



CULTURAL PROTOCOLS
for
Indigenous Reporting in the Media

abc.net.au/message/proper

CULTURAL PROTOCOL

- respecting the customs of the people or communities you are working with...
- Being aware that different communities have their own protocols that should be followed and...
- Communicating in a way that's relevant to Indigenous Australians.
- For the ABC Staff the Editorial Guidelines state that it is critical to adhere to the policies outlined. <http://abc.net.au/corp/edpolis.htm>
- Further info on *Ethics and Codes of Conduct*. Page 32
- Information from Australian Council for the Arts.
<http://www.ozco.gov.au/resources/publications>

ABC Indigenous Programs Unit, Radio and Online in conjunction with Indigenous staff and journalist in the ABC were aware that protocols for Indigenous communities have been ignored by many media outlets and journalists weren't aware that protocols existed or hard to find.

Message Stick has produced this Indigenous Protocol site hoping to assist journalists, filmmakers, producers and documentary makers to understand the importance of abiding by Indigenous Protocols. This document has been written as a guide to help bridge the gap between the needs of Television and Film makers and the Indigenous people and their customs.

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INDIGENOUS PROTOCOLS FOR JOURNALISTS

Introduction

Issues that effect or involve Indigenous people are often newsworthy. Similarly Indigenous people make up a proportion of the media consuming public, and are interested in what the media has to offer them.

Further info on [Ethics and Codes of Conduct](#).

The manner in which Indigenous people are portrayed and addressed by the media is important for informative and effective journalism.

Good journalism is based on many things, but effective relationships between the source or subject of information and the journalist is a good start.

These protocols are aimed at providing a guide for journalists to effective and respectful communication with Indigenous peoples. There are no firm rules which can be applied to all Indigenous peoples or situations but there are some guidelines and principles which can help identify the best way to proceed when researching, interviewing, writing and publishing works dealing with matters of concern to Indigenous people.

Lack of knowledge about the differences between Indigenous and non-Indigenous culture can create a breakdown in communication resulting in misrepresentation of Indigenous people reporting which is offensive to Indigenous people.

There is often a gap between many white media representations of Indigenous people and Indigenous perspectives of their own situations. This was recognised at the National Inquiry into Racist Violence (1990). It was claimed that television is perceived by Aboriginal and Torres Strait Islander people (and other minority groups) to be influential in maintaining racism against them. Insensitivity and ignorance of journalists are seen to be some of the primary reasons.

This protocol provides guidance and suggestions for ensuring accurate and appropriate journalism. It takes each step of creation of a story and advises on methods and practices to ensure efficient, accurate and respectful work.



There are no hard and fast rules when interacting with Aboriginal and Torres Strait Islander peoples. Every community is unique. The approach you will take will be different depending on the community's location - there are remote communities, rural communities, communities in provincial towns and major cities - each to be recognised as culturally distinct.

People

- It's offensive to question the 'amount' of Aboriginal or Torres Strait Islander blood an Indigenous person has.
- The labels "half caste", "quarter caste", "full blood" etc. are racist and unacceptable.
- The regional terms Koori, Murri, Nunga etc. are used by Aboriginal people to describe each other according to their home country.
 - Western Australia (southwest) - Nyoogar
 - Queensland - Murri
 - South Australia - Nungah
 - Tasmania - Palawa
 - Northern Territory (Arnhem land) - Yolngu
 - NSW - Koori
 - Victoria - Koorie
- The use of such terms recognises the changes to the original structure of language groups but acknowledges the cultural variations still existent within contemporary Aboriginal society.
- Your credibility has been well established within the community if you have sought permission from the relevant community.



Grammar

- Do not use acronyms to refer to Indigenous people e.g. '**ATSI**s', '**TIs**' etc.
- Abbreviation for Aboriginal is **AbI**, and Torres Strait Islanders **TSI**. This is if you have to use an abbreviation. It is preferable to use the names in full as stated in the Editorial Policies. If Aboriginal and Torres Strait Island people is too long to type or write, it is suggested you use Indigenous.
- Always use a capital **A** for Aboriginal and Aborigine. This applies only to Australian Aboriginal people.
- Most Aboriginal people prefer not to be called an Aborigine, and it's preferable to say Aboriginal person or peoples. Although the style guide refers to the correct grammatical use of the word Aboriginal and Aborigine...it is becoming the norm to use only Aboriginal when writing about Aboriginal people... whether it is grammatically correct or not because of the changing times. See [Style Guide](#) University of Queensland, School of Journalism and Communication
- When using Indigenous always use a capital **I**. Aboriginal and Indigenous are classified as people, and therefore qualify using capitals. This applies only to Australian Indigenous people.

Conduct

- Speak in a manner that can be easily understood as English is often a second, and sometimes, a third, fourth or even fifth language for many remote Indigenous communities. If necessary, use an interpreter;
- Keep technical words to a minimum, or if used, they should be fully explained;
- Be careful not to speak too quickly;
- Do not mimic Aboriginal speech patterns. Learn a few words of the local language. This will be a positive step in improving your relationship with the community.



- However, only use a language within its home community. It may be inappropriate to use elsewhere, or the language may be misinterpreted and you may find yourself excluded from another community.
- Be sensitive to the use of nonverbal communication cues, which are a natural part of Aboriginal communication patterns:
- Use of silence does not mean Aboriginal people do not understand. They may be listening, remaining noncommittal or waiting for community support;
- Use indirect eye contact (which is a sign of respect in Aboriginal culture).
- Time delays (sometimes lengthy) before communities impart requested information, or a less direct communication style, is common within Aboriginal communities.
- To be direct may be seen as confrontational:
- During discussions, Aboriginal people may delay expressing a firm opinion even though they may hold one.
- Instead, they may listen to others before offering their own view.
- If their view conflicts with others they will often tend to understate it;
- The question "why?" is virtually absent from the language of remote Aboriginal communities. Instead, observation is used as a learning device.
- In Torres Strait Island and Aboriginal communities - some members of families are unable to address one another and refer to each other differently. In some cases for example, a son in-law is unable to be in the presence of a father in-law. Or a brother is not able to use his sister in-laws name.

From: Protocols for Consultation and Negotiation with Aboriginal People (1998) [Qld Department of Aboriginal and Torres Strait Island Policy](#). This site offers a much more concise reference to Torres Strait Island Protocols.

