



# Seminar: Research involving Aboriginal and Torres Strait Islander Australians

## Q&A

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### Speakers:

Professor Dennis Foley (Professor of Indigenous Entrepreneurship, University of Canberra)  
Professor Michael Martin (Chair, ANU Human Research Ethics Committee)

### Host:

Dr Douglas Robertson (Director, Research Services Division)

*Questions have been edited for length and clarity.*

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*1. A lot of the ideas you've talked about conflict with the research practice in other parts of the university—not necessarily researching this issue, but also with other vulnerable populations. What are the incentives that might get these institutions to adopt these ideas, considering how counter they are to many of the ways that we are taught to research?*

**Prof Foley:** It's about the purity of knowledge and where the knowledge comes from. It can be adopted by anyone or any group; it can be adopted by any area of research, and I think it's crucial that it should be. What you're talking about is really the institution of the academy being the coloniser again, maintaining its colonising presence, and sadly that's so true. It's still there, it's still in existence. That's why they've got to open up. I've got colleagues who are doing work in not only feminist but also in queer areas and the academy in certain areas blocks that as well, so that the research can be only done in certain ways. The more the research opens up, the more open we are, the more enlightened we are—surely that's the better for our research.

*2. One of the challenges of this research is that it's often within a timeframe, and with limited funding, and the development of relationships is never going to be given a satisfactory timeframe.*

**Prof Foley:** Yes. When I was at Sydney University I worked closely with SOPHI—I forget what that acronym stands for, but history's in there somewhere, history and philosophical sciences—and they had a brilliant Head of School there, and what he used to do was to try and get the students that were studying Aboriginal issues—because he knew that time frame was so long—to start, in that early part in the development of the ethics application, before the ethics application was put in, in fact, right up to the literature review: as you're doing your literature review, start doing your community contacts. Build those contacts as a part of your literature review. So you had your formal literature review and then you had informal contacts. That's one way to do it when you're acting on a very short timeframe.



How long is a piece of string? If you research in the Aboriginal area, you usually find you do it for many, many years; you don't just get in there once. And they're the ones that I would like to see stopped. There's a standard joke about ANU (sorry, ANU): after April, can you ever find an anthropologist around here? No, they've all gone north where it's warm. At the University of Western Australia: can you ever find an anthropologist when the barramundi are running? No, 'cause they're all up north fishing. Yes, there are limited timeframes, and you've got to get out there and extend those timeframes if you can. But that's the way that—I wish I could remember his name, that Head of School, but he was brilliant—as soon as he found out it was Aboriginal, "okay, get out there and get your community contacts". And he used to make them do little charts, network charts, so they knew who to go to, who to see; and then get around to all the Aboriginal people at uni, ask them for the contacts, networks, that sort of stuff. It worked beautiful. And he got one of his staff that was a photography major to write a paper on "What right have you got to take a picture of an Aboriginal person?", and then that was given to all staff. Brilliant. He was great.

*3. When you talk about privileging Indigenous voices, could you contextualise that down to talk about ownership of data? How do data sovereignty and privilege interact?*

**Prof Foley:** I think standard practice is that people get a transcript given back to them all the time, and that's theirs. The copyright is theirs. Any publication that comes out of that is automatically returned to those people. If they want to be identifiable, so be it, you know, it's their copyright. The final production of anything is also given back to them. And then I usually do an agreement with them on how long I will keep their transcripts, and then in anything that's produced from that they're also acknowledged. For example, I'm currently doing work in Ireland on Irish travellers, who I see as the Aboriginal people of Ireland. And that data sovereignty—the individuals don't want their stuff, but the organisations that represent them do. So they get the credits for it, they get the publication, they get all the raw material. And for them I actually hand back the transcripts: I don't keep any transcripts at all. I just take down the information I need and I give it all back to their organisation so that it's there in a bank, so that the data is used for future generations of Irish travellers and people coming through, Irish travellers, can use it for their own work. So a little bit different to what we do in Australia, but I hope that something like that can take off.

*4. I just wanted to mention the United Nations Declaration on the Rights of Indigenous People and other international documents, which have their own provisions around consent and other areas that researchers should be aware of. Secondly: when talking about benefits, especially in environmental research, there's a very polite way that people sometimes refer to scientists as "cashed-up, ideologically sound tourists", who are able to bring large amounts of money from richer places to less rich places. The emphasis there is on the idea of benefits, and that research can build livelihood benefits and income for remote places. Where does ANU stand on that, in terms of encouraging or requiring that research is seen as a livelihood opportunity for where it takes place?*

**Prof Martin:** There are two parts to your question. The first part was to note the existence of UN declarations. We do talk about those in the ethics committee a lot. I didn't put it on the slide because I was just cognisant of not having time to talk about everything, but they are really central documents. But they also articulate essentially the same six principles that the other documents do, just with a broader scope.

