been passed down from generation to generations over thousands of years. So, it's not all about individual rights for individual rights holders or creators*. (Citing the Arts Law Centre of Australia, transcript of public hearing, Sydney 21 June 2016, p. 137)

The World Intellectual Property Organization (WIPO) has been working since 2001 to develop a global system to protect Indigenous knowledge around the world. WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) has been undertaking text-based negotiations with the objective of reaching agreement on the texts of three international legal instruments which will ensure the effective protection of traditional knowledge, traditional cultural expressions and genetic resources, which the ICG considered at its Fortieth Meeting in Geneva in June 2019 (WIPO, 2019b, 2019c, 2019d). Due to COVID-19, the Forty-First meeting of the IGC which was planned to take place in March 2020, has been postponed. The Australian Government and Australian Indigenous representatives are active in this process, and the outcomes are keenly awaited.

In 2017, IP Australia and the Department of Industry, Innovation and Science commissioned a discussion paper, *Indigenous Knowledge: Issues for protection and management,* from Terri Janke and Company (Janke and Sentina, 2018). The Discussion Paper was aimed at building a nationally coordinated approach by focussing on six key areas to identify clear gaps and suggest strategies for addressing them. The Discussion Paper provided a comprehensive examination of the issues affecting protection and management of ICIP and identified the following six key issues:

- The misappropriation of Indigenous arts and crafts.
- The misuse of Indigenous languages and clan names, commercially, without the consent of the traditional custodians.
- Recording and digitisation of Indigenous Knowledge. Once Indigenous Knowledge is recorded, controlling access, use and interpretation of underlying Indigenous Knowledge contained in those works is often beyond the control of the Indigenous Knowledge rights owners.
- The use of Indigenous Knowledge without benefits flowing to communities. Not sharing the benefits of a community's Indigenous Knowledge with that community can be offensive and propagates dispossession.
- The use of Indigenous Knowledge relating to genetic resources. Indigenous skills, techniques and other knowledge relating to bush foods, medicinal plants and other genetic resources remain largely unprotected. More and more, this knowledge is used and commercialised for scientific research and development, and much still needs to be done to safeguard Indigenous knowledge in research and from unauthorised use and commercialisation.

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[46] These abbreviations are used interchangeably in this report.

- The misuse of particularly sensitive sacred secret knowledge. Indigenous communities have customary laws that dictate whether Indigenous Knowledge is considered sacred or secret. Such laws restrict, for spiritual reasons, the use and availability of that knowledge. This knowledge needs to be protected from harm, and while there are no special laws for protecting sacred secret knowledge specifically, already some protections are available for example through the laws of confidential information. Sacred secret knowledge is also recognised in heritage and environmental legislation, which have special provisions to allow sensitive information or sacred sites to be protected (Janke and Sentina, 2018:7-8).[47]

The IP Australia Discussion Paper noted there is no single solution to solve the issues raised, and it suggests a package of options in order to recognise Indigenous Knowledge rights, including many measures that can be practically achieved with ease, as well as others that require deeper consultation and legislative change (Janke and Sentina, 2018:117).

While the brief for this review did not include an examination of ICIP issues *per se*, several questions were raised by various stakeholders, suggesting there is room for improvement in the protection of ICIP by the NESP Hubs. The one formal agreement SGSEP did see, included the usual provisions for protection of background IP, Indigenous intellectual property, research project intellectual property and third-party intellectual property. While the provisions of this agreement may suffice for some research projects, at face value, the provisions may not be strong enough with respect to the use of other forms of communication such as video or audio recordings, and how that information is stored and accessed over time. There are also no provisions in the agreement for benefit sharing, if they were to arise from the research. SGSEP reiterates that we did not examine this issue to a level of detail where we can draw firm conclusions, but we believe the issues raised in discussions with various Indigenous stakeholders warrant closer attention.