Taken from University of Queensland, [School of Journalism and Communication Style Guide](#) at Aboriginal, Aborigine

Use "Aboriginal" as the adjective, "Aborigine(s)" as the noun (note the capital A). The names "Koori" and "Murri" may be used where geographically appropriate and are often preferred by Aborigines. The term "Black" should be avoided: it is not a meaningful description and may be considered offensive by many Aborigines. Do not confuse Torres Strait Islanders with Aborigines. Although the two peoples often work together for political purposes, they do not have the same heritages and cultures. "Indigenous peoples" (with a lower case "i") is a term that covers both peoples.

*it should be noted that although this states that Indigenous should be given a lower case "I" it's becoming the norm by government departments especially to use the capital whenever referring to the word.



Representation of Indigenous people by and in the media has been the subject of concern to both Indigenous and non-Indigenous Australians. Evidence presented to the Inquiry and documented in the Report of the National Inquiry into Racist Violence by the Human Rights and Equal Opportunity Commission "demonstrated that Aboriginal and Islander people were keenly aware of media images which they felt were racist. Examples were provided of such reporting in the Inquiry's public hearings throughout Australia." [1] "The evidence presented to the Inquiry suggested a range of serious concerns of Aboriginal people in relation to the media. There was ample evidence of discriminatory reporting and racial stereotyping. It was argued that such presentations legitimise coercive and violent measures against Aboriginal people." [2]

Perpetuation by journalists of racist stereotypes is one way in which Indigenous people are misrepresented by media. Observers and participants in the media, have turned their attention also to mechanisms for misrepresentation which are more subtle, less overt, than the classic picture of the "Aboriginal criminal" or the "Aboriginal drunk". The experience of Indigenous people working in media and the arts has generated new ways of telling Indigenous stories in the non-Indigenous and Indigenous media. For journalism, this has focused on understanding, respecting and representing Indigenous world-views in reporting about or for Indigenous people.

On representation of Indigenous people, Marcia Langton, wrote: "I contend that the central problem is not one of racial discrimination, although I do not deny that it might factor in specific or general encounters. Rather, the central problem is the need to develop a body of knowledge on representation of Aboriginal people and their concerns in art, film, television and other media and a critical perspective to do with aesthetics and politics, drawing from Aboriginal world views, from Western traditions and from history." [3]

These protocols provide a guide to working within a framework that recognises respectful engagement with Indigenous people, the requirements and demands of the discipline of journalism, and the history of colonisation, its impact in Australia on Indigenous and non-Indigenous people.

An underlying principle of these protocols is an assumption that journalists are willing to undertake work, which accurately and fairly represents their subjects. This is not always an automatic process, even with good will from the reporter. Lester Bostock's first Guideline in his text *The Greater Perspective: Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities* states:



1. program makers should always be aware of and challenge their own prejudices, stereotyped beliefs and perceptions about Indigenous people; [\[4\]](#)

What is News?

These protocols recognise that journalists alone do not decide what is newsworthy and what is not.

With this in mind, it is appropriate to consider the following questions:

- Are Indigenous people newsworthy outside of NAIDOC week or Reconciliation week? Are Indigenous people newsworthy all year round?
- Are Indigenous people newsworthy when positive achievements occur or only when the negative events occur?
- Are Indigenous people interviewed and polled on "non-Indigenous specific issues" like the latest CPI or football results? [\[5\]](#)

1. Human Rights and Equal Opportunity Commission, *Racist Violence, Report of the National Inquiry into racist violence in Australia*, AGPS, 1991, page 116. [Back to text](#).
2. Ibid page 356 [Back to text](#).
3. Marcia Langton, Well, I heard it on the radio and I saw it on the television..." An Essay for the Australian Film and Television Commission on the politics and aesthetics of film making by and about Aboriginal persons and things. Australian Film Commission, 1993, Sydney, pages 27-28. [Back to text](#).
4. Lester Bostock, The Greater Perspective: Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities, Special Broadcast Services, 2nd ed, 1997, page 9. [Back to text](#).
5. Lorena Allam, Telephone interview, 29 May 2002. [Back to text](#).



These Protocols are based on the following principles:

Respect

The rights of Indigenous people to own and control their cultures should be respected. Diversity of Indigenous cultures should be acknowledged and encouraged. Indigenous worldviews, lifestyles and customary laws should be respected in contemporary life.

Indigenous Control

Indigenous people have the right to self-determination in their cultural affairs.

Consultation, Communication and Consent

Indigenous people should be consulted on the way in which their history, community, interviews, lives and families are represented and used.

Indigenous people should be consulted on the use and representation of their Indigenous Cultural and Intellectual Property.

Prior to use, Indigenous peoples should be informed on the implications of consent.

Consultation should address the communal nature of Indigenous society and cultural expression.

Interpretation, Integrity and Authenticity

Indigenous people should be consulted concerning the integrity and authenticity of the ways in which their history, community, interviews, lives and families are represented.

Indigenous people should be consulted concerning the integrity and authenticity of the representation of their cultural and intellectual property.



Secrecy and Confidentiality

The right of Indigenous people to keep secret and sacred their cultural knowledge should be respected. Sacred and secret material refers to information that is restricted under customary law. For instance some information may only be learned or viewed by men or women, or only after initiation.

Indigenous people have the right to maintain confidentiality about their personal and cultural affairs.

Attribution

Indigenous people should be given proper credit and appropriate acknowledgement for their achievements.

Indigenous people should be given proper credit and appropriate acknowledgement for their contributions and roles in the development of stories.

Indigenous people should be given proper credit and appropriate acknowledgement for the use of their cultural material.

Continuing Cultures

Indigenous people have responsibility to ensure that the practice and transmission of Indigenous cultural expression is continued for the benefit of future generations.

This responsibility should be respected by journalists and incorporated in any dealings with material on Indigenous peoples.



Sharing of Benefits

The contribution of Indigenous people should be recognised by payment where appropriate.

Indigenous people have the right to be paid for the use of their Indigenous Cultural and Intellectual Property.

The issue of copyright ownership of the story, image, music, contributions and artwork should be discussed up front.

Indigenous people should have the right to control exploitation of their cultural and intellectual property. If consent is given Indigenous people have the right to share in the benefits from any commercialisation of their Indigenous cultural material.

