'Whose ethics?': Codifying and enacting ethics in research settings[1]

Michael Davis

Independent Academic

Sarah Holcombe

The Australian National University

Courtesy, modesty, good manners, conformity to definite ethical standards are universal. But what constitutes courtesy, modesty and good manners and ethical standards is not universal. It is instructive to know that standards differ in the most unexpected ways. It is still more important to know how the individual reacts to these standards (Franz Boas in the foreword to Mead's Coming of Age in Samoa, *1928).[2]*

This quote highlights the conundrum that those working in the social sciences and humanities face today with the ever-burgeoning development of ethical standards and associated tools and resources to ensure conformity and compliance to a standard. Whose 'standard' is it that is being developed and promoted? And who are the intended users of those resources (codes, protocols, guidelines) that are designed to manage and uphold ethical standards? These questions may seem commonplace to some people, as there is an increasingly sophisticated range of approaches to managing ethical engagement in research and applied projects, as this thematic edition illustrates. And, indeed, appropriately, codified ethical 'standards' are becoming increasingly localised with the development of locally and regionally specific resources. Nevertheless, even the most fundamental and pervasive of ethics concepts — 'respect' — has a normative load that carries with it a range of performative and moral implications. For instance, in many contexts in

Indigenous Australia, respect is shown to Elders through being attentively silent and listening, not asking questions and not interrupting the unfolding of events. Indeed, asking questions can be a sign of disrespect. This epistemological position has clear implications for ethical research practice, as several of the papers in this volume illustrate, notably the contribution by Christie et al.

Balancing codification with practice

One critical challenge in the field of research ethics is the relationship between ethical standards as codified in protocols, guidelines and other documents, and the actual practice of ethics: the upholding of moral behaviours in face-to-face encounters. This was a key consideration in a revision of the AIATSIS *Guidelines for Ethical Research in Indigenous Studies* (AIATSIS 2000), one of the factors that prompted this special issue of *Australian Aboriginal Studies*.

The *Guidelines* are formulated and administered by AIATSIS and are used to guide

research conducted under the Institute's research grants program, as well as by research staff and other researchers sponsored by AIATSIS. The *Guidelines* were reviewed during 2009, after a decision by the Institute that such a review and revision was necessary in light of significant developments that have occurred since the 2000 version was completed. These developments include advances in law reform, such as moral rights amendments to the *Copyright Act 1968*; increasing trends in the use of digital and other computer technologies for data management, storage and access; and progress in international standards relating to Indigenous rights and cultural heritage. The endorsement by the United Nations of the *Declaration on the Rights of Indigenous Peoples* in 2007 was another important impetus for this review. The review and revision were carried out by Davis, and involved the preparation of a discussion paper and a draft revision of the *Guidelines* themselves, followed by a public consultation process and input by AIATSIS committees and staff. The review of the *Guidelines* also examined the language of the document, which retained in places an archaic and outmoded approach to research in Indigenous studies. The paper by Davis in this special edition details the review and revision, and the process that was used to conduct it.[3]

The topicality of this issue of ethics is also evidenced by the theme of the annual 2009 Australian Anthropological Society conference — 'The Ethics and Politics of Engagement' — at which Sarah Holcombe and Toni Bauman[4] convened a session on 'The Poetics and Politics of Voice'. This session was another stimulus in the decision to produce this thematic edition of *Australian Aboriginal Studies*, as it seemed important to maintain the momentum of the debate that was occurring in some ways parallel to the AIATSIS *Guidelines* revision.

As is evident in many of the contributions to this thematic edition, ethics is an intrinsic part of the research process. As such, an element in inculcating good ethical research must necessarily involve dialogue, negotiation and communication between and among participants in research. Ethics, in this sense, ideally should be 'part of the *plan* of research, rather than an afterthought or an exercise in self-conscious reflection once the study

has been completed' (Fluehr-Lobban 1991:232). Indeed, Mick Gooda, then Chief Executive Officer of the Cooperative Research Centre for Aboriginal Health (CRCAH), noted that if ethics and the collaborative approach is front and centre of the research, then formal ethics approval processes are simply add-ons (FASTS 2009).[5]

In the same vein, it is important to be mindful that the development of ethical standards, and the enactment of these by means of codified statements, establishes a primacy of accountability, and tends towards the creation of an 'audit culture' (Strathern 2000:2–3). In this sense, Strathern (2000:2) suggests, the concept of 'audit…has broken loose from its moorings in finance and accounting; its own expanded presence gives it the power of a descriptor seemingly applicable to all kinds of reckonings, evaluations and measurements'.

