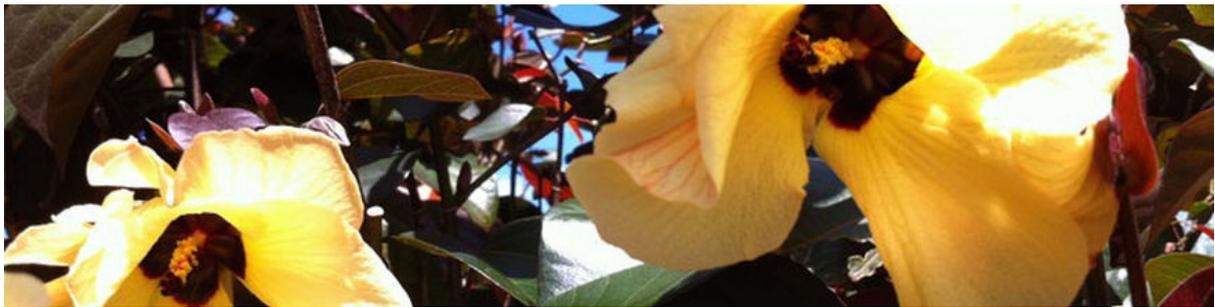


Indigenous Knowledge Forum



Report on Consultation Findings

Garuwanga: Forming a Competent Authority to protect Indigenous knowledge

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1 Overview of Findings

Many of the consultation participants indicated support a single national competent authority serving as both a national competent authority and a national focal point, with regional or community based competent authorities that may vary in their geographical coverage.

It is important to note here that the terms ‘local’, ‘regional’, and ‘community’, require further analysis and discussion. For example, what is the nature of ‘a community’, and what are the implications of this for considering what level(s) and/or types of competent authorities have been favoured by participants in the consultations. Similarly, interpretations of terms ‘regional’ and ‘local’ also need to be further teased out, This is done to some degree later in this Analysis of Consultations Report, and will be a subject for discussion in the Project’s Final Report.

There was not a universal endorsement among consultation participants for any specific kind of legal structure. However, participants did consider the ways in which a competent authority might operate.

The analysis of the consultations indicated that the national competent authority needs to have the following features:

- clear purpose
- security of tenure
- secure funding
- independence from government
- sound governance
- Aboriginal and Torres Strait Islander leadership and employees
- capacity strengthening protocols
- protocols for facilitating local and/or regional competent authority operations
- sound decision making protocols
- databases with robust security.

The consultations showed that people in a specific community and/or region should have the opportunity to determine the form of competent authority that is best suited to their needs at a local level.

In regard to the role of the Registrar, consultations showed that there is support for a male and a female registrar in the national competent authority. There is some resistance to the registrars being able to delegate authority.

2 Background and Scope of the Project

In 2014 the Indigenous Knowledge Forum presented a White Paper to the NSW Government entitled *Recognising and Protecting Indigenous Knowledge Associated with Natural Resource Management*. That White Paper was created during a research project funded by the Aboriginal Communities Funding Scheme of the Namoi Catchment Management Authority (now North West Local Land Services (NWLLS)). The main aims of that project were to identify key elements of a regime to recognise and protect Indigenous knowledge associated with natural resource management through consultation with Aboriginal communities in North West New South Wales and members of the Indigenous Knowledge Forum. The White Paper recommended the adoption of a stand-alone regime for the state of NSW, operating within a natural resources management framework.¹

The present project, *Garuwanga: Forming a Competent Authority to Protect Indigenous Knowledge*, commenced in 2016, funded by an ARC Linkage Grant. The Garuwanga Project aims to inquire into ways to provide better protection of biodiversity-related Indigenous Knowledge for the benefit of Australian Indigenous communities, specifically by examining possible models for a Competent Authority. Further detail on what is meant by a Competent Authority is provided below. In 2018, the Garuwanga Project produced a Discussion Paper, which was used as a basis for consultations with Aboriginal communities. Analysis of the outcomes of those consultations is what forms the basis of this current Report.

A framework for protecting Indigenous Knowledge has been developed internationally through the United Nations *Convention on Biological Diversity 1992 (CBD)*.² The *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity*³ is a supplementary agreement to the CBD. It provides a legal framework for the implementation of one of the three objectives of the CBD: the fair and equitable sharing of benefits arising out of the utilisation of genetic resources. The Nagoya Protocol on ABS was adopted on 29 October 2010 in Nagoya, Japan and entered into force on 12 October 2014. Australia ratified the Convention on Biological Diversity on 18 June 1993, and signed the Nagoya Protocol in January 2012, and has yet to ratify it and implement it.⁴

Late last century, countries around the world recognised the importance of the world's biological resources to economic and social development. They also recognised growing threats to species and the environment. In response, the United Nations Environment Programme (UNEP) established a Working Group to prepare an international agreement for the conservation and sustainable use of biological diversity. The agreement needed to promote the needs of developing countries and Indigenous peoples.

¹ See Natalie Stoianoff, 'Garuwanga: Forming a Competent Authority to Protect Indigenous Knowledge – a Project Supported by the Australian Research Council Linkage Scheme' (2017) *Intellectual Property Forum* 108, 73-75.

² *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 30619 (entered into force 29 December 1993) ('CBD').

³ *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Resources* was adopted by the Conference of the Parties to the Convention on Biological Diversity at its tenth meeting on 29 October 2010 in Nagoya, Japan, entered into force on 12 October 2014 (Nagoya Protocol).

⁴ See the Australian Government's environment department website for updates: <http://www.environment.gov.au/topics/science-and-research/australias-biological-resources/nagoya-protocol-convention-biological>

By 1992, this group had agreed text for the CBD. It was opened for signature at the Rio “Earth Summit”.⁵

The CBD has three main goals:

- conservation of biological diversity,
- sustainable use of biological resources, and
- fair and equitable sharing of benefits arising out of the utilisation of genetic resources.⁶

The last of these goals is the focus of the Garuwanga Project as the utilisation of genetic resources is often associated with the traditional or Indigenous knowledge about those resources. Under the CBD (Article 8(j)) countries must *respect, preserve and maintain, knowledge, innovations and practices of Indigenous communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity*.⁷ They must *promote the wider use of knowledge, innovations and practices of Indigenous communities with the approval and involvement of the knowledge holders and encourage the equitable sharing of benefits* arising from the utilisation of such knowledge, innovations and practices.⁸

The federal law implementing the CBD is the *Environment Protection and Biodiversity Conservation Act 1999*. Various states and territories have their own legislation attempting to do the same.⁹ The federal Act specifically addresses access to biological resources as section 301 and refers to the regulations for the mechanism to be employed. Regulations under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) do require entities seeking to access and commercialise biological resources to negotiate an agreement that provides for ‘reasonable benefit sharing arrangements, including protection for, recognition of and valuing of any [I]ndigenous peoples’ knowledge to be used’ by in relation to those biological resources.¹⁰ However, this federal legislation only applies in relation to Commonwealth land and waters and Native Title land. In the absence of federal ratification of the Nagoya Protocol, Australian biodiscovery entities are unable to obtain an International Certificate of Compliance (ICC), limiting their capacity to collaborate internationally and their access to important markets. Various state governments are moving to align their state legislation with the Nagoya Protocol’s requirements, including creating regulatory frameworks that require proof of prior informed consent and reasonable benefit sharing arrangements with Indigenous land owners before authorisation to collect and use native biological material is given.¹¹

The Nagoya Protocol requires each member state to designate one or more competent national authorities and a national focal point on access and benefit sharing in relation to genetic resources and Indigenous or traditional knowledge about those genetic resources.¹² The national focal point has the responsibility of providing procedural information to applicants seeking access to genetic resources and the Indigenous knowledge associated with those resources and liaising with the Secretariat of the Convention on

⁵ United Nations Convention on Biological Diversity (website), <https://www.cbd.int/history/>.

⁶ In the Convention on Biological Diversity, Article 1: Objectives

⁷ United Nations Convention on Biological Diversity (website), <https://www.cbd.int/convention/wg8j.shtml>.

⁸ United Nations Convention on Biological Diversity (website), <https://www.cbd.int/convention/wg8j.shtml>.

⁹ For example, *Biodiscovery Act 2004 (Qld)* and *Biological Resources Act 2006 (NT)*.

¹⁰ *Environment Protection and Biodiversity Conservation Regulations 2000*, r. 8A.08; see also Queensland Biotechnology Code of Ethics: Update of the Code of Ethical Practice for Biotechnology in Queensland, <<https://publications.qld.gov.au/dataset/qld-biotechnology-ethics/resource/47bf0b73-a1ed-4677-863f-f960b667b952> >

¹¹ Queensland Government 2018, Pathways to reform: Biodiscovery Act 2004: Options Paper, <<https://environment.des.qld.gov.au/licences-permits/plants-animals/documents/biodiscovery-reform-options-paper.pdf>>

¹² Nagoya Protocol Article 13(1) &(2).

Biological Diversity.¹³ Such information includes ‘procedures for obtaining prior informed consent or approval and involvement, as appropriate, of [I]ndigenous and local communities and establishing mutually agreed terms including benefit-sharing’.¹⁴

As for a competent national authority on access and benefit-sharing, such an organisation has responsibilities in accordance with ‘applicable national legislative, administrative or policy measures’ including being either

*responsible for granting access or, as applicable, issuing written evidence that access requirements have been met and be responsible for advising on applicable procedures and requirements for obtaining prior informed consent and entering into mutually agreed terms*¹⁵

Accordingly, the word “authority” does not mean that the organisation necessarily has power and control. That would depend on the legislation or administrative and policy measures under which the authority is created. Rather, as a competent authority, it is an appropriate organisation that is permitted to carry out its required tasks and is responsible for doing so. It is possible for the competent national authority and the national focal point to be the same organisation.¹⁶ And while these roles may be the sole responsibility of a national organisation, the reference to relevant [I]ndigenous and local communities and relevant stakeholders in Article 13(1)(c) does not preclude the establishment of local, community organisations, and regional organisations.

To encompass the range of options for competent authority organisations, we have used the term ‘competent authority’ to identify the various organisations that could operate at national, regional and local levels. This would assist with managing access and benefit sharing arrangements and negotiations with respect to Indigenous Knowledge.

The CBD and the Nagoya Protocol do not specify details on the nature of Indigenous Knowledge, in terms of how it is owned, managed and transferred, whether as ‘community’ knowledge, or as knowledge that is the particular responsibility of individuals. However the Nagoya Protocol recognises that it is the right of Indigenous communities, in the particular nation states, to determine their rightful knowledge holders, and therefore how to provide for community participation in access and benefit sharing arrangements.¹⁷ Although the Nagoya Protocol and the CBD refer throughout to the ‘rights of Indigenous and local communities’ the term, ‘indigenous peoples and local communities’ now applies, as if it was intended.¹⁸

It is understood in this Report that the relationships in Indigenous communities between the rights of individuals, and those of the group or community is complex. There is often not a clear dichotomy

¹³ Nagoya Protocol Article 13(1).

¹⁴ Nagoya Protocol 13(1)(b).

¹⁵ Nagoya Protocol Article 13(2).

¹⁶ Nagoya Protocol Article 13(3).

¹⁷ Article 5 Nagoya Protocol

¹⁸ For definitional clauses relating to use of the term ‘Indigenous peoples and local communities’ see Secretariat to the Convention on Biological Diversity, CBD/NP/MOP/DEC/2/7 10 December 2016, ‘Decision Adopted by the Parties to the Nagoya Protocol on Access and Benefit-Sharing, Article 2/7. Use of the term “indigenous peoples and local communities”; ‘The Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol: *Decides* to apply, *mutatis mutandis*, decision XII/12 F of the Conference of the Parties to the Convention on Biological Diversity on the use of the terminology “indigenous peoples and local communities”.

between the rights of an ‘individual’ and ‘group’ rights and responsibilities in regard to Indigenous Knowledge. As mentioned above, it is also important to recognise the complexities in such terms as ‘group’, ‘community’, and ‘local’ wherever these terms appear in transcripts from consultations with Aboriginal people.

It is useful to discuss the term ‘local’, since this appears frequently throughout the consultations, and in the CBD and the Nagoya Protocol. The Nagoya Protocol refers throughout the text to ‘Indigenous and local communities’. However, in Australia, the use of the term ‘local’ in referring to Indigenous communities may indicate a range of meanings in terms of factors such as geographical location, language group, and proximity to a town or urban or regional centre. An expression that is often used in this context is ‘the local community’. This expression has implications in terms of proximity (or perhaps ‘degree of local-ness’) to important towns, other communities and organisations, services, and also to family/clan/language/culture groups. Therefore it is necessary to remain aware of these nuances when discussing ‘local’ in the context of this report, and projects generally. The term ‘regional’ is also used to represent large geographical areas in Australia, for example, the ‘Kimberley region’ or the ‘Murray Darling region’. In the Kimberley, for example, these are comprised of many Aboriginal language groups who have grouped themselves under one or two representative bodies such as the Kimberley Land Council (KLC), Kimberley Aboriginal Law and Culture Centre (KALACC), and the Kimberley Language Resource Centre (KLRC).