Recognition and Protection under the Law

Indigenous people have the right to protection of their cultural and intellectual property.

Australian law and policies should be developed and implemented to respect and protect Indigenous rights to their Cultural and Intellectual Property.



PRODUCTION TIPS

RESEARCH

We have included a checklist of issues to consider when researching to ensure the story represents Indigenous people, and gives accurate contextual material within which to frame any story.

Respect for Indigenous diversity and the Indigenous culture, world views and customary law is an essential element to open minded, comprehensive research. Lester Bostock's second Guideline is expressed "an Aboriginal view of Indigenous issues may differ from a non-Aboriginal view." [\[6\]](#)

For this reason, it is also important to select Indigenous people for comment on Indigenous issues, rather than self-appointed non-Indigenous people. Recognition of Indigenous peoples' choice of spokesperson is important to respect and self-determination.

Indigenous Units and staff in the ABC can provide invaluable background to Indigenous issues, culture, politics, social structures, geographical characteristics in different areas, language issues, body language issues and a host of other factors.

While it should not be assumed that Indigenous people are experts in every matter concerning Indigenous people, they are excellent advisors on how to locate sources of information, appropriate ways of doing so, and sometimes warning against a course of action which may be culturally inappropriate. [\[7\]](#)



In the research stage, and throughout the story, the input of Indigenous researchers and media liaison officers will be invaluable to accurate reporting of issues concerning Indigenous people.

Indigenous people should be properly attributed and acknowledged for the assistance they provide.

Some basic questions to ask during a research phase are:

- Is there are Local Aboriginal Land Council or other community organisation in the area in which my story is set?
- What language is spoken in that area?
- Who are the people there?
- How do they wish to be referred to?
- Is there a media liaison officer in the area?
- Who can I approach to get permission to film or record?
- Do I need a permit to go onto the land?
- Are there any sacred areas or areas which the journalist or crew should keep away from?
- Is there a particular history of difficult relations with the media in this area, or issue?

Is there anything sensitive or confidential in the story?

Consultation, Communication and Consent

CONSULTATION

Research should identify the people to contact to discuss production of a story. Prior informed consent is fundamental to effective and culturally appropriate dealings with Indigenous peoples.

The nature, purpose and proposed outcomes of the story should be disclosed to participants prior to seeking agreement to any involvement in the process. Payment of fees and any copyright issues should also be discussed.

The third Guideline in *The Greater Perspective* states;

3. where non-Indigenous people produce programs non- Indigenous people they should do so in consultation with the indigenous people particularly with those who are the subject(s) of the program; [8]

COMMUNICATION



Respect for the communal nature of Indigenous social structures is essential in the process of consultation, communication and consent. It is generally not sufficient to consult with one person. It is generally necessary to consult with a series of people, families or clan representatives to inform, consult and seek consent.

"The complex relationships and obligations found in extended families of Indigenous Australians means that added responsibilities, not normally expected of non-Indigenous families are imposed on Indigenous group members. This can affect the ways deals or agreements might be achieved."

[\[9\]](#)

Respect for protocols when referring to a person who has passed away must be checked and followed in research, interview, writing and publication stages.

Respect for Indigenous time frames and decision making processes is essential during these processes also. Indigenous people may take some time to consider an issue. Decision-making processes may require further consultation, further thought and discussion or further information. A group may have to wait until everyone can be present, meetings may need to be scheduled around cultural obligations or travel considerations in remote areas where weather determines travel.

CONSENT

Where possible it is also advisable to gain an understanding of any tensions between non-Indigenous people and Indigenous people in an area, and between the Indigenous people in an area. It is important for the community, and for the quality of the story, that these tensions are taken into consideration. Guideline 4 of *The Greater Perspective* pertains to prior informed consent, communication and consultation:

4. Any dealings with Indigenous people should be conducted openly and honestly. The Indigenous people involved with the deal should be fully informed of the consequences of any proposed agreement, and they retain the right to seek independent legal advice as and when they see fit; [\[10\]](#)

6. Ibid [Back to text](#).

7. Lorena Allam, Telephone Consultation, 29 May 2002. [Back to text](#).

8. Lester Bostock, *The Greater Perspective: Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities*, Special Broadcast Services, 2nd ed, 1997, page 9 [Back to text](#).

9. Lester Bostock, *The Greater Perspective: Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities*, Special Broadcast Services, 2nd ed, 1997, page 12. Further information on concepts of time can be gained at page 14. [Back to text](#).

10. Ibid page 9. [Back to text](#).



Proper research and consultation processes should provide a lot of information about, who should be interviewed and should provide a lot of direction on how the person/people should be approached.

Further consultation, communication and consent may be appropriate as the story progresses.

Interviews with Indigenous people should have regard to:

Language

There are four broad language types spoken by Aboriginal and Torres Strait Islander people today: [\[11\]](#)

- Aboriginal and Torres Strait Languages
- Aboriginal Creoles (Kriol)[\[11a\]](#)
- Torres Strait Creoles (Torres Strait Kriol) (TCS)[\[11b\]](#)
- Aboriginal English
- Standard Australian English

Where Aboriginal or Torres Strait Islander languages or Kriols are spoken as a first language, journalists are advised to seek an interpreter who is acceptable to the people to be interviewed. English for a large number of Indigenous people is often their 4th or 5th language and not just their second.

Torres Strait Islanders 'Languages include:

- Meriam Mir spoken in the Eastern Torres Strait,
- Kala Lagaw Ya spoken in central and western Torres Strait and in the top communities of Saibai,
- Kalaw Kawaw Ya is a dialect of Kala Lagaw Ya in Western Torres Strait. [\[11c\]](#)

Correct spelling of language words and correct spelling of people's name should be ensured.

Subtitles should be checked for accuracy of translation. Accurate spelling should be ensured in subtitles.

Pronunciation should be checked for accuracy.



Body Language

Body language [12] is a significant means of nonverbal communication for most people. Indigenous people are no exception. Body language common to Indigenous people includes:

- Lowering one's eyes to show respect to older people or persons in authority;
- Not making eye contact with older people or persons in authority (ie. Not looking into their eyes or face);
- Not pointing with one's hands when giving directions (using the hand to point is seen as disrespectful);
- Engaging in body contact, such as friendly touching or jostling, or touching the upper torso and arm, when greeting people is inappropriate.
- A handshake is acceptable only if initiated by the other party.

