

Indigenous Cultural and Intellectual Property Protocol

April 2023





About the artist

The cover and internal artwork is titled “**We Are The Earth and The Earth Is Us**” by Bronwyn Bancroft, a proud Bundjalung artist who has been exhibiting nationally and internationally for over 3 decades.

Bronwyn’s story for the artwork is “I have family both salt and fresh water -the bush food and leaves for medicine-the cycle of the Sun and Moon-as all our knowledge is embedded in these elements”.

Other artwork in this document is by Nikita Ridgeway.

Acknowledgement of Country

The NSW Department of Planning and Environment acknowledges Dharug Nation of the Burramattigal people on whose lands the department’s headquarters is located. We acknowledge their continued connection to their Country and culture and pay our deepest respects to Elders past and present.

We extend our respect to Traditional Custodians and First Peoples from all nations of NSW on whose lands we meet, share and work, and acknowledge their ongoing custodianship of Country, knowledge and cultural expression.

www.dpie.nsw.gov.au

Title: Indigenous Cultural and Intellectual Property Protocol

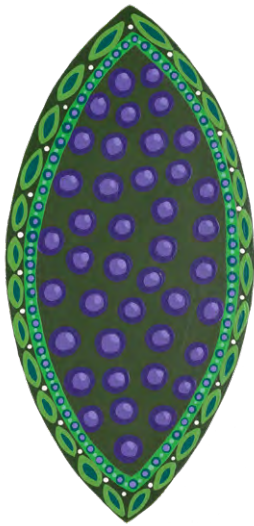
Created by Terri Janke and Company–Lawyers and Consultants

First published: April 2023

© State of New South Wales through Department of Planning and Environment 2023. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer:

The information contained in this publication is based on knowledge and understanding at the time of writing (April 2023) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.



Contents

1.	Introduction	2
1.1	What is Indigenous Cultural and Intellectual Property (ICIP)?	2
1.2	Why does the department need to protect ICIP?	4
1.3	How does the department engage with ICIP?	4
2.	Purpose	5
3.	Closing the gap	6
4.	Our Place on Country (OPOC) Strategy	10
5.	The rights of Aboriginal people to their ICIP	11
6.	True Tracks® ten principles	12
7.	Principles in practice	13
7.1	Recording or using Aboriginal knowledge of Country	13
7.2	Accessing ICIP through department employee's, community events and consultations	14
7.3	Filming and photography on Country and at events	14
7.4	Using data and data sovereignty	14
7.5	Using ICIP contained in existing records and archival material	15
7.6	Cultural mourning protocols	15
7.7	Attribution and acknowledgement	16
7.8	Benefit sharing	16
7.9	Long Term management of material incorporating ICIP	17
7.10	Feedback, complaints and disputes	17
7.11	Dealings with Aboriginal artists	18
7.12	Marketing and communications	19
7.13	Going on Country to take samples or collect data	19
7.14	Language and place making	20
7.15	Implementation and review of ICIP protocols	20
8.	Resources and Guides	21
8.1	Tips to Building Strong, Long-term Relationships	21
8.2	What is FPIC?	22
8.3	Guide to consultation and consent in projects	23
8.4	Project checklist	24



1. Introduction

In July 2020 the Department of Planning and the Environment (the department) [Our Place Our Country' Aboriginal Outcomes Strategy 2020-23](#) ('the **OPOC Strategy**') was launched. The OPOC Strategy was developed by the Aboriginal Outcomes Directorate with the aim of providing strategic direction for achieving Aboriginal outcomes across the department's work, in line with the NSW's Governments [Opportunity, Choice, Healing, Responsibility, Empowerment Plan](#) ('**OCHRE Plan**'). The OPOC Strategy seeks to embed the principles of self-determination and co-design into the department's core practice and contributing to wider positive benefits for Country and for Aboriginal communities. It sets out a clear vision, goals, principles and outcomes for improving Aboriginal outcomes through the work of the department cluster.

We acknowledge that a great deal of the work of the department impacts on Country, and on Aboriginal peoples and communities in NSW. Through this work, the department may be entrusted with Aboriginal knowledge and culture, also known as **Indigenous Cultural and Intellectual Property** (otherwise referred to as '**ICIP**' throughout this Protocol). This trust attaches with it an obligation to ensure ICIP's protection through agreed protocols and agreements. In upholding this obligation, the department acknowledges its responsibility to introduce practical measures to upholding the principles of self-determination and co-design.

The department's Indigenous Cultural and Intellectual Property Protocol ('**Protocol**') will guide staff in implementing these principles into practice. In adopting this ICIP Protocol, the department is strengthening its commitment to the OPOC Strategy, and the [National Agreement on Closing the Gap](#) ('**Closing the Gap**'), ensuring best practice around ICIP rights.

1.1 What is Indigenous Cultural and Intellectual Property (ICIP)?

Australian models for protection of cultural heritage, traditional knowledge and traditional cultural expressions currently use the terminology "Indigenous Cultural and Intellectual Property" following the *Our Culture: Our Future* Report¹. The department acknowledges the history and generalised nature of the term 'Indigenous'. We are committed to using respectful language, and based on feedback from local stakeholders and our understanding of current local conventions, the term has been avoided in this Protocol.

However, as the term "Indigenous Cultural and Intellectual Property" (ICIP) has a broad and recognised meaning in Australia and internationally, it has been adopted by this Protocol when referring to Aboriginal heritage, knowledge and cultural expressions. The department acknowledges that this term encompasses both Aboriginal and Torres Strait Islander heritage, knowledge and cultural expressions. We acknowledge Torres Strait Islander people living within NSW and will implement this Protocol in respect of all First Nations cultures and people in Australia.

¹ Terri Janke, Michael Frankel and Company, *Our Culture; Our Future, Report on Australian Indigenous Cultural and Intellectual Property Rights* (Report, Michael Frankel and Company under commission by Australian Institute of Aboriginal and Torres Strait Islander Studies/ ATSIC, 1999).