SGSEP also notes that the *Our Knowledge Our Way in Caring for Country* Best Practice Guidelines also raises Indigenous peoples' concerns about the wider use and application of traditional knowledge, innovations and practices (Woodward *et al*, 2017:15). Woodward *et al*, 2017:15) state that Indigenous cultural and intellectual property (ICIP) rights are based in customary laws which are not properly recognised by the Australian nation-state or international legal systems, and that once IK leaves Aboriginal and Torres Strait Islander customary territories, control over its future use is lost. Similar to SGSEP, Woodward *et al* (2017:15) found that ICIP law focusses on protecting 'new' information that has been 'discovered', it does not provide protection for Indigenous law and custom that has been passed on through generations. Woodward *et al* (2017:15) argue that any legal regime that affords reasonable protection for Indigenous knowledge must also provide security for:

- Sacred property (images, sounds, knowledge, material, culture or anything that is deemed sacred and, thereby not commodifiable);
- Knowledge of current use, previous use, and/or potential use of plant and animal species, as well as soils and minerals;
- Knowledge of preparation, processing, or storage of useful species;
- Knowledge of formulations involving more than one ingredient;
- Knowledge of individual species (planting methods, care for, selection criteria, etc.);
- Knowledge of ecosystem conservation (methods of protecting or preserving a resource that may be found to have commercial value, although not specifically used for that purpose or other practical purposes by the local community or the culture);
- Biogenetic resources that originate (or originated) on Indigenous lands and territories j Cultural property (images, sounds, crafts, arts and performances); and
- Classificatory systems of knowledge, such as traditional plant taxonomies (Posey, 1999).

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[47] For a further summation of Indigenous Knowledge issues in Australia, see IP Australia 2019:6-7, and on Traditional Knowledge and Genetic Resources in particular, see IP Australia, 2019:8-13.

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The Productivity Commission (2016:58) noted that ICIP, 'because of its communal nature and its connection to the cosmos (not just country but everything; land and water, stars and space)', is affected by many factors, and not just the IP laws (**Figure 7.2**). The Productivity Commission therefore recommended improved governance arrangements to apply to the IP system as a whole arguing that this 'would further ensure a broad-based examination of IP issues confronting Aboriginal and Torres Strait Islander Australians in the future' (Productivity Commission, 2016:59).[48]
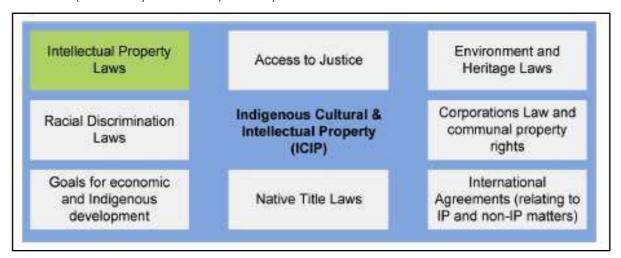

Figure 7.2: How ICIP is affected by more than IP laws

Source: Productivity Commission, 2016:59.

Janke's research over two decades ago recommended a *sui generis* approach to ICIP law reform (Janke 1999).[49] However, given such an approach has not eventuated, Janke (2019) believes that protocols still have a serious role to play in protecting ICIP. Janke's (2019:328) research highlights that in an intercultural context, protocols may be defined as 'the set of ethics, guidelines, rules or standards of behaviour when interacting with peoples and parties from another culture'. Janke stresses that:

> *'From an Indigenous perspective, protocols may imply preferred ways of interacting with Indigenous people that respect their cultural ownership, values and practices. As primary guardians, reproducers and interpreters of their cultures, Indigenous people have their own well-established protocols for dealing with cultural knowledge and material; protocols that are based on an ancient jurisdiction of laws and governance.'* (Janke, 2019:328).