Good ethics involves or requires 'a process of *prior* negotiation on points of ethics involving the intent and conduct of research and its results'; this 'prior negotiation' can help address issues such as 'possible ethical dilemmas that might occur during any phase of research from planning to publication, and a clarification of the interests and positions of the various constituencies involved in the study' (Fluehr-Lobban 1991:232–3).

In this edition of *Australian Aboriginal Studies* we bring together a group of papers that take up critical debates about the role, purpose and aims of ethics and ethical codes in the research process and research practice in Indigenous studies from the perspective of a diverse range of disciplines, practitioners, and institutional and professional positions. The papers are organised around three main themes. The first group is concerned with the 'big picture' that theorises, and critically engages with, the intersections between Western knowledge management (which incorporates the intellectual property system and archiving processes) and Indigenous knowledge/s. Flowing from this, the second group of papers examines specific areas of research and applied project work involving engagement with Indigenous communities, and case studies. Finally, we have included several papers that present locally specific discussions on ethical issues in the context of practice.

One of the many debates in ethical research concerns the codification of ethics in guidelines,

protocols and similar statements, and the question of how this codification balances with ethics in practice and action in research and field settings (see papers in Israel and Hay 2006; Meskell and Pels 2005). For example, papers in Meskell and Pels (2005) argue from the vantage point of anthropology, archaeology and ethnography, 'a view on ethics that emphasizes the priority of *practical ethical engagement* of the professional self with its audiences and criticizes the dominant tendency to disembed, exteriorize, and alienate ethics from everyday scientific practice' (Meskell and Pels 2005:1, original emphasis). These authors point to two 'lines of development' in ethical research among anthropologists; the one, they suggest, is a 'revamping of the ethical code as a form of public relations aimed at employers and gatekeepers', and the other 'a use of ethical codes by representatives of the people studied as a way of holding the researcher accountable in ways that had not previously been possible' (Meskell and Pels 2005:2).

Raven's paper in this edition examines the issue of 'gatekeepers' and explores this role in a typology of other actors in the research process that she identifies as 'gatecrashers' and 'guardians'. Raven introduces these roles in order to interrogate the problem of what she identifies as the lack of an overarching framework or standard in the development and operation of protocols for ethical research. She also takes up the critical issue of what she describes as the 'relationship' that each of these actors has to Indigenous knowledge. While acknowledging the problems in the bureaucratic codification of ethical research by means of protocols, she argues that these can nonetheless have a mediating role in the power relations among the various roles she discusses that are involved in the research engagement. Raven's approach importantly proposes a theorisation of the various actors in the research engagement.

While Raven's paper is concerned with unequal power relations in research, and especially the dominant role of the university and its relations to Indigenous researchers, Holcombe problematises the issues of authority and collaboration from the perspective of a social anthropologist. She interrogates the complex boundaries between the anthropologist and local knowledge owners, and the sometimes vexed role of intellectual property rights. The often presumed authoritative role and position of the anthropologist-as-expert in cross-cultural work and in collaborative engagement is a central focus of Holcombe's paper, and she addresses some key questions in current approaches to knowledge management in a rapidly changing global context of new and emerging economies of knowledge and information.

The codification of ethics is the central issue posed by Davis. He discusses the review he conducted for AIATSIS in conjunction with a consultation process to revise the 2000 *Guidelines for Ethical Research in Indigenous Studies*. The *Guidelines*, released a decade ago, were reviewed and revised in order to bring them in line with recent developments in Indigenous cultural and intellectual property rights, in intellectual property laws, and in new technologies in information and data management and digitisation. Davis situates his work with the 2000 *Guidelines*, and his paper in this edition, within a context of recent groundbreaking advances in international recognition of Indigenous rights with the adoption of the *Declaration on the Rights of Indigenous Peoples* by the United Nations General Assembly. Davis' paper describes these developments as well as some of the issues and dilemmas in the operation of the *Guidelines* within the particular organisational setting of AIATSIS and external ethical frameworks in which the *Guidelines* operate. For example, he explores the sometimes fuzzy boundaries and inter-relationships between the AIATSIS *Guidelines* and academic research ethics processes, as well as the Australian National Health and Medical Research Council's ethical framework and processes. After presenting an account of the review of the *Guidelines*, Davis concludes by raising some questions about the role of codified ethics statements such as the AIATSIS *Guidelines* in the research process, and suggests that ethical research is as much about processes of engagement as it is about regulated, prescriptive approaches. This discussion opens up the question that permeates many of the contributions to this volume — 'whose ethics' are being 'managed' in the complex settings in which codes operate? And what are the dynamics, governance issues and politics in the interplay between ethical codes and the settings in which they operate, and what are the roles of the various actors in these situations? The contributions by Koch, Smith and

