

AUSTRALIAN MUSEUM

# INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY (ICIP) PROTOCOL



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## PART 1 – INTRODUCTION AND BACKGROUND

The Australian Museum (**AM**) is Australia's first museum and a leading cultural institution in Sydney, Australia.

Since its establishment, the AM has had an important role as the custodian of cultural material and information. Today, it continues its dual roles in research and education. Furthermore, as a renowned cultural and research institution and a place of truth and fact, AM recognises the role it plays in education and truth telling of the reality of Australia's history and identity.

### Purpose

AM has one of the largest collections in the world of First Nations cultures, specifically from Pacific and Aboriginal and Torres Strait Islander peoples. AM recognises that these collections belong to ancestors, to First Nations people of the present and to the young people of the future. It is critical to support self-determination of First Nations peoples who are seeking their rights to determine how their cultural material is managed and represented.

By adopting the best practice approach set out in this Protocol, AM seeks to demonstrate respect for and the continued advancement of the inherent rights, cultures, knowledges and traditions of First Peoples – the Aboriginal and Torres Strait Islanders of Australia, and those from the Pacific Islands.

The purpose of the Australian Museum Indigenous Cultural and Intellectual Property Protocol (known hereafter as the **AM ICIP Protocol**) is to:

- recognise and respect First Nations peoples' rights to access, maintain, control and benefit their cultural heritage (also known as **ICIP**);
- detail the principles that guide how AM meaningfully engages with First Nations peoples in relation to their cultural heritage and ICIP;
- embed First Nations cultural values and knowledge systems across the institution;
- increase the cultural capability of the AM staff, volunteers and partners;
- publicly acknowledge AM's support for and encourage the wider recognition of the value of ICIP and ICIP rights.

### Introduction to Indigenous Cultural and Intellectual Property (ICIP) Rights

The rights of First Nations people are enshrined in the *United Nations' Declaration on the Rights of Indigenous People* (the **Declaration**). It recognises the "urgent need to respect and promote the inherent rights of Indigenous peoples".<sup>1</sup>

Article 31 of the Declaration (emphasis added) affirms that:

*Indigenous peoples have **the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions.***

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<sup>1</sup> [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

Article 12 of the *United Nations Declaration on the Rights of Indigenous People* states (emphasis added):

*Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and **the right to the repatriation of their human remains.***

*States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with Indigenous peoples concerned.*

Australia has adopted the Declaration as a framework to inform the recognition and protection of the rights of First Nations people.

The terms “cultural heritage”, “traditional knowledge” and “traditional cultural expression” are interrelated terms, embodying the complexities and intricacies of First Nations culture and knowledge.<sup>2</sup>

Australian models for protection of cultural heritage, traditional knowledge and traditional cultural expressions currently use the language “**Indigenous Cultural and Intellectual Property**” following the *Our Culture: Our Future* Report.<sup>3</sup>

### What is ICIP?

Indigenous Cultural and Intellectual Property (ICIP) rights refer to all aspects of First Nations peoples’ cultural heritage, including the tangible and intangible. This cultural heritage includes:

- traditional knowledge (scientific, agricultural, technical and ecological knowledge, ritual knowledge)
- traditional cultural expression (stories, designs and symbols, literature and language)
- performances (ceremonies, dance and song)
- cultural objects (including, but not limited to arts, crafts, ceramics, jewellery, weapons, tools, visual arts, photographs, textiles, contemporary art practices)
- human remains and tissues
- the secret and sacred material and information (including sacred/historically significant sites and burial grounds)
- documentation of First Nations peoples’ heritage in all forms of media such as films, photographs, artistic works, books, reports and records taken by others, sound recordings and digital databases.

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<sup>2</sup> In Australia, they are not legally defined terminologies, however the World Intellectual Property Organisation (<http://www.wipo.int/tk/en/resources/glossary.html>) and the United Nations Educational, Scientific and Cultural Organisation (<http://whc.unesco.org/en/conventiontext/>) provide definitions of these terms.

<sup>3</sup> Terri Janke, *Our Culture: Our Future, Report on Australian Indigenous Cultural and Intellectual Property Rights*.

The following diagram provides a general breakdown of ICIP rights:

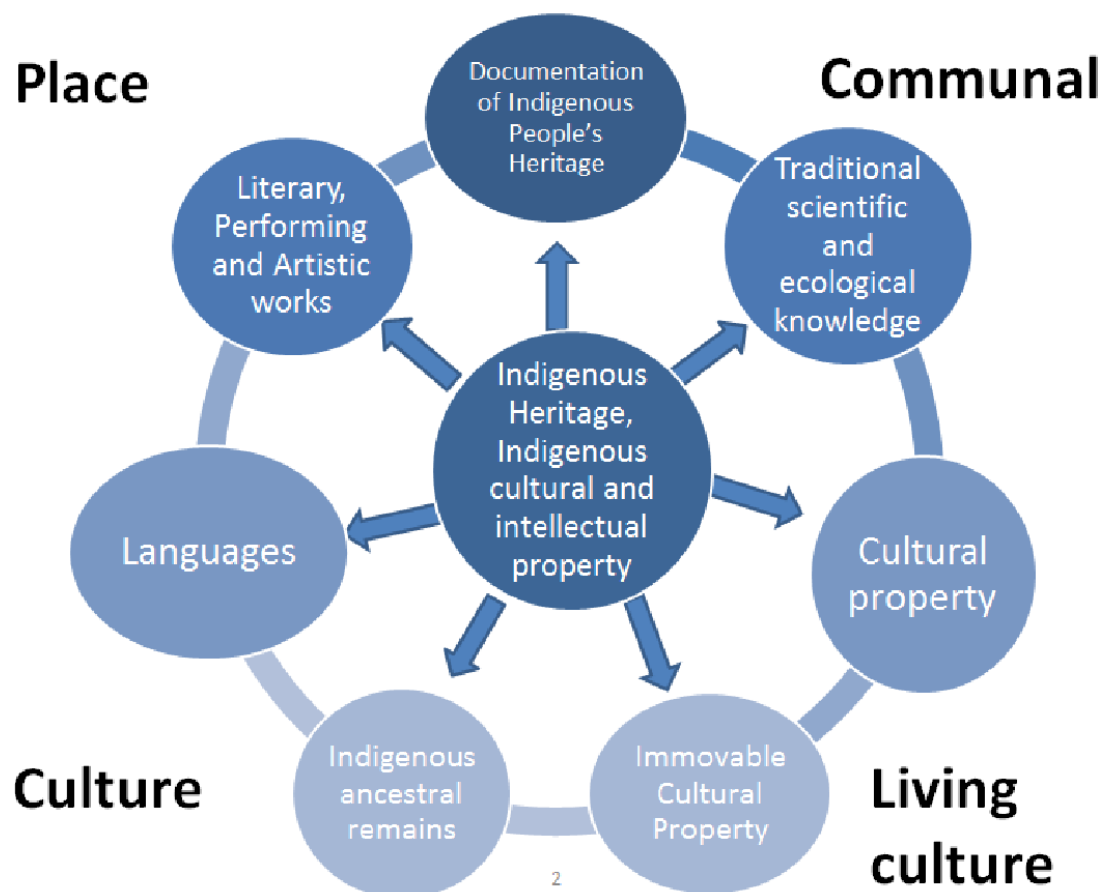


Figure 1: ICIP breakdown.  
© Terri Janke and Company, 2003

AM recognises that the right to control ICIP incorporates both the tangible and intangible – the object and the knowledge, the artwork and the iconography and the cultural practice. This heritage is a living heritage, transmitted from generation to generation and regarded as pertaining to a particular First Nations group or its lands or seas. Many generations may contribute to the development of ICIP. In this way, First Nations cultural heritage is communally owned.

AM also recognises First Nations peoples' rights in relation to cultural practice and repatriation of First Nations cultural material, including secret and sacred material.

In accordance with ICIP rights, First Nations people have the right to:

- own and control their ICIP
- ensure that any means of protecting ICIP is based on the principle of self-determination
- be recognised as the primary guardians and interpreters of their cultures
- authorise or refuse to authorise the commercial use of ICIP according to First Nations customary laws
- maintain the secrecy of First Nations knowledge and other cultural practices;
- guard the cultural integrity of their ICIP
- be given full and proper attribution for sharing their cultural heritage

- preserve, protect, manage and control First Nations cultural objects and First Nations ancestral remains
- control the recording of cultural customs and expressions and the particular language which may be intrinsic to cultural identity, knowledge, skill and teaching of culture.

These rights form the basis of the True Tracks Principles® and the AM ICIP Protocol.

### **The need for ICIP protection: Australian laws and the gaps**

Australian laws can be used to protect ICIP, but only to a certain extent. ICIP does not strictly conform to the limited provisions of intellectual property laws and there are gaps in the protection offered. Current intellectual property law frameworks confer IP ownership on creation or purchase of IP rights. Ownership of IP rights gives the 'owner' the ability to exclude others from using that IP without permission.

AM acknowledges that ICIP is complex and does not easily fit within existing intellectual property law frameworks, including the right to communal ownership of culture.

### **ICIP and the Australian Museum**

The AM acknowledges that it interacts with ICIP on a daily basis, including:

- acquiring First Nations objects for its collections
- displaying First Nations objects from the AM collections and exhibiting material about First Nations cultures
- researching, documenting and interpreting First Nations material
- storing and conserving First Nations objects
- reproducing and promoting First Nations material
- repatriating human remains and secret/sacred material
- developing and hosting public programs and events which may use First Nations material
- producing educational resources and other online content about First Nations history, culture and themes.

AM recognises that its collections hold the heritage of Aboriginal and Torres Strait Islander peoples and Pacific islands peoples from many clans and nations. First Nations cultures are living cultures and therefore First Nations people have a relationship with the objects collected and an interest in how cultural heritage material is stored, managed and displayed.

AM acknowledges that there are complexities with its relationships with First Nations people and their cultural heritage that have arisen from the Museum's colonial past and collecting practices across the world. The *Australian Museum Aboriginal and Torres Strait Islander Strategy 2017-2020* commits to change and transformation across the institution:

*We seek to build a shared future that is inclusive and respectful of Aboriginal and Torres Strait Islander communities. We will acknowledge our history, build on our existing relationships and actively pursue real partnerships based on equity, openness, listening, cultural norms and respect.*

The AM ICIP Protocol directly relates to the strategic priorities of the *Australian Museum Aboriginal and Torres Strait Islander Strategy 2017-2020*. It will assist AM to build cultural proficiency and partnerships with First Nations people and communities.