The second part of the question was—I'm going to paraphrase here—to what extent do we consider the benefits of, say, environmental research, that go back to community in terms of livelihood, support, things like that? We would certainly be very happy for such benefits to be



articulated, and we would find that a compelling argument supporting approval. Bottom line is: these benefits have to be discussed and agreed with communities. So what we would be looking to do would be to say to researchers, "look, we think that your research may have the following kinds of benefits. Have you talked about that with the people you're working with, and can you articulate in an agreement some principles around those benefits?"

And it's kind of hard to guarantee. One of the difficulties you always have—it's a line I very often read on information sheets under "Benefits": "this research will probably not benefit you". We very often see that when talking to individual participants, and then, very often, the following line is "but there'll be some broad benefit in terms of expanding knowledge". Well, with research involving Aboriginal and Torres Strait Islander people, that sentence ain't good enough. It's really got to be about how you can benefit Aboriginal and Torres Strait Islander people, and, where possible, the communities within which you're working. And you have to write agreements that articulate those benefits clearly. But, because these agreements have to be binding and enforceable, you can't be so specific around who's going to earn what. So there's a grey area in terms of what we can go to there. But as far as you're able to guarantee benefits, you should, and you should do so in a form that's binding.

*5. I'm interested in conflicts between contracts and ethics. What sort of pushback can the ethics committee muster? Say if it's a contract from government, can the ANU ethics committee say "You shouldn't be putting this contract out", or stop it from going ahead? What happens there?*

**Prof Martin:** Our most common experience in that regard would be to identify the areas of the contract that we think breach the National Statement. Sometimes these involve what we might regard as interference by government bodies: so for example, "we're going to give the minister our report first, and if they don't like it it'll either be changed or buried". We would not generally like to see those kinds of clauses in contracts. So what we would do is, we go back to the researcher and we would say, if it's an executed agreement, "can you go back to the department and seek a variation to the contract and have that clause excised?"

The other clauses that tend to attract our attention are the clauses involving intellectual property. In many instances there's provisions around background IP, and background IP tends to vest in the parties who brought it to the table. But then IP that's created within the research itself is almost always vested in the government under these contracts. They want it, and we very often want that to be negotiated in a way that ensures that, where that IP involves cultural knowledge, it must go back to community. We would require a variation to the contract to allow that to happen, and we couldn't approve it if that can't happen.

**Dr Robertson:** Just to add to that: one of the other teams within the Research Services Division is the Research Contracts team, and we're trying to spot more of those issues in advance if we can. But it is one of the challenges. But, as with any agreement, an agreement can be subject to variation. And when you've got the power of the National Statement behind you and the power of the AIATSIS statement, and other kinds of "regulations", those do allow us to go back and say, hang on a minute, you're not in line. And it can be an educational experience for the other party, because they may never have been involved with commissioning Indigenous research before. So when they put out a tender and they've got a minister that wants an answer a week on Friday, it can be a little challenging.

*6. You spoke about there being no low-risk Aboriginal research. I'm from the Australian Bureau of Statistics and we reuse a lot of data, so research might not necessarily involve any fieldwork. We're also often looking nationally, across all these different mobs and groups*



*across the country. With all that diversity, what would consultation and engagement look like and what evidence would the committee expect to receive?*

PROF MARTIN: That's a very good question. Let me pick it off in two parts. The first part is that there's no low-risk research—true. We would automatically call that "not low-risk", but as I said that's not the same as calling it high-risk. Where you've got de-identified data underpinning research, we don't have many of the concerns that we have where people might be identified. Now I know the ABS works hard, particularly where there's very small communities involved, to obfuscate data so that the reidentification risk is lowered as well. So I think a project that used that kind of data analysis, we would not regard that as being as high risk compared to where you've got participants who may face individual risk. Within the stuff that comes to the HREC, there's stuff that's so high-risk it would curl your hair and then there's stuff that we look at each other and go "why is it here with us?", and then "oh, that's because the National Statement says it has to be". That's part one.

Part two is, okay, how do you conduct engagement when you've just got data and you don't know who you've got it from and so on? It depends on the type of the research. If, for example, it's research on health for Aboriginal and Torres Strait Islander people, we would probably suggest engaging with the National Aboriginal Community Controlled Health Organisation. So you've got peak bodies, Indigenous bodies that look after particular areas of research, and they very often can speak for communities broadly on particular areas of research. Where it's possible to identify individual communities that are involved, we would certainly like to see some effort in engaging with those communities—and this is in the spirit of "not about us without us". So, yes, you have the data—I mean, the ABS has a statutory right to acquire data without consent; now, when you say that to an ethics chair, that's where I fall off my chair! I'm a statistician, oddly enough, I don't know how I ended up on ethics committees [Dr Robertson: Nobody does!] Nobody does. But there is still a responsibility acquired where you can identify communities to go and do some engagement.