Christie et al. take up these questions in different ways.

For Koch, the central question concerns the dilemmas that arise in the management and handling of research materials relating to Native Title in an institutional setting. She draws on her extensive knowledge and experience of these issues, with some case studies, including those relating to requests that are made for access to these kinds of materials. Among the various issues considered by Koch is the management of Indigenous research materials by different organisations, such as AIATSIS and Native Title Representative Bodies. Koch's paper returns us to one of the central themes of this edition, which is a focus on questions around the diverse actors, roles, institutions and layers of governance for ethics in research. If we are to find a good balance between ethical codes as instruments for compliance and regulation, and the enactment of ethics as a form of behaviour, practice and values in actual settings, then we need to interrogate complex matters such as individual responsibility, moral positions and the role of the state. Recent and emerging scholarship on cosmopolitanism may offer some fruitful avenues for contemplating some of these issues. Meskell (2009:2) argues, for example, that cosmopolitanism 'on the one hand…encompasses the overarching framework of global politics and, on the other…directs our attention to the concerns of the individual and the community'. This emphasis on cosmopolitanism, in Meskell's view, must necessarily include an acceptance of the ethical responsibilities that researchers have to the communities in which they work (Meskell 2009:1).

Discussion on the challenges of ethical practice in complex settings is a theme of Smith's contribution to this volume. Her paper is a meditation on the 'politics of recognition', from the particular vantage point of the 'discipline' and practice of 'heritage management'. As with other papers in this edition (such as Holcombe and Raven), Smith's paper foregrounds questions around the complex politics and role of the 'expert' as authoritative knowledge holder, and around collaborative engagements with local Indigenous experts. Framing her discussion within the context of wider issues of recognition and social justice, Smith interrogates the linking of 'heritage' with

'identity', and the implications for expert knowledge and ethical practice.

Christie's paper, as a collaboration with the Yolŋu teachers Kathy Gotha, Dhäŋgal Gurruwiwi and Yiŋiya Guyula, provides a close account of an innovative teaching program — 'Teaching from Country' — that enables senior knowledge authorities to participate actively in the academic teaching of their languages and cultures from their remote homeland centres and sites using new digital technologies. Such a program has actively challenged several of the assumptions of the university ethics process and the National Ethics Application Form, notably that it is natural to de-identify the source of data from its author — in this case the Yolŋu participants — and that why paying them is not regarded as *inducement*. Christie indicates that the ethics committee accepts their contention that Yolŋu *insist* that they are identified as the source of their comments and that this is a fundamental ethical consideration of Yolŋu knowledge work. How can one access the truth of a knowledge claim if the individual who made it is anonymous? Holcombe, likewise, argues that unless there are specific reasons why anonymity is requested, it should be standard practice for individuals and/or groups to be attributed, and this is increasingly what Indigenous peoples are demanding. The issue of paying Yolŋu participants in teaching or for their work as consultants on other projects is also understood, according to Christie, in terms of knowledge exchange as a continuing and significant part of the Yolŋu economy. Indeed, comparisons could be made in this context of Yolŋu being paid for their knowledge services, just as Indigenous rangers are paid for eco-system services.

Considering ethical codes and standards and institutional settings, Holcombe and Gould present a comparative survey of a range of codes formulated in various state and territory jurisdictions across Australia. This survey highlights the diversity of approaches and, importantly, impels us to consider the implications for the implementation and operation of codes for ethical research. The diversity of approach in ethical standards revealed in Holcombe and Gould's survey reminds us of Raven's argument about the absence in Australia of a universal, or 'overarching', framework or standard for ethical conduct

in Indigenous research. Could the AIATSIS *Guidelines* be considered as fulfilling this role? If so, whose ethics do these *Guidelines* uphold? As Holcombe and Gould illustrate, there are very few ethical tools or resources in Australia that are purpose built for local Indigenous use. Most of the resources developed are for external researchers. Nevertheless, the 'frontline', perhaps, where many of these resources are being developed is in the area of regional cultural and natural resource management.