The AM ICIP Protocol refers to and should be read in conjunction with the following AM policies:

- Aboriginal and Torres Strait Islander Strategy 2017-2020
- Aboriginal Cultural Protocols for Public Events
- Archaeological Collection Deposition Policy
- Code of Conduct
- Collections Maintenance Policy
- Cultural Collections Acquisition Policy
- Ethnographic Collection Development Strategy
- Reconciliation Action Plan
- Repatriation Policy
- Research Policy
- Workplace Bullying & Harassment Policy

### Government Information Legislation

The AM ICIP Protocol operates in accordance with AM's obligations under the *Government Information (Public Access) Act 2009* (NSW) and the *State Records Act 1998* (NSW). The AM archives contain a wide range of historical and government information. Any person may make a general or formal request to access information held by AM. When considering whether to provide access to information, AM will consider the impact that release of information containing ICIP may have on First Nations individuals or communities. This may contribute to a decision that there is an overriding public interest against disclosure of the information. AM will not release culturally sensitive information such as secret or sacred ICIP material without permission.

### Using the AM ICIP Protocol

The AM ICIP Protocol is designed to assist AM staff, volunteers, partners, contractors and other stakeholders to make good decisions and ethical choices when engaging with First Nations people and their cultural heritage.

The AM ICIP Protocol cannot specifically address all the issues that may arise in a particular project, but the framework it provides can be adapted and applied to specific situations. It is intended to give direction but still allow enough flexibility for staff to deal with situations as they arise.

**Part 1** is an introduction to Indigenous Cultural and Intellectual Property (ICIP) rights and gives an overview of the issues that inform the development of Indigenous protocols and the AM ICIP Protocol.

**Part 2** sets out the True Tracks® Principles that support the protection of Indigenous cultural heritage and provides information on how the principles can be applied in practice.

**Part 3** contains resources to assist with the implementation of the Protocol, including a consultation and consent guide and contacts lists to use as starting points to access relevant people and organisations.



## Part 2 – TRUE TRACKS® PRINCIPLES AND PROTOCOLS

In recognising ICIP, AM uses the following principles to guide its engagement with First Nations people and their cultural heritage:

### Principle 1 – Respect

In accordance with Article 31 of the United Nations' Declaration on the Rights of Indigenous Peoples, "*Indigenous (First Nations) peoples have the right to maintain, control, protect and develop their cultural heritage. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage...*"

AM considers that Article 31 encourages First Nations people to safeguard their cultural heritage, determine the cultural status for access and use of their cultural heritage, and as appropriate, have their cultural heritage repatriated.

#### Protocol in practice:

- AM acknowledges that ICIP rights co-exist alongside legal rights, such as intellectual property (IP) rights, that exist in First Nations peoples' cultural heritage material.
- When acquiring, interpreting or displaying cultural objects or other ICIP, staff will seek to respect the rights of all parties in line with this ICIP Protocol and other relevant AM Policies.
- In line with its commitments under the *AM Aboriginal & Torres Strait Islander Strategy 2017-2020*, AM will provide ongoing cultural competency training to staff to empower them to work within First Nations cultural protocols and navigate long term respectful relationships with First Nations people and communities.
- First Nations cultures are diverse. AM collections, exhibitions and programs should reflect a diversity of First Nations cultural expression and give different First Nations people and groups the opportunity to be represented.
- First Nations cultures are living and evolving cultures. Inappropriate or outdated language and ideas are to be avoided when interacting with cultural groups.
- At events, AM staff and other stakeholders will demonstrate respect for First Nations people, their heritage and their ongoing relationship with the land through Acknowledgement of Country and Welcome to Country ceremonies. See the *AM Indigenous cultural protocols for public events*.
- AM acknowledges and respects the rights of all First Nations people, including Pacific Islanders in line with the Cultural Protocols for Australian Museum First Nations (Aboriginal, Torres Strait, Pacific Islands).
- Researchers shall comply with the Guidelines of Ethical Research of Aboriginal and Torres Strait Islanders Studies<sup>4</sup> and the Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders.<sup>5</sup>

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<sup>4</sup> Australian Institute of Aboriginal and Torres Strait Islander Studies, *Guidelines for Ethical Research in Indigenous Australian Studies*, 2012, <<https://aiatsis.gov.au/sites/default/files/docs/research-and-guides/ethics/gerais.pdf>>.

<sup>5</sup> National Health and Medical Research Council, *Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders*, 2018, <[https://www.nhmrc.gov.au/\\_files\\_nhmrc/file/publications/indigenous-ethical-guidelines.pdf](https://www.nhmrc.gov.au/_files_nhmrc/file/publications/indigenous-ethical-guidelines.pdf) >



## Repatriation

In accordance with the *Repatriation Policy for Australian Aboriginal Secret/Sacred and Aboriginal Ancestral Remains Collections*, AM:

- stores all secret/sacred material and ancestral remains in an appropriate manner in accordance with customary law;
- restricts access to secret sacred items and associated information as determined by the appropriate Aboriginal or Torres Strait Islander peoples; and
- is committed to the repatriation of Australian Aboriginal secret sacred objects and ancestral remains to traditional owners and rightful custodians.

AM acknowledges the importance of digital repatriation in achieving its commitment to the repatriation of First Nations material. Digital and online systems may be used to manage, share, exchange and enhance understanding of First Nations ICIP material. Where AM develops online systems for digital repatriation, it will seek to embed local protocols and the AM ICIP Protocol to ensure ethical and respectful treatment of ICIP material.

## Principle 2 – Self-determination

Article 3 of the United Nations' Declaration on the Rights of Indigenous Peoples provides that "*Indigenous (First Nations) Peoples have the right to self-determination*".

AM considers that this means that First Nations people have the right to self-determination in relation to their cultural heritage and that First Nations people should be encouraged and empowered in decision-making processes about projects that involve or affect their cultural heritage.

### Protocol in practice:

- AM recognises and respects the right of First Nations people to be involved in decision-making concerning the use, acquisition or display of their ICIP held in the AM collections or archives.
- Where feasible, First Nations people will be involved in all stages of a project (from preliminary discussions and project planning to delivery) where the project concerns First Nations ICIP material, First Nations people, or involves access to the land or seas with particular significance to First Nations people. AM will actively seek opportunities for genuine collaborations and partnerships with First Nations people, groups and communities.
- Where feasible, First Nations engagement in projects with ICIP content should begin as early in the project as possible and continue throughout the project.
- AM values the cultural knowledge and perspectives of its staff who are also First Nations people. The AM recognises the key role such staff can play in upholding First Nations self-determination. AM staff draw valuable guidance and assistance from those staff members who are also First Nations people to build relationships and engage in culturally appropriate consultation with First Nations communities about ICIP. Decisions on projects with ICIP content will take into account the recommendations and feedback of relevant staff who are First Nations people.
- AM will consult in an appropriate and ongoing manner with relevant First Nations communities in regard to the development and management of First Nations collections. This aspect is addressed further in the *AM Cultural Collections Acquisition Policy*.

- Engagement and consultation with First Nations people regarding the use, acquisition or display of ICIP is to be undertaken in a respectful, informed, ethical and meaningful way.
- AM will strive to develop displays, exhibitions and programs that empower First Nations people to tell their own stories in culturally relevant ways.
- By working with cultural centres, [Keeping Places](#) and through outreach programs, AM provides First Nations communities access to their cultural objects held in its collections. Access to collections may be provided by visits to the collection, access to collection data via the internet, loans and display of collection objects. This aspect is addressed further in the *AM Collections Maintenance Policy*.
- Systems for establishing and maintaining First Nations ownership of ICIP material will be implemented. Examples may include digital libraries and records with appropriate metadata, establishing an advisory committee, or by engaging cultural advisors locally to specific projects.
- Where researchers or the general public seek access to unpublished First Nations material in the AM library or archives, AM staff will refer inquiries to the relevant Collections Manager for assessment, who will apply the relevant AM policy, including this ICIP Protocol, in determining the granting of access.

#### **Case Study: The Thomas Dick Photographic Collection**

The Thomas Dick Photographic Collection was the end result of a collaborative work conducted over the approximate period 1910-1920, in the Port Macquarie area, by a non- Aboriginal photographer and his subjects/ collaborators. The Goori subjects of the photographs – Charlie and Nellie Dungay, Peter Budge, Neil and Mary Morcom, Mary Dungay and her children Mary, Grace and Billy Bugg – posed in re-creations of traditional life and the collection includes photographs of artefact making, hunting and the carrying out of ceremonial practices.

A Family Stakeholder Group (FSG) of the oldest living descendants of the Goori collaborators has been formed to ensure that all families are rightfully acknowledged and involved in the ongoing ownership issues. The photographs of their family members that were taken by Thomas Dick are part of the cultural and intellectual heritage of the FSG.

The AM holds the negatives to the Thomas Dick Collection and undertakes to ensure that the ICIP rights of the FSG are upheld. The AM consults with the FSG when access to the images are requested by third parties. The FSG must grant their express consent to use of the images for any purpose.

## Principle 3 – Collaboration, Consultation and Consent

AM respects Article 11 of the *United Nations' Declaration on the Rights of Indigenous Peoples concerning the right of First Nations peoples to "maintain, protect and develop manifestations of their cultures"*, including their ICIP. In doing so, AM seeks to gain "free, prior and informed consent" from First Nations people for the use of their ICIP. AM will seek consent from First Nations people that is based on clear, unbiased information that allows consideration of the merits (or not) of providing their consent for the proposed project. This information will be given in ways that do not seek to influence First Nations peoples or apply any form of pressure to them (eg by avoiding pre-filled contracts, or imposing timeframes that do not take into account the need for First Nations people to consult widely within their communities).

In seeking free, prior and informed consent AM will engage in ongoing consultation, negotiation and inform owners and custodians about the implications of consent. Through collaboration and consultation AM seeks to achieve mutual and ongoing understanding through.

