

“How hard can it be?” Navigating our way through an ethical storm surge

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Abstract

Conducting qualitative research in contemporary society is highly scrutinised by the ethical process. We acknowledge that ethical clearance should indeed be a strident and thorough exercise. We also agree with Stake (2000, p. 447) that: “qualitative researchers are guests in the private spaces of the world” and that “their manners should be good and their code of ethics strict.” As two intrepid qualitative researchers, we enthusiastically set out to explore a reasonably straight forward (or so we thought) research project. We wanted to explore the education stories of our students and received a Learning and Teaching grant from the university to do just that. Our potential participants represent a fragile equity group, that of Indigenous men in custody. We are familiar with their environment through our regular teaching at the correctional centre. We did not realise however, that this group would be perceived as ethically problematic “How hard can it be?” we said. In this case, we found ourselves in a storm of complex requirements and dilemmas, ones we had not experienced before and ones which seemed to almost deliberately work to deter us. We struggled to engage with the process but also resolved not to take an easier option or to give up. This paper traces our journey through the ethical storm surge and the decisions we made. At times we thought that unconditional clearance might not be granted. Eventually after numerous delays, the research went ahead and proved to be an immensely satisfying experience.

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Introduction

We set out to interview four to ten of our Indigenous Tertiary Entry Program (TEP) students who have the extreme educational disadvantage of incarceration. We wanted to gain an understanding of the personal narratives of their lived education experiences. We sought to discover what had led them to the point of choosing to do tertiary preparation studies and we wanted to largely publish the raw stories as a way of providing inspiration to other Indigenous community members (and indeed, other university community members). How hard can it be? This paper explores the ethical clearance journey from the initial research idea through to finally gaining approval to do the study. The journey was far more complex than anticipated and this paper provides an overview of those complexities and then provides a discussion of the process which

highlights the decisions we made and the lessons we learnt. Our discussion includes: the need for networking, the guts to question the system and the fundamental courage to just get out and do it.

Why this research?

What are nice guys like them doing in a place like that? We often came away from our sessions in the correctional centre with this question. What has happened in their lives to have them end up inside? Do we know our students and where they came from and is this relevant to being able to teach them effectively? What had been their experience of formal educational settings and how does this impact on our understanding of the way we teach? The statistics tell a shocking story ...

Aboriginal people, who have been the subject of long-term disadvantage and discrimination, are nearly 16 times more likely to be imprisoned than non-Indigenous people. An Aboriginal or Torres Strait Islander youth is 19 times more likely to end up in the juvenile system than a non-Aboriginal youth. 91% of juvenile offenders with care and protection orders move into the Adult system. There is a paucity of post-release human services for offenders generally and the situation is particularly bad for Aboriginal people ... Many people go straight from prison to homeless services. Within 9 months of release 50% of prisoners are homeless. (Council of Social Service of New South Wales, 2006, p. 1)

These statistics demonstrate a very stark view of disadvantage and incarceration. Over a decade ago, The Royal Commission into Aboriginal Deaths in Custody (1991) found that “the single significant contributing factor to incarceration is the disadvantaged and unequal position of Aboriginal people in Australian society in every way, whether socially, economically or culturally” (Aboriginal and Torres Strait Islander Social Justice Commissioner, 2003). Much of this disadvantage has not been alleviated in the intervening years and we assumed that this burden has contributed significantly to our student’s lives – particularly for our students in custody.

The gap between Indigenous and non-Indigenous people in health, education, employment and housing is not significantly closing despite improvements noted in some areas. Life expectancy for Indigenous people is 20 years lower than non-Indigenous Australians, infant mortality 4 times that of non-Indigenous Australians, unemployment is 2.8 times higher, and the suicide rate is 3 times higher (Australian Council of Social Service, 2004). In addition, of particular significance for our teaching and therefore our research, are the established links between education level, unemployment and crime.

The links between unemployment and crime are complex. Latest figures suggest that two-thirds of all people in prison were unemployed at the time of arrest (Walker & Salloom, 1993). An obviously related statistic is that only one in eight prisoners had completed secondary school (Walker & Salloom). Indigenous percentages for both unemployment and school completions are far worse than those of non-Indigenous people. (ABS, 1993, Walker & McDonald, 1995).

In fact, according to Rawnsley (2003, p. 19), only some 36% of Indigenous prisoners (or just over one third) have completed primary education as compared to just 16% of non-Indigenous prisoners. This is extremely concerning as primary education can be considered the fundamental building block on which access to further education and subsequent employment relies. These statistics suggest that some two thirds of Indigenous people in custody have little opportunity of escaping the system because they lack the tools to intervene.