The contribution by Hemming et al. is a case study detailing the Ngarrindjeri experience in this area of developing the kinds of resources in cultural and natural resource management and associated methodologies that they have found to be effective. As part of a Ngarrindjeri 'think tank', the co-authors, Steve Hemming, Daryle Rigney and Shaun Berg, have developed a Ngarrindjeri research agenda through programs of the Ngarrindjeri Regional Authority Incorporated. They argue that unlike many other Indigenous Australians, notably those who live in remote regions, Ngarrindjeri are land *and* resource poor; they are forced to negotiate a space within the Australian nation from a place of constructed cultural extinction. In detailing this space, through an analysis of their methodology and an overview of the model contract they have developed to protect Indigenous Cultural and Intellectual Property (ICIP), potentially transferable insight and ideas are gained for regions and groups elsewhere. As they observe, there is currently no law that specifically protects ICIP or Indigenous knowledge. In the absence of any legislative protection, other solutions need to be considered, such as negotiated contract or the development of *sui generis* approaches. Hemming et al. provide excerpts from a model contract in which the 'cultural knowledge' clause intentionally excludes Indigenous knowledge from the definitions of intellectual property and confidentiality. The authors argue that this innovation allows the Ngarrindjeri to assert control over *all* cultural knowledge — whether already in the public domain or otherwise. Thus, the Indigenous group own all and any cultural knowledge. As indicated in Holcombe and Gould's paper, the inclusion of confidentiality clauses in contracts with researchers is an increasingly common mech-

anism by which Indigenous organisations are managing the use of knowledge.

Through an analysis of ethics in Indigenous health research, Dudgeon et al. encourages all those concerned with ethics in research to take a step back and consider how this issue emerged in the Australian colonial context. They argue that greater recognition of research methodologies, such as community-based participatory action research, is necessary to ensure that Aboriginal people have control of, or significant input into, the health research agenda for Indigenous people at all levels. Drawing on a range of national standards and a consideration of how these were developed over the past 20 years, notably the National Health and Medical Research Council (NHMRC) standards, enables Pat Dudgeon, Kerrie Kelly and Roz Walker to reflect on how health outcomes are determined by ethical research methods and they outline two case studies to this effect. They observe that the Close the Gap campaign in Indigenous health outcomes highlights issues of negotiated research methods and the acknowledgment of historical and current power imbalances in order to build capability and capacity of Indigenous peoples and health practitioners.

Although Dudgeon et al. focus on the health arena, the discussion of the rise of the Indigenous Research Reform Agenda (IRRA) through the CRCAH is illuminating for the rise of ethics in the social sciences more generally.[6] This is noteworthy because it was in this health context that the IRRA began the formalisation of Indigenist research philosophies, principles and practices to legitimise and validate Indigenous peoples' ways and practices. It seems clear that this has had significant influence on social science methods in Indigenous research leading the shift in greater accountability and collaboration, perhaps most notably the shift from 'investigator-driven' research practices to a reassertion of local control and a greater needs-based approach to research. Importantly, the authors also argue that in the context of NHMRC competitive research funding there should be a shift away from a focus on peer-reviewed articles — the output model of performance evaluation — and, rather, a consideration of the evidence of meaningful implementation and translation of research findings into policy

and practice as these also accord with Indigenous needs and priorities.

The question of how best to protect and manage Indigenous knowledge, and its relationship to both Western intellectual property regimes and to the concept of ICIP, is a central theme throughout many of the contributions to this volume.

What is Indigenous knowledge?