### Protocol in practice:

- AM supports the right of First Nations people to be consulted about the use, acquisition or display of their ICIP and commits to ensuring such consultation is respectful, informed and ethical.
- The scale of the activity being undertaken by AM will influence the extent of involvement of First Nations stakeholders.
- To achieve best practice AM will plan those projects with ICIP elements to provide sufficient time for First Nations consultation and reflect that consultation in the project's strategy, timeframes and budgets. In doing so AM will allow time to have meaningful dialogue with First Nations owners, custodians or knowledge holders. AM seeks to ensure that this process does not result in First Nations people feeling forced or pressured into making a decision about use of ICIP by the AM.
- When collaborating or consulting with First Nations people about the use of their ICIP, AM staff should:
  1. **Allow ample time to plan and engage with First Nations people** - identifying the relevant First Nations communities who own the ICIP will take time. Building relationships with First Nations communities takes time. Presenting your proposal to use ICIP to First Nations people in a way which is neutral and free from bias or pressure will take time. Obtaining consent and possibly entering into a benefit sharing agreement will take time. Putting your project together for the AM will take time. Plan accordingly at the outset.
  2. **Seek internal AM guidance at the planning stage** – consult with relevant AM staff members who are First Nations people, getting advice about the process of engagement. AM staff who are First Nations people may have existing relationships with the relevant First Nations people and communities who own the ICIP. Where advice is given, AM staff should be guided by their knowledge and perspectives to ensure that consultation is respectful and culturally appropriate.
  3. **Identify the relevant First Nations people in authority** - if the project involves working with a First Nations artist or performer, seek their assistance in identifying which First Nations community or group holds the ICIP. Communicate and consult with the relevant First Nations people in authority.

4. **Present your proposal to use ICIP** – the goal is to seek the free, prior informed consent of First Nations people, groups or communities for projects that involve ICIP. This means that proposals need to provide full and relevant information in a neutral way (not advocating for the project), in an easy-to-understand format so that First Nations people, groups or communities can make an informed decision about whether they consent to the proposed use of ICIP (sometimes it may be appropriate to encourage First Nations people to seek their own independent legal advice especially if AM seeks a formal benefit sharing agreement with them). Be prepared to disband the project if consent cannot be obtained.
  5. **Be flexible when consulting** – and be prepared to make changes to the project brief, timeline and budget based on the outcomes of the consultation process. Consultation is a process of sharing and exchange and AM needs to be responsive to the views and opinions of First Nations stakeholders;
  6. **Allow sufficient time** - for a determination to be made by the First Nations people about the project. Acknowledge that there may be differing priorities for First Nations rights holders and it may take a long time to get approval. Again, if consent cannot be obtained or if your project timeframes do not allow for sufficient time, you should refer to your AM Director about whether the project needs to be disbanded.
  7. **Re-consult** - where there are changes to the project that take it outside of the scope of the original consent given; and
  8. **Keep detailed records** - of written consents and consultation with relevant First Nations people and communities in relation to a project. This is of paramount importance for AM's record keeping purposes to establish that due enquiries and consultation were conducted with First Nations groups. Records should be dated, set out clearly who was consulted, the substance of those discussions, the parameters of any consent and the project scope that was presented.
- AM library and archive collections may be reproduced in research projects. AM staff can make the Researcher ICIP Management Tool (see **Part 3 - Resources**) available to researchers in order to promote ethical use of library and archival collections. However, the ultimate responsibility for obtaining free, prior and informed consent for use of the ICIP material rests with the individual researcher.

**For further guidance and practical tips, refer to the *Consultation and Consent Guide* in Part 3 - Resources**

## Principle 4 – Interpretation and Authenticity

AM supports the right of First Nations peoples to be involved in the interpretation of their culture as the primary guardians and interpreters of their cultural heritage.

### Protocol in practice:

- Representations and depictions of First Nations cultures need to be authentic and empowering for First Nations people.
- Where projects incorporate ICIP, consider:
  - Is this project relevant to the First Nations community?
  - What connections to country are acknowledged? How are place-based narratives being maintained?
  - How will the project portray or interpret First Nations culture or themes? Is it appropriate? Does it empower First Nations people?
  - What First Nations perspectives are represented? How will First Nations viewpoints be prioritised and amplified?
  - What opportunities for collaboration with First Nations people and communities are there in the project?
- Present First Nations cultures as continuous living cultures and emphasise that cultural material originates from specific places, lands and communities that are inseparable from the people who made them.
- Identify and collaborate or consult with First Nations owners, custodians, knowledge holders, cultural advisors and other members of the community who can give AM advice on interpretation of culture, and its authentic use.
- Build long term relationships that ensure the ongoing interpretation and cultural integrity of the ICIP.
- AM may receive requests from interested parties to change the way it is using or displaying ICIP. Where those interested parties have a legitimate basis for their concerns, AM will carefully consider such requests and may seek further advice. AM's senior leadership is responsible for making the final determination and will consult with AM staff who are also First Nations people regarding the final determination and AM will advise the party of the reasons for the decision.
- **Offensive or incomplete material:** AM may attach a sensitivity warning to archival or library materials that contain outdated or offensive language. AM does not amend archival records but may amend the titles of offensive records that are displayed online. The original titles will always be kept in the text of the material. Where material is incomplete or incorrect, AM may also attach a note to adviser readers. AM welcomes feedback from First Nations people regarding offensive or outdated material and encourages the inclusion of First Nations perspectives to enhance or correct the material.

#### **Case Study: Garrigarrang: Sea Country**

*Garrigarrang: Sea Country* is a permanent exhibition at the AM that seeks to educate visitors about the diverse values and knowledge systems of specifically coastal First Nations communities. It showcases 300 cultural materials from the museum collection and tells stories through the voices of Aboriginal and Torres Strait Islander people in traditional language, using sound and video.

## Principle 5 – Cultural Integrity

AM recognises that maintaining the integrity of cultural heritage information is important to First Nations people. In any interpretations of ICIP, AM must ensure that the integrity of the cultures, stories and themes depicted are maintained.

### Protocol in practice:

- **Respectful:** AM seeks to ensure that its use of ICIP is respectful of the cultural integrity of that material.
- **Seek advice:** Staff should seek advice on cultural requirements and restrictions which might apply to the use of ICIP in projects.
- **Adaptation of ICIP material:** Before reproducing any First Nations images, symbols, songs, stories or knowledge, it is important to discuss and gain consent for any material alterations. Further consultation and consent may be required if the proposed use is outside the scope of consent already provided. Be prepared to change the proposed use if the First Nations language group or community do not agree with the proposed alteration.
- **Publishing online:** Be mindful that ICIP that is published online is difficult to control. If material is to be made available on the internet (for example, on the AM website, social media etc), consent to use it in this way must have been obtained prior to publication, and measures must be taken to limit the ease of copying. Speak with the key people involved in initial consultations about whether clearances were obtained for adaptation of material to online forms.
- **Marketing:** Ensure all the First Nations participants in a project agreed to the use of their knowledge, songs or designs, including reproductions in marketing and the use of biographical material and text.
- **Archives:** AM staff will seek the guidance of relevant AM Collections Manager who can provide guidance if further information is required to appropriately and accurately view and categorise archival material that contains ICIP.
- **Languages:** When using First Nations languages is important to consult with all the relevant communities and knowledge holders to ensure AM has obtained their consent for the proposed use. This also ensures that language is used correctly, appropriately, and its integrity and authenticity is maintained.



## Principle 6 - Secret, Sacred and Privacy

AM respects the right of First Nations people to maintain their cultural practices relating to secret and sacred information and knowledge. The privacy and confidentiality concerning aspects of First Nations individuals' personal and cultural affairs must also be respected.

### Protocol in practice:

- Sacred or secret material refers to materials that have spiritual significance to First Nations communities. This can be embodied in spiritual practices, initiation practices, ceremonies, beliefs and customs and sharing sacred or secret materials. Disclosing sacred or secret materials against cultural protocols can be harmful for communities.<sup>6</sup>
- AM acknowledges that some parts of First Nations culture are not appropriate to be shared publicly or may be subject to customary laws or other restrictions. These restrictions may apply to:
  - culturally restricted information (such as secret or sacred knowledge, or information which has a specific restriction such as gender specific knowledge; sacred sites and objects) which is subject to conditions under customary law;
  - confidential information;
  - personal or private information about individuals;
  - images reflecting or representing culturally restricted information, confidential information or personal or private information about individuals.
- AM ensures culturally sensitive handling, viewing and storage of secret or sacred objects or material in accordance with the *Australian Museum Repatriation Policy*.
- During consultations, AM staff should speak to the First Nations source communities about whether there are sacred or secret knowledge issues that could impact upon a project. Abide by the communities' cultural protocols regarding the appropriate safeguards.
- In some First Nations communities, the reproduction of names and photographs of deceased First Nations people is not permitted during the mourning period. There are also sensitivities around using the name or showing images of First Nations people who have been deceased for a long time.
- Where AM wishes to use the name or likeness of a deceased person, AM will attempt to consult with the family or relevant First Nations group, if known, to consent to this use. Where such consultation is not possible or achievable, AM will seek advice from cultural advisors as to the appropriateness of use of the name or likeness.
- Material held in the AM library and archival collections may be designated as secret or sacred by First Nations people. AM library and archives staff will not access secret or sacred material except as permitted and when it is necessary to view the material during changes or updates to AM's storage of the material.
- AM commits to providing appropriate warnings when displaying or exhibiting secret, sacred or private material. Cultural sensitivity warnings will be placed on materials which feature images of people who have passed away, to advise First Nations readers or viewers of the content of such materials.

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<sup>6</sup> Terri Janke and Maiko Sentina, *Indigenous Knowledge: Issues for Protection and Management*, IP Australia, Commonwealth of Australia, 2018.



## Principle 7 – Attribution

First Nations stakeholders are custodians of their cultural material and thus have the right to be attributed in relation to any use of ICIP.

AM commits to acknowledging First Nations stakeholders for the use of ICIP, where possible, including individual, community and/or family acknowledgements as required.

### Protocol in practice:

- AM attributes creators or authors of cultural heritage material on display at the museum, in exhibitions or online, where known, and with approval from the particular person.
- Acknowledgement may also be made to the relevant First Nations custodians, knowledge holders or community of origin of the ICIP as appropriate.
- It may be appropriate to include a traditional custodian notice or special acknowledgment. Where possible, traditional knowledge or ICIP notices should be included in any use of First Nations cultural material, including but not limited to programs, displays, exhibitions and published materials.  
**See Part 3 – Resources for a traditional custodian’s notice.**
- It is important to consult with the First Nations person or community on how they wish to be attributed with the ownership of cultural heritage material. AM respects the right of First Nations stakeholders to choose not to be publicly attributed or acknowledged.

## Principle 8 – Benefit Sharing

First Nations people have the right to share in the benefits from use of their cultural heritage.