Janke (2019:328) argues that protocols:

> *'can constitute agreed procedures for appropriate interactions; a basis for the way dealings should occur within a situation, community, culture or industry'* and that *'Complying with the accepted protocols of other cultural groups arguably promoted ethical conduct, and interaction based on good faith and mutual respect. To achieve that standard of conduct and interaction, protocols need not only be well informed by culturally credible processes, the processes must also be workable and acceptable to all the stakeholders involved'.*

Janke's PhD research (2019) has examined how Indigenous people are operating at the legal and cultural interface between Indigenous cultural expression and knowledge and the Australian legal system. Drawing on 25 years of working with Indigenous people, organisations, companies and government in the context of intellectual property rights, Janke has developed a framework for dealing with Indigenous cultural assets and heritage in a way that promotes the intent of Article 31 of the UN *Declaration on the Rights of Indigenous Peoples*' (Janke, 2019:9).

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[48] See Chapter 17 of the Productivity Commission, 2016:485-525.

[49] For an overview of legal instruments and other measures to aid in the protection and valuation of Indigenous knowledge, see Chapter 2 of Blackwell et al 2019, pp.16-31.

The framework comprises a set of 10 overarching True Tracks ICIP Principles (**Figure 7.3**) and a True Tracks Framework (**Figure 7.4**) which have been used across various sectors with practical applications in the arts, museums, archives and business.

Figure 7.3: True Tracks Principles Diagram

Source: Janke, 2019:340.

The Principles were developed though an applied research methodology of continual action inquiry involving consultation and communication in a wide range of contexts, leading to a deepening understanding of the needs and desires of Indigenous people to protect their ICIP. The Framework was developed through culturally informed practice and 'in response to the cultural values and feedback of Aboriginal and Torres Strait Islander clients during workshops and international panels' (Janke, 2019:12).

While the actual content of protocols for research will need to differ depending on the nature of the research task(s) and between different communities and research institutions, the True Tracks principles and Framework developed by Terri Janke and Company present an overarching conceptual and good practice model to provide flexible arrangements within which to design relevant provisions (Janke 2019:328). The True Tracks Framework is able to be adapted to suit different industries or sectors and provides a basis to negotiate, plan and manage the ICIP in research activities. It also assists Indigenous people with protecting their ICIP with the necessary supporting infrastructure and governance (Janke, 2019:vi).

The Productivity Commission (2016:59) also believes protocols have a role to play as a flexible alternative to a legislated solution, but the Commission also points out they are inherently voluntary and there is a high risk they may not be followed. IP Australia notes that even when protocols are followed, they 'may be invisible to detection because people are simply seen as collaborating or that people may not engage because of a misunderstanding of protocols' (Blackwell *et al,* 2019:15).

Hence, SGSEP finds there is a strong case for including more specific performance indicators and reporting requirements of the new NESP Hubs under NESP2 on matters relating to the protection of IK and ICIP.

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| Stage 1 | | *Identify source community/communities |
| Respect | → | |

| Stage 2 | | *Contact verbally and in writing peak organisations to identify relevant persons and application fee paid |
| Self-determination | → | |

| Stage 3 | | *Community consultation on use, perceived benefits and detriments. |
| Consultation & consent | → | *Free, prior and informed consent |

| Stage 4 & 5 | | *Culturally appropriate and authentic representation |
| Interpretation & integrity | → | *Review, check context and cultural integrity |

Stage 6		*Sacred secret material
Secrecy & privacy	→	*Customary law restrictions
		*Personal, private, individual and community information

Stage 7		*Individual credits
Attribution	→	*Copyright notices
		*Community attribution
		*Other creatives

Stage 8		*Royalties
Sharing benefits	→	*Copyright sharing
		*Skills exchange
		*Copies of resulting products

Stage 9		*Passing on skills
Maintaining cultures	→	*Customary uses continue
		*Databases and archives
		*Consulting for future use(s) and other contexts
		*Continuing relationships