The concept of 'Indigenous Knowledge' (IK) is now pervasive in research, but in this globalised post-colonial knowledge economy, where knowledge is 'capital' (per Thornton 2009), can this type of knowledge be categorised as distinct from other knowledges? What *is* IK and what makes it different from non-Indigenous knowledge? In earlier work Davis (2006), for example, contemplated the complexity of the engagement between IK and Western knowledge systems, and argued for a more nuanced approach to understanding these intersections. He asserts the need to interrogate the received views that tend to homogenise entities such as 'Indigenous knowledge', and to gain greater appreciation of the complexity both within systems of IK and in the intersections between different knowledges (Indigenous and Western). Likewise, the anthropological concept of the 'intercultural' also unsettles the notion that there are distinct or discrete knowledge systems, by recognising contemporary cultural practice as a legitimate space of dynamic cultural formation (see Hinkson and Smith 2005; Merlan 1998). Yet, ironically, it is at this intersection that knowledge categories have most relevance, as we discuss below in the context of development.

In this introduction, and this thematic edition generally, the term IK is used instead of 'Traditional Knowledge' because of the connotation that 'tradition' is somehow unchanging. There is a range of expressions used to refer to IK, including 'Indigenous Ecological Knowledge' (IEK), 'Traditional Ecological Knowledge' (TEK) and 'local knowledge'. These terms are most notable in the development literature with the now-recognised value of IK in bringing about development *and* environmental conservation (Agrawal 2002:287). As Agrawal (2002:287) observes, 'Indigenous knowledge has come to occupy a privileged position in discussions about how development can best be brought about so

that finally, it really is in the interests of the poor and marginalised'. In this context, IK may be understood as local knowledge — to be mobilised as 'livelihoods' in the *practice* of IK (see Scoones 1998). Alternatively, the terms TEK or IEK are utilised as 'types' of local knowledge that can potentially be commoditised for global — that is 'Western' — value. This is most notable in medicinal uses of plants (ethno-pharmacology), for instance. The San Hoodia case in southern Africa (Wynberg et al. 2009) and the Neem tree in India (Gupta 1996; Marden 1999) are perhaps the most cited examples of attempted IEK piracy, also known as bio-piracy, where IK is understood as exploitable capital. So in this sense, IK can be understood externally as a *practice* to realise local livelihoods or a *commodity* to be sold or misappropriated.

As Agrawal (2002:287) notes, contemporary research on and advocacy of IK is founded upon the earlier pioneering writings of anthropologists and ethnographers, notably those who specialised in ethnoecology, ethnobiology and customary economies (see Conklin 1957, Posey 2002 and, in Australia, Altman 1987).

Christie et al.'s paper foregrounds the issue of 'what is Indigenous Knowledge?' by approaching knowledge as principally and profoundly practice based or *performative* in the specific Yolŋu context. This performativity of knowledge has major implications for both knowledge production and the ethics of collaborative research. As the Yolŋu downplay human agency, they also regard the asking of questions as inappropriate; this may be most notable in this space of the ethics of teaching, yet this is transferable to other contexts. As Christie et al. note, this issue of the asking of questions is often mentioned by Yolŋu educators as a key difference between Yolŋu and *balanda* knowledge production. They offer the example of 'gifted' Yolŋu children who are characterised by their silent watchfulness, their listening, their quiet, respectful, biddable involvement at the fringes of ceremonial and political activity, and their respect for and support of their Elders. As such, Christie notes that asking questions is more a sign of impatience and disrespect than intelligence.

In many ways IK is also a political category, an identifier of First Nations peoples and those who

are marginalised politically, socially and economically (see United Nations 2009). The UNESCO publication *Best Practices on Indigenous Knowledge* (UNESCO n.d.:4) defines the characteristics of IK, which:

- is generated within communities
- is location and culture specific
- is the basis for decision making and survival strategies
- is not systematically documented
- concerns critical issues of human and animal life: primary production, natural resource management
- is dynamic and based on innovation, adaptation and experimentation
- is oral and rural in nature.

In the General Assembly's endorsement of the United Nations *Declaration on the Rights of Indigenous Peoples*, the General Assembly affirmed that 'Indigenous peoples are equal to other peoples, while recognising the right of all peoples to be different, to consider themselves different, and be respected as such' (United Nations 2008:4). It is fundamentally this issue of *difference* which is articulated so strongly in the papers that follow and which poses the greatest challenge to researchers working with Indigenous peoples, as IK is embodied and articulated differently in different places. Likewise, although the Australian Government's endorsement of the Declaration in April 2009 was an important step in the recognition of a unique set of Indigenous rights, it would be fair to state that this issue of Indigenous Australians' *difference* from the majority in the new nation state has been, and still is, a core dilemma for the Australian Government (see Altman and Rowse 2005; Stanner 1969, 2009). Hence, the government's historical attempts at Indigenous policy as a discourse of 'integration' and 'assimilation', and, more recently, 'mainstreaming' and 'normalisation', attempt to reign in and control this 'unruly' minority population. As the Australian Government has shown little interest, as yet, in the process of embedding these rights-based principles into the discourse of Indigenous affairs and policy, it seems to us that it is up to regional and local level representative bodies to do so, while the new National Congress of Australia's First Peoples also holds considerable potential in this area.