### Protocol in practice:

- AM acknowledges the right of First Nations people to benefit from the sharing of their ICIP and culture and works to deliver a wide range of financial and non-financial benefits for First Nations people. For example, benefits may include:
  - facilitating access to ICIP in the AM Collection, whether as part of a specific exhibition or otherwise;
  - display, exhibition and promotion of ICIP, traditional knowledge and cultural expressions as embodied in objects, materials, performances and artistic works;
  - facilitating skill-sharing and learning in relation to collection items and ICIP, its interpretation and the intergenerational transfer of knowledge, including through educational programs, workshops or training;
  - facilitating the careers of emerging and leading First Nations artists and creators, for example, commissioning and/or programming First Nations artists and creators works;
  - touring exhibitions and outgoing loans to provide greater accessibility to First Nations cultural material or information held in AM collections;
  - building best practice engagement methodology and protocols through consultation with First Nations stakeholders;
  - invitations to attend and speak at events and as part of programs;

- financial benefits from commercialisation of First Nations Cultural Material, as approved by First Nations stakeholders;
- employment, internship and training opportunities.
- First Nations people should always be consulted as to what benefits they would prefer to receive, and this should be discussed as part of the consultation and consent process. It is the responsibility of AM to create useful and relevant outcomes for First Nations people based on their own priorities and on a case-by-case basis.
- AM will consider benefit sharing in the planning stages of a project, so that realistic and meaningful promises are made.
- First Nations people involved in projects will be paid appropriate rates that reflect their skills and input. First Nations people who share ICIP at AM by performing, speaking or sharing knowledge have the right to be paid for their services.
- Consent or clearance documents must clearly identify the benefits that the individual or source community will receive for their involvement.
- Each new use of ICIP requires sharing additional benefits with the source community. This may also require further consultation and consent if the proposed use is outside the scope of consent already provided. See above, Principle 3 – Consultation, Collaboration and Consent.

#### **Example: International benefit sharing standards in scientific and research projects**

The **Nagoya Protocol**, made under the UN Convention on Biological Diversity, is an international agreement that aims to ensure fair and equitable sharing of benefits with Indigenous people for use of their resources. Australia has signed the Protocol but is yet to implement it.

The Protocol's provides guidance on making decisions about benefit sharing and lists<sup>7</sup> the following examples of shared benefits in scientific and research projects:

- **Monetary benefits**
  - Up-front payments
  - Milestone payments
  - Payment of royalties
  - Licence fees in case of commercialisation
  - Salaries
  - Joint ventures
  - Joint ownership of relevant intellectual property rights
- **Non-monetary benefits**
  - Collaboration, cooperation and contribution in development programmes
  - Collaboration, cooperation and contribution in education and training
  - Strengthening capacities for technology transfer
  - Institutional capacity-building
  - Contributions to the local economy
  - Research directed towards priority needs
  - Institutional and professional relationships
  - Social recognition

<sup>7</sup> The Nagoya Protocol (Annex): <https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf>

## Principle 9 – Maintaining Indigenous culture

AM acknowledges that First Nations cultures are not static and that measures need to be taken so that First Nations people can maintain, revitalise and advance their cultures.

### Protocol

- As a public cultural institution, AM recognises its responsibility to ensure that First Nations people can maintain, revitalise and advance their cultures for future generations.
- AM works actively with First Nations communities to provide access to the AM collections in order to provide connections with living cultural practice and assist with processes of cultural revitalisation and regeneration.
- In line with the *Australian Museum Repatriation Policy*, AM works to repatriate material from the AM collections to First Nations cultural centres and Keeping Places, and collaborates directly with communities to return significant cultural objects and ancestral remains to their places of origin.
- First Nations cultures are not static, but constantly evolving. AM understands that it is important to build and maintain relationships with First Nations communities. Consultation is an ongoing obligation.
- AM strives to use ICIP consistently with ICIP permissions obtained through consultations.
- Rights and obligations under these ICIP Protocols are ongoing and AM recognises that ICIP rights are perpetual and do not cease upon the death of an individual knowledge holder or creator, or the expiry of copyright. AM should:
  - keep accurate and up-to-date records of the First Nations people and communities with whom it has consulted;
  - give First Nations individuals the opportunity to nominate a next-of-kin for AM to consult with and seek consent from if the First Nations person is incapacitated or has passed away. This can be done, for example, by including next-of-kin clauses into project contracts. **See Part 3 – Resources for a sample next-of-kin provision.**

### Case study: Educational Programs

AM hosts a range of educational programs, workshops and events that give the public and First Nations people the opportunity to engage and connect with living cultural practices.

Working with D'harawal Elder, Aunty Fran Bodkin, AM developed educational programs which highlight the extensive plant and bush food knowledge of First Nations people. The First Nations Bush Tucker - Museum in a Box series was developed to help students examine the ways in which First Nations people obtain, process and use their food resources.

Other educational programs celebrate the diverse arts practices that exist across First Nations communities. First Nations art and cultural objects from the AM collections are used as a tool to assist students to investigate the diversity of styles, materials and tools used in contemporary art practice.

## Principle 10 – Recognition and Protection

AM acknowledges that Australian policy and law should be used to recognise and protect First Nations cultural and intellectual property rights. These issues can be covered in contracts, protocols and policies for better recognition.

### Protocol

- AM recognises its responsibility as a cultural institution to ensure continued engagement with First Nations artists, creators and stakeholders to implement and recognise the Principles listed in this ICIP Protocol.
- Any new proposed uses of ICIP should be taken back to the source community for further consultation. Their free, prior and informed consent should also be sought for these new uses.
- Practical measures to recognise, protect and promote ICIP will be implemented by AM. This includes the use of traditional knowledge notices, written licences or agreements and cultural consent forms for use of ICIP.
- AM will develop mechanisms to ensure effective monitoring and review of this ICIP protocol and other policy implementation. AM welcomes feedback in relation to the operation of the Principles in this ICIP Protocol and will respond to any inquiries, complaints or other feedback in a timely, transparent and respectful way.
- **Published material:** AM acknowledges that there may be multiple rights holders in published materials – both the copyright owner/s and First Nations people who have ICIP rights in the material. AM will use traditional custodian's notices on its website to advise persons accessing published material (including books, photographs and reports) that they should seek clearance from First Nations peoples if they wish to reproduce or publish ICIP contained in the material.

### Summary

The AM ICIP Protocol is designed to apply to all people involved in the activities of AM including AM Trustees, Directors, Executives, employees, agents, contractors and volunteers (collectively referred to as 'AM staff'). There is an expectation that AM staff will follow the protocols as appropriate. As a working document, AM staff are encouraged to provide feedback which will help to inform future iterations of this ICIP Protocol. AM will regularly review the Protocol to ensure that it remains relevant and continues to meet best practice.

This ICIP Protocol may also be used to advise partners, affiliates and collaborators about AM's expectations in relation to ICIP and engagement with First Nations people. AM encourages all stakeholders to read this guide in full before commencing any projects that involve ICIP or First Nations people and communities.

The AM ICIP Protocol is expected to transform practise across all areas of the institution, meet new global standards and assist AM to build a shared future with Australia's First Nations people.

## Part 3 – Resources

### Consultation and Consent Guide

It is vital to collaborate with and consult with First Nations source communities and get their free, prior and informed consent for use of ICIP.

However, AM staff often require further guidance around consulting with the community; identifying the right people to speak to; and building relationships.

This guide gives an overview of the practical considerations of collaborating and consulting with First Nations communities about their ICIP. It is intended to give AM staff the confidence to navigate consultation and collaboration with respect and in culturally appropriate ways.

It is unlikely this guide will cover all the issues AM staff may face in professional practice, but it provides a starting point for solving problems and knowing where to go to find out more information.

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as, to maintain and develop their own indigenous decision-making institutions.

- *UN Declaration on the Rights of Indigenous Peoples, Article 18*

#### 1. Speaking to the right people

To identify the right people to speak with, AM project leaders will consult with relevant First Nations parties who will be involved in or affected by the project, starting with the source communities. This may include a range of people, communities, groups and organisations.

As the project may affect a range of people it is important to consult widely to ensure that the project gains the perspectives of the whole community it affects. AM project leaders will need to factor in enough time into the project delivery to identify the appropriate First Nations groups who own the ICIP.

#### ***Who do we consult?***

There are existing infrastructures and decision-making authorities within First Nations communities. However, this may differ from community to community. Seek advice regarding who to consult and the extent of appropriate consultation from:

- where known, traditional owners or cultural or language custodians;
- cultural advisors, including First Nations individuals, communities and custodians with whom AM has ongoing relationships;
- First Nations organisations such as representative bodies of particular communities such as local, regional or state Aboriginal Land Councils, prescribed bodies corporate and the Australian Institute of Aboriginal and Torres Strait Islander Studies;
- relevant artist/artist's estate;
- First Nations organisations in the relevant areas of practice, such as:
  - Language and cultural centres – there are over 100 First Nations language groups, most with their own language networks and centres;
  - First Nations art centres – there are regional and local Indigenous art centres that represent many First Nations artists across Australia;
  - First Nations educational bodies – all states and territories are represented by First Nations educational consultative groups AECG etc,]
  - First Nations rangers and land organisations (i.e. native title organisations);

- recognised individuals and academics;
- state and national libraries, art galleries and museums; and
- relevant AM staff whose positions or background mean they can provide guidance

For a useful list, and further detail on, First Nations organisations and bodies to contact, see **Part 3 – Resources**.

Through consultation, AM can come to understand what the community needs, what requires consent and the correct people to provide that consent. In turn, the people and communities giving consent are able to fully understand what they are consenting to.

Remember also that consulting with select members of the community doesn't necessarily mean that the community as a whole support the project. Consult widely so that you gain the perspectives of the community as a whole. Decisions about the project should be based on wider perspectives.

In situations where the most appropriate community or individual within that community are not easily identifiable, AM should contact secondary stakeholders such as Land Councils, language, arts or educational centres for assistance.

## 2. Consultation process and methods



### **Tip: Build long-term working relationships**

Long-term relationships built on trust and mutual respect can help AM to achieve more together with First Nations collaborators.

Consultation is the process of exchanging views and information on a particular matter or issue.

It is part of First Nations tradition and cultural practice to engage in deep listening – to stop, think, slow down and engage in meaningful and respectful discussions. This should be embedded in the consultation process. It's a two-way street where knowledge and opinions are shared in an atmosphere of mutual respect, and full and equitable participation.

Consultation means working together, listening to what the other party has to say and acting upon it.

It may be conducted as face-to-face meetings in person or online, telephone conversations and/or email correspondence. Consultation is an interactive and multi-layered process that aims to deliver a range of outcomes for both First Nations people and communities, and AM.

### ***Scope of consultation and consultation plans***

The scale of the activity being undertaken by AM will influence the extent of First Nations stakeholder consultation. As a rule of thumb, the larger the project, the greater and wider the consultation required.