Stage 10		*Using law
Recognition & protection	→	*Notices
		*Protocols

Disputes
↓
*Dispute resolution process
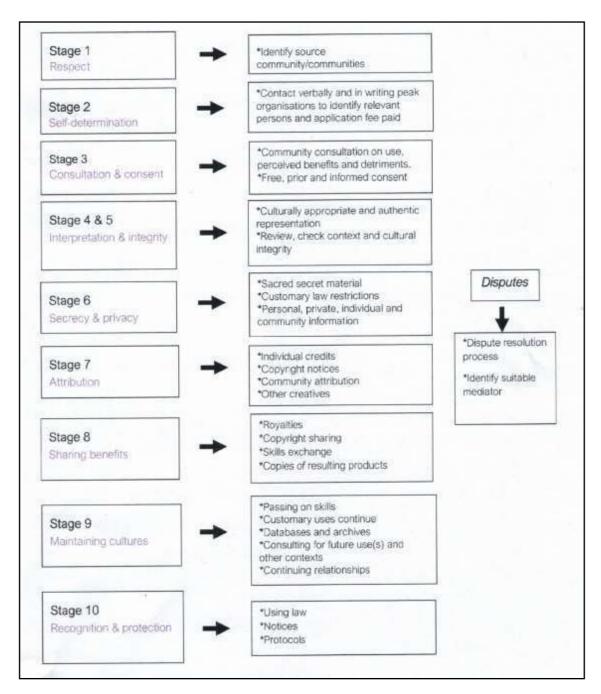*Identify suitable mediator

Figure 7.4: True Tracks Principles and Framework

Source: Janke, 2019:341.

A further issue that emerged from some of the consultations that SGSEP conducted with various stakeholders is Indigenous data sovereignty. As stated earlier in this report, Aboriginal and Torres Strait Islander peoples have expressed the need for better data collection, particularly in relation to Indigenous use and rights, non-commercial activities and other social and economic attributes, but they are very concerned about how this information may be utilised without their prior knowledge and consent. This is a consistent theme across many environmental and climate science research themes, not just coastal and marine matters. Indigenous Peoples have always been data collectors and knowledge holders and there is growing concern among Indigenous peoples world-wide about the need to protect against the misuse of Indigenous data and to ensure Indigenous Peoples are the primary beneficiaries of their data (Research Data Alliance International Indigenous Data Sovereignty Interest Group, 2019).

The concept of data sovereignty is 'linked with Indigenous Peoples' right to maintain, control, protect and develop their culture, heritage, traditional knowledge and traditional cultural expressions, as well as their

right to maintain, control, protect and develop their intellectual property over these.' (Tauli-Corpuz, 2016:xxii). The topic of Indigenous data sovereignty is multifaceted and wide-ranging from legal and ethical dimensions around data storage, ownership, access and consent to intellectual property rights and practical considerations how data is used in the context of research, policy and practice. The scope also includes data generated by Indigenous communities and organisations, governments, research institutions, non-government organisations and commercial entities (Kukutai and Taylor, 2016:2).

The impetus for the formation of the Global Indigenous Data Alliance (GIDA) commenced with a forum that was held in Canberra in July 2015, sponsored by the Academy of the Social Sciences (ASSA) and the Centre for Aboriginal Economic Policy Research (CAEPR). The forum was attended by an international group of scholars, representatives of Indigenous organisations and government personnel from the CANZUS group of Anglo-settler democracies – Canada, Australia, New Zealand and the United States of America. The purpose of the forum was to identify and develop an Indigenous data sovereignty agenda, to stimulate new thinking and to uncover emergent practices regarding the generation of demographic, wellbeing and community information and data on Indigenous peoples, and what this might mean for Indigenous peoples' sovereignty over data about the, their territories, resources and ways of life (Kukutai and Taylor, 2016:1-2).

Since that time, the Global Indigenous Data Alliance has been established (GIDA), a network of Indigenous researchers, data practitioners, and policy activists advocating for Indigenous Data Sovereignty within their nation-states and at an international level. The aim of GIDA is to progress International Indigenous Data Sovereignty and Indigenous Data Governance in order to advance Indigenous control of Indigenous Data. GIDA's objectives include:

- Advancing Indigenous Data Sovereignty and Governance;
- Asserting Indigenous Peoples rights and interests in data;
- Advocating for data for the self-determined well-being of Indigenous Peoples; and
- Reinforcing the rights to engage in decision-making in accordance with Indigenous values and collective interests.