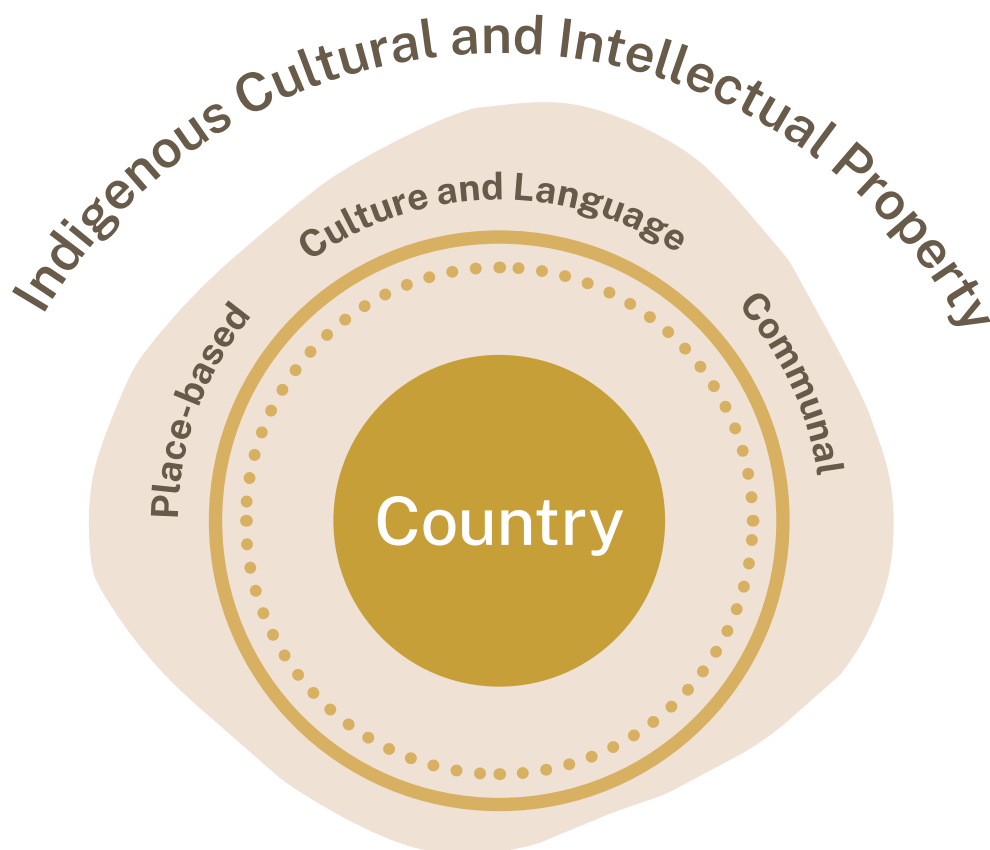
The department recognises that ICIP incorporates both tangible and intangible elements – the object or material and the knowledge incorporated within it, the artwork and the iconography and the cultural practice embedded within it. This heritage is living and evolving, handed down from generation to generation, inextricably connected to Country, and will continue to evolve for generations to come.

ICIP and the roles and responsibilities to look after culture and pass it on come from Country. They come from an individual or range of Aboriginal or Torres Strait Islander groups, or their lands or waters. Many generations may contribute to the development of ICIP. In this way, Aboriginal and Torres Strait Islander cultural heritage is communally owned. The communal nature of this ownership is often not recognised by current Australian legislation, demonstrating the need to articulate the department’s commitment to protecting ICIP legally and morally via this Protocol.

ICIP includes things like:

- Cultural knowledge (knowledge of Country and what healthy Country looks like, ecological knowledge, management techniques, scientific, agricultural, technical knowledge, ritual knowledge),
- Traditional cultural expression (traditional land management practices, stories of Country, art, designs and symbols and literature),
- Language (including oral or written language words),
- 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,
- Places, sacred and historically significant sites and burial grounds,
- The secret and sacred material and information (including sacred/historically significant sites and burial grounds), and
- Documentation of Aboriginal and Torres Strait Islander peoples’ heritage in all forms of media such as films, photographs, artistic works, books, reports, research and records taken by others, sound recordings and digital databases.

The following diagram illustrates where ICIP sits within the OPOC Strategy.





1.2 Why does the department need to protect ICIP?

The department acknowledges that Australia's intellectual property laws fall short of recognising and protecting ICIP in line with article 31 of the UNDRIP. In Australia, there is no comprehensive legal right for Aboriginal people and communities to manage or control their ICIP or make decisions about how it is used, represented or interpreted.

Australian laws do not adequately provide a legal right for Aboriginal or Torres Strait Islander people to maintain ongoing enforceable connections with their ICIP, and to stop others from debasing or misusing their ICIP.

The department is committing to protecting ICIP in the performance of its role through the creation and application of this Protocol which establishes an ethical and standard approach to give effect to the rights Aboriginal people need to maintain, control, protect and develop their ICIP.

1.3 How does the department engage with ICIP?

Through the department's work on Country and engagement with Aboriginal people and communities across NSW, staff will inevitably engage with ICIP. This will be encountered across the areas of work which are particularly relevant for Aboriginal communities including when:

- making decisions about land or water, including when impacting on culturally significant sites,
- engaging the services of Aboriginal people including as consultants, performers, guest speakers or for Welcome to Country,
- commissioning artworks from Aboriginal artists which incorporate cultural knowledge,
- contracting Aboriginal people to make or feature in films or recordings which documents an Aboriginal communities' priorities for Country, their cultural heritage, or cultural knowledge,
- consulting with and recording Aboriginal people and communities sharing cultural knowledge in community forums, workshops, or other events,
- incorporating personal stories, perspectives, experiences, priorities, culture of Aboriginal people and communities into the department's projects, case studies or reports,
- funding organisations, such as incorporated Aboriginal organisations, and unincorporated Aboriginal groups, to deliver projects that incorporate their traditions, cultural knowledge and beliefs,
- collaborating with Aboriginal people and communities on department co-design projects such as written reports, incorporating their cultural knowledge, beliefs and cultures,
- collecting data, facts or information about Aboriginal people, knowledge, culture, or Country, and
- using language in department projects such as naming places, sites, rooms, or other locations.