ICIP consultation plans are particularly useful for projects or activities where ICIP consultation and consent required involves more than one First Nations community or multiple stakeholders.

Having an ICIP consultation plan can assist AM with identifying and keeping track of relevant stakeholders, managing expectations (i.e. the plan can include strategies for conducting consultations and navigating intercultural considerations), as well as with documenting and collating consultation responses.

### ***Priority of consultation***

Where there are multiple relevant First Nations people, communities and organisations identified for consultation, or where the relevant stakeholders cannot be identified, AM may prioritise the consultation process for ICIP use in a project as follows:

- Where specific First Nations people, communities, or organisations with a direct interest or connection to the First Nations subject matter or ICIP are identified, consultation with them is the priority.
- Where multiple First Nations stakeholders are identified, consultation should be with all stakeholders.
- Where the relevant First Nations people or communities cannot be located to consult with, AM project leaders and staff should seek advice and input from **as wide a variety of First Nations stakeholders** as reasonably necessary to inform themselves about the appropriateness of and any issues that may arise from use of First Nations subject matter or ICIP.

### ***Providing information***

As part of the consultation or consent process, AM should provide as much information as known at the time to the relevant First Nations people and communities.



#### **Tip: The project brief**

Information provided as part of the consultation should include details of the project brief. This includes clear information and details about:

- AM and any project partners;
- The 'why' in terms of how it relates to mutual benefits for First Nations communities and AM;
- The project and what work or level of participation is required of First Nations people and communities;
- For projects involving ICIP:
  - the ICIP and the nature of the use, including the intended aim and public exposure of such ICIP and any resulting works and what implications of this are;
  - The use of any resulting works, including the scale of the project, the context of use, the intended audience, the medium of the project and the intended outcome, where relevant;
  - Include details of all proposed uses where known, for example in education or public programs, in marketing including online; and
  - Due diligence research information concerning the particular ICIP to be used.
- The project budget;
- Any costs the relevant First Nations people and communities are expected to incur;
- How the relevant First Nations people and communities will be attributed for their contributions;
- What benefits (monetary and non-monetary) will the First Nations people and communities receive from their time, contributions and the use of ICIP, if any.



### ***Format of information***

AM should provide information in a neutral manner and in an easily understandable format which may change depending on the First Nations person and/or community, but could include written details, email, letters, phone discussions, face-to-face meetings (whether with individuals or groups). The priority should be to ensure enough information has been given such that the First Nations stakeholders that have been consulted understand the implications of the particular use and the terms of any proposed licence or consent.

### ***Engaging expertise***

It may be helpful to engage local First Nations consultants and professionals to facilitate the communications between AM and the community. This includes, for example, engaging the services of First Nations cultural and arts experts or a First Nations lawyer to assist with negotiations and contracts. Should this be required, please consult AM's Corporate Counsel to ensure proper engagement of external legal advisers.

### ***Sacred or secret material***

During the consultation process, always seek advice from the relevant First Nations people and communities on the suitability of material for wide dissemination and publication, particularly if culturally or legally sensitive information is involved.

### ***Allow enough time***

Allow sufficient time for a determination to be made by the First Nations stakeholders about the particular use. AM should build these consultation time allowances into its timeframes so that First Nations stakeholders do not feel forced or pressured into making a decision without proper consideration of the material and the facts.

### ***Get feedback***

Invite First Nations people to provide feedback on the project in its initial and development stages to ensure that communities are represented appropriately.

### ***Be flexible***

Understand that the consultation and consent process may lead to changes to the project brief, timeline and budget. Communicate budget and time restraints during the consultation process and be flexible to changes.

### ***Keeping records of consultation***

To comply with state record keeping legislation and as a necessary risk management practice, AM must keep sufficiently detailed records of consultation with relevant First Nations people and communities in relation to using ICIP for a project. Those records should be dated, set out clearly who was consulted, the substance of those discussions, the parameters of any consent and the project scope that was presented. Copies of documentation given to First Nations communities must also be kept. ICIP consents, as a form of IP licence, should be recorded just as other IP records are recorded.

### 3. Obtaining free, prior and informed consent for ICIP use

Ultimately, projects involving ICIP must obtain the **free, prior and informed consent** (FPIC) of the relevant First Nations people and communities for the use of their ICIP. This is the international standard of obtaining consent from First Nations people, enshrined in the UNDRIP and other international instruments.<sup>8</sup>

The consent process should be transparent for all parties, and information should be explained in plain English or with the help of an interpreter. First Nations stakeholders involved in the process should not feel as though they have been coerced or manipulated.

Understanding the legal and cultural implications of giving consent allows First Nations people and communities to make informed decisions as to whether or not to give consent.

#### When is consent required and recommended?

ICIP consent may be attached to intellectual property law consent requirements, such as where copyright-protected works (e.g. visual artworks, photographs, recordings or written materials) are used or reproduced. Consent from the creators will be **legally** required to use the intellectual property rights in these works, and it is recommended that consent also be obtained for use of ICIP contained in this works.

Where material being used isn't subject to intellectual property laws (for example, ancient rock art in which copyright has expired, or oral stories or songs which do not meet the requirements for copyright protection) but the material contains ICIP, **AM requires that reasonable efforts must be made to obtain consent for ICIP use.**

As a guide only, the following examples are situations where consent should be obtained:

- Creating projects with First Nations subject matter or containing identifiable Indigenous languages, traditions, beliefs, songs and stories or other ICIP;
- Collaborative projects;
- Use of First Nations subject matter or ICIP;
- Projects depicting real-life events; and
- Projects about an identifiable First Nations person or group of people.

In such cases, rights should be negotiated with the relevant First Nations people and/or communities, and consent obtained (preferably in writing) covering the issues outlined in this AM ICIP Protocol. There may be implications in consumer law, copyright, defamation law without this consent.

Consent in relation to use of ICIP material is an ongoing obligation. Consent for a certain use does not necessarily extend to additional uses of that ICIP material. This is why careful consideration should be given at the planning stage of your project as to what the scope of your project is but also with a view to what other uses AM may wish to use the ICIP for and present those purposes as part of the consultation and consent process.

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<sup>8</sup> The principle of free, prior and informed consent is backed by international human rights standards, such as those contained in the United Nations Declarations on the Rights of Indigenous People (Article 11(2)), the Convention on Biological Diversity and the International Labour Organisation Convention 169, which are some of the leading international instruments recognising First Peoples rights.

**Tip: Consent is dynamic and ongoing**

Where AM wishes to use ICIP material for a new or additional use outside the scope of the original consent given, AM should re-consult with the identified First Nations people and/or community representatives to make sure that free, prior and informed consent is given for each new use.

Remember that consent is dynamic, and ongoing consent should be sought for future uses of ICIP. Those who provide their consent to use ICIP may revoke consent for specific uses, even after consent has been given.

**Documenting ICIP consents**

When consent is obtained for use of ICIP, it is important to ensure that this is put into a contract clearly specifying all terms agreed to, including the use of knowledge, ownership of the resulting work, intended uses of the resulting work and the fees.

Depending on the specific First Nations people or community that AM is dealing with, as well as the scope of the project, AM may record consent or support for use of ICIP material in many different forms, such as:

- written cultural clearances, memorandums of understanding, collaboration and commissioning agreements, consent forms or licence agreements, setting out the terms of the consent;
- written email or letter of support;
- written record made by AM project leaders or staff of the consent (given verbally over the phone or in person) and signed off by the relevant First Nations person or community representatives;
- audio or audio-visual recording of the consent being given by the relevant Indigenous person or community representatives;
- letters, emails, facsimiles or other correspondence documenting the consent;
- a written file note made by AM staff of the conversation with the relevant First Nations person or community representatives providing consent (this form of record should only be considered as a last resort).

Where an individual is providing consent or support on behalf of a group of First Nations stakeholders i.e. a community as a whole, AM should confirm with them that they are authorised to do so on behalf of the group.

**Tip: Keeping ICIP consent records**

Records of ICIP consents and support in relation to ICIP material should be kept securely and filed to easily identify and connect these records with the relevant ICIP material and project.

An ICIP register should be kept as a central record.

Any cultural protocols attaching to the ICIP material to be used should be adhered to by AM. This extends to ensuring any third-party use of the relevant ICIP material does not conflict with the consent given to AM.

All parties involved in the project (including partners, employees, contractors, participants etc.) should acknowledge the value of ICIP rights and acknowledge that ownership of such rights remains always with the Traditional Owners and custodians of that ICIP. In addition, all parties should agree to comply with AM's ICIP Protocols in respecting ICIP rights.

## Copyright vs ICIP consents

Copyright consents required under law may be different to ICIP consents required by Indigenous communities. The table below summarises the differences.

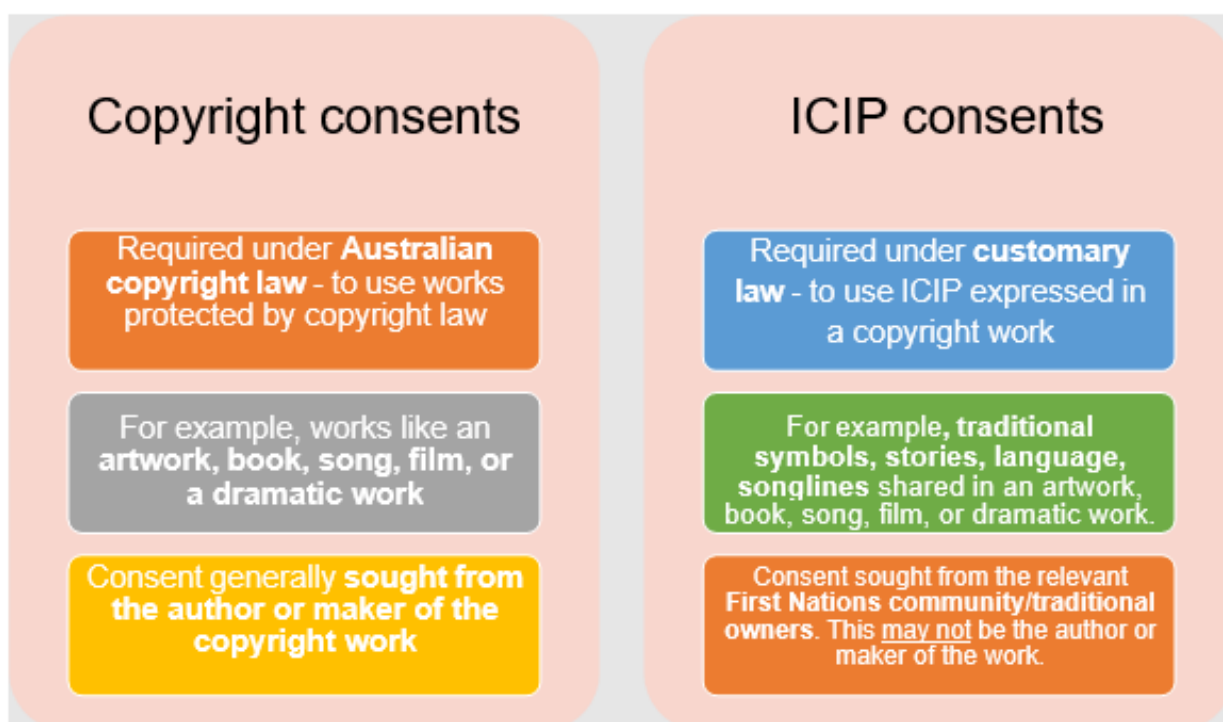


Figure 2: Copyright vs ICIP consents breakdown  
© Terri Janke and Company, 2018

As there may be a distinction between the author or maker of a copyright work and the knowledge holder of the ICIP contained in the work, consent may be required from multiple stakeholders, for example:

- The author or maker of works, or their estate if the maker is deceased (usually the copyright owner);
- The First Nations person or people depicted in the material, or their family or community if deceased;
- The Traditional Owners or Custodians of ICIP depicted or described in the material;
- The community organisation who can speak for the community or country or language depicted or described in the material.