Henstridge (2000, p. 3) suggests Indigenous people are more likely to engage with justice systems, more likely to experience imprisonment and more likely to “die in custody” and further, that these effects are recorded in the statistics “published in every State and by the Australian Bureau of Statistics.” In other words, Indigenous Australians are over-represented in the justice system. Alarming, this over-representation of Indigenous people in prisons is endemic. “For Aboriginals who have already been arrested once or twice, the probability of re-arrest approaches certainty” (Harding et al., cited in Henstridge, 2000, p. 3). This over-representation in prisons is the ‘fall-out’ from widespread, endemic disadvantage across all social indicators. Henstridge (2000, p. 5) also notes, that the reason most often recorded for the arrest of Indigenous people was “disorderly conduct/public drinking.” Police discretion is particularly relevant in relation to these offences. Such offences would appear to be relatively minor and should be dealt with cautiously as “... any pairing of Indigeneity and institutionalisation should give the greatest pause for thought. Institutionalisation has been a catastrophe for generations of Indigenous Australians in relation to culture, land and family/kin relationships” (Worby & Rigney, 2002, p. 25).

Specifically in relation to education, there are a number of education programs currently operating throughout Australia for prisoners. These programs have a variety of learning and sentence management outcomes. Can access to education assist rehabilitation, encourage reintegration into society and have a positive influence on deterring re-offending? While acknowledging the potential positives of education such as students gaining useful knowledge and skills, access to education in prison may not necessarily lead to a reduced level of re-offending (UNESCO, 1995, cited in Clarke, 1999).

However, there is some evidence to support education’s role in reducing re-offending. For example, the Recidivism and Open Learning Education (ROLE) project which involved a program of literacy and numeracy education through art, offered in South Australia. This project conducted an investigation into the benefits of providing open learning style, self-paced education for Indigenous prisoners in correctional institutions to assess the impact on repeat offending. “Participation in the ROLE project may have had a positive influence upon recidivism rates. An initial differential in rates of return to prison between participants and non-participants shows that the study group were less than half as likely to be readmitted as the control group. This result remained after controlling for background variables” (Kinnear, 2000, p. 4). While this is an encouraging result, further longitudinal studies need to follow the progress of prisoners post-release to determine if these outcomes are in fact conclusive. Further we acknowledge (unlike the ROLE project), that the students in our program are preparing for university entrance level rather than improving

literacy and numeracy. Our question then is: does our program contribute to reducing recidivism?

Allowing for the stark statistics, the equity group profile and the issues of education in reducing re-offending, we ask the question: “do we as lecturers actually make some level of difference to the perceptions/lived experience of our students in custody”? If the Tertiary Entry Program was discontinued would there be any adverse impacts on our students? What do we really know about our students apart from what the literature tells us? Our stories as teachers and researchers in the prison context are already constructed through our engagement with the landscape and therefore conspire to influence our assumptions. This research project became a means to ‘test’ our assumptions against the perceived reality of our students.

Our research story

Imagine razor wire, concrete, bars and gates. Entry into this intimidating environment is monitored by numerous security checks and electronic surveillance. The effect upon the visitor is one of powerlessness within a hostile space. Apart from supportive education officers whose role is to facilitate education opportunities for inmates, some prison staff evoke an unwelcoming arrogance and a “They-don’t-deserve-education” attitude. This is home to our students.

The journey of our study started with the inspiration provided by one of our students. He spoke about some of the incidents that led him to this place in his life and how he was now in his 30s and had been in prison for all but 2 years since he turned 18. His story resonated with other stories that several of our students in custody had provided glimpses of during our time with them. We believed (perhaps naively) that it would be a worthwhile study to interview our students and record their stories. We hoped that their voices could provide some insight into the lived educational experiences of Indigenous people in custody, from their perspectives. We wanted to know why they had chosen to study in the TEP. Ultimately, we were seeking to gain valuable feedback about the program but also to gain a deeper understanding of our students and their education journeys.

We were awarded a learning and teaching grant for a grand total of \$2,040. At the National Aboriginal and Islander Day of Celebration (NAIDOC) event held annually at the correctional centre, over a ‘cuppa’ and a nice piece of cake, we introduced ourselves to the General Manager of the centre. He was enthusiastic about our study and suggested we send him a proposal which he would forward to the Department of Corrective Services (DCS) Research Committee. We happily set about putting together an ethical clearance application for our university’s Human Research Ethics Committee (HREC).