3 Approach to Community Consultations and Research Methodology

The Garuwanga Project ‘Forming a Competent Authority to Protect Indigenous Knowledge’ (The Garuwanga Project) commenced in 2016. The Project’s aims are to:

- *Identify and evaluate a variety of legal structures for a Competent Authority suitable for governing and administering an Indigenous knowledge protection regime;*
- *Facilitate Aboriginal Community engagement in the process of such identification and evaluation; and*
- *Recommend an appropriate legal structure for such a Competent Authority in accordance with that engagement.*¹⁹

The Garuwanga Project developed from the outcomes of the Indigenous Knowledge Forum project entitled *Recognising and Protecting Indigenous Knowledge Associated with Natural Resource Management* and reported in the 2014 White Paper produced for the New South Wales Office of Environment and Heritage.²⁰

Discussions of the investigators and other participants in the Garuwanga Research Roundtable took up many of the questions flowing from that White Paper in relation to the issue of establishing a competent authority to administer a national access and benefit-sharing scheme with relation to Indigenous Knowledge. In 2018 a Discussion Paper was produced and distributed, and used as a basis for further discussions and consultations.

3.1 Approach to Community Consultations

Consultations and discussions on the Discussion Paper took place with Aboriginal communities and representatives of organisations in Broome and the West Kimberley (WA), in and near Sydney (NSW) in both urban and rural locations. Informed consent was obtained for all consultations. Consent processes were carried out in compliance with UTS ethics approval processes & principles, and also conformed to the Australian Research Council’s requirements. For these consultations, free, prior informed consent was sought, and obtained from all participants either in written form, or verbally as a group. Examples of the approved consent forms used are reproduced in the Appendix to this report.

It is necessary to review some of the issues that should be considered when engaging in research consultations:

- *Context – regional; language group; community and local politics*

¹⁹ See Natalie Stoianoff, ‘Garuwanga: Forming a Competent Authority to Protect Indigenous Knowledge – a Project Supported by the Australian Research Council Linkage Scheme’ (2017) *Intellectual Property Forum* 108, 73-75; also Evana Wright, Natalie P. Stoianoff and Fiona Martin, *Comparative Study - Garuwanga: Forming a Competent Authority to protect Indigenous knowledge* (UTS - Indigenous Knowledge Forum, 2017).

²⁰ UTS – Indigenous Knowledge Forum and North West Local Land Services, ‘Recognising and Protecting Aboriginal Knowledge Associated with Natural Resource Management’ (White Paper, Office of Environment and Heritage, Government of New South Wales, 2013) <<https://www.indigenousknowledgeforum.org/white-paper>>

Aboriginal community organisations typically do not ‘standalone’ in isolation from the wider geopolitics of place, region and language/cultural group. People in Aboriginal communities form part of a complex, intertwined network of organisations, people, family, language and community groups. As such, there are ongoing local politics that comprise the fabric within which the people and their organisations are situated. Research needs to be cognisant of these wider factors, and, consistent with the principles and practices of ethical, participatory Indigenous research, researchers need to work closely with Indigenous participants in carrying out the project.²¹

- *Who ‘speaks’ for the community*

The matter of representational and identity politics is critical to any research engagement.²² When engaging with Aboriginal people to seek their views on complex issues, a project will necessarily identify particular individuals with whom the primary engagement and involvement is conducted.²³ It is important to keep in mind that the matter of who this person is, is often a political one, and may in some circumstances be subject to some discussion and debate within the community. To adequately and precisely determine who has responsibility for representing, or who ‘speaks for’ a community, organisation, or other ‘local’ group is not easily determined, and there may be ongoing problems in regard to the selected representative. According to the AIATSIS Guidelines it is essential for Indigenous research to recognise the diversity of Indigenous groups and communities and to not presume that the view of one group represents the collective view of the community.²⁴ Furthermore, it is important to differentiate between individual, group or collective rights, responsibilities and ownership.²⁵

Limitations

With the approach to consultations, it is also necessary to outline some of the ways in which the consultations for this project were subject to limitations or constraints. In general, the consultation process had to take into account many factors, including the unavailability of people, prior commitments by communities, and divergent timeframes. Additionally, the notion of ‘community fatigue’ was mentioned in one meeting, and there was also a perceived incompatibility in the kind of language used to explain the project, and the language understood within the community. Inevitably, these factors imposed limitations on the extent to which full participation could be effectively achieved.

Effective and respectful research with Aboriginal peoples requires an understanding of, and adherence to relevant protocols and ethics, and of the importance of Indigenous peoples’ ontologies, epistemologies and praxis.²⁶ As such, the Garuwanga Project seeks to incorporate an appropriate decolonising stance, ensuring that a collaborative, participatory and inclusive approach is adopted. This also means that ‘consultations’, as a modality of engagement in the research process, must necessarily be cognisant of all the multiple obligations and responsibilities of Indigenous people within their communities and

²¹ AIATSIS Guidelines for Ethical Research in Australian Indigenous Studies 2012, 4 & 14.

²² See generally, Iris Marion Young, 1990, *Justice and the Politics of Difference*, Princeton: Princeton University Press.

²³ In keeping with Principle 6, AIATSIS Guidelines for Ethical Research in Australian Indigenous Studies 2012, 9.

²⁴ AIATSIS Guidelines for Ethical Research in Australian Indigenous Studies 2012, 4.

²⁵ Ibid.

²⁶ See, for example: Shawn Wilson, What is an Indigenous research methodology (2001), *Canadian Journal of Native Education*, 25(2), 175-179; and more generally, AIATSIS Guidelines for Ethical Research in Australian Indigenous Studies 2012.

organisations.²⁷ In this context, there is often likely to be a ‘mismatch’ between the expectations and requirements of the researchers, and those of the Indigenous people whose views are being sought for this project. This may have impacts on timing, schedules, logistics, and the nature of outcomes.

In the light of these factors, much of the consultation time was devoted to the research team and consultation groups building trust and understanding, before moving on to the substantive issues that were the focus of the discussions. Where Partner Investigators played a more active role in engagement with those consulted, more time was able to be spent engaging more deeply with the discussion questions posed as part of the consultation. This highlights the desirability of building into the design of future research projects provisions that will enable preliminary consultation meetings to take place that can, among other things, allow for full provision of information to project participants, as part of the free prior informed consent process. Nevertheless, the consultation process yielded rich results in understanding the range of expectations and concerns about the concept of a competent authority and Indigenous knowledge governance.

In the context of the complex nature of consultations with Aboriginal communities, there were several matters that impacted on the research team’s being able to hold all the meetings with communities that had been planned. For example, two of the planned consultation meetings did not take place because of matters relating to the timing. In addition, some meetings took place without some of the participants with the authority to attend and speak for these issues (Board Members for example) due to ill health, timing or other commitments. Meanwhile, two additional meetings took place that were not originally anticipated. However the Garuwanga Project has still met its original objective to consult with at least some of the communities represented by the Partner Organisations. The range of meetings held and their locations illustrates the diversity of demographics between Aboriginal communities. The Garuwanga Project was also restricted in scope in that, owing to the limitations of budget and timeframe, it was not feasible in the design of the project, to provide for consultations with communities and organisations in the Torres Strait. However, the themes, issues, and findings from this project are nonetheless also highly relevant to the interests of Torres Strait Islander peoples.

3.2 Decolonising Research: Indigenous Epistemologies

The discussion above about the ‘constraints’, or ‘limitations’ of the consultation meetings goes to the matter of incorporating elements of Indigenous research methodologies and epistemologies into the project, and in the discussion in this Report.

Projects and research involving Aboriginal people needs to be carried out in a fully participatory and inclusive way, in accordance with relevant ethics, protocols and guidelines (for example, the Australian Institute of Aboriginal and Torres Strait Islander Studies – AIATSIS - ethical guidelines). That is the purpose of the Research Roundtable comprising Indigenous and non-Indigenous researchers working together to achieve the aims of the Garuwanga Project. Central to such projects is the requirement that they be carried out within a framework, or standpoint of Indigenous research methodologies and ways of knowing, or epistemologies.²⁸ What this means is that research should be carried out, not just ‘from an

²⁷ AIATSIS Guidelines for Ethical Research in Australian Indigenous Studies 2012, 4.

²⁸ There is a large literature on Indigenous research methodologies, decolonising research and Indigenous epistemologies, and this warrants further discussion elsewhere. See for example Linda Tuhiwai Smith, *Decolonizing methodologies: Research and indigenous peoples*. (Zed Books Ltd., 2013).

Indigenous perspective’, but using a deep understanding of the Indigenous paradigm. The Indigenous paradigm is derived from, and embedded in, Indigenous concepts, cosmologies, and ways of seeing and acting in the world. An Indigenous research paradigm seeks to work from a contrary position to the dominant Western framework, to acknowledge a range of Indigenous worldviews.²⁹ One of many elements of this approach is to understand that Indigenous knowledge, and many aspects of Indigenous ways of being in the world are not isolated, or discrete events, processes and behaviours, but rather, are *relational*, and must be seen in this context. The conduct of the Research Roundtable meetings demonstrates this. In advancing an Indigenous research methodology, there is also a need to explore ‘local’ protocols and epistemologies as part of the *relational* context of people in *Country*. Here the role of the Partner Investigators is crucial in guiding the Chief Investigators and the rest of the research team prior to and during the consultations.

3.3 Methodology in Analysis of Consultation Transcripts

Identifying Australia’s obligations under the Nagoya Protocol, and the role of a Competent Authority in that context, as a critical part of the Garuwanga Project, a Discussion Paper³⁰ was prepared. That Paper outlined the idea of a competent authority, and suggested some options for its establishment and functions. A shorter document was also prepared to provide a summary of the key points covered in the Discussion Paper. Permission was obtained from participants in the community consultations for sessions to be sound recorded, and these recordings were supplemented by note taking. Two Chief Investigators other research staff, and the Garuwanga PhD student participated in the consultations, along with at least one of the Partner Investigators and Additional Investigator responsible for the relevant region. The former Research Associate provided continuity with arrangements made and data collected during her tenure. It proved impractical to hold Research Roundtable meetings to de-brief and finalise the notes taken following the consultations.

The recordings of the consultations were transcribed, with some issues in regard to the quality of the recordings. In some meetings, the quality of the recordings was compromised by background noise, room size and participants being softly spoken. As a result, professional transcription was not possible for those recordings and transcription was undertaken by the Research Associate who had the benefit of notes taken and having listened to the discussions first hand. For the sake of consistency, all transcripts were prepared by the Research Associate. In some places the recording were not audible or clearly understood. Where possible approximations of what was said were noted and any material of this nature included in this Report is noted as “paraphrased”. Meetings and participants were de-identified and are referred to by numbers so each quote in the data presented is identified by a meeting number (M#) and a participant number (P#). Transcripts and/or recordings were returned to communities where requested.³¹

Analysis of the Transcripts

Analysis of the transcripts from the consultation meetings was carried out using a qualitative approach drawn from elements of textual and discourse analysis and ‘narrative inquiry’.³² . Initially, some thematic

²⁹ See for example Shawn Wilson, What is an Indigenous research methodology (2001), *Canadian Journal of Native Education*, 25(2), 175-179.

³⁰ Garuwanga: Forming a Competent Authority to protect Indigenous knowledge - [Discussion Paper](#) (April 2018).

³¹ Following reflection on this point, there was some concern about potential risks in returning research materials to communities, that this could result in people being able to identify the particular communities and individuals in the meetings, and that people listening to the recordings may object to some of the comments in those recordings.

³² There is a large volume of literature on social research methodological issues. See for example Norman Fairclough, ‘Discourse and text: linguistic and intertextual analysis within discourse analysis’, *Discourse and Society* 3(2): 193-217, 1992;

analysis was engaged with.³³ This involved unpacking the transcripts and then repacking them in a way that presented an overview of shared and unique perspectives. As stated in the ARC Application, the original plan was to use three-stage manual coding³⁴ and matrix presentations based on the work of Miles and Huberman,³⁵ addressing the three evaluation criteria in the Discussion Paper:

- (i) suitability to the domestic legal and regulatory context;
- (ii) expectations of the functions and powers of competent authority to be established under the White Paper; and most importantly
- (iii) those Aboriginal laws and customs considered relevant by the Partner Investigators, and other Aboriginal members of the Research Roundtable.

On further reflection, and review of the consultation meetings transcripts, it became apparent that analysis employing an ‘intuitive’ discursive and textual, ethnographic analysis of the language used in consultations was a more appropriate methodology, rather than ‘iterative manual coding’, or other more formal, structured methodological tools.³⁶ This is because discourse and textual analysis methodologies allowed for greater capture and close interpretation of the rich and nuanced language in the recorded community consultation meetings, and the transcripts.