ICIP rights needs to be recognised when negotiating copyright rights. Written licences and cultural consent forms for use of ICIP material should be utilised in the same way that permissions for copyright are required.

This also applies to works which may be in the public domain (i.e. works that are no longer protected by copyright laws) or works held in museums, archives or found on the Internet. ICIP consents are required to use these works where ICIP are embedded in them.

#### **4. Dealing with new copyright created in the course of a project**

Copyright works and materials may be created during the course of an AM project including:

- Artistic works, designs and crafts, performances, musical works and dramatic works (such as commissioned artworks, digital images, songs, audio recordings);
- Literary works (such as software, codes, reports and written materials, data, databases);
- Films (in any format, such as taken on mobile phones, personal cameras and commercial cameras as well as archival footage);
- Products applying emerging technologies (such as holograms, language apps, virtual reality games, augmented reality programs).

##### ***General position at law***

AM will own the copyright in any material created by its staff, but will only own material created by independent contractors by agreement. To the extent that works contain ICIP, AM's position is that AM will not own the copyright in works created that incorporate ICIP but, as part of the consultation and consent process, AM will seek a licence to use the copyright materials and the ICIP embodied in it. That licence will be a written document.

##### ***New copyright works where ICIP contribution is significant***

Where new copyright is created by a First Nations knowledge holder for the creation of copyright-protected work, the knowledge holder should:

- Grant free, prior informed consent for use of any ICIP in relation to the project (e.g. in the form of a cultural clearance);
- Be given an opportunity to review and comment on drafts, for example, checking prototypes, exhibition concept document, report or written materials and provide feedback;
- Receive benefits for use of their ICIP in the work e.g. a fee for their input;
- Be attributed as a co-author and share or own the copyright in the work.

For emerging technologies projects such as holograms, augmented reality, virtual reality works, the following additional permissions are required:

- Permission from copyright owners of any underlying artwork, song, dance, text, photograph, archival footage etc used, and a moral rights consent (i.e. in the form of a licence agreement);
- Where recordings are to be made (film or sound), permission from all participants for recordings to be made of them (i.e. a participants' release form);
- Free, prior and informed consent from knowledge holders for use of any ICIP captured in relation to the project (a cultural clearance form can be used);
- Attribution should be given to the artists/creators of any copyright-protected material, including cultural attribution to the First Nations artists' language or clan group.

## 5. When consent can't be obtained

There may be circumstances where consent to use ICIP can't be obtained or is not appropriate, for example:

- There are multiple First Nations people, communities and/or organisations and consensus cannot be reached;
- One or more First Nations stakeholders withholds consent;
- AM has been unable to identify or locate the relevant First Nations people and/or communities who are able to speak for the ICIP material.

To assist AM in making a determination as to the appropriateness of the use of the ICIP material in these circumstances:

- Advice should be obtained from First Nations consultants;
- Advice should be sought from AM's trusted First Nations partners;
- Support should be sought from those First Nations stakeholders who do consent; and
- Letters of support should also be sought from secondary First Nations stakeholders (i.e. a Letter of Support from the relevant Aboriginal Land Council).

Finally, the matter will be referred to senior AM staff members who are First Nations people (persons who are either a Manager, Director, part of the Executive Leadership Team or the AM Trust) who will review the proposed use of ICIP material and all supporting documentation and then make a final determination as to use of the ICIP material at issue. It may be that AM decides not to proceed without consent for the use of ICIP in which case the project will be disbanded. In any event, the keeping of detailed records in the official records management system regarding attempts to contact ICIP owners is crucial to demonstrating the efforts that the AM has undertaken to secure consent.



### **Tip: Using ICIP where consultation and/or consent is an issue**

Where AM decides to use ICIP material where it has not been able to identify or locate the relevant First Nations people, communities or organisations who may speak for the material, or where AM has been unable to identify or contact the rights holder of the material, AM must endeavour to use any such material in an ethical and responsible manner. It is of paramount importance that detailed records are kept to demonstrate AM's efforts to identify the relevant First Nations people.

Any subsequent notification of cultural protocols or concerns about use of the ICIP material (e.g. that it is publicly accessible) will be investigated by AM and, if necessary, the material will cease to be used and/or removed from public access.

## Sample ICIP clauses for contracts

The sample clauses provided here are for information only. Independent Contractor Agreement templates incorporate the ICIP provisions set out below. Incorporating ICIP clauses into any form of contract must be undertaken by AM's Corporate Counsel. For agreements other than Independent Contractor Agreements, such as Employment or Volunteer Agreements, please contact Corporate Counsel to discuss your project and what documentation you require.

### *Independent Contractor Agreements*

#### Short-form definitional clauses:

**First Peoples or First Nations** refers to people indigenous to the Pacific Islands and Australia's Indigenous peoples - Aboriginal and Torres Strait Islanders.

**Indigenous Cultural Intellectual Property (ICIP)** means all aspects of First Peoples' cultural heritage, including the tangible and intangible.

**Relevant Policies** means all of the AM's policies and protocols in force and as updated from time to time.

#### IP clauses

### 1. INTELLECTUAL PROPERTY

- 1.1 Where the Contractor informs AM in writing that particular Intellectual Property used in the provision of the Services is Indigenous Cultural Intellectual Property (and providing AM with evidence of the ICIP to AM's reasonable satisfaction, AM will not assert ownership over that Intellectual Property and will approach the Intellectual Property in accordance with its Relevant Policies addressing ICIP.
- 1.2 The Contractor acknowledges that, with the exception of any ICIP identified in accordance with clause 1.1 above:
  - (a) any Intellectual Property arising as a result of or in connection with the provision of the Services will, from its creation, vest exclusively in the AM; and
  - (b) the Contractor and the Nominated person assign to the AM all his/her interests which the Contractor may have at present or in the future in such Intellectual Property.
- 1.3 With the exception of any ICIP identified under clause 1.1, the Contractor undertakes to do all such acts and to execute all such documents necessary to vest the Intellectual Property in the AM pursuant to this clause 1.
- 1.4 To the extent that the Contractor uses or requires Intellectual Property belonging to a third party in the provision of the Services, including for ICIP, the Contractor will procure the right for AM to continue to use the Intellectual Property of that third party to the extent it is necessary for AM to have the benefit of Contractor's Services, providing AM with satisfactory evidence of those rights.
- 1.5 The AM grants the Contractor a limited licence to refer to Contractor's work for the AM for reference purposes only and by name. Any other use of AM Intellectual Property (including logos) requires the prior written consent of the AM.



## 2. WARRANTY

2.1 The Contractor warrants that it, and the Nominated Person:

- (a) will provide the Services in a safe manner free from risks to health and safety;
- (b) will perform the Services safely and to a reasonable standard of workmanship expected in the profession or industry in which the Contractor operates;
- (c) will comply with all relevant Laws in providing the Services;
- (d) will comply with all Relevant Policies relating to providing the Services;
- (e) in relation to any ICIP incorporated into Contractor's Services or work, have:
  - (i) to the best of their knowledge, identified the relevant First Nations owners of that ICIP; and
  - (ii) secured consent from those identified First Nations owners for the AM, to give the AM the benefit of the Services or work Contractor has been engaged to undertake;
- (f) will not engage in any business or activity or have any other interest which would conflict with the AM's business interests or bring the AM or the AM Group into disrepute; and
- (g) in providing the Services, will not infringe any person's Intellectual Property rights, including ICIP rights.

2.2 The Contractor further acknowledges that it is aware that the AM is relying on these warranties.

### Next-of-Kin clause for clearance forms or agreements

1.1 AM respects First Nations peoples and communities' cultural death protocols and agree that in the event of death or incapacitation of the *Creator/Contributor/Knowledge Holder* during the Term, AM will discuss the ongoing use of the *Creator/Contributor/Knowledge Holder's* name, any approved likeness and any approved biography in connection with *Project/Program/Work* with the *Creator/Contributor/Knowledge Holder's* next of kin as follows:

- (a) Name: [insert details]
- (b) Relation: [insert details]
- (c) Address: [insert details]
- (d) Contact number: [insert details]

or such other representative of the *Creator/Contributor/Knowledge Holder* who will have the required legal capacity to perform the *Creator/Contributor/Knowledge Holder's* obligations under this agreement.

### Cultural sensitivity warning notice

WARNING: The *[document/material]* contains names of deceased persons of Aboriginal and Torres Strait Islander. It also contains some language that might be considered offensive.