11. Ibid page 16

11a. KRIOL [ROP] 10,000 or more fluent first language speakers (1991 B. Borneman SIL), 20,000 or more including second language users (1991 SIL). Roper River, Katherine areas, Ngukurr, Northern Territory; Kimberley Region, Western Australia; Gulf Country, Lower Cape York Peninsula, Queensland. Alternate names: ROPER-BAMYILI CREOLE. Dialects: ROPER RIVER KRIOL (ROPER RIVER PIDGIN), BAMYILI CREOLE, BARKLY KRIOL, FITZROY VALLEY KRIOL, DALY RIVER KRIOL. Classification: Creole, English based, Pacific ([©Ethnologue](#))

11b. TORRES STRAIT CREOLE Torres Strait Islands, towns on upper Cape York and some towns on the east coast of north Queensland. Alternate names TORRES STRAIT PIDGIN, TORRES STRAIT BROKEN, CAPE YORK CREOLE, LOCKHART CREOLE ([©Ethnologue](#))

11a. [Qld Department of Aboriginal and Torres Strait Island Policy](#).

12. Ibid page 15.



Production of a final copy requires attention to a combination of issues:

Credit people who contributed or are named in the work. Correct names, spelling and titles of Indigenous subjects or contributors are important. For instance, Indigenous people are often inaccurately referred to as "activists". While these people may well consider themselves to be activists, it is a frequently used generic term, which is imprecise and fails to credit people with their achievements. They may be identified by their occupations as writers, public speakers, tradespeople, musicians, artists, community workers, directors of corporations, CEOs of organisations, lawyers, fishermen or any manner of occupations held by Indigenous people.

They may also be identified by their position in the community as an identified spokesperson, media liaison officer or elder. Consultation with the community in which the story is set is essential for *authentic* identification of contributors and subjects. Accurate representation protects the *integrity* of the Indigenous persons contribution, and the *authenticity and integrity* of the story.

Interpretation, Integrity and Authenticity of a story is also promoted by correct use of words for identifying Indigenous peoples. Many Indigenous people use the following names to identify themselves depending on the area they come from.

- Western Australia (south-west) - Nyoogar
- Queensland - Murri
- South Australia - Nungah
- Tasmania - Palawa
- Northern Territory (Arnhem land) - Yolngu
- NSW - Koori
- Victoria - Koorie

But it is advisable to ask people how they want to be described. For instance, it is not safe to assume that all people in NSW are Kooris. Many are from other parts of Australia, and wish to be known by their place or origin. Some may wish to be known by their clan group. Torres Strait Islanders may wish to be identified by their clan or Island name.

Another important method of ensuring authenticity and integrity is to provide copies of interviews and proposed articles for editing by Indigenous people who have contributed or been the subject of a work.

Deceased People It is important for the integrity of a story to follow protocols for avoidance of naming deceased people. Consult the community for individuals concerned by correct procedures, and correct avoidance names, and time periods for avoidance. Find more information [here](#).



Secrecy and Confidentiality

Indigenous subjects and contributors should be given an opportunity to check that nothing *sensitive* has been included without permission and/ or respectful presentation. They can also check that no *confidential* material has been included in the copy.

Continuing Cultures

Indigenous people's obligation to continuing cultures includes observation of responsibility for material that is published with their participation. Indigenous people need an opportunity to check that work they have participated in has not breached any cultural norms or customary laws. This includes the use of images with the work.

Guideline 5 of The Greater Perspective states in part:

5. No damage of any kind should be done to the lands of Indigenous people or cultural property, not to the subject(s) of the programs. [\[13\]](#)

Guideline 6 of The Greater Perspective provides some further information on practices which promote respect for ongoing obligations of Indigenous people to their culture.

6. the collection and use of information for a project should be done in such a way that it will not be used against or be considered detrimental to the people from whom the information comes. One is aware of the need to maintain the independence and integrity of news and current affairs programs and it is accepted that, at times, there may be a need to file reports, which, could be detrimental to the subject(s) of the programs. Even so, when the use of such material may be unavoidable, then relevant program makers need always be aware of and to examine any preconceptions they might have about the matter, and attempt to provide a report that is balanced by an awareness of the cultural norms and practices of Indigenous people. It is critical that program makers are sensitive to the cultures of Indigenous people and that they undertake consultation and negotiation with the people concerned prior to and during the making of the program.



Images and Audio

Consultation is important for decisions on images that might accompany a story. The copy may meet all protocols but this can be undermined by inappropriate images accompanying a story. Consult with Indigenous people about appropriate images.

Images of people should be checked that they do not include images of people who have passed away.

Copyright ownership of any information provided should be discussed, and where possible, Indigenous people's rights to maintain copyright ownership should be discussed, disclosed and respected.

Images should be related to the story. It is inappropriate to place an image of Torres Strait dancers next to a story about NSW South Coast dancers.

Use of the Flag

The Aboriginal Flag is red, black and yellow - the bottom half is red, the top black and a yellow sun is represented in the middle.

The Torres Strait Islander flag is green, black and blue, incorporating a white Dari (headdress) and a white five pointed star beneath it.

There are some important considerations that need to be observed when using Aboriginal and Torres Strait Islander flags:

- Make sure that you use the right flag in stories relating to Aboriginal and Torres Strait Islander people
- For Indigenous media events - the preferred protocol is to use both flags.
- Make sure both flags are reproduced, hung and depicted the right way. Often the Aboriginal flag is reproduced



upside down.

- You may not need direct permission to reproduce the flag if reporting news.
- For commercial use, special permission would need to be sought from the copyright owners.
- Permission needs to be sort by Harold Thomas for use of flag if you are a government department reproducing it for any Indigenous unit workwear or reports/brochures etc. Price would have to be negotiated by Harold Thomas.

For the Aboriginal flag: contact Harold Thomas - There is only one flag company that his permission to mass manufacture the flag too.

For the Torres Strait Island flag: contact the Island Coordinating Council.

What is the Aboriginal Flag?