2

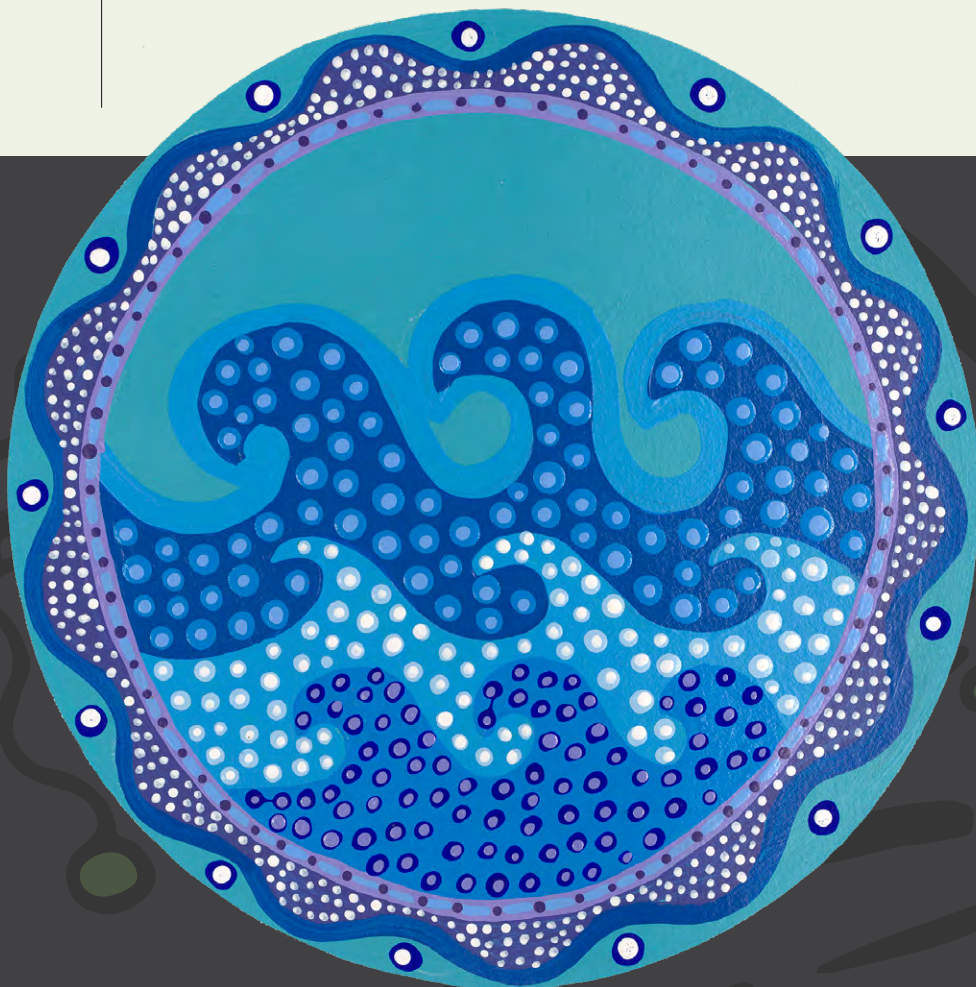
2. Purpose

The purpose of this Protocol is to cut through the aspirational aspects of policy documents to offer practical guidance to the department's staff on protecting ICIP. The Protocol is a foundational guide that will decode and underpin the OPOC Principles and Closing the Gap commitments, providing methods to recognise and protect ICIP. The Protocol should be considered and thoughtfully implemented in all existing and future work with Aboriginal people and communities or involving ICIP. Where reasonably possible, staff should also consider how the Protocol can be applied retrospectively to department projects involving ICIP to ensure best practice has been followed.

This Protocol is guided by the True Tracks® Principles for ethical engagement with First Nations people developed by Dr Terri Janke of Terri Janke & Company, Lawyers and Consultants, and the principle of Free Prior, and Informed Consent as provided for under the [United Nations Declaration on the Rights of Indigenous Peoples](#) ('UNDRIP').

The Protocol is accompanied by a:

- Guide to Free Prior, and Informed Consent,
- Guide to Consultation and Consent in Projects,
- Project Checklist





3. Closing the gap

3

The National Agreement on Closing the Gap is a 10-year partnership between all Australian governments and the Aboriginal and Torres Strait Islander Community-Controlled Peak Organisations (“CAPO”) to deliver better outcomes for Aboriginal and Torres Strait Islander people. The refreshed Agreement was signed in July 2020 and sets out a future where Aboriginal and Torres Strait Islander people have decision-making roles in policy that affects them.

The Agreement sets out 17 socioeconomic outcomes and targets, and five new Priority Reforms to change the way governments work to improve life outcomes experienced by Aboriginal and Torres Strait Islander people. The socioeconomic outcome areas cover education, employment, health and wellbeing, justice, safety, housing, land and waters, and languages.