The CARE Principles for Indigenous Data Governance are people and purpose-oriented, reflecting the crucial role of data in advancing Indigenous innovation and self-determination. CARE stands for Collective benefit, Authority to control, Responsibility and Ethics. These principles complement the existing FAIR principles encouraging open and other data movements to consider both people and purpose in their advocacy and pursuits. FAIR stands for Findable, Accessible, Interoperable, and Reusable. GIDA's motto is "Be FAIR and CARE".

The CARE Principles for Indigenous Data Governance were drafted at the International Data Week and Research Data Alliance Plenary co-hosted event "Indigenous Data Sovereignty Principles for the Governance of Indigenous Data Workshop," 8 November 2018, Gaborone, Botswana. Australia was represented at this conference by Ray Lovett from the ANU.

To ensure governance of Indigenous data in health and research environments, GIDA advocates for mechanisms that facilitate Indigenous data governance. For example, better publication practices and metadata tagging. Provenance and disclosure statements detailing the origin of data, collective consent and data availability. The implementation of TK and Biocultural labels are a way to raise awareness of the cultural significance in data (and other content) and express restrictions and expectations around the access and use of the data by non-community users.

The NESP Hubs have been and will continue to be involved in the collection and collation of Indigenous data, and these Principles provide sound advice on how to protect the integrity of such data.

7.8 Reflections on Indigenous peoples' experiences in Land and Water Research

During this Review, SGSEP was granted access to an Honours research project undertaken by Hmalan Hunter-Xenie, an Aboriginal woman from Larrakia Country in Darwin in the NT. Hunter-Xenie's research was on Aboriginal peoples' participation in land and water research. Hunter-Xenie interviewed over 50 people, 18 of whom were from Aboriginal research teams based in Darwin, 16 of whom were Aboriginal academics who are employed by research institutions, and 18 of whom were non-Aboriginal scholars undertaking research in the NT with Aboriginal peoples, many of them employed by universities, and some of them working as consultants.

To analyse the interviews Hunter-Xenie conducted, she used a software program that creates word clouds to show which words get the highest mentions. The following three Figures show the word clouds for each of the three different groups of people she interviewed. For those not familiar with reading Word Clouds, the most frequently used words in the interviews are those that appear the largest and darkest in the cloud.

Figure 7.5: Word Cloud for Aboriginal Research Teams On-Country

Source: Hunter-Xenie, 2020:3

In relation to **Figure 7.5**, Hunter-Xenie (2020:3) found that for Aboriginal research teams on Country, the focus is on research jobs for locals, that research work on Country should include local Indigenous knowledges 'to make sure researchers know and follow those kinship rules.' Hunter-Xenie (2020:3) also found that Aboriginal people 'also want to be recognised for what they know without having a university certificate.'
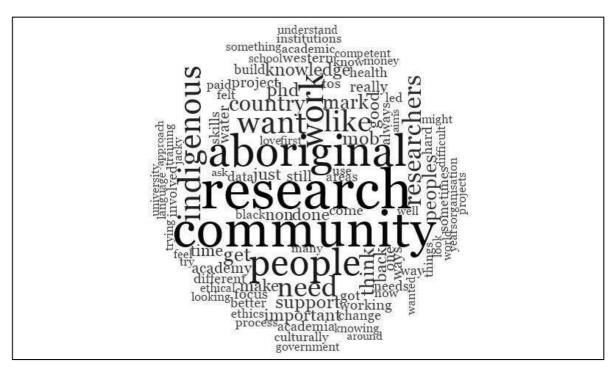
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Figure 7.6: Word Cloud for Aboriginal Academics

Source: Hunter-Xenie, 2020:4

In relation to **Figure 7.6**, Hunter-Xenie (2020:4) found that for Aboriginal academics 'want to do research differently to non-Aboriginal researchers' and that 'Aboriginal academics want universities to know local Indigenous knowledges and make sure research follows Aboriginal protocols.' Hunter-Xenie found that Aboriginal academics want more Aboriginal researchers to do work with Aboriginal mobs, they are happy for non-Aboriginal people to work with them too, but only if they are helping as allies, but they do not want 'non-Aboriginal people thinking they are the bosses.'