Questions for Discussion in Consultation Meetings

In the Discussion Paper and consultations these evaluation criteria were explored through a series of discussion questions, as follows

Reflecting Aboriginal customary laws, and cultural protocols

- What do you consider to be the most important features for a Competent Authority?
- What existing organisations do you think provide effective models for protecting Aboriginal and interests?
- What existing organisations do you think provide ineffective models for protecting Aboriginal interests?
- How should local competent authorities (LCAs) be formed?
- Should all employees, officers and councillors be Aboriginal people?

Functions and powers of the Competent Authority

- Should there be a single national competent authority (NCA)?

Terry Locke, *Critical Discourse Analysis*, London and New York: Continuum, 2004; Sylvia S. Barton, ‘Narrative inquiry: locating Aboriginal epistemology in a relational methodology’, *Journal of Advanced Nursing* 45(5): 519-526, 2004.

³³ RE Boyatzis, *Transforming qualitative information: Thematic analysis and code development*, (Thousand Oaks, London & New Delhi: SAGE Publications, 1998).

³⁴ Margaret Mc Kerchar, *Design and Conduct of Research in Tax, Law and Accounting*, (Thomson Reuters, Sydney 2010), 227-230.

³⁵ M. Miles and A. M. Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (2nd ed, Sage, Thousand Oaks CA, 1994).

³⁶ See for example T. A. Van Dijk., ‘Principles of critical discourse analysis’ (1993), *Discourse & Society* 4(2), 249–83; J. Blomeart, J. and C. Bulcaen, C., ‘Critical discourse analysis’ (2000), *Annual Review of Anthropology*, 29, 447–66.

- Should a NCA carry out the duties of the NCA and the national focal point?

Suitability to Australian law and regulations

- What form do you think the Competent Authority should take? (for example, an Aboriginal Corporation, statutory body, charitable trust, and how many tiers: local, regional, national?)
- How should decision-making within the Competent Authority operate taking into account that the Competent Authority needs to meet criteria under the Nagoya Protocol?
- Should the national registrars for men's business and women's business databases and registries be able to delegate authority to others in the Competent Authority?

Data collected from some of the consultations did not address each of the evaluation criteria, limiting the utility of a matrix analysis. Opportunity was provided for interested parties to make written submissions and for consultation participants to provide further written comments to supplement the information made available. No written submissions were received due to time pressures and other pressing priorities. At the same time, the data was rich with stories, narrative and reflection, connectedness to *Country*, culture and spirituality providing deep understanding of the concerns of community, especially the knowledge-holders charged with protecting the knowledge of the community.³⁷

Consequently, a narrative was created from the consultation meetings that helped frame these concerns. This narrative was useful in extracting contextual data that helped inform the thematic analysis. Responses addressing any of the discussion questions relating to each of the evaluation criteria were noted. Themes were developed through identifying common and unique perspectives, labelling these with keywords used by the participants as initial codes, reviewing the codes to identify potential themes followed by reviewing and refining the emerging themes. Emerging themes were tested against the data to confirm that key insights had been captured. In some instances, community views were articulated through direct comments. In other instances, attitudes were implied through direct responses on other issues and context. As outlined above, this coding approach to analysing the consultations outcomes was initially pursued, and was then superseded by an approach focusing more on interpretation of text, discourse and language, as this was found to be more suitable for the kinds of research data yielded by the consultations.

Table 1 (after the Appendix) shows the range of specific discussion themes, mapped against each consultation meeting.

³⁷ Ewa Czaykowska-Higgins, 'Research Models, Community Engagement, and Linguistic Fieldwork: Reflections on Working within Canadian Indigenous Communities' (2009), *Language Documentation & Conservation* 3(1), [pp?]

4 Theme 1: Indigenous Knowledge

It is important to be clear about what is meant by Indigenous knowledge. Also important, is to acknowledge that it is for Aboriginal and Torres Strait Islander peoples themselves to define what they mean by their Indigenous knowledge.³⁸

Indigenous communities hold bodies of knowledge relating to the lands, and natural resources for which they are the traditional custodians. Indigenous knowledge is intricately connected to, and permeates place, identity, being and cosmology.³⁹ There is no sharp separation between this knowledge, and all the other aspects of Indigenous peoples' material and spiritual lives.⁴⁰ This knowledge is also performative and expressive, it finds its form through action, and re-enactment, in ceremony, and in song, story, dance and other manifestations such as in artworks, and in ways of relating to one another.⁴¹ There is much knowledge that is bounded by strict rules of secrecy and sacredness. The protection of traditional knowledge is often incompatible with western legislative regimes; for example an infringement of traditional knowledge may offer unsatisfactory relief for Indigenous communities.⁴² In general, Indigenous knowledge is regulated by understood codes, rules, obligations and responsibilities. Its use, transmission and expression is governed by these protocols, which are also typically regulated along lines of gender, age, and other aspects of social and cultural status (such as kinship, family, ritual status and so.⁴³

A further aspect of Indigenous knowledge is that, while it is embedded in place and topography, associated with important features of the ancestral domain, it is also embodied in personhood, as much as in the specifics of place. The nexus between place-based, and person-based knowledge is intricate, and cannot be adequately addressed in this analysis.⁴⁴

These matters are important to note here, as the Garuwanga Project has as its focus, Indigenous knowledge relating to biological diversity and genetic resources, insofar as these are provided for in the CBD and the Nagoya Protocol. The CBD and the Nagoya Protocol employ throughout, the phrases 'traditional knowledge' and 'knowledge, innovations and practices of [I]ndigenous and local communities

³⁸ See for example Michael Davis, *Biological Diversity and Indigenous Knowledge*. Research Paper No. 17. Canberra. Department of the Parliamentary Library, Canberra, 1998; Michael Davis, 'Indigenous Knowledge: Beyond Protection, Towards Dialogue' (2008), *Australian Journal of Indigenous Education* 37, Supplement, 25-33,

³⁹ Sonia Smallacombe, Michael Davis, and Robynne Quiggin, *Scoping Project on Aboriginal Traditional Knowledge*, Report of a study for the Desert Knowledge Cooperative Research Centre, Desert Knowledge Cooperative Research Centre, Alice Springs, 2006.

⁴⁰ Michael Davis, Bridging the Gap, or Crossing a Bridge? Indigenous Knowledge and the Language of Law and Policy, in *Bridging Scales and Knowledge Systems: Concepts and Applications in Ecosystem Assessments*, eds. Fikret Berkes, Doris Capistrano, Walter V. Reid, and Tom Wilbanks (Washington DC, Island Press, 2006), 145-182.

⁴¹ In the development of international legal instruments for recognising and protecting Indigenous knowledge, there is a distinction made between 'Traditional Knowledge' and 'Traditional Cultural Expressions'. This is most developed in the work being carried out by the World Intellectual Property Organisation (WIPO). See for example Terri Janke, *Indigenous Knowledge: Issues for Protection and Management: Discussion Paper*, Report Commissioned by IP Australia, n.d.

⁴² Virginia Marshall, Terri Janke and Anthony Watson, 'Community Economic Development in Patenting Traditional Knowledge: A case study of the mudjula TK project in the Kimberley region of Western Australia' (2013) 8(6) *Indigenous Law Bulletin* 19.

⁴³ Davis, Bridging the Gap, *ibid*.

⁴⁴ For a discussion on the complexities of these issues concerning Indigenous knowledge and place, see for example Michael Davis, "'I live somewhere else but I've never left here": Indigenous Knowledge, History, and Place', in *Indigenous Philosophies and Critical Education*, ed. George Sefa Dei (New York: Peter Lang Publishing, 2011), 113-126.

embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity'. It should be noted that the CBD recognises the sovereign rights of the nation state (Australia) over genetic resources in scientific research and of commercial and non-commercial uses of genetic resources.⁴⁵ For the Garuwanga Project, this aspect of Indigenous knowledge may be termed 'Indigenous Ecological Knowledge', but on the understanding that Indigenous peoples do not separate knowledge that relates to biological diversity from all other forms of knowing. Indigenous lawyer Terri Janke has summed up some aspects of Indigenous knowledge thus:

*Indigenous people have customary rights and obligations to their Indigenous knowledge, cultural expression, just like land. Sometimes that knowledge is sacred, but at all times that knowledge comes from a place and forms the identity of the people. There are rules about how it should be respected, and reproduced, disseminated and interpreted.*⁴⁶

Central to the CBD and the Nagoya Protocol is the matter of access and benefit-sharing. These instruments offer a framework within which Parties can devise ways in which Indigenous peoples and local communities can receive benefits from the wider use of their knowledge and practices relating to biodiversity and genetic resources. An effective access and benefit-sharing regime can form the basis for capacity building, and economic development for many Indigenous communities.⁴⁷ In designing such schemes, it will also be crucial to take into account the idea, noted by many researchers, that the protection of TK has often proved incompatible with Western legislative regimes.⁴⁸

The subject of Indigenous knowledge was discussed at all consultation meetings, and participants also talked about the importance of the protocols around this knowledge. These discussions provided part of the context to the project's research questions around forming a competent authority. The following extracts from the consultations illustrate the kinds of discussions around this particular research theme.

P1M1: *detail as to what is sacred will be different across each local group... Some songs can only be sung by certain family members and if they don't have anyone to pass it on to then that history dies.*

⁴⁵ Virginia Marshall, 'Negotiating Indigenous Access and Benefit Sharing agreements in genetic resources and scientific research' (2013) 8(8) *Indigenous Law Bulletin* 16.

⁴⁶ Terri Janke, Mabo Oration 2011 - *Follow the stars: Indigenous culture, knowledge and intellectual property rights* (website), <https://www.adcq.qld.gov.au/resources/a-and-tsi/mabo-oration/2011-Mabo-oration> viewed 25 June 2018.

⁴⁷ Professor Natalie Stoianoff - *Garuwanga: Forming a Competent Authority to Protect Indigenous Knowledge – A Project supported by the Australian Research Council Linkage Scheme* Intellectual Property Forum, March 2017, 73-75 – place held?.

⁴⁸ Virginia Marshall, Terri Janke and Anthony Watson 'Community economic development in patenting traditional knowledge: A case study of the mudjala TK project in the Kimberley region of Western Australia' (2013) *Indigenous Law Bulletin* 8(6) pp. 17-21; see also Michael Davis, 'Law, Anthropology, and the Recognition of Indigenous Cultural Systems', in *Law and Anthropology: International Yearbook for Legal Anthropology* 11, eds. René Kuppe and Richard Potz (The Hague, Martinus Nijhoff), 298-320, 2001.

P2M2: *we are really passionate about protecting knowledge of plants and Aboriginal knowledge for anything that's on Country, that's one of our main issues What is connected to the land, what is the story, who belongs to the story, who is the traditional owner of that story?*

P4M4: *Knowledge is not your own. It comes from your ancestors and gets passed on to children and grandchildren. Knowledge holders are caretakers.*

P4M5: *Like if my old people were still alive and I asked them what knowledge was, they would say it's the reason the fish swim up the river. And why do the fish swim up the river? They swim up the river to spawn. So, you can't catch new fish unless you have spawning fish, and that's just one example. Six season weather patterns, that's incredible knowledge because it explains why the trees grow, why the trees blossom, why the fish come in, why the birds move, why, what's that little mouse that screams in the middle of the night, it explains the ecosystem, yeah, why the lyrebird builds its mound.*

P2M6: *any knowledge that is given to me that is my inherent right as a matriarch and elder of my family to pass on that knowledge to my own children, my own grandchildren, the neighbours, the kids at school, whatever.*

P3M6: *and that's culture. To pass your knowledge onto one person who can help the community. They then choose a person to then pass that on to so that then not everybody else is either burdened with it but they can benefit from it ...*

P5M6: *I'm still learning now too my cultural stuff and I have my elders that are sitting here, and I try and talk to them and if it's right I get the answer, and if it's not I have to go back to the drawing board and that's the same thing I do with my son.*

In Meeting 3, a participant spoke strongly of the pain, or hurt caused by the abuse of Knowledge.