As a part of the Agreement, governments commit to delivering policy that impacts on Aboriginal and Torres Strait Islander people in ‘full and genuine partnership’. In NSW, this partnership model has manifested in the joint-council governance structure in which government and the CAPO work together to design initiatives to further progress towards meeting NSW’s targets. NSW CAPO members include:



ICIP Alignment to Closing the Gap

The department respects the right for Aboriginal people to practice and uphold culture, and the right for culture to be protected. This commitment is formalised through this Protocol, which will cascade down to individual contractual arrangements with stakeholders. Whilst the principles of ICIP and Closing the Gap can both be viewed as underpinning almost every aspect of Aboriginal people's lives, implementation of an ICIP Protocol will directly contribute to many Closing the Gap targets and reforms. There are two (2) targets that the department is responsible for:

Target 9

Aboriginal people secure appropriate, affordable housing that is aligned with their priorities and need.

Target 15

Aboriginal people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters.

The department is committed to:

- promoting and strengthening connections to culture and identity in our work on Country under the OPOC Strategy,
- value and embed Aboriginal cultural knowledge and world views in program delivery and business as usual in an effort to promote and strengthen these relationships as they relate to the the department's functions.

The department will do this by utilising this Protocol and using its best endeavours to enter into arrangements with Aboriginal organisations and people when going on Country to talk about their priorities, perspectives or cultural knowledge (for instance, in environment or water management, heritage protection, planning or housing) so they have a say in how Country is managed, and decide how culture can be practiced on Country.

This relationship is also underpinned by ICIP rights, being the rights Aboriginal people have to their culture, explained in part 5 of this Protocol.

Priority Reform 1

Formal partnerships and shared decision making – Building and strengthening structures to empower Aboriginal people to share decision-making with governments.

Under the OPOC Strategy, the department is committed to strengthening meaningful ongoing relationships with Aboriginal people. This strategy links to strengthen the management of Country in issues such as education, health, employment and law and justice, including Local Decision Making (as central to the delivery of the OCHRE plan).

This forms part of the department's OPOC strategy to foster:

- partnerships based on co-design and collaboration to enable Aboriginal people and communities to have greater choice, access and control over land, water and resources, and
- Aboriginal people and communities to determine the Aboriginal culture and stories that are reflected in the built and natural environment across NSW.

This Protocol provides a framework for ICIP protection when engaging on co-design projects and reinforces the UNDRIP, which sets out the rights Indigenous peoples of the world to maintain, control, protect and develop their cultural heritage, cultural knowledge and traditional cultural expressions. This Protocol recommends free prior informed consent of the appropriate Aboriginal people and communities where there ICIP is being accessed, used, recorded, and stored at the department. It is anticipated that this framework provides the foundation for more formal partnerships to develop. This demonstrates the clear overlap between the department delivering on its targets under Closing the Gap and protecting ICIP rights.

Priority Reform 2:

Building the community-controlled sector – Building formal Aboriginal community-controlled sectors to deliver services to support Closing the Gap.

Under the OPOC Strategy, the department will contribute to building the community-controlled sector by prioritising economic independence for Aboriginal people through increased employment and enterprise development, and engaging Aboriginal people and organisations to lead bodies of work. The aim here is to:

- increase our Aboriginal workforce across at all levels as we become an employer of first choice for Aboriginal people, and
- engage independent Aboriginal people and organisations, enabling more community-controlled organisations to emerge.

These commitments are first implemented through this Protocol in the department's engagement with and remuneration of Aboriginal people. For example, the department should engage and remunerate Aboriginal people when:

- consulting and co-designing ICIP projects,
- accessing Country to take samples or collect data and information, and
- working with Aboriginal people for their general time and efforts.

The desired outcome is to build the department's ongoing relationships with Aboriginal people and community bodies, and in doing so, contribute to sustained capacity building and investment in Aboriginal community-controlled organisations.

By implementing this Protocol, the department will establish arrangements with Aboriginal people and communities to ensure any projects involving art, creative works and Aboriginal knowledge generally, have provision for benefit sharing. This will generally ensure benefits flow back to people and communities, thereby supporting economic prosperity for Aboriginal people.

Priority Reform 3

Transforming government organisations – Systemic and structural transformation of mainstream government organisations to improve accountability and better respond to the needs of Aboriginal people.

The department aims to change the way we do business through the implementation of the OPOC Strategy. A central feature of this strategy is our commitment to Aboriginal partnerships founded on co-design and collaboration and the implementation of this Protocol in all services of the department. For instance, senior executive and managers should:

- be aware and promote the importance of developing responses that address the needs and aspirations of Aboriginal people impacted by our work,
- create and support opportunities for Aboriginal staff and stakeholders to reform and develop responses to address the needs and aspirations of Aboriginal people impacted by our work,
- be held accountable through governance and contractual arrangements, and
- support Aboriginal staff in partnership with Aboriginal communities to develop responses to address the needs and aspirations of Aboriginal people.

Under this Protocol, the department commits to improving our accountability and responding to the needs of Aboriginal people through consultation, co-design and implementing good practice when contracting with Aboriginal people (including ensuring copyright ownership remains with Aboriginal people and benefits for the use of ICIP flow back to Aboriginal people and communities).

We recognise these leadership roles are integral for success, and that appropriate engagement and connection with Aboriginal people and Country are core to our service delivery. Many opportunities exist for the department to continuously improve in this space, by implementing committees, sub-committees and engaging consultants for project-specific or broader bodies of work, to ensure Aboriginal voices are integrated and can be heard at all levels of government.

Priority Reform 4

Shared Access to Data and Information at a Regional Level

–Enable shared access to location specific data and information to support Aboriginal communities and organisations achieve the first three Priority Reforms.

Under the OPOC strategy, the department commits to promoting and strengthening connections to culture and identity. The desired outcome is to:

- ensure residents and visitors to NSW gain a deeper understanding of Aboriginal history and culture through our tangible and intangible heritage, and
- the continuum of Aboriginal history and culture as a visible part of NSW's built and natural environment.

These outcomes will be achieved through the implementation of this Protocol, and the department's commitment to data sovereignty and information sharing. For example, agreements will need to be considered when creating new materials incorporating ICIP, going on Country to take samples or collect data and planning for the long-term management and storage of material incorporating ICIP, data and information. These measures ensure shared access and control of data and information is fostered at a regional level by department staff.