Figure 7.7: Word Cloud for Non-Aboriginal Scholars

Source: Hunter-Xenie, 2020:5

In relation to **Figure 7.7**, Hunter-Xenie (2020:4-5) found that for non-Aboriginal scholars are worried that not all researchers know how to undertake research with Aboriginal peoples, and they want to make sure that researchers are culturally competent, are taught how to behave with Aboriginal people and communities, and that universities are not teaching students enough about Aboriginal cultures and Aboriginal peoples. Hunter-Xenie also found that non-Aboriginal scholars 'want universities to know what is needed to do research the way Aboriginal people want it done', and 'want emerging researchers to work with Aboriginal people to do research that Aboriginal people want.' And that non-Aboriginal scholars want research organisations and researchers to show more respect for Aboriginal people's ways of valuing, knowing, being and doing, and that this takes time (Hunter-Xenie, 2020:5).
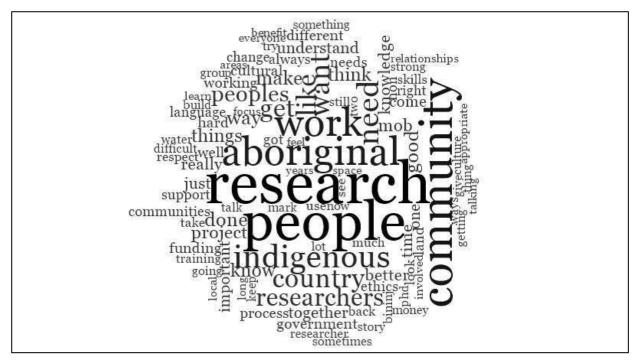

Figure 7.8: Word Cloud for all Participants Combined

Source: Hunter-Xenie, 2020

Figure 7.8 shows the Word Cloud for all Participants combined. The **Figures** reveal that words like 'research', 'people', 'community' and 'work' are getting the highest mentions. Other words such as 'Indigenous', 'knowledge', 'researchers' and 'government' are among the next most frequently used words in the interviews that Hunter-Xenie conducted.

What this research reveals are that Aboriginal people are deeply interested in conducting research on their Country, that kinship rules are applicable and must be followed when undertaking research on Country, and they want their knowledge of Country recognised in ways that don't involve having to obtain formal university qualifications.

The research also reveals that Aboriginal academics want universities to know and understand Aboriginal knowledges and to adhere to Aboriginal protocols. They also want more Aboriginal researchers to work with Aboriginal people and for non-Aboriginal researchers to work with them, so long as they are willing to work with them as allies and not as their noses.

The research also reveals that non-Aboriginal scholars have several concerns about how universities are handling research with Aboriginal peoples and on Country. While the sample is obviously very small, it nevertheless reflects some of the concerns that SGSEP also found in conducting this review. Including for example, that some researchers are not adequately skilled in undertaking research in cross-cultural contexts where a fair two-way exchange of information and knowledge is regarded as the norm, and that more respect is needed for understanding Aboriginal people's ways of valuing, knowing, being and doing when it comes to land and sea management and looking after Country.

Hunter-Xenie's research is also consistent with other research currently being undertaken by three Aboriginal women from large regional centres in Queensland undertaking higher degree research programs at Central Queensland University – Melinda Mann, Samantha Cooms and Joann Schmider (Mann, Cooms and Schmider 2019). The three scholars gave a presentation on their reflections and insights at the AIATSIS Studies Conference in 2019 on their particular geo-cultural research relationships (Darumbal, Noonukul – Quandamooka, and Mamu – tropical rainforest peoples.