The Aboriginal Flag is red, black and yellow - the top half is black, the bottom red and a yellow sun is represented in the middle. The flag is a symbol of Indigenous pride, identity and struggle. [14] Harold Thomas is recognised as having created the flag in 1970. In 1995 the artistic work was proclaimed officially as the Aboriginal flag. [15] No permission was sought from the copyright owner. In *Thomas v Brown and Another* [16] the court confirmed Thomas as the copyright owner. In the judgment, the design and copyright law provisions were discussed. The issue before the court was whether the production of over 50 flags constituted industrial application and therefore resulted in loss of copyright. [17] Justice Sheppard accepted that Mr Thomas had never authorised any mass reproduction of the flag design for commercial purposes. [18] The flag was reproduced on fabric and paper with his consent for Aboriginal communal purposes. Hence, section 74 - 77 of the *Copyright Act 1968 (Cth)* does not affect the ownership of subsistence of copyright. [19] These sections provide defences from actions for infringement, by providing that some uses will not infringe copyright. Prior to the case, there were a lot of commercial articles that applied the flag such as clocks, watches, t-shirts and desk calendar holders. These however, were all produced without licence from Mr Thomas.

Registered designs that incorporate elements of the Aboriginal flag may arguably be infringement of Harold Thomas' copyright.

What is the Torres Strait Islander Flag?



The Torres Strait Islander flag was created by Bernard Namok of Thursday Island now deceased. The green, black and blue flag incorporates a white Dari (headdress) and the white five pointed star beneath it symbolises the five major island groups and the navigational importance of stars to Torres Strait Islanders. The green stripes represent the land, the black stripes represent the people, and the blue the sea. [20] The flag is also reproduced on a range of items included clocks and t-shirts. The design is not registered under the designs law. The flag is proclaimed a flag of Australia [21], Copyright would still subsist in the flag. According to the Island Coordinating Council, the flag is a symbol of unity for all Torres Strait Islanders. The Council does not stop commercial uses of the flag only because it has more pressing issues to attend to as part of its activities. [22]

What issues arise when using the Flag?

- Make sure that you use the right flag in stories relating to Aborigines and those relating to Torres Strait Islanders. Torres Strait Islanders are likely to get offended if you reproduce the Aboriginal flag with a media story on Torres Strait Islander issues.
- Indigenous media events - the preferred protocol is to use both flags.
- Make sure they are reproduced, hung and depicted the right way. Often the Aboriginal flag is reproduced upside down.

Do I need permission to reproduce the flag?

You may not need direct permission to reproduce the flag if reporting news. Such use would come under the fair use provisions of the *Copyright Act 1968 (Cth)*.

For commercial use, such as making t-shirts, badges, cups or magnets, special permission would need to be sought from the copyright owners.

For the Aboriginal flag: contact Harold Thomas

For the Torres Strait Island flag: contact the Island Coordinating Council.

Sharing of Benefits

Fees should be paid where it is appropriate, for contributions or participation in a story. Discussions of fees should be held in the early stages of consultation.

Copyright ownership of any information provided should also be discussed, and where possible, Indigenous people's rights to maintain copyright ownership should be discussed, disclosed and respected.



Guideline 5 of *The Greater Perspective* states in part:

5. Special consideration should be given to the applicability of non-Indigenous notions of intellectual property rights, especially copyright, to the cultures of Indigenous people.
14. See www.ausflag.com.au/flags/ab.html [Back to text](#).
15. Section 5 Flags Act 1953 [Back to text](#).
16. 37 IPR 207 [Back to text](#).
17. Section 77 of the Copyright Act 1968 (Cth). The rationale for loss of protection is discussed by Jill McKeough and Andrew Stewart, "Intellectual Property and the Dreaming" in Elliott Johnston et al, *Indigenous Australians and the Law* (ed), Cavendish Publishing Australia Pty Ltd, Flinders University of South Australia, Adelaide, pp 53 - 79 at page 73 [Back to text](#).
18. Colin Golvan, "Copyright Ownership of the Aboriginal Flag", *Art + Law* 1997, Issue 2, page 8 [Back to text](#).
19. Ametex Fabrics Inc v C & F Fabrics Pty Ltd (1992) 24 IPR 449 "In this case Wilcox J held that the immunity from suit for infringement conferred by s 77 deprived the copyright owner of a right of action but did not have the effect of divesting the copyright interest". *Thomas v Brown & Anor* 37 IPR 207 at 266 [Back to text](#).
20. See www.flag.com.au/flags/torres.html [Back to text](#).
21. Under section 5 of the Flags Act 1953 (Cth). Proclaimed on 14 July 1995. [Back to text](#).
22. Meeting with Peter Anderson, Secretary, Island Coordinating Council [Back to text](#).



RECOGNITION, PROTECTION AND COPYRIGHT

Indigenous people's cultural and intellectual property is not adequately protected under western intellectual property systems. Most intellectual property is protected under the *Copyright Act 1968 (Cth)*. Copyright is a bundle of specific rights granted to the creators of literary, dramatic, artistic or musical works and the makers of sound recordings and films, "published editions" and broadcasts.

Copyright will exist in a work as soon as it is created (for example, reduced to "material form", as when an image is put on paper) or in a recording or film as soon as it is made, provided that certain statutory requirements are met:

- **Original work:** The new work must not be copied, and the creator must have used the necessary degree of skill, labour and effort to create a new work.
- **Material form:** A work must be written down or recorded in some fixed form.
- **Identifiable author:** There must be an author, or authors, for a work to be a copyright work. Generally the author must be identifiable, although there is some protection for anonymous works.

Duration of copyright

The period for protection of copyright is, generally:

- Published artistic, literary, musical and dramatic works - 50 years from the death of the artist.
- Unpublished artistic, literary, musical and dramatic works - 50 years from the date of publication.
- Films, sound recordings - 50 years from when they are made.

Some Indigenous cultural and intellectual property is not protected by the *Copyright Act 1968 (Cth)* because it does not meet the abovementioned requirements. It is important that people working with Indigenous people's intellectual and cultural property are aware of these issues.

For further information on Copyright Laws, check out the [resources](#) page.



HOW TO CONTACT THE COMMUNITY

As stated in other sections of the protocol document, each community has individual and unique reasons and beliefs. You can never generalise about what you do for one community is then exactly the same for another, even if it is a neighbouring community. You must approach each community and request with respect what you would like to do and ask each community individually.

One question that is always raised is "how do you contact the right people and the right community".