Priority Reform 5

Employment, Business Growth and Economic Prosperity (NSW Only).

This priority is reflected in the OPOC Strategy commitment to prioritise economic independence for Aboriginal people through increased employment and enterprise development. The department will do this by:

- expanding our current efforts to develop a cluster-wide plan to support the achievement of targets under the Aboriginal Procurement Policy and Aboriginal Participation in Construction Policy, and
- implementing cluster-wide targets and plans to increase the Aboriginal workforce across all portfolio areas within our organisations.

The department will expand on opportunities for businesses to deliver government contracts through our engagement with Aboriginal communities, businesses, and relevant experts when making decisions that impact on Aboriginal people, Country and their ICIP. This is supported by this Protocol by ensuring Aboriginal people are both consulted on and involved in decision making where it relates to ICIP and Country and remunerated for their time and expertise.

4. Our Place on Country (OPOC) Strategy

The *Our Place on Country* (OPOC) Strategy acknowledges that Country is at the core of Aboriginal identity and sense of belonging. The OPOC Strategy also acknowledges that the ongoing effects of colonisation and dispossession, including of stewardship and access to Country, has correlating impacts on Aboriginal people and communities. The department recognises the importance of our role in enabling Aboriginal people and communities to achieve self-determination, autonomy and leadership in managing Country. It is the place from which Aboriginal languages and culture are derived, determining families and kinship and systems that make up communities, and is at the centre for continuing the oldest surviving cultures on the planet.

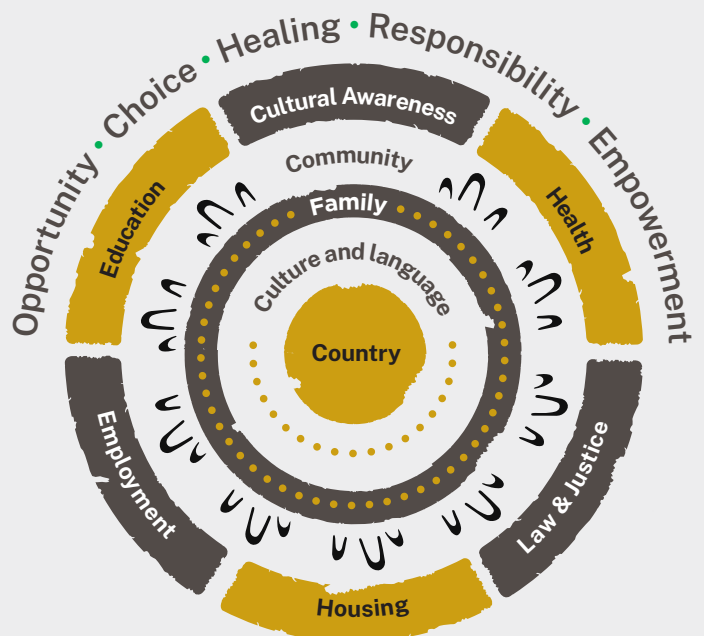
The OPOC Strategy aims to help the department do a better job of delivering our core business by:

- developing a better understanding of Aboriginal communities and integrating this knowledge into our work, and
- creating partnerships based on co-design and collaboration.

The department acknowledges that Aboriginal communities are often very busy prioritising the immediate needs of the community. These issues are symptomatic of the dispossession of lands and of the displacement of voice in managing Country. The aims of the OPOC Strategy allows the department to contribute to healing, starting with Country and radiating out to all other areas, like a ripple effect. This Strategy will open previously closed doors, and as we become stronger and more capable, we can walk alongside and strengthen Aboriginal communities, families, cultures and languages. This will benefit Country and create healing for both Aboriginal communities and non-Aboriginal people.

The principles of the OPOC Strategy are:

- acknowledge, value and embed Aboriginal cultural knowledge and world views in program delivery as business as usual,
- respect Aboriginal people's rights, obligations and roles as Traditional Custodians of the land, sea and waterways,
- promote and strengthen connections to culture and identity,
- prioritise economic independence for Aboriginal people through increased employment and enterprise development,
- establish and maintain meaningful ongoing relationships with Aboriginal people and Country, and
- recognise appropriate engagement and connection with Aboriginal people and Country as core to our service delivery.



5. The rights of Aboriginal people to their ICIP

The rights Aboriginal people have to their ICIP are enshrined within international law instruments. The *United Nations Declaration on the Rights of Indigenous Peoples* ('**UNDRIP**'), to which Australia is a signatory, sets out the rights Indigenous peoples of the world require for their survival, dignity and wellbeing.

Article 31 of the UNDRIP states that:

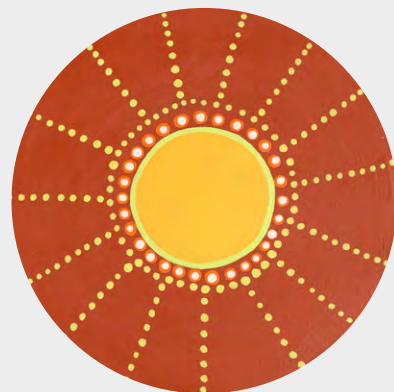
“Indigenous peoples have the **right to maintain, control, protect and develop their cultural heritage, cultural knowledge and traditional cultural expressions**, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge 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, cultural knowledge, and traditional cultural expressions.”



In accordance with ICIP rights, the department recognises that Aboriginal people have the right to:

- manage 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 Aboriginal customary laws,
- maintain the secrecy of Aboriginal knowledge and cultural practices,
- guard the cultural integrity of their ICIP,
- be given full and proper attribution for sharing their heritage, knowledge and cultural expressions,
- preserve, protect and manage Aboriginal cultural objects,
- respectfully care for, and manage, Aboriginal ancestral remains, and
- 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.²

These rights form the basis of the True Tracks® Principles outlined in this Protocol. The foundation of Closing the Gap targets also directly relates to the UNDRIP.