Our optimism is perhaps our downfall as, when submitting the learning and teaching grant application, we had only put 10 months as the timeline for the study. We believed that if we gained ethical clearance from the university committee (that operates, as all HRECs do, under the national guidelines from the National Health and Medical Research Council – NHMRC), we could simply attach this to our letter to the General Manager and this would be

sufficient. We did not realise that we would also have to complete an application to conduct research, a research deed of agreement and in addition, consider a number of other government documents and processes. At this point we thought we were riding a little wave of success ... we were cruising.

We received an email from the DCS research committee stating that the General Manager had forwarded our proposal and a letter of support for our study. We were also advised that the DCS Research Committee only met 3 times each year and their next meeting was in September. The deadline for the DCS application was only a couple of weeks away and we were also under very tight timelines for the university ethics committee. Approval (or at minimum, conditional approval) from the university HREC had to be attached to the DCS application. This was our first inkling of stormy waters.

The DCS application contained a further 13 web links to other documents to be completed and policies to which we should adhere. Most confusing of all (other than the 13 page application itself) was the Researcher's Deed of Agreement. In addition, we were required to undergo a new criminal history check, a check we had undertaken previously to allow us to teach at the correctional centre. It was curious to us that now as 'researchers' in the same environment we were suddenly different people. We were beginning to realise just how difficult this study was going to be.

At a loss to understand the protocols and language in the various documents, we contacted a law colleague to help us discover the meanings of what was being asked. Our colleague responded with some major concerns in relation to the researchers' agreement with DCS and referred us to the university's Office of Research and advised us not to sign anything!

While we spent time coming to terms with the DCS process, we were waiting for our university's HREC decision. We had originally submitted the application to the university by the end of June and it was now late August. With little time left before we had to submit the DCS paperwork (due by the 13 September), HREC decided that the application was only a Category D (unacceptable) but had granted 'expedited conditional ethics approval' (due in large part to our insistence on the urgency of the clearance needed to be supplied with the DCS application).

The HREC had significant issues with the content of the application. Among the long list of issues raised, the greatest concern seemed to be that the research was aiming to discover 'life behind bars' for our students and interestingly, this concern was added as a general communication rather than a condition of ethical clearance.

The Committee notes that, while the intent of the research is to gauge the success of TEP for Indigenous participants, there is still the possibility that this research could be construed as investigating the 'lived experience' of being an 'inmate' at [the correctional centre] and that being enrolled on the TEP course is incidental or an add-on to the underlying intent of the research. The Committee suggests that a more considered focus is placed on the TEP program and the student experience of [the university]. (Human Research Ethics Committee Memorandum, 23 August, 2006)

The impression we gained from this response was that the HREC seemed to believe that the DCS would not accept a research project about ‘life behind bars.’ However, other research has been conducted into this topic (see Clarke, 1999) and while this seems a worthwhile area of research, it certainly was not the aim of our study. Indeed, we had no desire to explore the students’ perceptions of ‘life behind bars’ but specifically their education journeys particularly focusing on where, when and how they had accessed formal education and why.

HREC was particularly concerned with confidentiality for the participants and the capacity to access counselling that was also confidential and outside of the prison system. Our response to this was to ensure (through the university’s counselling staff) that our participants as students were entitled to counselling. HREC, however, was still unsatisfied and demanded that we (the researchers) provide evidence that counselling would be absolutely confidential. We went back three times to the university counselling staff with the concerns and it was made abundantly clear that counselling and confidentiality were the specific domain of the counselling staff – not the researchers’ or the Committee’s.

Now we could submit the conditional approval with our DCS application. We contacted the Office of Research (OoR) regarding the Researcher’s Deed of Agreement. The OoR Officer had a concern with 2 items in the document regarding the ‘licence, warranty and indemnity’ clause and the ‘moral rights consent’ clause. The document was duly forwarded to the Copyright Officer who was concerned with the clauses, and advised that we (or the university) should not sign the deed. Significantly, the deed of agreement was unacceptable as it stated:

12.6a The Researcher grants the State a perpetual irrevocable royalty-free licence to—

- iii. do any other act comprised in the copyright or other Intellectual Property Rights (if any) in the whole or any part of the Research Report; and
- iv. to use the information contained in the Research Report for the State’s purposes. [and that]

12.7 The Researcher shall, within seven days of being requested to do so, provide to the State consent to any act or omission of the State in the exercise of rights granted under this clause that might otherwise constitute an infringement of the Researcher’s moral rights under the *Copyright Act 1968*.