1. As a general rule most communities is governed by a Community Council, often described as "Lands Council".
2. In the Far North Queensland and Torres Strait Island communities have their own community councils recognised under Local Government by-laws. These are the people you should sort permission from if wanting to visit or drive through their land. You don't use the Land Councils for these purposes in The Cape and Torres Strait Islands.
3. Otherwise, many communities has a media unit, either run by a BRACS (*Broadcasting for Remote Aboriginal Community Services*) set up or a community run media unit. Most questions for media coverage should always be handled by or at least run past the local media group if there is a media group for that area. It might be worth mentioning that one or two people only man these units. You will need to keep trying to make contact.
4. The third way of contacting community members and family members is through the medical centres or through the education centres. They may not be able to assist you with material, they will however, know the appropriate people to contact.

Below we have provided links to some of the larger Land Councils and Media groups to help you find your way.

Some points to remember

1. Most often decisions are never made by one single individual. A committee makes most decisions. It will take time. Do not leave permission for permits and interviews until the last minute. It can take months.



2. Most communities you go to will require a Permit. Each member of your crew will need to be included in the permit. Make sure that you are fully aware of what communities you are allowed to work in. You may need more than one permit for the larger communities.
3. Some communities you may need more than one permit. You may need to get permission not only from the Community Land Council, but you may need it from the Media Centre and either the Health Centre or Education Centre. One permit may not be sufficient.
4. Always consider that the communities you travel in have alcohol, drugs and petrol bans. Please check what you are permitted to bring into the communities. Many communities only use diesel.

Links to National, Regional and Local Aboriginal Land Councils:

- Indigenous Land Corporation - <http://www.ilc.gov.au/>
- NSW Aboriginal Land Council - <http://www.alc.org.au/>
- Central Land Council Alice Springs, Northern Territory - <http://www.clc.org.au>
- Northern Land Council - <http://www.nlc.org.au/>
- Goldfields Land and Sea Council - <http://www.glc.com.au/>
- Gundjehmi Aboriginal Corporation - Mirrar people from the Kakadu Region, NT <http://www.mirrar.net/gac.html>
- Anangu Pitjantjatjara -South Australia <http://waru.org/ap/>
- FAIRA Aboriginal Corporation -Sydney, New South Wales - <http://www.faira.org.au/>
- Noongar land Council -Perth, Western Australia <http://www.noongar.org.au/>
- Nyangatjatjara Aboriginal Corporation -Yulara, Northern Territory <http://members.ozemail.com.au/~nyac/>
- Queensland Land Councils -A listing of Queensland land Councils with contact information. <http://www.slq.qld.gov.au/jol/fact/5nativetitle.htm#councils>
- Wadeye Community - western edge of the Daly River Reserve - Northern Territory <http://www.indiginet.com.au/wadeye/council.htm>
- Buku Larrnggay Mulka, Yirrkala, Northern Territory, - <http://www.octa4.net.au/yirrkala-arts/buku/listpage.html>
- Nyangatjatjara Aboriginal Corporation, Central Australia- <http://members.ozemail.com.au/~nyac/>
- Western Australia Regions and Offices to contact - <http://www.dia.wa.gov.au/>
(Click on the Region buttons)
- South Australia Aboriginal Health Services - http://www.nfwrhs.sa.gov.au/ab_health.htm
- Torres Strait Island Community listings - http://www.indigenous.qld.gov.au/pdf/mm1_3.pdf



Indigenous Land Corporation - Head Office (08) 8216 4100 <http://www.ilc.gov.au/>
Level 9, 44 Waymouth Street, GPO Box 652 ADELAIDE SA 5000
Central Divisional Office - (08) 8216 4102
Eastern Divisional Office - (07) 3854 4600
Western Divisional Office - (08) 9420 6300
Land Enterprise Australia - (02) 6269 2500
Freecall - 1800 818 490

Links to Authorities

TSRA

The Chairperson Torres Strait Regional Authority PO Box 261 Thursday Island Qld 4875 Phone (07) 4069 0700 Freecall 1800 079 093 Fax (07) 4069 1879
<http://www.tsra.gov.au/ResearchProtocols.html>

About [ATSIC Board and Regional Councillors Regional Councils Information](#)

Links to Media Organisations

CAAMA Central Australia Aboriginal Media Association
<http://www.caama.com.au>

PY Media PitjantjatjaraYankunytjatjara Media - SA
<http://waru.org/pymedia/index.html>

Warlpiri Media Association - <http://www.warlpiri.com.au/> - Yuendumu, NT.

Goolari Media - Broome, WA <http://www.gme.com.au>

Waringarri Media 6WR Warnun, Kubunurra, WA 6743,
<http://www.indiginet.com.au/kununurra.html>

The T.S.I.M.A. Network - Radio Torres Strait AM 1062kz
<http://www.indiginet.com.au/tsima.html>



DEATH IN A COMMUNITY

The question on how to deal with members of a community that have passed away is a large issue for the Media.

If an individual who died is a significant person in a community or in the broader Australian community, the local Media group usually issue press releases relating on how you can use the image, voice or video of the deceased person.

Consultation

Each community deals with the death of an individual differently and therefore you must contact someone from the community or media group and get written permission to use the name, image, voice or video of that person. In some cases some people will need to be removed from archived films, radio pieces and websites. Culturally it is difficult for some family members to mention the deceased person by name. It is best to contact council, media groups etc. to make the liaison with a family member, rather than go to them directly while they are grieving. Some family members in the past have been harassed for interviews while they are in their most important grieving times.

It is worth mentioning, that some communities, in both Aboriginal and Torres Strait cultures, the entire community will shut down for 'sorry business' whether you are coming or not. Even if you have gained permission to film, you may find that no one is available on arrival. It is advisable to contact communities prior to your arrival and check before leaving to make sure that the community are able to conduct formal business until the 'sorry business' is over with.

Time of Mourning

Many communities have a mourning period where that person's name and image cannot be used. The time of mourning is different between communities. It can be for a week, year or for an indefinite period of time that you will not be able to use the deceased's name, image, voice or video. Some communities offer a mourning name e.g. Kumantjayi in parts of the Northern Territory as in the case of Dr Charles Perkins was called Kumantjayi Perkins.

Permission

If you have been granted permission (in writing), the presenter of the program or the item's introduction must state that you were granted permission to use the person's name, image, voice and video for the particular segment you about to produce.