Mann, Cooms and Schmider (2019) highlight research design considerations to meet the University PhD requirements alongside cultural responsibilities and imperatives. The presenters assert that Traditional Custodians are well-positioned on their Homelands as researchers because of their access and knowledge of local land and people. Mann, Cooms and Schmider (2019) also assert that their cultural imperative for protecting, maintaining and creating knowledge as Traditional Custodians posits them as critical contributors in the future research agenda.

Mann, Cooms and Schmider have developed the following diagram (**Figure 7.9**) to depict the uniqueness of traditional custodian research and the link to traditional custodial identity. Mann (2019: audio recording) maintains that all research is about being immersed in the local place, and the closer you are to your apical family, the closer you are to your traditional custodial knowledge and responsibilities, and conducting research on one's own country carries with it responsibility to ensure the elders are involved and that their knowledge and culture is strengthened.
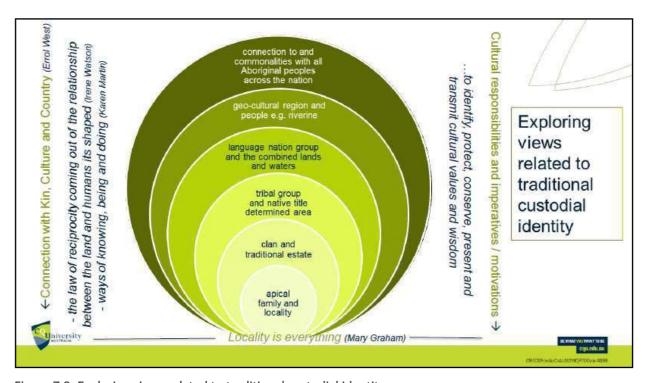

Figure 7.9: Exploring views related to traditional custodial identity

Source: Mann *et al* 2019.

Mann, Cooms and Schmider (2019) outline several benefits of working with Traditional Custodians, including transparency of motivation because the Traditional Custodians are involved; established knowledge and connection because the Traditional Custodians are enmeshed in culture and place; awareness of diversity and history and using the skills and knowledge for the Traditional Custodians' benefit; familiarity with custodial and kinship responsibilities brings about accountability and transparency; and the relationships with Country and elders rests on connection and trust. Mann, Cooms and Schmider (2019) also acknowledge that research is not without its challenges, including ensuring the grounded-ness of the research aims,

objectives and research questions; developing the contribution to the field of research; dealing with definitional issues; and managing budget limitations and time constraints.

As AIATSIS (2019a) notes in its introductory remarks about the research by these three Aboriginal scholars, it is increasingly accepted that Indigenous researchers are best placed to conduct Indigenous research. The clear benefit is that Indigenous researchers possess the intimate understanding of cultural, historical, social and political contexts affecting Indigenous peoples and their ancestral Country.

7.8   Findings and Conclusions

This Chapter examined the resources supporting Indigenous engagement in environmental and climate science research and found that there are several international and domestic resources available to the NESP Hubs to develop appropriate guidance materials, whether they be engagement policies or strategies, formal agreements or protocols.

There are three resources that form the framework for ethical research in Australia (The National Statement, the Code of Conduct and the GERAIS), and all researchers must conform to these documents when conducting research with Aboriginal and Torres Strait Islander peoples. While the third element of this framework is still a guideline, it is in the process of being elevated to a mandatory Code of Ethics. While the GERAIS has come in for some criticism from Indigenous people as being too weak, especially with respect to protection of ICIP, the new Code of Ethics will need to stand the test of time to measure its effectiveness in this regard, when combined with the National Statement and the Code of Conduct.

It was reported in Part 3.2 of **Chapter 3**, that Indigenous engagement in environmental and climate science research has also given increased access to IK and observance of Indigenous cultural practices and as a consequence significant contributions have been made to, or enhanced existing scientific knowledge of, environmental issues (including but not limited to, threatened species, land and water management, fire management, climate change) and contributed to the development of practical environmental solutions. In part, this can be attributed to the co-design and co-production of research projects by Indigenous people. However, as Holmes (2011:22-26) and Hunt (2013a:6) note, co-design and co=production of research projects are not without their challenges, including the need for leadership, trusting relationships and willingness to share power; the requirement to reshape accountabilities and align organisational structures; the need for an organisational culture that supports such ways of working; and better evaluation of what works.