² Terri Janke, Michael Frankel and Company, *Our Culture; Our Future, Report on Australian Indigenous Cultural and Intellectual Property Rights* (Report, Michael Frankel and Company under commission by Australian Institute of Aboriginal and Torres Strait Islander Studies/ATSIC, 1999).

6. True Tracks[®] ten principles

6

Since the [Our Culture, Our Future](#) report was published in 1999 recommending the introduction of best practice protocols as a way of acknowledging ICIP rights, protocols have become an important industry tool.

This Protocol incorporates Terri Janke and Company's ten True Tracks[®] Principles which are in accordance with Article 31 of the UNDRIP, of which Australia is a signatory. The principles are as follows:

1. Respect

Aboriginal people have the right to own and control their cultural heritage.

2. Self-determination

Aboriginal people have the right to self-determination in their cultural heritage. Aboriginal people should be encouraged and empowered in decision-making processes about projects that affect their cultural heritage.

3. Prior informed consent and consultation

Prior informed consent for use of Aboriginal knowledge should be sought from Aboriginal people. This involves ongoing negotiation and informing custodians about the implications of consent. Consultation with the owners of the traditional cultural expression should take place.

4. Interpretation

Aboriginal people are responsible for maintaining their culture and the interpretation of their cultural heritage.

5. Integrity

Maintaining the integrity of cultural heritage information or knowledge is important to Aboriginal people.

6. Secret/Sacred and privacy

Aboriginal people have the right to keep secret their sacred and ritual knowledge in accordance with their customary laws. Privacy and confidentiality concerning aspects of Aboriginal people's personal and cultural affairs should be respected.

7. Attribution

It is respectful to acknowledge Aboriginal people as custodians of Aboriginal cultural knowledge by giving them attribution.

8. Sharing benefits

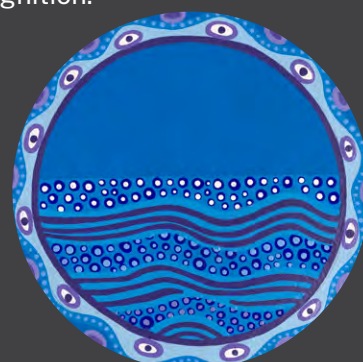
Aboriginal people have the right to share in the benefits from the use of their culture, especially if it is being commercially applied. The economic benefits from use of their cultural heritage should also flow back to the source communities.

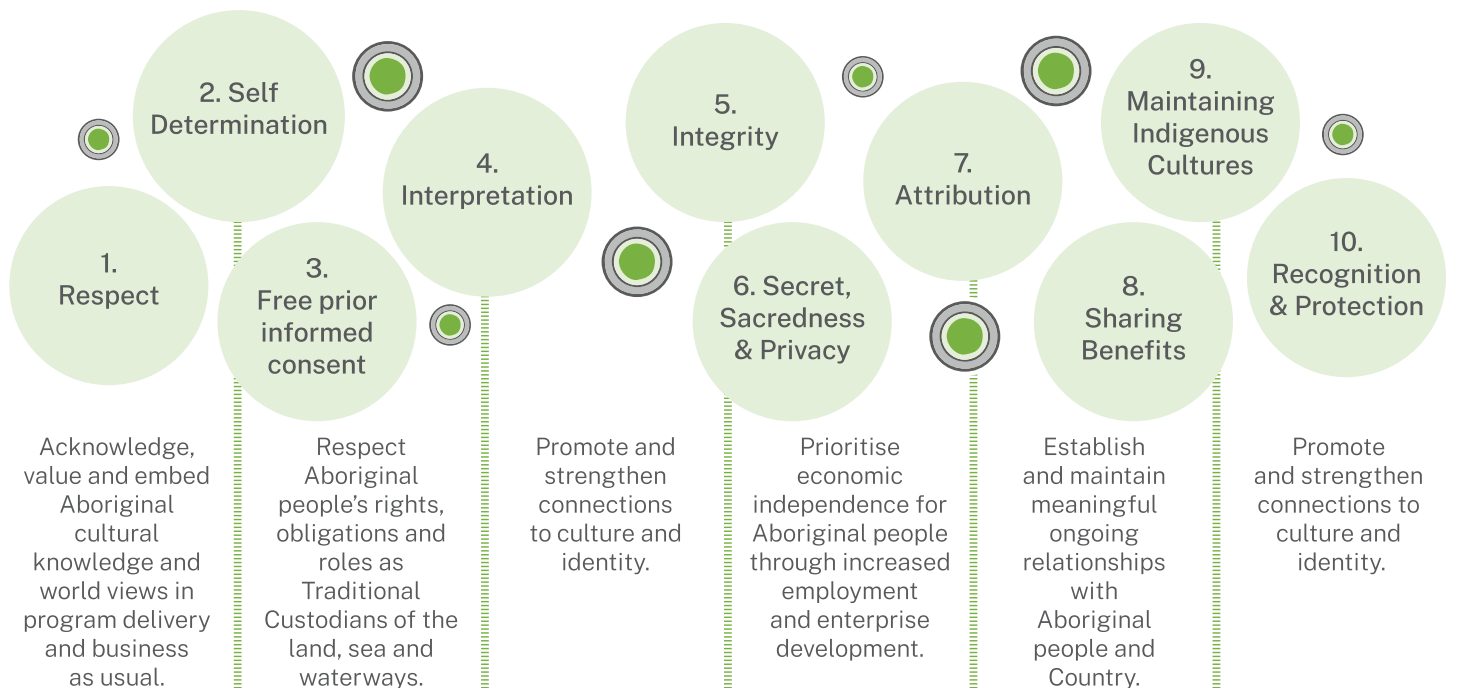
9. Maintaining culture

In maintaining Aboriginal cultures, it is important to consider how a proposed use might affect future use by others who are entitled to inherit the cultural heritage. Importance and respect should be given to Aboriginal cultural practices such as dealing with deceased people and sensitive information.