Permission for whom and for how long.

It is highly recommended that you also establish whether the permission is a blanket rule for perpetuity. This is to establish whether permission is restricted to the specific segment, state or town and whether it includes later segmentation. Written permission should include should include the date in which the mourning period ends to assist with archiving and the use of archives.

For example, if the ABC Darwin radio and television journalists are given the right to use the name, image, voice and video of a deceased person, this does not mean that all the other news services for ABC are able to. This mistake was made when the Northern Territory artist Kumantjayi Tjapaltjari died creating confusion as to the scope of the permission.

It is imperative for you to establish with the family and the community how the material can be used, for what parties and for how long.

Warning:

ABC Television, Radio and Online have a warning that is used in the introduction to most programs. The warning below is copyright of the ABC Indigenous Programs Unit and you are able to seek permission to use this for your own programs. Contact ABC Indigenous Program Unit at ipu@your.abc.net.au

WARNING: The ABC seeks to treat Indigenous cultures and beliefs with respect. To many communities it is distressful and offensive to depict persons who have died. Indigenous communities which may be offended are warned that the following program may contain such scenes.



PROTOCOL RESOURCES

- There is no single Aboriginal culture - Aboriginal society is very diverse.
- Aboriginal culture is dynamic - it is not the same as it was in 1788.
- Torres Strait Islanders are a separate group with their own distinct identity and cultural traditions.

Significant issues in the cultural identity of both Aboriginal and Torres Strait Islander people include:

- kinship.
- recognition and respect as a distinctive people.
- relationship to land and sea.
- preservation of customs, laws and language.

A number of protocol documents have been produced in recent years to meet the needs of particular communities, organisations, industry and situations. The following are selected as useful guides for people working in the new media arts sector:

- Lester Bostock, *The Greater Perspective: Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities*, Special Broadcast Services, 2nd ed, 1997
- 'Doing It Our Way: Contemporary Indigenous Cultural Expression in New South Wales', Janke, Terri, New South Wales Ministry for the Arts, Sydney, NSW, January 2002.
- *Our Culture: Our Future - Report on Australian Indigenous Cultural and Intellectual Property Rights*, 1998, written and researched by Terri Janke, Michael Frankel and Company, Solicitors, for Australian Institute of Aboriginal and Torres Strait Islander Studies, and the Aboriginal and Torres Strait Islander Commission.
- *Taking the Time - museums and galleries, cultural protocols and communities, A Resource Guide*, 1998, produced by Museums Australia Inc. (Qld)
- *Previous Possessions, New Obligations*, a policy document produced by Museums Australia in 1994, to provide a way for museums to approach Indigenous cultures. A plain English version, with case studies has been published.
- *Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services*, compiled by Alex Byrne, Alana Garwood, Heather Moorcroft, Alan Barries, and endorsed at the Aboriginal and Torres Strait Islander Library and Information Resources Network (ATSILIRN) conferences, December 1994 and September 1995.
- The Encyclopaedia of Aboriginal Australia: Aboriginal & Torres Strait Islander History, Society & Culture David Horton (ed) 1994.
- As a Matter of Fact: answering the myths & misconceptions about Indigenous Australians Aboriginal & Torres Strait Islander Commission (ATSIC) 1998.
- Stars of Tagai: the Torres Strait Islanders Nonie Sharp 1993.
- The World of the First Australians Ronald & Catherine Berndt 1981.
- Kulinma: Listening to Aboriginal Australians H.C. Coombs 1978.
- Caught in the Draught - Veronica Brady, 1994.



- *Mysteries of the Dreaming: the spiritual life of Australian Aborigines* - James Cowan, 1989.
- *Blood on the Wattle: massacres & maltreatment of Australian Aborigines since 1788* - Bruce Elder, 1988.
- *Being Aboriginal: comments, observations & stories from Aboriginal Australians* - from the ABC radio programs - Ros Bowden & Bill Bunbury, 1990.
- *Living Black* - Kevin Gilbert, 1977.
- *The Wailing: a national black oral history* - Stuart Rintoul, 1993.
- *Aboriginal Identity in Contemporary Australian Society* - Donald Tugby, 1973.
- *The Torres Strait: people & history* - John Singe, 1989.
- *Daughters of the Dreaming* - Diane Bell, 1983.
- *Aboriginal Voices: Contemporary Aboriginal Artists, Writers & Performers* - Liz Thompson, 1990.
- *Before the Invasion: Aboriginal life to 1788* - Colin Bourke, Colin Johnson & Isobel White 1980.
- *The Aboriginal Tasmanians* - Lyndall Ryan, 1981.
- *Doorditj: Australian Indigenous Cultural Expressions Australian on CD* - Dept of Communication & the Arts, 1998.
- *Frontier: Stories from white Australia's Forgotten War* ABC, 1997.

Links to sites on media and advocacy issues:

- Australia Council for the Arts - <http://www.ozco.gov.au/>
- National Indigenous Arts Advocacy Association - <http://www.niaaa.com.au/>
- The Australian Government Directory, Aboriginal Media Links - <http://www.agd.com.au/indigmedia.html>
- Aboriginal and Torres Strait Islander Protocols for Libraries, Archives & Information Services - <http://www.ntu.edu.au/library/protocol.html>
- The Australian Institute of Aboriginal and Torres Strait Islander Studies Guidelines for Ethical Research in Indigenous Studies - <http://www.aiatsis.gov.au/corp/docs/EthicsGuideA4.pdf>
- Our Culture, Our Future - a discussion paper written by Terri Janke and commissioned by the Australian Institute of Aboriginal & Torres Strait Islander Studies (AIATSIS). This paper discusses the nature of Indigenous Cultural & Intellectual Property and what Indigenous people feel should be protected.
- The Commercial TV Code of Practice contains an Advisory Note on the Portrayal of Aboriginal and Torres Strait Islander People, see <http://www.aba.gov.au/tv/content/codes/commercial/index.htm>
- <http://www.alliance.org.au/hot/ethicscode.htm>
- Ethics and Code of Conduct from ABC and AJA

Further Links:

[Australian Institute of Aboriginal and Torres Strait Islander Studies - Ethical Research](#)

This will bring you to the AIATSIS homepage. To proceed to the ethical research area, select **Research Grants** in the navigation bar on the left hand side, then scroll to the bottom of this page to the link which reads **Information for Applicants and Ethical Guidelines**. From here, a PDF version of the Institute's research guidelines can be downloaded.