P1M3: *They send a letter for us. They say we will come here on this date. They tell us we come to the bush. They come, take us. They look at plants and things ... They explain that they come for our stories. ...already, already, already...that's what I am saying... we don't get a response back and we are lost, we are crying, pain, sorrow, heartache. The miners, all them, taking over, stealing our stories... we mind our own business ... We gave them all the stories and they don't come back. They are sweet talkers. They tell us ... we are lost. This is all bulldust. Cheat. Liar. Who knows... no answers... we used to have a free life...in the bush ... where is it today...*

5 Theme 2: A single National Competent Authority

The consultations considered whether there should be a single national competent authority that carries responsibility for all the obligations under the Nagoya Protocol, including acting as a national focal point; or whether several competent authorities would better serve the aims of the Protocol such as regional and local community authorities. This research question was not specifically addressed in the consultation meetings. In some of the consultation meetings however, where there was discussion about the need for different types, or ‘levels’ of competent authority (such as ‘national’, or ‘local’), the discussion focused mostly on the idea of a single national competent authority, and how that might operate. The following extract illustrates this:

P1M1: *I do see a need for a national body, but it has to be carefully constructed. ... there is an important need for an overarching authority that sets the broad principles and framework and best practices but there still needs to be some support for those people to be able to apply and implement those things I always see the benefit of having a regional or national body a strong voice in a single presence and sort out ourselves, and make a clear pitch for whatever it may be towards the government ...em... concise, succinct.*

Question to M2: *and then what about a national body that all the [Aboriginal organisations] speak to?*

P2M2: *I think the competent authority would be made out of whoever works in the [regional organisation] to make up that competent authority.*

Question to M2: *So each land council has a rep?*

P2M2: *Yep or a couple.*

Question to M2: *and then they just meet whenever it is necessary to report to the government or to the international body?*

P2M2: *Yeah*

Question to M3: *Do you think there should be one national body and then a regional organisation?*

P1M3: *That's how it should be*

P1M4: *We would like a bit of time to think about It That would be easier. Gives us a chance to read through it and then add our own opinions*

P5M5: *Now if there was an authority, a competent authority that ran that I don't know how that would work.*

P1M6: *My answer to the question of a national entity is to take some of the earlier thoughts. It's a yes and no answer. Yes, but only if the federal or national body's functions are clearly defined and limited.*

In one meeting, it was seen that the unnecessary duplication of organisations is undesirable, as duplication leads to confusion and a waste of resources. This supports the idea that a single organisation carrying out both roles may be preferable.

P1M1: *what we find is duplication of services across the region. They are all trying to do the same thing ... in isolation Aboriginal people on the ground are just like any other consumer and they want to know what's in it for me. I don't want to set up another entity or structure that doesn't have a place, have a mission where Aboriginal people may feel they are going to be ripped off. So, you need to be clear about what you are trying to achieve and how you are going to go about it ...*

Theme 2.1 Legal structure for the national competent authority

An important consideration in establishing views as to the forms and functions of a competent authority, was to understand what type of legal structure this may represent. This question is a difficult and complex one for all involved in the project, since the matter of 'legal structure' goes to the heart of the type of organisation that may be considered, including: governance; decision-making; consistency with national and state laws. The extracts from the transcripts of the consultation meetings ask participants what should be an appropriate legal structure for a competent authority. However there were no specific views expressed by the participants regarding the legal structure that should be used for the national competent authority. The discourse in some of the consultation discussions were about matters such as function, rationale for competent authority, and best practice, as illustrated in the extracts quoted here (above and below).

The participants in Meeting 2 expressed a strong affinity with their regional representative organisations, and the participants in Meeting 3 with their regional cultural organisations, and to some extent other representative organisations. This points to an issue concerning the relationships that Aboriginal people already maintain with their existing organisations. It raises questions about whether another, separate organisation might be established as a competent authority, or instead, existing organisations take on the roles of a competent authority given their responsibilities, networks and existing connections, or relationships that people maintain with their existing organisations.

Consultation discussions had the focus of participants during these two meetings as more regional than national, particularly in the case of Meeting 3. This suggests that caution should be exercised in assuming that participants were providing a clear endorsement of these types of organisation as competent authorities at the national level. In Meeting 2, there was general support for the regional representative organisations being involved. The discussion in Meeting 3 did not tie the concept of a national body to any particular type of existing organisation.

There was a response by participants from Meeting 4 regarding the benefits of forming a new organisation over trying to introduce new activities into existing organisations. This again illustrates, the importance of considering the relationships and networks that already exist between people and their existing community organisations.

In Meeting 5, the challenges of conforming Aboriginal law and culture to Western style organisations was raised, but no structural solution was suggested. This goes to the heart of the issue of Indigenous methodologies and epistemologies, as discussed above. It invites reflection as to what extent the consultation questions were underpinned by understandings of decolonising Indigenous research methodologies, or whether they were driven more by Western notions concepts and notions regarding legal structures, types of governing and regulating organisations, and related matters. It is in the nature of any research project to be constantly engaging in self-reflexivity about the methodological approach as the project progresses. Indigenous methodologies are more oriented to grounded theory where the

participants create the agenda, whereas the Garuwanga Project defined the question prior to the interviews. The questions in this instance helped to shape the answers. This invites reflection on the extent to which this project engages in ‘Indigenous methods’ for decolonising research, or mainstream methods that bring about a decolonising effect. But the Garuwanga Project is trying to bring together two systems of law – Aboriginal law and the Western colonial law that operates in Australia. And the further complication lies in bringing these systems together to address national obligations under international law. If the ultimate aim is self-determination, this needs to be achieved regardless of the legal framework in which the nation state is operating.

In response to a question raised in Meeting 6 there was acknowledgement that a statutory authority structure might be useful as a funding and sustainability model.

P1M1: [paraphrased] *I’m not fixed on a particular structure ... em - what is best practice? Actual structure won’t worry people – it’s more important to show how people will relate to it and explain the rationale behind choosing a particular structure.*

P3M4: *Just thinking from what I have gathered and what I have read and when I have talked to people, a new model is a lot easier and quicker than trying to change an existing one.*

P1M5: *... the whole thing is around protecting knowledge and who are the right people and the right groups to protect the knowledge and I think you said it before that we are trying to create something new and in that notion of creating something new is the dominant structure and legal system going to allow that newness? That protects the very essence of what you are wanting this to be which is knowledge which is all encompassing and actually takes into account law/lore. Is the western system that is currently in place going to allow that?*

Question to meeting 6: as opposed to having to apply for grants and stuff what about things like statutory authorities where their funding comes through government appropriations?

P1M6: *That’s as close as you will get to secure as far as I know.*

Theme 2.2 How the national competent authority should operate

The consultations also sought Aboriginal peoples’ views on how a national competent authority might operate, either as a single authority or several, and about the legal structure of such an authority. There is a reciprocal relationship between the structure of an organisational entity, and the way it operates. Structure, operation, legal framework, and associated political, socio-legal and cultural issues encompassing principles of good governance – are all components of governance as addressed in the Garuwanga Project Discussion Paper. While there were few direct comments by participants in consultation meetings about a possible structure for the national competent authority, there were strong views expressed about the way in which the authority should operate. Thus, comments about its operation also imply structural issues where these are viewed in the wider context of governance. In brief, governance principles identified by the Garuwanga Project Research Roundtable embrace values such as trust, confidence, participation and advocacy.

Theme 2.2.1 Clearly defined purpose, relationship to the community and to other organisations

Some discussions with community organisations acknowledged that people place high importance on their relationships, and networks with existing community organisations in their locality and region. In

considering the purpose, roles and functions of a competent authority then, it is important that the relationship a competent authority has with these existing organisations is understood. In at least two consultation meetings, some participants indicated the importance of understanding the purpose of a competent authority, and of its mandate and scope, and how such an organisation would serve them.

P1M1: *people need to see the need for the Authority ... how do they interrelate and how they work together. You have to be clear about what is your mandate - what are you taking charge of...*

P1M6: *I think that an organisation's purpose, role or job has to be very clear, defined and specific, rather than lovely, wandering words and...and then you know what your business is, and you stick to it and you are required to stick to it. If you want to change your business there's obviously got to be a process where you can do that but not just by choosing to change.*

Theme 2.2.2 The national competent authority needs to be Aboriginal-led and run

Consistent with self-determination and Indigenous rights, as articulated for example in the United Nations Declaration on the Rights of Indigenous Peoples, a national competent authority should be owned, controlled and managed by Aboriginal people. Meetings 1 and 6 addressed this issue. In those meetings participants acknowledged that in some instances Aboriginal communities will not have all the skills required to lead and operate a competent authority but where those skills exist, then Aboriginal people should fill those roles. A participant in Meeting 6 suggested the use of parallel roles to facilitate skill development for Aboriginal people. This suggests an implicit tension between Western oriented models for organisational and business affairs, and the requirements imposed on Indigenous communities to conform to these.

This issue of Aboriginal control and management of a competent authority also goes to the heart of the matter of engaging in a decolonising Indigenous epistemology, wherein peoples are at the centre of, and drive any processes for legislative and political reform and innovations that flow from Australia's obligations under the CBD and Nagoya Protocol.

P1M1: *it's great to be working towards 100% Indigenous but the reality is that it is quite a specific skill set that you are looking at and it needs to be acknowledged that a community might not have all that skill set at a particular point in time, but it should be stated that this is the skill set that is going to be needed into the future. We should be backed, and the community should be supported to build that skill set.*

P1M1 [paraphrased]: *representatives are not able to speak on an issue if they are not from the country that the issue relates to. I think it comes back to not having a great appreciation of how we operate in terms of who can speak for country.*

P1M6: *... the people who operated, not ran, but operated the system would have to have specific skills or be able to acquire specific skills ... Any decision making on Aboriginal cultural matters must and can only be done by Aboriginal people. Administrative decision making about what bank account, paying the bills and which bills get paid first I don't care. That's not cultural business. So, I think that answers your question about staffing being a mix.*

Another critical component of governance, structure and function, and decision-making for a national competent authority would be how individuals are appointed to such a body. These issues were discussed

in some of the consultations. Participants talked about how democratic processes have been abused, and some expressed scepticism around the way in which some government appointments work. Problems with attempts at representative models were also raised, for example, with reference to the issue of who has authority to speak for *Country*.

There was some discussion of the decision-making body at the national level needing to be in the form of an Aboriginal Congress with participants from all Aboriginal nations. This structure may be unwieldy for more routine decision-making operations, but consideration should be given to implementing this model in a form that allows each community to have a voice on key issues.

Theme 2.2.3 The role of the individual in the community

Discussions in some consultation meetings also turned to the matter of roles, responsibilities and rights of individuals within Aboriginal communities with respect to knowledge for which they are the knowledge holders. It was suggested by some that a community-based model is not consistent with how Indigenous knowledge works.

P1M6: *The key, and this is my opinion now, the mistaken belief of the notion of community knowledge is an anthropological myth in my mind. Knowledge belongs to the individual. Either they have been taught stuff by their parents, aunties, uncles or whatever and they have learned stuff through their own lives that adapts, modifies or whatever the stuff they have been taught. Knowledge is not a collective thing because it is drawn from a lot of different experiences and sources. It is purely an individual and what [name] has decided to do is her decision and her right to make that decision and it is a good demonstration. A lot of people might make the decision and say well I want a million dollars, so they will sell it to a pharmaceutical or something. That will happen and that is because of the other influences in society but what you might call traditional knowledge... is an individual knowledge. The decision making about it is not only a right but the responsibility of that individual.*

The CBD and Nagoya Protocol do not detail the specifics of individual versus community roles and responsibilities in regard to access and benefit-sharing, beyond using the term ‘Indigenous and local communities’. The earlier discussion also outlined some of the complexities in the relationships between the individual and the community in Aboriginal society. These are matters that go to the heart of the cultural and socio-political organisation in particular Aboriginal communities, and are central to determining how a competent authority will regulate and manage access and benefit-sharing arrangements. This underscores the importance to ‘not generalise from understandings of one Indigenous community to others or to all Indigenous peoples’ as noted in Principle 1 of the AIATSIS Guidelines. The diversity among individuals, groups and communities is important to recognise in a project such as this. A fuller discussion of this is outside the scope of this document, but it is important to acknowledge this as a matter that will require some analysis and discussion, and will be taken up in the project’s Final Report.

Theme 2.2.4 The national competent authority needs to be independent from government

To realise the rights of self-determination, a competent authority should be independent from government.⁴⁹ The requirement that a competent authority should be independent from government was

⁴⁹ See generally, National Congress of Australia’s First Peoples, *The Call for a National Indigenous Cultural Authority*, 2013.

raised in the Indigenous Knowledge Forum 2014 White Paper,⁵⁰ and also in the Garuwanga Governance Principles.⁵¹ This crucial aspect of self-determination was mentioned in Meetings 1 and 6. As well as fulfilling the right to self-determination, independence from government would also be important to the tenure of the organisation, and strengthen its capacity to maintain decision-making and control over assets and databases. The matter of databases is one for discussion in the project Final Report.

P1M1: *Independence, membership are important. How does it fit into the political landscape?*

P1M6: *So, it's accountable down the line not up the line to government or whatever because it has no accountability to government because it is an independent authority.*

Theme 2.2.4.1 The national competent authority needs to be long lasting and securely funded

The Indigenous Knowledge Forum 2014 White Paper⁵² raised questions around the timing of a competent authority – and access and control of data by Aboriginal communities. Forum and consultation participants were concerned about what would happen to any databases and assets held by a competent authority if it was wound up. This issue was addressed most clearly in Meeting 6 where it was observed that a national competent authority would need to have secure tenure, as far as possible. In part, this concern reflects peoples' weariness with frequent changes in governments, which often results in changes in programs and entities with responsibility for particular matters.