You raise a very good point which raises a separate issue: sometimes as a committee we're scratching our heads around how to conduct engagement with particular kinds of research. For example, we're sitting here in the School of Music; there has been research done with individual Indigenous musicians. And of course, because they're human participants, it comes to the full HREC and then the question comes up, what about engagement? And you know, yes, you're engaging with individuals who have a particular cultural practice that may or may not be connected to their particular community. And so very often we have to find inventive ways to think about engagement—and I'd be fascinated to hear your take on this, Dennis—where you've got individuals involved who don't sort of cleave to a specific community within the research ambit.

**Prof Foley:** I'm always dismayed at the cutbacks to the ABS, and especially to Aboriginal data. I can remember, going back a few years, under a certain government that was led by John Howard, the ABS actually came out and said "these figures have been manipulated"—or words to that effect. The ethical stance of the ABS was so strong that they came out and said that the data regarding Aboriginal year 12 completions had been manipulated by the federal government or the minister. That was the first time in Australia's history where the ABS had broken that stance based on the ethics, because there was false information coming out for political reasons. So full credit to them. And the ABS has suffered ever since under conservative governments.



**Dr Robertson:** I think it's a general point as well. With the internet out there we're getting questions about using stuff that is on the internet, and reusing it, and images that identify individuals, and it poses some real challenges that aren't going to go away.

*7. My question is about Professor Martin's suggestion that ethics and contracts should be part of the early phases of design. I'm very heartened to hear a public conversation about how we can do this a bit better. Do you have suggestions for things the university could pilot or trial in this space, in terms of intellectual property and also just in terms of really mapping out all the dynamics when we make contracts?*

**Prof Martin:** Where do I start! This is going to sound terrible, but whenever I hear "We're sending it to ANU Legal", I die inside. Because I know that we'll get back something that seizes all the rights and grants them to the ANU; that's what internal legal counsel says. So what we have to do, I think, is work with college offices to develop knowledge around how intellectual property works in the Indigenous context, because it's really clear that it should never vest in the University. It doesn't belong to us. We shouldn't just take it, and then we shouldn't rely on a legal instrument to allow us to have taken it after we did. We need to develop templates for contracts that build in the necessity for Aboriginal and Torres Strait Islander peoples' IP to be vested in their communities and their people, and protected from the demands of the modern university. Now the world works against us, right, because if you write a paper and you want to get it published, guess who wants the copyright? The publisher. And it doesn't matter that there's cultural knowledge in there. This copyright goes to some mob in Holland—they don't care. So we've got a long way to go, and we're not going to win every battle that we enter, but we should represent to those who seek to assert rights that they can't have that it's not okay with us for them to do that. We might lose battles on that journey. So I think we need to develop expertise in contracts offices about how IP needs to work going forward. There's no lack of goodwill in this matter; people want to do the right thing—but legal training often has you doing the done thing, which is not always the right thing.

**Prof Foley:** One of the sad parts is, I always get an experience where all they ever care about is how much of a percentage they're going to take out of the contract. That's what really hurts me. The IP never seems to come into it, it's just how much the university's going to take. But maybe that's just my poor choice of universities or employers:

*8. Whenever I try to bring in an Indigenous co-author on my research, I make about a million phone calls around Australia, I beg and cry and plead, and it's very difficult. So regarding research capacity, how do we build a stronger research capacity around Indigenous issues generally?*

**Prof Foley:** I thought we were! I thought we were in the process now. I've seen a massive improvement in the last thirty years. It's a tenfold improvement. In fact, it's improving so much I don't know who the young ones are coming through any more because there's so many. Should AIATSIS keep a list of active Indigenous researchers? That would be a wonderful thing, that'd be a brilliant move, so we had one central place to go to. I find it very frustrating, because there's so many people in the space now and the ones that I used to know are either dead or retired. Sorry—that's my age. And I find it very frustrating because I don't know who the young ones are coming through. So maybe a central register—which I hate, having a register, it sounds so colonial, but for this case I think it's important. You know, they do in speech pathology, they do in other sciences; why not in the social sciences?



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**Dr Robertson:** Thank you very much for that. I think this has been an excellent event. As I said at the beginning, I've learnt something—many things actually—that I didn't know at the beginning. I'd just make a few summary comments at the end: there's a famous physicist I often quote called Feynman, and he has a quote which says "the easiest person to fool is yourself". And that is all about the internal biases that we all hold, and that we don't think we have. So just be conscious of that. And I think the other thing I always find salutary is when you put the map up, Dennis, of Aboriginal communities and languages. Just remember the map. You're not talking about a single people. It's not a race thing; it's a much more complex dynamic. And I think in terms of things to think about, paralleling the literature review with the engagement is very good and helpful. And paralleling the discussion pre-contract so that we can engage early with the discussion and try and shape the contract to fit the ethics requirements and fit the community's needs. And I think, coming back to Michael's key point, ethics is often seen as an administrative process. It is not. It happens to be embodied in an administrative process, but it is actually about the research, and building good solid research. I'm an absolute fan of the co-production of knowledge in all fields of science and humanities, and this is just one complex of that. So thanks very much for that. Thanks to our speakers and to Bruce Smyth, members of my team and members of the Centre for Social Research and Methods for putting together this event. And thank you all very much for coming.