10. Recognition and protection

Australian policy and law should be used to recognise and protect ICIP rights. Using copyright laws for example but also new laws and policies should protect these rights. These issues can be covered in contracts, protocols, and policies for better recognition.

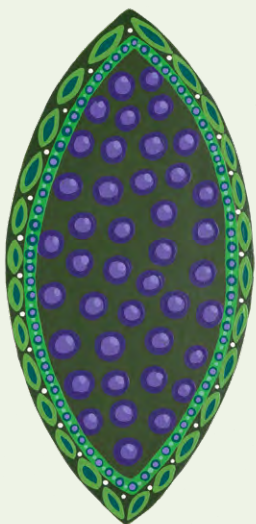




The True Tracks® Principles underpin the OPOC principles and offer practical guidance as depicted in the diagram above. They are designed to help staff think through the issues that might arise in implementing the OPOC principles and situations involving ICIP. They may appear to be in a sequential line and separate from each other, however they are deeply interconnected and dependent on each other. Each Principle integrates a number of practice points outlined in Part 7 of this Protocol.

7. Principles in practice

7



7.1 Recording or using Aboriginal knowledge of Country

- 7.1.1** Self-determination and respect must be put in practice when recording or using ICIP in department projects. Staff will respect the self-determination of Aboriginal people when recording Aboriginal people sharing their cultural knowledge, perspective or priorities for Country (This includes recording cultural knowledge in reports, case studies, films, audio etc).
- 7.1.2** It is important to ensure free, prior and informed consent (**FPIC**) processes are followed prior to using ICIP or recording Aboriginal people sharing ICIP. The details of consent should include clear agreements around copyright ownership of materials incorporating ICIP or the recording, rules around how the recording and ICIP can be used and by whom, how it will be stored and managed and who can access the material. See the **Guide to FPIC** for guidance.
- 7.1.3** The recording of copyright materials containing ICIP should be negotiated to ensure these materials are owned and managed in culturally appropriate ways, including: recognising Aboriginal people's ownership and custodianship of the ICIP being passed on,
- giving Aboriginal people and Traditional Owners the ability to control and protect material containing ICIP under Australian copyright law, and
 - ensuring that ICIP contained in department projects may be accessed and used by Aboriginal people, their family and community in the future for cultural maintenance and other purposes

7.1.4 Agreements or other written documents should be used to keep a clear record of agreed terms to ensure the conditions of access and use of ICIP are followed by all department staff. In line with the department Records and Information Management Policy, staff must maintain clear records about material or information stored or managed by the department and incorporate ICIP to enable Aboriginal people access to the ICIP in the future.

7.2 Accessing ICIP through department employee's, community events and consultations

7.2.1 When going on Country to talk about the priorities, perspective or cultural knowledge (for instance, in environment or water management, heritage protection, planning or housing) of Aboriginal people and communities, it is important to consider this Protocol and how you will protect Aboriginal people's knowledge. Consider, how you will attribute the Aboriginal group, and how Aboriginal people will be compensated for their expertise and time.

7.2.2 When accessing ICIP through workshops, consultations or community events with Aboriginal people, ensure FPIC processes are explained and followed before commencement for the use of ICIP.

7.2.3 Detailed records of participants should be maintained in order to support ongoing relationships and avenues to obtain future consents, and ensure participants are properly attributed. This includes contact details of participants, next of kin, and language groups.

7.2.4 Cultural knowledge of Aboriginal employees and consultants may also be shared with the department. It is essential to respect the wellbeing and cultural safety of Aboriginal staff and consultants. There is no expectation on Aboriginal employees to provide cultural consultation on topics they are not comfortable to or cannot speak on.

7.2.5 However, where Cultural knowledge is shared, FPIC processes outlined in this Protocol should be followed prior to using this knowledge. It is important not to re-use ICIP shared by Aboriginal employees or consultants in new contexts without FPIC.

7.3 Filming and photography on Country and at events

7.3.1 When intending to film on Country, show respect by consulting and seeking permission to enter land, seas, sites and places, through appropriate organisations.

7.3.2 Where permission is given, you will also need a written clearance or talent release form prior to filming, recording or photographing on Country and/or Aboriginal people and communities. This is necessary to secure legal permission to record and use or publish the images or film in department projects. This process and all proposed uses of the film, recording or photographs should be clearly explained to the participants.

7.3.3 Special care should also be taken when filming and recording Aboriginal children under 16 years of age. Written consent will be required from a parent or guardian.

7.3.4 It's important to be aware that when interviewing, filming and recording Aboriginal people for department projects or program delivery, staff will generate copyright in the written notes, films, photographs and sound records. Ensure that the Aboriginal people who are recorded in writing or audio-visual recordings retain control of culture through copyright ownership in their contributions. Additionally, moral rights will apply including the right of attribution. Consult with Aboriginal people and communities about whether and how they would like to be credited in the photograph or film. This may be done via a contract or agreement, stating that these rights are retained by the relevant Aboriginal people and community, but permission or sub-licence is given for the department to use the material in specific ways.

7.4 Using data and data sovereignty

7.4.1 Through the department's work on Country, staff may collect data about the environment including plant life, endangered species, cultural heritage sites, or waterways. Staff may engage with Aboriginal people and Traditional Owners to share their cultural knowledge on land and water management (including traditional practices to maintain healthy Country, such cultural fire burning practices or agricultural knowledge).



7.4.2 Data collected about Aboriginal communities, peoples, lands and resources will undoubtedly include vast amounts of ICIP. Data must be collected respectfully and appropriately. This includes ensuring correct place names and spellings are used in the collection and categorisation of data.