In reality this meant that the State could use the information contained in a final report (to be submitted to the department on completion of the study) regarding the research findings for any purpose without any regard to compromising the researcher’s right to intellectual property or moral rights. Our copyright officer noted the following:

... the only rights under the Copyright Act that the Researcher should grant to the State is ... - A royalty-free, non-exclusive licence to reproduce and communicate the report in whole or in part.

As far as 12.7 Moral rights consent - ... the Researcher should retain all moral rights as the author of the report. In no way should the State,

by act or omission, infringe the researcher's moral rights. [Moral rights include:]

The **Right of Attribution** ensures that the author of a work has the right to be named as the author of that work. Failure to correctly attribute a work is an infringement of that author's moral rights, and in addition, it is also an infringement to falsely attribute the work to someone else. [and]

The **Right of Integrity** ensures that a work cannot be treated in a derogatory way, that is, altered or changed in any way that will impugn the author's honour or reputation.

The copyright officer urged us to request both clauses be deleted. Armed with this information we submitted the application to DCS with the proviso that there would be no signatures until these issues were resolved.

Meanwhile we made the amendments required by HREC and resubmitted our ethical clearance application. It was now three months since beginning the ethics approval process and time was also ticking down on the funding grant timeline. Originally, we were scheduled to conduct the research between November and March when we were both scheduled as teaching free and before we understood the problematic nature of ethics for this particular equity group. We finished the DCS application – taking on board all the points that the HREC had made and submitted the application with a letter stating that we would like clearance but would sign the deed of agreement at a later date after negotiations regarding the wording. And we waited ...

With the university HREC, we were at the point of serious hair tearing. We decided that the only way forward was to attend the next committee meeting and speak to the item to answer any persisting queries. We amended our application as requested and explained in detail our standpoints on the issues raised. We stated categorically that it was not our position to investigate the “lived experience of being an inmate” at the correctional centre – though that should also constitute a valid study and rightfully should not be deemed an inappropriate topic of inquiry. We reiterated that we were specifically interested in the pedagogical integrity of our programs, our teaching and also the lived education experiences of our students. We also specified how the benefits of the research would outweigh the risk/harm to the participants such that:

Many prisoners have low levels of education and many prisoners have experienced educational failure (Senate Employment Education and Training References Committee, 1996). ... Education clearly provides a pathway for access to better social and economic opportunities for prisoners on their release. (Response to Conditional Ethical Approval, Interoffice Memo, 12 September 2006).

At the next HREC meeting in October we spoke to the item. Astoundingly, one of the members stated that they had made personal contact with the principle advisor at DCS to discuss our research and was now ‘satisfied.’ To us this action seemed if not unethical, at least unprofessional and it implied that as researchers we were incompetent. Subsequently, on the same day (and before insanity set in) ethical clearance was granted. We continued to wait for DCS

clearance and process. By this stage, we were somewhat weary of the constant struggle but had made up our minds that we were going to persist no matter how difficult the process because our students were asking for an opportunity to share their voice.

DCS approved our application at their September meeting pending conditions and the modifications to the deed of agreement. On the strength of our success with both committees, we moved into the next stage of the process and began negotiations to have the two clauses removed from the deed. DCS referred our issues with the deed to their legal unit and we waited ...

Throughout the DCS process, we were in contact with the principle advisor to the research committee to ensure that we had complied with the appropriate procedures and requirements. Our contact was invaluable, supplying pertinent information and was always cheerful in an otherwise hostile context. Unfortunately, though we had succeeded thus far, our contact was seconded to another position and we had to cultivate a new relationship with someone who was impossible to reach (either by telephone or email).

To finish the story, on the 23rd March (some 9 months after beginning the application journey), DCS notified us that they would consent to the removal of the clauses in the deed of agreement. We were now authorised to begin our data collection. This was almost an anti-climax as we already felt as if we had swum the Sydney to Hobart Yacht Race. Throughout the process we had had to request an extension from the university HREC and for our learning and teaching grant – more paperwork. Now that we have ‘survived’ the process, reflection allows us to share what we have learnt from our experiences.