### Sample traditional custodian's notice

“

## Consultation Checklist

STAGE 1: PLANNING THE PROJECT	YES	NO	ACTION ITEMS/NOTES
<b>RESPECT</b>			
Have we considered why the project is being undertaken, why we are using First Nations subject matter, the perspectives you bring to it, and how it affects First Nations people and communities?			
Have we sought advice on the cultural issues that need to be addressed through consultation?			
<b>INTERPRETATION, INTEGRITY AND AUTHENTICITY</b>			
Have we conducted research on the project, including the First Nations subject matter or material proposed to be used?			
Is the project appropriate for the location or site?			
Does our project reflect the cultural value of the subject matter?			
Does our project empower First Nations people?			
Did we establish that any ICIP in the project is used in the correct cultural and historical context?			
<b>FIRST NATIONS SELF DETERMINATION</b>			
Is the project First Nations-led?			
Is there a First Nations voice in the design and implementation of the project or initiative?			
<b>COMMUNICATION, CONSULTATION AND CONSENT</b>			
Does our project deal with communally owned material (e.g. ritual knowledge, creation stories, songs or traditional or tribal communal designs)? If so, did we identify, consult with and seek consent from the traditional owners or other relevant First Nations people/groups?			
Have we identified the relevant First Nations people, communities and/or organisations?			
Did we make sure that consent comes from the right persons or faction(s) within a community?			
Where more than one First Nations group is involved, did we seek consent from every group?			
Did we ask the relevant First Nations people whether he/she/they require an interpreter? If so, did we ask them to identify a suitable person to translate?			
Did we engage the services of an interpreter? If so, did we pay them for their services?			
Are we prepared for the possibility that approval will be denied or conditional on substantial changes to our project?			
Have the suggestions of and feedback from relevant First Nations stakeholders been considered and incorporated?			
<b>SECRECY AND CONFIDENTIALITY</b>			
Is the subject matter or material culturally sensitive? Is it sacred or secret?			

Have we discussed any restrictions on use of subject matter or material with the relevant First Nations stakeholders who might be affected by the disclosure?			
Does our project contain any reference to personal or confidential information about individual First Nations people? If so, did we seek consent from anyone who might be affected by the disclosure (the individual themselves, their community/relatives) before using the information?			
Does our project feature any deceased First Nations person? If so, did we obtain clearance from their family/community prior to use?			
<b>STAGE 2: FORMALISING IP AND ICIP RIGHTS</b>	<b>YES</b>	<b>NO</b>	<b>ACTION ITEMS/NOTES</b>
Is there a contract with First Nations contributors or people involved? Does there need to be one?			
Does the contract clarify the project materials being created and who owns the IP rights in the material?			
<b>RECOGNITION OF ONGOING RIGHTS</b>			
Does the contract clarify that ICIP rights are retained by the First Nations custodians?			
<b>SECRECY AND CONFIDENTIALITY</b>			
Where the project deals with sensitive matter, are the agreed uses and protocols reflected in the contract?			
<b>ATTRIBUTION</b>			
Does the contract clearly identify how the First Nations project participant and/or source communities will be credited in the project?			
<b>BENEFIT SHARING</b>			
Does the contract appropriately reflect the benefits (monetary or non-monetary) that the First Nations project participant (and where possible the community) will receive for their involvement in the project?			
<b>MAINTAINING FIRST NATIONS CULTURES</b>			
Does the contract identify a next-of-kin for the relevant First Nations person, knowledge holder or custodian?			
<b>STAGE 3: AFTER THE PROJECT</b>	<b>YES</b>	<b>NO</b>	<b>ACTION ITEMS/NOTES</b>
<b>ATTRIBUTION</b>			
Are we complying with our ongoing obligations to attribute the artist/creator/knowledge holder/custodian?			
<b>COMMUNICATION, CONSULTATION AND CONSENT</b>			
Have we considered whether ongoing uses of the work are within the scope of the permission granted? If not, have we re-negotiated, and received the prior written consent from the artist/creator/knowledge holder/custodian for new uses of the ICIP (and any additional fees)?			
<b>BENEFIT SHARING</b>			
What new or additional benefits are being shared for new uses of the ICIP?			

## Researcher ICIP Management Tool – for projects involving the use of library and archival material

TEXT	YES	NO	ACTION ITEMS/NOTES
<b>CONSULTATION BY RESEARCHER</b>			
Have you considered why you are using First Nations subject matter, the perspectives you bring to the research, and how the research may affect First Nations people and communities?			
Have you complied with all Ethics Clearances and the <i>Guidelines for Ethical Research in Australian Indigenous Studies</i> ?			
Have you obtained the free, prior and informed consent from relevant First Nations people to use their ICIP material in your research project? <ul style="list-style-type: none"> <li>Have you identified the relevant First Nations people, communities and/or organisations to speak to?</li> <li>Do you need to consult with First Nations cultural advisors?</li> <li>Have you made sure that consent comes from the right persons or faction(s) within a community?</li> <li>Where more than one First Nations group is involved, did you seek consent from every group?</li> </ul>			
Is there any secret/sacred material or personal information to be reproduced in the research? This includes the names and/or images of deceased First Nations people. If so, have you obtained clearance from their family/community prior to use?			
Are there any other groups that may have issues with this research, version of events, or use of ICIP?			
<b>USE OF PHOTOGRAPHS</b>	<b>YES</b>	<b>NO</b>	<b>ACTION ITEMS/NOTES</b>
Is the person known?			
Are there any sacred or secret issues (e.g. cultural mourning practices – depiction of deceased persons)			
Do you have the required clearances from the copyright holder?			
<b>THIRD PARTY COPYRIGHT CONTENT</b>	<b>YES</b>	<b>NO</b>	<b>ACTION ITEMS/NOTES</b>
Do you hold the appropriate clearances for use of the content?			
Are there any ICIP clearances required?			

## Compiled list of land councils

Land councils, regional authorities and native title groups may often be able to assist in identifying the correct First Nations people to contact. There are several Land councils in Australia and they are usually state based. Not all areas in Australia have a land council, so it may be necessary to contact regional authorities, prescribed bodies corporate or native title groups, some of which are listed below. For a list of all Prescribed Bodies Corporate (formally Registered Native Title Bodies Corporate) and their contact details see AIATSIS' Native Title Corporations website: [www.nativetitle.org.au](http://www.nativetitle.org.au)

### New South Wales:

- NSW Aboriginal Land Council [www.alc.org.au](http://www.alc.org.au)
  - A list of all the Local Aboriginal Land Councils in NSW and their contact details can be found here: <http://www.alc.org.au/land-councils/lalc-boundaries--contact-details.aspx>

### Victoria:

- Barengi Gadjin Land Council Aboriginal Corporation [www.bglc.com.au](http://www.bglc.com.au)
- Dja Wurrung Clans Aboriginal Corporation [www.djadjawurrung.com.au](http://www.djadjawurrung.com.au)
- Eastern Maar Aboriginal Corporation [www.easternmarr.com.au](http://www.easternmarr.com.au)
- Gunaikurnai Land and Waters Aboriginal Corporation [www.gunaikurnai.org](http://www.gunaikurnai.org)
- Gunditj Mirring Traditional Owners Aboriginal Corporation [www.gunditjmirring.com](http://www.gunditjmirring.com)
- Martang Pty Ltd [djabwurrung@gmail.com](mailto:djabwurrung@gmail.com)
- Taungurung Clans Aboriginal Corporation [www.taungurun.com.au](http://www.taungurun.com.au)
- Wathaurung Aboriginal Corporation trading as Wadawurrung [www.wathcorp.com.au](http://www.wathcorp.com.au)
- Wurundjeri Tribe Land and Compensation Cultural Heritage Council [www.wurundjeri.com.au](http://www.wurundjeri.com.au)
- Yorta Yorta National Aboriginal Corporation [www.yynac.com.au](http://www.yynac.com.au)

### Queensland:

- Cape York Land Council [www.cylc.org.au](http://www.cylc.org.au)
- Northern Peninsula Area Council (Cape communities) [www.nparc.qld.gov.au](http://www.nparc.qld.gov.au)
- North Queensland Land Council [www.nqlc.com.au](http://www.nqlc.com.au)
- Torres Strait Regional Authority [www.tsra.gov.au](http://www.tsra.gov.au)
- Torres Strait Island Regional Council [www.tsirc.qld.gov.au](http://www.tsirc.qld.gov.au)
- Torres Shire Council [www.torres.qld.gov.au](http://www.torres.qld.gov.au)

### Northern Territory:

- Anindilyakwa Land Council (Groote Archipelago) [www.anindilyakwa.com.au](http://www.anindilyakwa.com.au)
- Central Land Council [www.clc.org.au](http://www.clc.org.au)
- Northern Land Council [www.nlc.org.au](http://www.nlc.org.au)
- Tiwi Land Council [www.tiwilandcouncil.com](http://www.tiwilandcouncil.com)

### Western Australia:

- Goldfields Land and Sea Council [www.glsc.com.au](http://www.glsc.com.au)
- Kimberley Land Council [www.klc.org.au](http://www.klc.org.au)
- Ngaanyatjarra Council Aboriginal Corporation (WA) [www.ngaanyatjarra.org.au](http://www.ngaanyatjarra.org.au)
- South West Aboriginal Land and Sea Council [www.noongar.org.au](http://www.noongar.org.au)
- Yamatji Marlpa Aboriginal Corporation [www.ymac.org.au](http://www.ymac.org.au)

### South Australia:

- Adnyamathanha Traditional Lands Association [www.atla.com.au](http://www.atla.com.au)
- Anangu Pitjantjatjara Yankunytjatjara (APY) Land Council [www.anangu.com.au](http://www.anangu.com.au)
- Far West Coast Aboriginal Corporation [www.fwcac.org.au](http://www.fwcac.org.au)
- Maralinga Tjarutja [www.maralingatjarutja.com](http://www.maralingatjarutja.com)
- Ngarrindjeri Regional Authority (NRA) [www.ngarrindjeri.org.au](http://www.ngarrindjeri.org.au)

### Tasmania:

- Tasmanian Aboriginal Centre [www.tacinc.com.au](http://www.tacinc.com.au)

## Compiled list of key First Nations organisations and peak bodies

There are many First Nations organisations and peak bodies that exist in the different practice areas such as in the creative arts, media, health, education and business. These organisations are often community controlled and First Nations-led structures that have growing capabilities may be able to assist with identifying the First Nations people groups for a particular project or make decisions.

This is a non-exhaustive list of organisations, but provides starting points for AM for identifying relevant First Nations people or groups. Representation and decision-making bodies vary between the industry areas, regions and communities. Links to organisation websites are provided where found.