Recent research found that combining IK with Western science are affected by numerous factors, including the adaptive co-management context, the intrinsic characteristics of the natural resources, and the many different governance systems for different components. The research projects with a high level of co-governance arrangements provides better prospects for integration of IK and western science, for the sustainability of social-ecological systems (Hill *et al,* 2012:23) and ultimately for the benefit of all Australians.

Several questions were raised by various stakeholders, suggesting there is room for improvement in the protection of ICIP in the context of research being undertaken by the NESP Hubs. While several reviews have recommended Australia's intellectual property laws be amended to provide better protection (i.e. Janke 1999), it remains an area of considerable discussion (Productivity Commission 2016; Janke and Sentina 2018; IP Australia 2019). This leaves voluntary arrangements as the only available mechanism for developing locally appropriate solutions for providing adequate protections on a case by case basis.

Recent research by Janke (2019:328) has found that protocols enable the parties to arrive at an arrangement that respects Indigenous cultural ownership, values and practices as the primary holders, guardians, reproducers and interpreters of the cultures and interactions based on good faith and mutual understanding. Based on many years of experience working in intellectual property protection, Janke has developed a True Tracks Principles and Framework which is able to be to adapted to suit particular circumstances or fields of research.

While protocols are a flexible alternative to a legislated solution, they are inherently voluntary and there is a risk that they may not be followed in all circumstances. SGSEP therefore finds there is a case for including more specific performance indicators and reporting requirements on matters relating to the protection of ICIP in environmental and climate science research in the Funding Agreements for the new NESP Hubs being established under NESP2.

The other issue that emerged from consultations with stakeholders is Indigenous data sovereignty. The NESP Hubs have been and will continue to be involved in the collection and collation of Indigenous data and information, and SGSEP finds the principles being developed by GIDA provide a sound basis for protecting the integrity of such data. Especially if GIDA is successful with the implementation of ITK and Biocultural labels as a way of raising awareness of the cultural significance in data (and other content) and the express restrictions and expectations that may apply to the access and use of Indigenous data by non-community users.

Recent research by Indigenous scholars is finding that several factors are crucial to engaging meaningfully and effectively with Indigenous peoples in research on matters pertaining to their land and sea Country. Factors such as transparency of motivation, established knowledge and connection, awareness of history and diversity, custodial and kinship responsibilities, relationships with Country and elders, the grounded-ness of the research proposal's aims and objectives, the contribution the research will make, and managing budget and time limitations. As AIATSIS (2019b) concludes these factors present multiple opportunities and challenges for Indigenous researchers, particularly where research focuses on Indigenous peoples' lands and waters. The reality is that Traditional Owners or Custodians cannot ignore their custodial responsibilities. As Mann, Cooms and Schmider (2019) assert, their cultural imperative for protecting, maintaining and creating knowledge as Traditional Custodians, posits them as critical contributors in the future research agenda.

SGSEP therefore concludes that Indigenous engagement resources of the kind produced by the KISSP under the auspices of WAMSI (the *Collaborative Science on Kimberley Saltwater Country – A Guide for Researchers,* Lincoln *et al* 2017) and by the NAER Hub (*Our Knowledge Our Way in Caring for Country* Best Practice Guidelines, Woodward *et al*, 2020), are invaluable because they have been prepared by Indigenous peoples and are specifically about how they want others to work with them in respectfully accessing and sharing their unique knowledges. While these two resources have particular relevance to specific TO groups and their land and sea Country, the authors of the two resources have said that the principles and frameworks embedded in them are replicable by other TO groups and custodians subject to the free, prior and informed consent of the TOs and Custodians that prepared them.