[Human Research Ethics](#) - University of South Australia

The Aboriginal Research Institute has established guidelines aimed at ensuring that Indigenous people are consulted about, and involved in, any research conducted in relation to them or their communities. The University of South Australia Ethics Department have adopted the ARI's research guidelines. They ensure appropriate consultation, clarification of research ownership and control, and community involvement.

[School of Indigenous Australian Studies - James Cook University](#)

A leader in research on Indigenous issues. This page lists staff involved in the University's Indigenous research program.

[Curtin Indigenous Research Centre](#)

Currently developing a policy and guidelines for the conduct of ethical and culturally appropriate research.

[Ethics in Research Involving Aboriginal & Torres Strait Islander People](#) - Murdoch University

Procedures to follow where research involves Aboriginal and Torres Strait Islander People.

Also based heavily upon the Aboriginal Research Institute guidelines.

[Australian Heritage Commission](#)

AHC's Policy in Relation to Aboriginal & Torres Strait Islander Peoples and the National Estate.

[NSW Health](#)

Ethical health policy which ensures consistency and good practice in the management of health-related information about Indigenous people. Includes issues surrounding the collection, ownership, storage, security, access, release, usage, reporting and interpretation of information, as well as issues of confidentiality and privacy.

["Aboriginal Gangs Terrorise Suburbs"](#)

Australian Press Council - media racism case study.

Protocols for Consultation and Negotiation with Aboriginal People (1998) [Qld Department of Aboriginal and Torres Strait Island Policy](#). This site offers a much more concise reference to Torres Strait Island Protocols.

University of Queensland, [School of Journalism and Communication Style Guide at Aboriginal, Aborigine](#)



RCIADIC RECOMMENDATIONS

Royal Commission into Aboriginal Deaths in Custody Recommendations

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) was established in 1989 following concern over the deaths of 99 Aboriginal people in police custody and prisons between 1 January 1980 and 31 May 1989.

When investigating each death, the Commission took into account the social impact of colonisation on the lives of Aboriginal people.

The Final Report of 1991 included recommendations that refer to media organisations and their treatment of Indigenous people and issues:

Recommendation 205:

All media organisations should be encouraged to develop codes and policies relating to the presentation of Aboriginal issues, the establishment of monitoring bodies, and the putting into place of training and employment programs for Aboriginal employees in all classifications.

Recommendation 206:

That the media industry and media unions be requested to consider the establishment of and support of an annual award or awards for excellence in Aboriginal affairs to be judged by a panel of media, union and Aboriginal representatives.

Recommendation 207:

That institutions providing journalism courses be requested to:

1. Ensure that courses contain a significant component relating to Aboriginal affairs thereby reflecting the social context in which journalists work;
2. Consider, in consultation with media industry and media unions, the creation of specific units of study dedicated to Aboriginal affairs and the reporting thereof.

Recommendation 208:

That, in view of the fact that many Aboriginal people throughout Australia express disappointment in the portrayal of Aboriginal people by the media, the media industry and media unions should encourage formal and informal contact with Aboriginal organisations, including Aboriginal media organisations where available. The purpose of such contact should be the creation of a better understanding, on all sides, of issues relating to media treatment of Aboriginal affairs.



ETHICS & CODES OF CONDUCT

The media influences to a large extent community attitudes towards Indigenous Australians. A large number of guidelines have been published in an effort to educate journalists and prevent media racism. Institutional watchdogs such as the Australian Broadcasting Authority and the Australian Press Council play a role in policing these guidelines. Department of Communications - media coverage of Indigenous issues

- [MEAA Ethics and Code of Conduct](#)
- [ABC Editorial & Program Policies](#)

Statement of Principles - in relation to media coverage of Indigenous issues (broad guidelines developed by Department of Communications in consultation with media organisations & Indigenous groups)

1. Publishers and broadcasters should not distribute material that is likely to incite or perpetuate hatred against, severely ridicule or incite serious contempt for, a person or group based on the reason that the person is an Aboriginal or Torres Strait Islander or the group is composed of Aboriginal or Torres Strait Islanders.
2. Broadcasters and publishers should avoid prejudicial references to, or over emphasis of a person who is an Aboriginal or Torres Strait Islander.
3. Media reports about an Aboriginal or Torres Strait Islander should respect the customs of that person and his or her people.
4. A positive emphasis and balanced approach is expected. Reporting should report the causes and not simply symptoms of problems that exist. Reporting that implies a community has a problem because the community is made up of Aboriginal and Torres Strait Islanders is an example of reporting that should be avoided.

From: Plater, D. & Roberts, R. (1994) Going For Red Black and Gold: The Indigenous Media Manual. Jumbunna Centre for Australian Indigenous Studies, Education and Research, UTS.



Still known as the AJA code of ethics. The members of MEAA recognise the importance attached by the Aboriginal people to sacred sites, ceremonies and other practices associated with traditional Aboriginal culture.

Members will endeavour not to film or televise Aboriginal sacred sites or ceremonies where it is likely to cause offence.

Members will endeavour to respect other traditional Aboriginal customs, such as refraining from televising or naming recently deceased people where such action is likely to cause offence.

When necessary, members will use qualified Aboriginal interpreters in communities where English is not a primary language.

Copies of all material recorded in Aboriginal communities will be available at cost when requested by the community in advance.

From: Plater, D. (1992) Guidelines on reporting Aboriginal & Torres Strait Islander Issues. In: Signposts: a guide for journalists. Australian Centre for Independent Journalism, UTS.

Go to the [MEAA Journalists' Code of Ethics](#) (revised / draft edition)

[International Journalist Network](#)

See [Further Resources](#) Page 28



CONCLUSION

Following Indigenous protocols for the creation of media stories will produce accurate, respectful work. Just as there is no universal "Indigenous opinion" on issues, there are no "universal protocols or rules" which apply to all countries or area, Indigenous individuals, families, clans or communities or media projects. But there are general ground rules which can be used to locate the proper ways for the area, the people and the project.

"It's about making sure that the community respects how you go about it." [\[23\]](#)

23. Pauline Clague, Telephone Consultation, 30 May 2002.