P1M6: *What I'm worried about is security of tenure, not a guarantee because you can't provide guarantees but whatever the construct is it should provide the securest tenure and therefore less ability for government intervention so the least ability for government to intervene. ... So, if the organisation had the security of the knowledge that its position was safe as long as it did the job that it was specified to do, that's the only insecure thing or questionable thing, you need that sort of thing.*

Another concern is that a national competent authority should be securely and independently funded. Participants in some of the consultation meetings raised the funding issue, and these discussions referred to government funding as the primary funding source. In Meeting 1, the response was that the issue was not necessarily one of more funding, but rather of more efficient use of existing funds. In meeting 6 participants reflected on some programs that have used particular sources of government revenue to fund Aboriginal communities. There was some discussion of other funding options, however these were not presented as possible solutions to funding a national competent authority.

A participant in Meeting 4 noted that some Aboriginal organisations, at least at the local level, were self-funded through member contributions. In some instances, meeting space is apparently provided through local area land councils (Meeting 6).

⁵⁰ See background on the White Paper at the beginning of this Report, and UTS – Indigenous Knowledge Forum and North West Local Land Services, 'Recognising and Protecting Aboriginal Knowledge Associated with Natural Resource Management' (White Paper, Office of Environment and Heritage, Government of New South Wales, 2013); see UTS (website), <https://www.indigenousknowledgeforum.org/white-paper>.

⁵¹ Garuwanga: Forming a Competent Authority to protect Indigenous knowledge - [Discussion Paper](#) (April 2018).

⁵² UTS – Indigenous Knowledge Forum and North West Local Land Services, 'Recognising and Protecting Aboriginal Knowledge Associated with Natural Resource Management' (White Paper, Office of Environment and Heritage, Government of New South Wales, 2013) <https://www.indigenousknowledgeforum.org/white-paper>.

In Meeting 5, the possibility of cultural decision-making positions being honorary with funding for expenses was raised (see also discussion below on membership of competent authorities).

We note that the experience various participants have with managing different types of organisations was varied. Some of the community members consulted have established income generating small to medium enterprises. However, for some groups there seems to be significant reliance on government funding. Many participants were not currently in paid work due to remoteness of locality, age, health issues, caring or other responsibilities. Many were engaged in voluntary work.

P1M1: *Financial support is really important. There has been a lot of research around governance structures and best practices, but the reality is that none of it has been applied and used in practice. It's theory and that's where I think more needs to happen. ... we aren't asking for any more money we are just asking that in these difficult times that better use is made of it. Give it to us and we will make decisions about who to use as service providers, what programs are they running, and we will hold them accountable for that ourselves.*

P1M6: *There are models and variants around that could provide a greater level of security. The land rights tax one I thought was good as an idea and a concept ... So how you are going to do that in the long term with annual funding and all, that em- I'm talking about guarantees and unimpeachable guarantees they don't exist but maybe there's a way that something close to it.*

Theme 2.2.5 The national competent authority needs to strengthen capacity

The Nagoya Protocol provides for capacity building for nation states, their institutions, and for Indigenous and local communities.⁵³ Capacity building has many aspects, including infrastructure, financial and economic strengthening, and strengthening and support for participation, and decision-making. It can be addressed at community, and/or individual, levels, and include skills development, organisational strengthening, and a wide range of other components. The National Competent Authority will have a key role in capacity-building.

The issue of capacity-building was discussed in several of the consultation meetings. Participants in some of the meetings reflected an interest in skills building and in enabling organisations to operate more effectively. There was also recognition by some participants that differences in access to education and employment opportunities affect the skills base that may exist in different communities.

P1M1: *... there is an important need for an overarching authority that sets the broad principles and framework and best practices but there still needs to be some support for those people to be able to apply and implement those things ... create tools that are used to say how would you work in this complex framework. How would you govern yourselves?*

⁵³ Nagoya Protocol, Article 22.

P1M6: *There has got to be a parallel position where people are developed within the structure of the organisation to take on that role. So that CEO role must be a term role and must have its performance measurement include staff development, Aboriginal staff development, so after the three or five year term or whatever it is there should be somebody in the organisation capable of filling that role.* **P5M6:** *An Aboriginal person?* **P1M6:** *Absolutely, yes sorry I didn't make that clear but yes because there are just certain skills that a person may not have and as long as they have the other skills, the cultural skills and they have the capacity to acquire the non-cultural skills they should be fostered and sponsored because isn't that what we talked about? In terms of our knowledge processes?*

Theme 2.2.6 The national competent authority needs to have sound governance

Principles and practices for good governance are vital in developing a national competent authority. Governance Principles have been discussed in the Discussion Paper, and are also referred to earlier in this document.

The need for good governance was discussed directly by participants in Meetings 1 and 6. The Garuwanga Project has developed a set of governance principles using input from a number of sources.⁵⁴ These principles are set out in the Discussion Paper and were provided to participating communities.⁵⁵ The Garuwanga principles relate to:

- Relationships/Networks
- Trust/Confidence
- Independence from government
- Community participation
- Guarantees/Confidentiality
- Transparency/Accountability
- Facilitation
- Advocacy
- Communication
- Reciprocity.

Meeting 6 discussed and endorsed the Garuwanga principles. In addition, that Meeting raised safety as an issue, although the view was subsequently expressed that safety was captured in other principles already listed in the Garuwanga principles. The notion of 'safety' has multiple meanings, including 'cultural safety'.

The participants were asked to identify organisations that provided both effective and ineffective governance models for protecting Aboriginal interests. In response, participants offered some examples of existing organisations that provide efficient models for a competent authority. Again, this relates to emerging central themes in this analysis, that of the relationships, networks and associations that participants already maintain with existing organisations in their community, locality and region. The connections that bind people and these organisations, whether in urban or rural areas are of vital importance and are informed by complex combinations of kin, family, clan group, language and other

⁵⁴ See Section 6 of Garuwanga: Forming a Competent Authority to protect Indigenous knowledge - Discussion Paper (April 2018).

⁵⁵ Ibid, Section 7.

ties. Participants will often talk about these organisations, some of which include health services. At meeting 1 participants mentioned the work being done in Empowered Communities⁵⁶ as an exciting and beneficial development.

For examples of organisations deficient in some aspects of governance, some participants expressed strong views about the operation of Aboriginal land councils. At meeting 2 participants noted the importance of Aboriginal people having rights, reflecting the view that often Aboriginal people feel they have no voice in the organisations that serve them. Such comments turn on critical matters of participation, empowerment, representation, and control over decision-making.

Some of the issues that were identified as problematic in terms of the ways in which organisations operate include nepotism, fighting, with decisions being made that do not reflect the interests of key stakeholder groups, and disenfranchisement of important stakeholder groups. These issues were discussed in most meetings.

P1M1: *you have a process put in place and you thoroughly work through that process but ultimately you have a decision maker that can overrule all that, so I think it's got to be respectful. People have to be reassured that if they are going to engage that their voice will be heard*

P1M1: *Representation is going to be difficult ... but I think the real challenge for this process is that it is a complex issue that you are dealing with and how you translate that down to the grass roots level and try to be clear about what you are trying to achieve- communication is critical*

P2M2: *structuring a governance body where we have rights.*

P1M6: *it should be structured or set up so that any person, member or employee or whatever, would feel safe to raise any issue that they thought was relevant and I hadn't thought about that and I thought, the notion of safety is really important and then when I thought about it a little bit it said to me, this is why things like our lovely local land council doesn't work because nobody feels safe.*

Theme 2.2.7 The national competent authority needs to facilitate regional/local competent authority operations?

Turning again to the matter of how community organisations interact and relate to one another, some discussion was held on the relationship between a national competent authority and regional/local authorities.

At a number of meetings, participants expressed a view that local and regional competent authorities should not be subordinate to a national competent authority. The national competent authority needs to facilitate for, not to govern over, regional/local competent authorities. This is an important view on relationality that again reflects an Indigenous worldview. This idea of 'relationality' articulates a consciousness in Indigenous worldviews about the ways in which things – people, animals, plants, places

⁵⁶ Empowered Communities, *Empowered Communities: Empowered Peoples Design Report*, 2015, <https://empoweredcommunities.org.au/wp-content/uploads/2018/04/EC-Report.pdf>

and so on –are interconnected and interdependent.⁵⁷ It is suggested, from many of the discussions in these consultations, that relationships between organisations are often seen not in a hierarchical, top-down sense, but rather, in terms of interconnecting, reciprocal and mutually supporting entities.

If a regional/local competent authority is considered, then questions need to be raised about resourcing and capacity building of communities. In some meetings, participants recognised that communities may not have the resources to carry out all the functions that a regional or local competent authority might need to access, such as business and financial training and development skills and support, for example. In such circumstances it was considered that an important role for the national competent authority would be to provide the relevant resources and services. This has the advantage of avoiding unnecessary duplication of services that might be needed infrequently by communities. It would also mean that services, such as auditing and accounting, and financial management, that might place a significant financial burden on communities, may be accessible through the regional and/or the national competent authority. In response to a question about rights and responsibilities of competent authorities, participants at two meetings indicated that the national competent authority should be responsible for enforcement of intellectual property rights and traditional knowledge.

P1M1: *if you have an authority at a higher level then there's an expectation that there's a good governance structure at those lower levels and quite often it isn't there and if the overarching authority isn't as effective as it should be either because it doesn't provide appropriate support or in what it requires of those local authorities and governance structures to operate functionally they are not getting the support I suppose from government. ... How do you make decisions about issues on country and they are just fundamental issues we have to deal with and then when you talk about specific subject matters about IP or land management or tenure or unemployment or whatever it might be then we've got a bit of a struggle to be able to make informed decisions on particular issues ... the need for support to those more grass roots level*

P1M1: *so that people feel that when you going to that national group you are not having to take a lower position or a position that is different from your subgroup.*

P2M5: *And one of the conflicts that arises in that is, let's say some community out there has some magic medicine or something that they use, and it gets commercialised illegitimately, whatever that might mean, whatever the process might be, that little community is so disadvantaged. They have no means to actually combat the might of the pharmaceuticals or whoever the abusers are. Those abusers may well be government itself That's where I see a role for a competent authority not as a governing authority but as a support authority. So, it somehow gathers, through the databases you talk about, the resources to protect or support that mob in their battle against the giants. That could be a role at a higher level in the food chain of competent authorities whereas the actual competent authority itself as in what is legitimate to happen with that medicinal knowledge is that little mob down there that has held that knowledge for generations, but they need some back up because they are just going to get steam rolled given the might of society. That's why silence is golden in our business.*

⁵⁷ See for example Kathy Absolon, 'Indigenous wholistic theory: A knowledge set for practice'. *First Peoples Child & Family Review*, 5(2), 74-87, 2010.

P1M6: *So, if there's a valid reason for a national body to exist and I think there may well be and that body adhered to the validity of those reasons in its functions and it's not a controlling authority but it's like a support body.*

Theme 2.2.8 The national competent authority needs to have appropriate decision-making protocols

In discussions with participants on the topic of governance a theme that recurs throughout is concerned with decision-making. Effective protocols and processes for decision-making were identified by participants as being an important issue. For an Indigenous model of an organisation that is founded upon self-determination, the development and implementation of protocols and processes for effective decision-making is a first priority. That means that Aboriginal people must be the decision-makers, and assert their ownership and control for overseeing informed consent, ethics and other protocols. Where decisions relate to a particular area or site on *Country*, the decision-makers should be traditional custodians and others who have rights and responsibilities over that country. Whether these are recognised Traditional Owners under native title, or land rights legislation, or as recognised by other Indigenous institutions, or community groups, will be matters for Aboriginal people to decide at their community levels.

A decision-making model that is often deployed by governments relies on Aboriginal advisory boards or committees. However, in an advisory role, Aboriginal people are often not the decision-makers. Rather, their advice is provided to the person or group who has the decision-making role, but who may have no obligation to take that advice into consideration in making a decision. For example, under the NSW National Parks and Wildlife Act, the Aboriginal Cultural Heritage Advisory Committee has no decision-making capacity, rather, the Chief Executive of the Office of Environment and Heritage has the decision-making power in relation to 'the protection of Aboriginal objects and Aboriginal places in New South Wales'.⁵⁸ Further, the composition of such advisory committees or boards may comprise of members appointed by government or other agency sectors. This raises issues with regard to how such individuals represent the interests of community, and reflect the views of the community/(ies) they are intended to represent.

Participants in all the meetings viewed Aboriginal decision-making as being of importance, including decisions on cultural matters. In Meeting 6, a participant shared anecdotes about community members who are not traditional owners exhibiting culturally inappropriate behaviour. This sentiment was mirrored in Meeting 4, where a participant noted the importance of all services being culturally appropriate. Comments in Meetings 3 and 5 reflect the need for institutions to remain compatible with Aboriginal culture.