### Arts and Design

- Regional art centres and associations:
  - Desert (the Association of Central Australian Aboriginal Art and Craft Centres) <https://desart.com.au/>
  - Ananguku Arts and Culture Aboriginal Corporation <https://www.anangukuarts.com.au/>
  - Association of Northern, Kimberly and Arnhem Aboriginal Artists <http://ankaaa.org.au/>
  - Indigenous Art Centre Alliance <https://iaca.com.au/>
  - Saltwater Freshwater Arts Alliance <https://iaca.com.au/>
  - Aboriginal Art Centre Hub of Western Australia <http://aachwa.com.au/>
  - Umi Arts- <http://umiarts.com.au/>
  - Indigenous Arts Centre Alliance (FNQ) <https://iaca.com.au/>
- Indigenous Art Code <https://indigenousartcode.org/> which maintains ethical standards for Indigenous art dealings
- National Aboriginal Design Agency <http://nationalaboriginaldesignagency.com.au/about/>
- Blakdance - <https://www.blakdance.org.au/>

### Research and Academia

- Peak research bodies:
  - Aboriginal and Torres Strait Islander Studies <https://aiatsis.gov.au/>
  - Lowitja Institute <https://www.lowitja.org.au/>
- National Indigenous Research and Knowledge Network <http://www.nirakn.edu.au/>
- National Health and Medical Research Council <https://www.nhmrc.gov.au/>
- Australian Centre for Indigenous History <http://history.cass.anu.edu.au/centres/acih>

### Languages

- First Languages Australia <http://www.firstlanguages.org.au/> - peak national body
- State and regional representation language bodies:
  - Languages Hub, Regional Enterprise Development Institute <http://redie.org.au/>
  - Victorian Aboriginal Corporation for Languages <http://www.vaclang.org.au/>
  - Queensland Indigenous Languages Advisory Committee <http://www.qilac.org.au/>
  - Kimberley Language Resource Centre <https://www.klrc.org.au/home>
  - Murrumbidgee Aboriginal Language and Culture Co-operative <http://murrumbidgee.org.au/>
  - Wangka Maya Pilbara Aboriginal Language Centre <http://www.wangkamaya.org.au/news>
  - Noongar Boodjar Language Centre <http://noongarboodjar.com.au/?v=6cc98ba2045f>
  - Far West Languages Centre, Ceduna Aboriginal Corporation <https://www.fwlc.org.au/>
  - The University of Adelaide – Mobile Language Team <http://www.mobilelanguageteam.com.au/>
  - Tasmanian Aboriginal Centre Ltd <http://tacinc.com.au/>



- Cape York Institute <https://capeyorkpartnership.org.au/game-changers/cape-york-institute/>
- Batchelor Institute of Indigenous Tertiary Education (Batchelor NT) <https://www.batchelor.edu.au/>

## Media and journalism

- First Nations media associations and broadcasters:
  - Brisbane Indigenous Media Association (Brisbane) <https://bimaprojects.org.au/>
  - Central Australia Aboriginal Media Association (Central Australia) <http://caama.com.au/>
  - Central Queensland Aboriginal Corporation for Media (Central Queensland)
  - Gadigal Information Service Aboriginal Corporation (New South Wales) <http://www.gadigal.org.au/>
  - Goolarri Media Enterprises (Kimberley region) <http://www.goolarri.com/>
  - Indigenous remote communities association <https://irca.net.au/>
  - Mount Isa Aboriginal Media Association
  - National Indigenous Television <https://www.sbs.com.au/nitv/>
  - National Indigenous Radio Service <http://www.nirs.org.au/>
  - South Eastern Indigenous Media Association (Victoria) <http://www.3knd.org.au/>
  - Torres Strait Islander Media Association (Torres Strait) <http://www.tsima4mw.org.au/>
- First Nations newspapers:
  - Koori Mail <http://koorimail.com/>
  - National Indigenous Times <https://nit.com.au/>

## Procurement and business

- Supply Nation <https://supplynation.org.au/>
- First Nations Chambers of Commerce:
  - New South Wales Indigenous Chamber of Commerce <https://nswicc.com.au/>
  - Victorian Aboriginal Chamber of Commerce <http://www.kinaway.com.au/>
  - South East Queensland indigenous Chamber of Commerce <http://www.seqicc.com.au/>
  - Aboriginal Business Industry Chamber of SA <https://abicsa.org.au/>
  - Northern Territory Indigenous Business Network <http://www.ntibn.com.au/>
  - Tasmanian Indigenous Chamber of Commerce.

## Education and Cultural Training

- State and Territory Education Consultative Groups:
  - NSW Aboriginal Education Consultative Group <https://www.aecq.nsw.edu.au/>
  - ACT Aboriginal and Torres Strait Islander Education Advisory Group
  - QLD Indigenous Education Consultative Committee
  - SA Aboriginal Education and Training Consultative Body <http://saaetcb.demo.webez.biz/>
  - VIC Aboriginal Education Association Incorporated <http://www.vaeai.org.au/>
  - NT Indigenous Education Council,
  - Tasmanian Aboriginal Corporation for Education
  - WA Aboriginal Education and Training Council
- Metropolitan Local Aboriginal Land Council <http://metrolalc.org.au/services-resources/cultural-awareness/>
- SNAIC- National Voice for our Children <https://www.snaicc.org.au/sector-development/training-programs/>



## Related Museum plans, policies and/or procedures

- Aboriginal and Torres Strait Islander Strategy 2017-2020
- Aboriginal Cultural Protocols for Public Events
- Archaeological Collection Deposition Policy
- Code of Conduct
- Collections Maintenance Policy
- Cultural Collections Acquisition Policy
- Ethnographic Collection Development Strategy
- Reconciliation Action Plan
- Repatriation Policy
- Research Policy
- Workplace Bullying & Harassment Policy

## Other protocols

### UN Declaration on the Rights of Indigenous Peoples

Australian Human Rights Commission, *Community Guide to the UN Declaration on the Rights of Indigenous Peoples*,  
[https://declaration.humanrights.gov.au/sites/default/files/document/publication/declaration\\_community\\_guide.pdf](https://declaration.humanrights.gov.au/sites/default/files/document/publication/declaration_community_guide.pdf)

### Research

Australian Institute of Aboriginal and Torres Strait Islanders Studies, *Guidelines for Ethical Research in Australian Indigenous Studies*, 2000 (revised 2011)  
<<http://aiatsis.gov.au/sites/default/files/docs/research-and-guides/ethics/gerais.pdf> >

Australian Institute of Aboriginal and Torres Strait Islanders Studies, *Ethical Publishing Guidelines*, 2015, <<https://aiatsis.gov.au/aboriginal-studies-press/getting-published/ethical-publishing-guidelines>>

The National Health and Medical Research Council, *Ethical Conduct in Research with Aboriginal and Torres Strait Islander Peoples and Communities*, 2018, <<https://nhmrc.gov.au/about-us/publications/ethical-conduct-research-aboriginal-and-torres-strait-islander-peoples-and-communities> >

### Libraries and Archives

Aboriginal and Torres Strait Islander Library, Information and Resource Network Inc, *Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services* 1995 (revised 2010), <<http://atsilirn.aiatsis.gov.au/protocols.php> >

### Artistic and cultural expression

Australia Council, *Protocols for Working with Indigenous Artists* booklets available for download at <http://www.australiacouncil.gov.au/about/protocols-for-working-with-indigenous-artists/>

### Film

Screen Australia, [Pathways and Protocols: A filmmaker's guide to working with Indigenous people, culture and concepts](https://www.screenaustralia.gov.au/about-us/doing-business-with-us/indigenous-content/indigenous-protocols), Screen Australia, May 2009 (Terri Janke under commission of Indigenous Branch) -<https://www.screenaustralia.gov.au/about-us/doing-business-with-us/indigenous-content/indigenous-protocols>

## Protection of ICIP rights

United Nations Declaration on the Rights of Indigenous Peoples -  
[http://www.hreoc.gov.au/social\\_justice/declaration/assembly.html](http://www.hreoc.gov.au/social_justice/declaration/assembly.html)

World Intellectual Property Organisation, Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions/Folklore – <http://www.wipo.int/tk/en/>

World Intellectual Property Organisation, Draft Provisions for the Protection of Traditional Cultural Expressions/Folklore (TCEs) and for the protection of Traditional Knowledge (TK) against misappropriation and misuse -  
[http://www.wipo.int/tk/en/consultations/draft\\_provisions/draft\\_provisions.html](http://www.wipo.int/tk/en/consultations/draft_provisions/draft_provisions.html)  
[http://www.wipo.int/tk/en/igc/draft\\_provisions.html](http://www.wipo.int/tk/en/igc/draft_provisions.html)

Terri Janke, *Our Culture, Our Future*, Michael Frankel and Company, Sydney, 1999 -  
<http://www.terrijanke.com.au/our-culture-our-future>

United Nations Global Compact, *United Nations Declaration on the Rights of Indigenous Peoples: A Business Guide*,  
[https://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/IndigenousPeoples/BusinessGuide.pdf](https://www.unglobalcompact.org/docs/issues_doc/human_rights/IndigenousPeoples/BusinessGuide.pdf).

United Nations Human Rights Office of the High Commissioner 2013, *Free, Prior and Informed Consent of Indigenous Peoples*,  
<http://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>.

Ninti One 2012, *What is Free Prior Informed Consent?*,  
[http://www.nintione.com.au/resource/BP7\\_Free-Prior-Informed\\_Consent.pdf](http://www.nintione.com.au/resource/BP7_Free-Prior-Informed_Consent.pdf).

## Further resources

Terri Janke and Maiko Sentina, *Indigenous Knowledge: Issues for Protection and Management*, IP Australia, Commonwealth of Australia 2018,  
[https://www.ipaustralia.gov.au/sites/g/files/net856/f/ipaust\\_ikdiscussionpaper\\_28march2018.pdf](https://www.ipaustralia.gov.au/sites/g/files/net856/f/ipaust_ikdiscussionpaper_28march2018.pdf)

Batchelor institute, Centre for Australian Languages and Linguistics Collection  
<http://callcollection.batchelor.edu.au/>

Australian Institute of Aboriginal and Torres Strait Islander Studies - [www.aiatsis.gov.au](http://www.aiatsis.gov.au)

Australian Human Rights Commission 2015, *Targeted Recruitment of Aboriginal and Torres Strait Islander people: A Guideline for Employers*,  
[https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC\\_Targeted\\_recruitment\\_ATSI\\_people\\_guideline2015.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_Targeted_recruitment_ATSI_people_guideline2015.pdf)

Australian Human Rights Commission 2015, *Targeted Recruitment of Aboriginal and Torres Strait Islander people: Summary*,  
[https://www.humanrights.gov.au/sites/default/files/AHRC\\_Targeted\\_recruitment\\_ATSI\\_people\\_summary2015.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC_Targeted_recruitment_ATSI_people_summary2015.pdf)

Reconciliation Australia, *Fact sheet: Capturing data on your Aboriginal and Torres Strait Islander employees*  
<https://www.reconciliation.org.au/workplace/wpcontent/uploads/2014/03/Fact->