Codes and practice: implications for ethical research in Indigenous studies

While the papers in this volume present a range and diversity of approaches to ethical research in Indigenous studies, they speak to a common theme. That is, if a 'best practice' standard is to be developed, the key may lie in finding and maintaining a balance between regulatory compliance and institutional governance of ethics through codification and the practice of good ethical behaviours in actual settings.

The papers that follow reflect the transformed relationships of the post-colonial context in which the binary oppositions of Indigenous/non-Indigenous can no longer be readily assumed. In the contexts of ethical practices around the research engagement, we now must consider the complexities in the meeting of Indigenous and non-Indigenous voices, claims and rights. Indigenous and non-Indigenous voices are shared in this space as negotiation is the necessary language of research.

NOTES

1. We would like to acknowledge Melinda Hinkson for her comments on this introduction.
2. Boas, arguably the 'founder' of anthropology in America, was reportedly the only member of the American Anthropological Association 'ever to be censured and expelled'. According to Berreman (1991:19) (citing Boas and the American Anthropological Association), Boas' transgression was that in 1919–20 he had 'reported in *The Nation* "incontrovertible proof," ...that "at least four" anthropologists had served as spies under cover of scholarly research during World War I'.
3. The revised *Guidelines* were considered by the AIATSIS Council in June 2010. These were accepted in principle by Council, with the instruction that they be edited for use as a handbook. The edited draft will be considered by Council at its meeting in December 2010 and, subject to final approval, will be published on the AIATSIS website in December 2010 and in print early in 2011.
4. Toni Bauman is a Research Fellow at AIATSIS.
5. Mick Gooda, now the Aboriginal and Torres Strait Islander Social Justice Commissioner for the Australian Human Rights Commission, stated this (not verbatim) at the inaugural Federation of Australian Scientific and Technological Societies forum at Parliament House, which Holcombe facilitated in March 2009.

6. It is interesting to note that the Close the Gap campaign, which began as a health initiative, has likewise been transferred to the Indigenous policy domain more generally. Whether or not this is appropriate is arguable.

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Dr Michael Davis is an independent researcher and consultant specialising in Indigenous knowledge, ethics, protocols and Indigenous/European histories. He is (to 31 December 2010) an Honorary Visiting Research Associate with the Cosmopolitan Civil Societies Research Centre at the University of Technology Sydney. Michael has published widely, including a major work *Writing Heritage: The depiction of Indigenous heritage in European–Australian writings* (2007, Australian Scholarly Publishing, Melbourne, and National Museum of Australia Press, Canberra). Among his most recent consultancy reports is *Maintain and Strengthen Your Culture: Handbook for working with Indigenous ecological knowledge and intellectual property* (2009), produced for the Natural Resources Management Board (NT) in collaboration with the National Centre for Indigenous Studies, ANU.

<mdavis@pcug.org.au>

Dr Sarah Holcombe is a research fellow at the National Centre for Indigenous Studies (NCIS), The Australian National University (ANU). As a social anthropologist, she has 20 years research experience with Aboriginal peoples in the Northern Territory, Western Australia and western Queensland. This research has been a balance of applied and academic anthropology. Holcombe's PhD (1998) research was in the central Australian community of Mt Liebig. Before joining the NCIS, Sarah was a Research Fellow at the ANU Centre for Aboriginal Economic Policy Research (CAEPR). The final project Sarah was engaged in at CAEPR was as Social Science Coordinator for the Desert Knowledge CRC, where she developed a range of ethical research tools, including an Aboriginal knowledge and IP protocol. Dr Holcombe has published widely in a range of areas, including Indigenous engagement with the mining industry, Indigenous community governance and the socio-politics of contemporary Indigenous land tenure.

<sarah.holcombe@anu.edu.au>