P1M1: *going through processes but making decisions with no regard to the advice that has been provided ... existing stuff like the Heritage Act where you have a process put in place and you thoroughly work through that process but ultimately you have a decision maker that can overrule all that, so I think it's got to be respectful. People have to be reassured that if they are going to engage that their voice will be heard*

⁵⁸ National Parks and Wildlife Act 1974 (NSW) Section 85(1).

P5M2: *There has to be a, what do you call them, a custodian of those areas on country that they have to look at to see who are the people.*

P2M4: *they've got to be cultural appropriate services. You can't do it any other way because we are protecting our arts and our designs.*

6 Theme 3: Regional/Local competent authorities

The consultations discussed the requirement and need for a national competent authority, and the possibility of establishing regional and/or local competent authorities. The importance of local-ness to Aboriginal peoples cannot be underestimated, as illustrated in the discussion on the consultations around the theme about relationships people have with their local organisations. In this way consideration needs to be given to establishing regional and/or local competent authorities that are the decision-making and negotiating bodies for each community with regard to Aboriginal biodiversity-related knowledge and associated genetic resources. Consistent with observations made in the Indigenous Knowledge Forum's 2014 White Paper, Aboriginal communities consulted in this project favour the concept of subsidiarity with decision-making residing with regional bodies or the local community where possible. The traditional owners are the custodians with authority to speak for their *Country*. Consequently, it must be these custodians who make decisions that affect that *Country*.

P2M4: *At the grassroots that's where everything happens.*

There are a number of themes with respect to regional and/or local competent authorities and the relationships between these and a national competent authority. Discussion of these themes is repeated here for the sake of completeness, and also to capture comments that specifically relate to the role of the regional and/or local competent authority in these arrangements.

Theme 3.1 The form of the regional and/or local competent authority is for each community to decide.

There is a great diversity between and among Aboriginal communities and some comments during the consultations reflect this diversity. According to one estimate, approximately 250 language groups existed at the time of European colonisation and around 120 of those languages continue to be spoken.⁵⁹ Each different language group (nation) has very specific rules, laws, codes and protocols that inform their conduct and decision-making. For this reason, the particularities of ways in which a regional and/or local competent authority might be established and function are to be decided by regional representative bodies and/or local communities, and each community expresses its own view on these matters.

Participants in Meeting 3 outlined a model in how their community conducts their decision-making. The participant described this process in a visual way, referring to concentric circles, talking about the specific roles and responsibilities of certain individuals and groups within the community, and how they engage

⁵⁹ AIATSIS, Indigenous Australian Languages <https://aiatsis.gov.au/explore/articles/indigenous-australian-languages>.

with each other. This point raises again the importance of relatedness and interaction within Aboriginal communities – a theme that has resurfaced throughout the consultation discussions.

P1M5: *uniquely we are First Nations Peoples to this landscape. Uniquely, we are multicultural in our nations*

P1M1: *need to accommodate different language groups and communities in how the template is presented for how you apply a framework so that people can adapt it realise and localise. If you can get to that point will be very helpful not only for this region but also for the whole of Australia.*

P1M1: *there isn't a general understanding of the required resources to penetrate to the grass roots levels to support and be able to engage ... you need to be able to penetrate through all of those layers*

P1M1: *Can't be too prescriptive*

P1M1: *Position that is consistent across the whole of Australia is unrealistic.*

P2M4: *... it's what the people here in Australia need. But it's going to be a problem because every area is different. Broome's different. Northern Territory different. North New South, Queensland different. Tasmania! Go down there. It's so different.*

P7M3: *On the outside of that circle, the last faded circle, that's all of us. All of the people that are coming in. That orange circle in the middle, that's the interpreters and that's the people who understand what you are saying and then they will go away and have a meeting with the elders and they will explain. You don't come and expect to get answers a yes or no right on the spot. It takes time. People should come in and talk to these people on the outside and then let them talk to the elders and discuss it in an understandable way and then that information, the yes or no, will come back out to you and it's just respect honouring the dignity that comes with all that*

That old man in the middle goes back out and tells us what to do. We don't make any decisions here ... until he says yes or no but it's all explained to him in the proper way like how I just spoke now

Question to meeting 6: *In terms of the local entity, do you think different communities are going to have different ideas about what they want theirs to look like? P1M6: Absolutely P4M6: It's going to be like a diamond. P1 M6: A lot of different facets. Yes, a good analogy. Each facet is different. P2M6: Flexibility I think is a good word in all this too. Being flexible to maybe listen to somebody else's way of doing things and then adjust that little bit slightly to work for us.*

In regard to how a regional and/or local competent authority might be managed, participants in Meetings 1 and 5 spoke about the challenges of administering Aboriginal business within the ambit of Western legal and business systems. This turns again to questions about Indigenous versus Western ways, in regard to governance, decision-making, and organisation and management.

P1M1: *It's an enormous burden to do all that and we see it all the time where they say not only are we faced with this non-Indigenous construct to make decisions about and then we go home and have customary issues to deal with.*

P1M5: *and we are now having to operate within a foreign legal construct which is Western, a Westminster construct which is why I was kind of well what's your definition of knowledge because if it's that all-encompassing then we're going to try and fit a big massive round peg into a tiny square hole because the Western construct is so ... limited ...*

The way in which a regional and/or local competent authority needs to be run is also likely to be affected by the circumstances and history of the respective communities. For example, in remote communities, community Elders may speak English as a second, third or fourth language, and may have had a limited Western education. Lack of opportunity, poverty, poor health and social challenges faced by Aboriginal communities⁶⁰ were clearly visible within the broader communities visited, and particularly in remote areas of the West Kimberley region of WA.

P1M1: *Reality is we sit and talk about a lot of big issues (that are important to us) but a lot of potential beneficiaries are in crisis mode living week to week and have more important issues.*

P1M1: *We are failing against the gross measures.*

P2M3: *I would like to say something about ... we are getting ripped off by the...the old people with that tax that they brought in ... too much money for us ... we only get \$200 a fortnight... the money out from... we got nothing to pay anything... all these bills come ... we got nothing to pay out you know... pension...*

P1M3: *aged pension...* **P2M3:** *we have nothing to pay ... money ... have to wait next fortnight, all that...*

P7M3: *So, I think that protocol should be understood from the outside before you come in here. I mean even how to communicate with people. I mean for a lot of our people English is a second language ...*

Those circles on the outside represent the protocol you need to go through to talk to him because we have had problems a lot of times in the past where people come in even researchers, mining companies and all that and go straight to him and he might not understand all the jargon and language that people use, and they get him to sign anything.

Aboriginal people that live in urbanised and rural contexts also face challenges. Whilst there may be greater opportunities for community and access to services than experienced by remote communities, there are many social, health and economic issues faced by rural and urban Aboriginal communities.

In the extracts below, some urban and rural communities discussed additional challenges in terms of demography and group identity. These challenges may arise in regard to the extent to which they include Aboriginal people living off, and sustained by their traditional lands. For example, despite, traditional owners being significantly outnumbered in some developed areas, they continue to engage in cultural

⁶⁰ *Indigenous disadvantage in Australia: The disparity between Indigenous and non-Indigenous Australians* at <https://www.australianstogether.org.au/discover/the-wound/indigenous-disadvantage-in-australia/> viewed 4 July 2018.

activities including hunting and collecting foods and medicines. This can be problematic with regard to traditional owners being heard or able to access their own *Country*.

P4M6: *One of the big problems we have with any organisation here is that people are not from here. They have no loyalty to the land you know and that's the big problem. We have these fly ins and they have full rights and what is it?*

P2M6: *... with our LORE, we wouldn't dream of going onto somebody else's country without being welcomed, without having some engagement with them about everything, and a meet and greet and all that sort of stuff, more than we would cut off our own arm, you know, you don't go in, you don't stamp on them, you don't take over their rights, you don't throw your beliefs and practices down their throats, you ask them for their permission if you can do this that or the other but yet they come down here from all over the place and it's like we can do this, we can do that and they're running over the top of us ...*

Discussions around competent authorities will also need to consider the contexts in which Aboriginal communities are changing, for example, with developments in community organisations, and programs such as land and environment related ones. These kinds of changes and developments are in some cases occurring quite rapidly, as illustrated in the quotation below.

P1M1: *We have done some really good things around land management.*

P7M3: *We've got the language centre, we've got our own youth programs [names specific program], we've got our own ranger programs to look after environmental stuff...*

P4M6: *the kids we get in to the uni we probably have about 1000 kids a year. We do all the year 9s the Aboriginal kids from throughout [this area]. We get them in. We give them a run around the university we show them the plants, give them a bit of knowledge, tell them the stories and how to get the meaning from the stories*

P4M6: *In the schools that I help I establish a medicine garden ... Now I've got thirteen of those schools established throughout [this area].*

Intergenerational developments can also create challenges with regard to how a regional and/or local competent authority operates. For example, on the one hand there are younger community members who have had greater access to Western education, but on the other, some younger community members have limited connection with their Aboriginal cultural heritage. Respect for Elders as decision-makers is not always demonstrated. For example, in some communities, some of the Elders do not present the kinds of role models that younger people require.

P5M6: *and we do know there is a younger generation coming up and they are white smart and they understand it having been taught that way but they are culturally still within their system and it's a mix of two and that's where they are going but it's the younger generation.*

P2M6: *We have a handful of people in our community that respect our elders, and they are mainly us as elders, each other. You try and get that respect through the schools, that's a good start but if they are*

going home to parents that are not teaching the cultural respect to the grandchildren via aunty, nan, pop, uncles, whatever, there's a whole generation that has just slipped through the gaps.

The range of different circumstances, experiences and situations faced by Aboriginal communities necessarily impacts on their community organisations, including those that are involved in cultural heritage and related matters. This also impacts on the differing views people expressed regarding the form of the regional and/or local competent authority might have. For example, in meeting 2, participants provided an example of a regional group who have begun to work on a form of protection for their traditional knowledge. This appears to be still a work in progress, however the participants desire to control access to their traditional knowledge is apparent.

P2M2: *I don't know if you guys have heard any movement but just going up in xxx we had a meeting and we are talking about what you are talking about, having a ... body to protect Indigenous knowledge and if you are going to do it at a higher level that would be good like for Indigenous knowledge protection. We are not there yet but we are in the process but if you are doing the same thing that we are doing well that is even better ... We are trying to develop a governance body where we protect Aboriginal rights and knowledge. They have to go through criteria and other stuff and even ownership to traditional owners. What is connected to the land, what is the story, who belongs to the story, who is the traditional owner of that story? So, we are on that at the moment.*

It is apparent that participants may often favour using an existing organisation such as a land council or a cultural organisation as their regional/local competent authority. For example, participants in Meeting 2 favoured using local and regional land councils.

P2M2: *So, for something like that, for knowledge, I reckon you should have the land councils from all over Australia. They would do the job then go to the regional. The regional would go to the traditional owners.*

Meeting 3 supported a combination of land council, cultural centre and a language centre.

As this report shows Indigenous knowledge is complex, and knowledge is embedded in, underpins, and permeates all domains of Indigenous peoples' lives. Knowledge resides in land, plants and animals, water, stories, ceremonies, dance, artworks, and language. For example, the dominant features of Australia's water and land are Aboriginal, and the Aboriginal creation stories provide some evidence for these connections.⁶¹

P3M3: *[name of organisation] ... this is our Aboriginal organisation*

⁶¹ Virginia Marshall, *Overturning Aqua Nullius: Securing Aboriginal Water Rights* (Aboriginal Studies Press, 2017) 32.

P5M3: *It depends on what you are asking for.*

P6M3: *It could be land knowledge.*

P1M3: *work together*

While often expressing support for their existing regional and/or local organisations, at the same time, in some cases, a challenge exists with equitable representation of all community members by existing organisations. For example, while successful native title claims have provided opportunities for some communities to improve their economic circumstances, there are others who have limited recognition as owners of traditional lands depending upon the type of determination such as by consent or litigation or where exclusive or non-exclusive rights are recognised by the court or tribunal. Australia's native title legal system often complicates and reconstructs Aboriginal concepts and knowledge,⁶² creating winners and losers. This situation has been well documented.⁶³

P1M3: *Because some conflicts happen up at my place. Some smart people... want for us not to go back... they are using our names and we are not there and that's why we are getting nowhere...*

In the case of some Aboriginal land councils, membership is open to Aboriginal people who reside in the area in which the land council operates, regardless of whether they are traditional custodians of the lands. In more urbanised areas there may be a lot of members who are not traditional owners. These individuals will not be custodians of knowledge from the relevant country. This is seen by some as a challenge with respect to developing a local competent authority.

P4M5: *I can see you have looked at Land Councils... they are an interesting structure...even in [this region] they are chalk and cheese depending on who the chair is. See one of the big problems [here], you have 46 or 50 Land Councils...and of those there is only a handful that are traditional owners ... The people who run them aren't traditional owners and then there are several that are extremely well run by people who have married into traditional owners, so it is quite an interesting mix*

P4M5: *You are highlighting the big issue that we have got that we don't have representation. We don't have organisational representation.*

Meeting 6 supported the model of an Elders' council with senior members mentoring successors. There were differing views however with the degree of formality needed.