Learning from the journey – Tides of change

Lobby the system

When we set out to conduct this study, we assumed that we understood the HREC process and we also assumed that the DCS process would be to gain approval from the correctional centre General Manager, attach our ethical clearance from the university and begin data collection. “How hard can it be?” After we discovered the DCS process, we first did not understand it and second, it appeared to be extremely difficult. The DCS process aims to ‘catch all’ research within the prison system for any purpose. Research in a prison can include prisoner interviews for legal or investigative purposes and other groups conducting research who are not necessarily academics undertaking social, qualitative research. The documentation is designed for ‘one size fits all’ and as suggested to us during the ethical clearance process, is apparently to deter ‘rogue research’ or people with a morbid fascination for ‘life on the inside’.

Further, one does not have to accept all the bureaucratic requirements of an organisation as ‘set in stone.’ Ethics process or deeds of agreement can be questioned so that the researcher retains the power over outcomes and their moral rights within the context. Despite how rigid the documentation for DCS seemed we were able to negotiate the removal of the two clauses. Researchers

should not be intimidated by the bureaucratic process or the enormity of the requirements. Negotiate your position and you may be pleasantly surprised at the result. One size does not necessarily fit all.

Support networks & building relationships

Given our experience, we would suggest that any apprehension about research requirements is worth following up with expert others. In our case, the Office of Research, colleagues from other faculties and the copyright officer all provided invaluable assistance. They tapped into their own networks to facilitate this assistance. Expert others also have ‘new eyes’ to see potential issues or solutions and for a new researcher conducting research, it is necessary to make these connections early and build up a research support network.

We also received crucial assistance and advice from the principal advisor to the DCS Research Committee. This contact provided an insider’s perspective on the DCS process of which we had no knowledge. On reflection, the contacts we made for assistance happened on a needs basis and somewhat ‘accidentally’ rather than as a result of any organised research networking/mentoring program. We would hope that by association with our research journey, our contacts in turn gained useful experience for their own needs and extended networks. Fenwick’s research (1991, cited in Stone, 1995, p. 255) confirms that: “Networks are successful when there is a two-way flow of information. Members must contribute as well as draw on a common pool of wisdom and experience.”

Be aware also that eventually the university is the signatory for the Deed of Agreement. Therefore researchers need to keep all contacts informed throughout the process, not only to utilise their networks as advice providers but also to ensure that the project has continuity for all parties.

Just do it – don’t compromise your research

“How hard can it be?” According to Punch (1998, p. 160):

... “tales of the field” (Van Maanen, 1988) abound of obstructionist gatekeepers, vacillating sponsors, factionalism in the field setting that forces the researcher to choose sides, organizational resistance, respondents subverting the research role, sexual shenanigans, and disputes about publication and the veracity of findings. Such pitfalls and predicaments can rarely be anticipated, yet they may fundamentally alter the whole nature and purpose of the research.

Despite all these things to look forward to, the researcher needs to ask the question: Why should participants (because of who they are or where they are located) not have a voice? This is not about ‘cavalier research’ or reckless research practices. It is about the voice of the participants. We are qualitative researchers who have exposed our research methodology to scrutiny, and maintained our integrity throughout the experience. In our case we had to balance three bureaucracies, the correctional centre, the DCS and our university’s HREC – each with their own research agendas. We have not compromised our research or ourselves, while at the same time, managing the demands of the process.

Punch (1998, p. 157) argues for the “get out and do it perspective.” Understandably, no one in his or her right mind would support a carefree, amateuristic, and unduly naive approach to qualitative research. But, at the same time, I would warn against leaning too far towards a highly restrictive model for research that serves to prevent academics from exploring complex social realities that are not always amenable to more formal methods.

This perspective on research closely aligns with our research philosophy. We have been out there and we have done it.

Conclusion

In conclusion, this paper has traced the research journey for ethical clearance. Our story is complex and within the scope of this paper we can only highlight aspects of the complexities. We survived and challenged the ethics process and committees and they challenged us. Throughout the process we retained our sanity and we are now collecting and analysing our data. We feel empowered to know that researchers can challenge and lobby for change to systems and processes. Significantly though, this overdose of process almost denied our equity cohort a voice. We explored our networks for expert others and ensured that the relationships developed provided a “two-way flow of information” (Fenwick, 1991, cited in Stone, 1995, p. 255). This was vital for the progress of our research and the preservation of our sanity. Ultimately this paper highlights the fundamental underpinning of qualitative research in that while ethics should be paramount it should not dominate to the extent where the research initiative of ‘just do it’ is stifled.

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