⁶² Virginia Marshall, *Overturning Aqua Nullius: Securing Aboriginal Water Rights* (Aboriginal Studies Press, 2017) 75.

⁶³ Australian Government, Human Rights Commission, *Native Title Report 2011* Chapter 2 Lateral violence in native title: our relationships over lands, territories and resources <https://www.humanrights.gov.au/publications/native-title-report-2011-chapter-2>

P5M6: ... with what we are talking about here with a new business we need to structure it not like a community-based organisation. It has to have its format as like a business, so you have everything down proper and it's got itself protected and talking about people feeling safe. You've got to have that as one of the main things or else you are not going to have people coming to do the job.

By providing opportunities for Aboriginal communities to identify and appoint their preferred form of regional and/or local competent authority, questions will still need to be addressed in terms of the control of databases and other assets such as community cultural registers. For example, these questions are likely to arise if there is a risk that the entity is wound up, or that it is impacted by other external factors. These factors might include changes of personnel, people moving away from community, or other changes within the community. These are all matters that will require attention by local people, and must be considered in determining the form, structure and operation of regional and/or local competent authorities. There are potential risks facing a regional and/or local competent authority in managing the most sensitive community information databases.

Theme 3.2: The scope of community served by a regional and/or local competent authority

The scope of the community to be served by a regional and/or local competent authority may be a relatively simple issue, if it assumed that the whole of the community will be potentially associated with the relevant Indigenous knowledge. As outlined in the beginning of this report, it can by no means be assumed that there will be a consensus in communities about ownership and management of knowledge, as the politics, laws and economics of knowledge management are complex, and are infused with networks, alliances, relationships along lines of kinship, extended family, clan, language and cultural ties, roles and responsibilities. In addition to these issues, what is meant by 'regional' and 'local' will also require some serious reflection by the respective community.

An example of the ways in which these complex layerings of associations and relationality may impact on allegiance to a regional/ and/or local competent authority, relates to an earlier point, that often in urbanised communities there may be a mix of traditional owners and community from other Aboriginal nations. In many instances, the traditional owners may be in the minority. This calls for consideration of whether all Aboriginal people should have the right to participate in the access and benefit sharing arrangements and negotiations under the control of the local competent authority or whether only traditional owners. These issues were not widely discussed in the consultations.

P5M5: my thinking having lived here for so long, most of my life, is that there are some people that pretend to be knowledgeable, but they are actors. So, you have got to be understanding where the actors are going to come in. So, to me, I think I had a dream a couple of months ago about wouldn't it be deadly if there was an agreement about you stay on that side of the river and this business is over here and this business is here. So, I was already creating that.

P1M6: It's about that group of knowledge holders, Elders. The question that remained unanswered was does it take in only people of country or does it take in others and I don't think we talked about that and my simple view is for Sydney that you have to take in others. **P4M6:** Yes. **P1M6:** But they should not be in a majority, ever.

This issue is further complicated by blurring of ‘borders’ between nations. Participants in Meeting 6 discussed the concept of clans moving with sea levels, and the fluidity of boundaries that results. Shared responsibility is important where no one clan speaks exclusively for an area of land affected by these issues. Boundaries are artificial, imposed notions, and largely serve administrative purposes.

P4M6: *the tribes or the nations or whatever you want to call them, the groupings shifted with the rising and the falling of the sea levels.*

Theme 3.3: Who sits on the regional and/or local authority and how they are appointed to that role

One of the critical elements in creating governance structures and processes for competent authority organisations is the question of membership and representation within the Aboriginal community.

At some of the consultation meetings, participants expressed concern about how individuals would be appointed to roles on the regional and/or local competent authority. While there was consistent acknowledgement of the importance of Elders as decision-makers and advisors, there was also recognition that some communities have experienced a breakdown in respect for that model of representation.

Participants in Meeting 6 favoured using an Elders’ council as the decision-making body with respect to Indigenous knowledge. This meeting also discussed a model proposed by other Aboriginal communities in which the board of an organisation would have one man and one woman from each of the families, elected by that family. This was viewed favourably by the meeting, although one participant observed that it might prove difficult where there are many families in a community.

There was notable wariness in some groups regarding nepotism in election processes, and abuse of power to favour the interests of particular stakeholder groups.

P1M4: *why can't we be respected as the elders that we are?*

P2M5: *Yes, so anyone who has any power or authority can recognise who they choose to recognise for functional purpose and there is no comeback. You have no comeback. I have no comeback. I live in the [local] area and there's all sorts of people running around out there saying I'm in charge and I'm an authority on this and so you say okay well tell me your story and there is no story. That reveals one of two things. They aren't from and don't know country or they're just totally ignorant. If they are from country, they have not been passed on knowledge. And there is a reason for that and it generally boils down to you have not been worthy.*

P2M6: *That would be having an Elders' council with authority.*

P4M6: *and a majority of people of the land*

P3M6: ... *I just don't like the election process. I think people should be elected on merit and what they can do for the community and their promises to the community rather than I will stand up and be nominated and my best friend will vote for me and now I'm in.*

P2M6: *It should be what you can bring to the table, what you are prepared to do for your community, how much passion and love and commitment you really have. Do you have the black blood running through you or do you have your own hidden agenda? Are you going to talk the talk but not walk the walk, then we don't want to know you basically because you are no help to us.*

P2M6: *Which is a rite of passage because that's the way that lore works. The elders are the people that you go to for advice, run everything past them, get their approval, include them in decision making, not just make decisions for them, trample over them on your way to the top of the ladder. It doesn't work that way.*

Theme 3.4: Decision-making

There has already been discussion in this Report about the decision-making processes. The importance of Indigenous people in controlling decision-making was voiced very clearly by participants. At several meetings participants expressed the view that decision-making for cultural matters on country needs to be undertaken by appropriate Aboriginal people. In the case of decision-making around Indigenous knowledge, at the regional and/or local level, participants also held the view that the traditional custodians of the lands to which the knowledge relates should be the decision-makers, with particular reference to the relevant knowledge holders, and/or senior law people.

Aboriginal communities should determine for themselves how decisions are made within their community and whether there is a single process for all knowledge or whether different processes will apply to different types of knowledge. In addition to decisions around access to knowledge there are also decisions that will need to be made around access and benefit sharing. Again, communities need to be able to adopt culturally appropriate protocols and what determines these protocols.

P2M6: *any knowledge that is given to me that is my inherent right as a matriarch and elder of my family to pass on that knowledge to my own children, my own grandchildren, the neighbours, the kids at school, whatever.*

In regard to benefit-sharing, not all communities expressed interest in monetary compensation/royalty payment for any knowledge they may provide access to. It is important to recognise that in the CBD, and the Nagoya Protocol, that benefits to communities from the wider use of their knowledge and practices will not only be monetary, but may take many other forms such as other intangible and tangible acts of reciprocity. For example, in the consultations it was proposed that strengthening capacity, receiving support and services are in some instances more important. Further, the idea of "selling" knowledge does not sit well with some participants.

P5M6: *Is not for sale.*

Theme 3.5 Relationship between regional/local and national competent authorities

The relationships between a national, and regional and or local competent authorities have been discussed in this document, but further discussion is warranted. Participants in consultation meetings expressed a view that regional and/or local competent authorities should not be subordinate to a national competent authority.

A number of meetings shared the view that a hierarchical structure of a national competent authority would seem as superior to the regional/local competent authorities and would be inconsistent with Aboriginal culture and values. This reflects the grass roots nature of decision-making. It also reflects the need for appropriate representation in decision-making, as borne out in the consultations.

P1M6: *You create an organisation that doesn't have any power or authority in itself. It can't make decisions that override and control people, but it has a specific job to do. It has a specific job to provide support to people who are recognised as contributing knowledge to communities ... It doesn't have a choice but to do the job and it can't make decisions not to do the job so you create an organisation that's job is clear and defined and not flexible unless you create a process to allow it extra things to do in the structure of the organisation but it can't do them until it's gone through whatever that process is. ...*

and also so that the national body is not ... a governing body because once it starts governing, you're drifting power on a false premise up to a level that's beyond its comprehension and then you either have a cultural area or region authorities however you want to define it that deal with the knowledge and business belonging to that area, however you define it. But the national body needs to be what we talked about earlier- being there in support of. Like it might not be that a regional or local body can pursue an American company for breach of copyright. You need something more in tune with that international stuff and all that so you either divert your regional resources and not do your local or regional job or you have a competent authority up there that can handle at the request of others, not at its own initiative. So, its accountable down the line not up the line to government or whatever because it has no accountability to government because it is an independent authority....

It instructs up. Same pattern should go in terms of its coming into being. You don't create a national body to then set up all these state or regional or local bodies. You create the local bodies who agree by some means to create the national body, so the national body's existence is dependent on the continuing support of the local bodies. What happens in the colonial, western construct is that the higher authority is at the top of the triangle and the other authorities' existence is dependent on them and that's the wrong way around. It has never been done and so why not? It's the only thing the governments of the day have not tried is a ground up model. They always come down.

Theme 3.6 Regional/Local competent authorities supported by a national competent authority

Returning to the theme concerning the relationships between a national competent authority and local competent authorities, people at several meetings expressed the view that the local competent authorities should be supported by the national competent authority in dealing with access and benefit sharing and enforcement issues. Again, as mentioned previously in this report, this aligns with an Indigenous

worldview about relationality, preferring mutually supportive engagement between organisational entities, rather than command and power, top down hierarchical models. An important element in considering the relationships between competent authorities is the matter of relative roles, rights and responsibilities. Participants in Meeting 2 expressed the view that any enforcement of rights would need to be done by the national competent authority.

There are tensions that exist between Western style organisational structures, and Indigenous approaches. Participants indicated that their organisations have considerable expertise in business and legal matters, but others do not. Individual community members may or may not have relevant expertise in these areas. In some instances, the challenges are around particular skills and resources such as those mentioned in the consultations. A further challenge arises where many responsibilities fall to a small group of Elders who are already overburdened by existing community responsibilities.

P1M1: *if you have an authority at a higher level then there's an expectation that there's a good governance structure at those lower levels and quite often it isn't there and if the overarching authority isn't as effective as it should be either because it doesn't provide appropriate support or in what it requires of those local authorities and governance structures to operate functionally they are not getting the support I suppose from government. ... How do you make decisions about issues on country and they are just fundamental issues we have to deal with and then when you talk about specific subject matters about IP or land management or tenure or unemployment or whatever it might be then we've got a bit of a struggle to be able to make informed decisions on particular issues ... the need for support to those more grass roots level*

P2M3: *We don't know much about the law... white people don't know our culture*

P3M3: *Can you explain what you are really here for? ... Before it went too high.*

P3M6: *So, to have time to take up one more without any support from anybody is really hard. Like you might go, look I'm really tired I don't want to drive, can somebody drive you? Can somebody take notes, do the computer thing for me that sort of thing? If you had the support...*

P2M6: *You know I wouldn't say no to any assistance. I don't have a computer. I'm not computer tech savvy. If there was somebody I could go to. Yeah, no worries we can type up that welcome for you or we can photocopy that information for the kids or whatever that would mean the world to me and I feel like I'm getting some support morally, spiritually and whatever.*

P2M6: *...its extremely difficult and you can't as an elder stand up there and encourage your will on the community. You can't force the respect. It's a two-way thing. It's given and received and we as elders are wearing ourselves out because we are trying to impart our knowledge, trying to be on top of everything that is happening and trying to advise them, guide them ...*

7 Theme 4 Role of the Registrar

The roles of a Registrar in a competent authority is outlined in the 2014 White Paper. The Registrar for the national competent authority would have responsibility for the databases held by the authority. The Registrar would have a role in dispute resolution, among other roles to be determined. Because of the separation of knowledge into men's knowledge and women's knowledge, the need for separate women's and men's registers is acknowledged. There may also be a register for knowledge that is not specifically women's or men's knowledge, but knowledge that can be shared. Meeting 1 expressed the view that different communities might have a different view on this issue. The other meetings responded favourably to this proposal.

P4M3: *Yes. I think that is the culture and it would feel right with all the old people to be part of that women's side or part of that men's side.*

Participants were also asked for their views regarding whether the Registrar(s) should be able to delegate its authority. The notion of a delegated authority caused some tension in Meeting 6.

P3M6: *How does the registrar then oversee that and make sure that they're doing the right job?*

P1M6: *Who is the registrar accountable to?*

P3M6: *He's got to know that the delegates are doing what they are meant to do and it just gets so big that no one person can do that.*

P2M6: *Our registrar is directly answerable to the minister but in saying that the minister sat across the room from me and said I can't, I've got no power, I can't help you but isn't that what the law is?*

8 Conclusions

What is clear from the analysis of the consultations in the Garuwanga Project is that simply a national competent authority is not enough for the governance of a regime that protects, facilitates access to and benefit-sharing from such access to Indigenous knowledge. For self-determination to be achieved by Aboriginal communities, a more local or regional response is required with the national body providing support to such local or regional authorities while satisfying international reporting requirements that Australia may have under its international obligations. Consultations showed that having both a male and female registrar in the national body would be appropriate culturally. There was, however, some resistance to the registrars being able to delegate their authority.

While there was no universal endorsement among consultation participants for any specific kind of legal structure, participants did consider the ways in which a competent authority might operate. The analysis of the consultations identified the following features that a competent authority might have, namely:

- clear purpose
- security of tenure
- secure funding
- independence from government
- sound governance
- Aboriginal and Torres Strait Islander leadership and employees
- capacity strengthening protocols
- protocols for facilitating local and/or regional competent authority operations
- sound decision making protocols
- databases with robust security.

The consultations showed that people in a specific community and/or region should be empowered to determine the form of competent authority that is best suited to their needs at a local level. In this way, Aboriginal (and Torres Strait Islander) communities would be able to exercise self-determination.

APPENDIX

The following comprise the

- Plain English Research Statement,
- Informed Consent Form,
- Informed Consent Script for Oral Consent, and
- Combined Plain English Research Statement and Consent Form

utilised for the consultations undertaken in the Garuwanga Project.

Plain English Research Statement

Research project:

Garuwanga: Forming a Competent Authority to protect Indigenous knowledge

This research project is being conducted by Professor Natalie P Stoianoff, Professor Fiona Martin, Professor Andrew Mowbray, Dr Evana A Wright, Dr Ann Cahill, Dr Virginia Marshall, Dr Anne Poelina, Aunty Frances Bodkin and Uncle Gavin Andrews, Paul Marshall and Neva Collings from 2016 - 2019. We have grant funding from the Australian Research Council Linkage Scheme to conduct this research. The research is being carried out through the University of Technology Sydney (UTS) and the Indigenous Knowledge Forum.

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Ms Neva Collings is a Yuin woman from south coast NSW, she is a solicitor and the PhD student associated with the project.

This research project has been approved by the UTS Human Research Ethics Committee [UTS HREC REF. NO. ETH16-0784].

What will the researchers do?

We are trying to find out what Aboriginal people think about our recommendations for the legal structure of a Competent Authority suitable for governing and administering an Indigenous knowledge protection regime.

We are asking interested members of the Aboriginal communities in the Sydney/south coast region of NSW and the Kimberley to be part of one of the several focus group meetings to be held in the region. This means that you sit in a group and talk with us and other people there about the recommended governance structure while we listen/record the session so we can study it later. We will try to make sure that we understand your feedback and opinions and will ask questions to try and make sure we have understood them. It is also important to recognise that other communities and other people participating in the meeting you attend may have different opinions from yours. We ask you to promise not to tell people outside the focus group meeting what other people say inside the focus group meeting.

The focus group meetings will take place in Broome, Jarlmadangah Burru, Derby and Fitzroy Crossing in The Kimberley Western Australia during the week 30 April – 5 May 2018; in Bargo New South Wales on 9 May 2018; North Sydney and Batemans Bay in New South Wales on dates to be advised in the second half of August 2018 and will require the following time commitments from each participant: 1-3 hours reading and up to 2 hours discussion in the focus group. In case of conflict the resolution process will be mediation by an outside party.

What will the researchers do with the information they collect?

The information will be used to prepare a Report with a recommendation for an appropriate legal structure for a Competent Authority suitable for governing and administering an Indigenous knowledge protection regime. Such a regime has been proposed by our research group in 2014 to

- (i) ensure that prior informed consent of Indigenous communities is obtained for access to their traditional knowledge, and
- (ii) that fair and equitable benefit-sharing mechanisms are agreed upon for the use of that knowledge, keeping in mind community laws and procedures as well as customary use and exchange.

It may also be used to inform the nature of the operations of such a Competent Authority so that the structure can be used by individual or groups of Indigenous Australian communities, states, territories or even the Commonwealth government. We may also write papers for academic journals and books and put a summary of the research on the Indigenous Knowledge Forum website.

We won't include personal or culturally restricted information without your consent.

We won't use any names to identify people who participate in this research without their consent. We will identify people by numbers and location or community number only.

What will happen to the results of the research?

We can't guarantee that the Indigenous knowledge protection regime we have designed will be implemented by any of the Australian governments nor that the recommended form of Competent Authority to administer such a regime will be formed or that any of the Australian governments will agree with your opinions. However, you and your community will be free to implement your own governance organisation for the protection of your community's traditional knowledge using the recommendations we provide in the Report.

We will keep the notes/recordings of the focus groups in a locked filing cabinet at UTS for 5 years and data will be securely stored with limited access on a password protected computer. After that, we will destroy the records and data. Only the Discussion paper, the Report, material on the Indigenous Knowledge Forum website and other academic publications will be publicly available.

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The research is supported by an Australian Research Council Linkage Grant. The research is being carried out through UTS and on behalf of the Indigenous Knowledge Forum.

Participant's understanding

1. I understand what this research is about. I have read/or had read to me the Plain English Research Statement which explains what this research project is about and I understand it.
2. I have had a chance to ask questions about the project and I am comfortable with the answers I have been given. I know I can ask more questions whenever I like.
3. I have volunteered to participate. I agree to participate in the research. I know I don't have to participate if I don't want to. I made up my own mind to participate- nobody is making me do it.
4. I know that I don't have to answer any questions I don't like.

5. I know I can pull out at any time without getting into trouble with the researchers or anyone else.
6. If I pull out the researchers will be able to use information I gave before pulling out unless I ask them not to.
7. I agree to talk about the questions the researchers give us in a group of people. This is called a 'focus group'. I agree that the focus group can be voice recorded. I agree that the researchers can take notes.
8. I know that I won't get paid for participating in the focus group.
9. I know that the researchers will ask other people in the focus group not to talk about what is discussed in the focus group but can't stop them from doing that.
10. I understand that the researchers want to write about the research in paper(s) that will be presented to other academics at conferences within Australia and internationally, through the Indigenous Knowledge Forum and other public meetings, published in academic journals and the books in the LexisNexis Indigenous Knowledge Forum Series. I will not be required to write any of these papers and my name will not appear in or on them.
11. The researchers can present information about the project at a conference without asking me first.
12. If the researchers keep a record of what I say that record will be stored securely in a locked filing cabinet at UTS or on a secure computer.
13. I understand that I will not have copyright in any papers, notes or recordings produced in this project.
14. I know that if I am worried about this research I can ring up Professor Natalie Stoianoff on (02) 9514 3543 and talk to her about it.
15. I also understand that this study has been approved by the University of Technology, Sydney Human Research Ethics Committee.

If I have any complaints or reservations about any aspect of my participation in this research which I cannot resolve with the researcher, I can contact the Ethics Committee through the Research Ethics Officer (ph: +61 2 9514 9772 Research.Ethics@uts.edu.au), and quote the UTS HREC reference number. I understand that any complaint I make will be treated in confidence and investigated fully and I will be informed of the outcome.

Or

If I think there has been a breach of my privacy I can write to the Privacy Commissioner.

I have read the Informed Consent Form and I agree with it.

Signed by the research participant _____

Name of the research participant _____

Date _____

AND

Signed by or on behalf of the researcher(s) _____

Name _____ **Date** _____

Informed Consent Script for Oral Consent

Acknowledgement of Country

We acknowledge the traditional custodians of the land on which we meet and we pay our respect to their elders past, present and future.

OR

We respectfully acknowledge the past and present traditional custodians of this land on which we are meeting, the [D'harawal]/[Nyikina Mangala]/[Yawuru] people. It is a privilege to be here on [D'harawal]/ [Nyikina Mangala]/[Yawuru] country. We are honoured to be able to use this site for this meeting.

The research project title is: *Garuwanga: Forming a Competent Authority to protect Indigenous knowledge*

This research project is being conducted by Professor Natalie P Stoianoff, Professor Fiona Martin, Professor Andrew Mowbray, Dr Evana A Wright, Dr Ann Cahill, Dr Virginia Marshall, Dr Anne Poelina, Aunty Frances Bodkin, Uncle Gavin Andrews, Paul Marshall and Neva Collings from 2016 - 2019. We have grant funding from the Australian Research Council Linkage Scheme to conduct this research. The research is being carried out through the University of Technology Sydney (UTS) and the Indigenous Knowledge Forum.

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You understand what this research is about;

You have had a chance to ask questions about the project and you are comfortable with the answers you have been given. You can ask more questions whenever you like;

You have volunteered to participate. You agree to participate in the research. You know you don't have to participate if you don't want to. You made up your own mind to participate- nobody is making you do it;

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You understand that you will not have copyright in any papers, notes or recordings produced in this project.

I _____ read this Informed Consent Form aloud to the participants at the focus group meeting at _____ and I believe that the participants understood and agreed to it:

Signed by Researcher: _____

Signed by witness _____

Name of witness _____

Date _____

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5. I know I can pull out at any time without getting into trouble with the researchers or anyone else.

6. If I pull out the researchers will be able to use information I gave before pulling out unless I ask them not to.
7. I agree to talk about the questions the researchers give us in a group of people. This is called a 'focus group'. I agree that the focus group can be voice recorded. I agree that the researchers can take notes.
8. I know that I won't get paid for participating in the focus group.
9. I know that the researchers will ask other people in the focus group not to talk about what is discussed in the focus group but can't stop them from doing that.
10. I understand that the researchers want to write about the research in paper(s) that will be presented to other academics at conferences within Australia and internationally, through the Indigenous Knowledge Forum and other public meetings, published in academic journals and the books in the LexisNexis Indigenous Knowledge Forum Series. I will not be required to write any of these papers and my name will not appear in or on them.
11. The researchers can present information about the project at a conference without asking me first.
12. If the researchers keep a record of what I say that record will be stored securely in a locked filing cabinet at UTS or on a secure computer.
13. I understand that I will not have copyright in any papers, notes or recordings produced in this project.
14. I know that if I am worried about this research I can ring up Professor Natalie Stoianoff on (02) 9514 3543 and talk to her about it.
15. I also understand that this study has been approved by the University of Technology, Sydney Human Research Ethics Committee.

If I have any complaints or reservations about any aspect of my participation in this research which I cannot resolve with the researcher, I can contact the Ethics Committee through the Research Ethics Officer (ph: +61 2 9514 9772 Research.Ethics@uts.edu.au), and quote the UTS HREC reference number. I understand that any complaint I make will be treated in confidence and investigated fully and I will be informed of the outcome.

Or

If I think there has been a breach of my privacy I can write to the Privacy Commissioner.

I have read the Informed Consent Form and I agree with it.

Signed by the research participant _____

Name of the research participant _____

Date _____

AND

Signed by or on behalf of the researcher(s) _____

Name _____ **Date** _____

Table 1: Matrix of consultation themes by meetings

	Meeting 1	Meeting 2	Meeting 3	Meeting 4	Meeting 5	Meeting 6
Indigenous Knowledge	Discussed	Discussed	Discussed	Discussed	Discussed	Discussed
Functions and powers of the Competent Authority						
A single national competent authority (NCA)	Yes	yes	yes	Not addressed	Not addressed	Yes
Reflecting Aboriginal customary laws, and cultural protocols						
Important features for a Competent Authority	Clear purpose Securely funded Independent Indigenous led & run Capacity building Strong governance Facilitation	Capacity building Strong governance Facilitation	Strong governance	Strong governance	Capacity building Strong governance Facilitation	Clear purpose Security of tenure Securely funded Independent Indigenous led & run Capacity building Strong governance Facilitation
Effective models for protecting Aboriginal interests	Empowered communities	Local land councils; regional LC	cultural organisations and land councils	Not addressed	Not addressed	Health organisations Cultural organisations

Ineffective models for protecting Aboriginal interests	Not addressed	Not addressed	Not addressed	Not addressed	Local land councils.	Local land councils.
Local, grass roots presence	Yes	Yes	Yes, cultural organisations and land councils	yes	yes	Yes, Elders' council
Role of employees, officers and councillors in a Competent Authority	Indigenous where possible	Not addressed	Not addressed	Not addressed	Not addressed	Indigenous for decision making and capacity strengthening
Suitability to Australian law and regulations						
Form of the NCA in full	Best practice	Land council reps	Not identified	Perhaps a new entity	No specific response	Possibly statutory authority
Decision-making within the Competent Authority	Indigenous esp. on cultural issues	Indigenous esp. on cultural issues	Indigenous esp. on cultural issues	Indigenous esp. on cultural issues	Indigenous esp. on cultural issues	Indigenous esp. on cultural issues
Registrars	variable	Male and female	Male and female	Male and female	Male and female	Male and female
Delegating authority	variable	Not addressed	Not addressed	Not addressed	Not addressed	Concerns expressed