7.4.3 The collection of data should be governed by agreed-upon terms for Aboriginal Data Sovereignty and Data Governance. Data Sovereignty and Data Governance means the right of Aboriginal peoples to control and give their free, prior and informed consent to the collection, application, and ownership of their data and information relating to them, including their ICIP. This means Aboriginal people should oversee the recording, use and storage of data accessed or produced by employees where possible. Detailed consents should also be obtained regarding the long-term storage and management of data, including:

- where and how the data will be stored,
- who will have access to it (including the Aboriginal communities access and control rights),
- whether the audience/access conditions change over time,
- cultural protocols to be followed as determined by the Aboriginal people to which the data relates to, and
- how the data will be used and whether it can be used in new ways yet to be consulted on.

7.4.4 Aboriginal Data Sovereignty should be acknowledged to respect the right of Aboriginal people to own and control data and information that is collected about and for them.

7.4.5 Where the recordings containing ICIP are to be digitised or made available online, ensure the implications of the use are clearly explained and discussed to ensure consent is informed.

7.4.6 Aboriginal people and communities should also be provided with opportunities to access, use, review and give feedback on data collected and used by the department to ensure the authenticity and integrity of data outputs. Opportunities for benefit sharing and collaboration to include Aboriginal perspectives and interpretations of data collected by the department should also be considered.

7.5 Using ICIP contained in existing records and archival material

7.5.1 Before using ICIP contained in existing records and archival material (for instance, in research reports or field notes), their authenticity should be checked. Weight should be given to the spoken words of Aboriginal people who share their cultural knowledge with the department.

7.5.2 Appropriate consents should be obtained before using ICIP contained in existing records and archival material. Staff should use the Consultation and FPIC Guide as a tool to obtaining consents and auditing existing materials incorporating ICIP. This is important even where non-Aboriginal people hold copyright ownership of the material. Before using the material, locate and consult with the appropriate Aboriginal people or community whose culture is incorporated in the material for clearance.

7.5.3 Consent in relation to use of material incorporating ICIP is also dynamic and an ongoing obligation. Consent for certain uses does not necessarily extend to additional uses of material incorporating ICIP. The appropriate Aboriginal person or community representatives should be re-consulted to make sure that FPIC is given for new or additional uses which are outside the scope of the original consent. For guidance on obtaining FPIC, see the **Guide to FPIC**.

7.6 Cultural mourning protocols

7.6.1 Special care must also be taken when dealing with references to, and images of, deceased Aboriginal people. Before using existing records and archival material containing ICIP, it is important to ensure cultural protocols are observed regarding representations of deceased people. As far as is feasible, representatives of the family of a deceased Aboriginal person should be consulted to determine whether it is appropriate to use that person's name and image.



7.6.2 Appropriate warnings should also be used on material on all new and existing materials (e.g., reports, presentations, films, audio material, photographs, etc.) which may feature images of people who have passed away. Such notices advise Aboriginal readers or viewers of the content of such materials. A cultural sensitivity notices can also be used to advise readers or viewers that material may contain offensive language or themes:

Cultural Sensitivity Notice

WARNING: The following [document/material] contains the name, image, likeness, recording or other information of deceased persons of Aboriginal or Torres Strait Islander descent. It also contains language that may be considered offensive to some audiences.

7.7 Attribution and acknowledgement

- 7.7.1** Aboriginal people, Traditional Owners and contributing communities of ICIP have the right to be attributed or credited as the owners of their ICIP. This could include individual, community and/or family acknowledgments.
- 7.7.2** It is important to consult Aboriginal people or communities about how they wish to be attributed, including the correct spelling and reference. Where Aboriginal people or communities do not want to be publicly attributed or acknowledged, it is as equally important to respect these wishes.
- 7.7.3** Attribution must be depicted on internally and externally facing resources at the department. This includes on written materials, databases, websites and on platforms or applications developed by the department which contain ICIP.
- 7.7.4** The following Traditional Custodian's Notice (or a similar one expressing the same sentiment) will be included on published resources and materials such as reports, websites, films or applications developed by the department incorporating ICIP:

Traditional Custodian's Notice

This work embodies traditional knowledge of the [NAME] community. It was created with the consent of the custodians of the [NAME] community. Dealing with any part of the work for any purpose that has not been authorised by the custodians is a serious breach of customary law of the [NAME] community and may also breach the *Copyright Act 1968* (Cth). For enquires about permitted reproduction of the traditional knowledge contained in this work, contact [NAME] community [insert contact email].

7.8 Benefit sharing

- 7.8.1** The department acknowledges the value of cultural knowledges and ICIP in the work that we do on Country. Aboriginal communities' priorities must be respected and considered in all department projects involving decisions about Country and Aboriginal people. This includes perspectives and priorities for land and water management, heritage protection, planning, housing and infrastructure on Country. It is essential for the department to develop and maintain ongoing relationships of mutual benefit with Aboriginal communities.
- 7.8.2** Benefit sharing is an important factor to consider when building relationships with Aboriginal people and communities. Aboriginal people and communities should share in the benefits from the use of their ICIP in department projects. This includes the right to benefit from commercialisation. Aboriginal people and communities should also be appropriately compensated for their time and expertise shared.
- 7.8.3** Benefits can take the form of monetary benefits, including fees, royalties and payments, or non-monetary benefits, such as:
- collaborating with and being led by the Aboriginal communities' priorities to ensure project outcomes are beneficial to the community;
 - providing copies of project outcomes and materials incorporating ICIP;
 - ensuring copyright ownership rests with the Aboriginal person or community;
 - providing employment, internships and training opportunities; and
 - providing opportunities to host events in the community.



7.8.4 Benefits should be negotiated and agreed to during the planning stages of any project and prior to commencement. By engaging in consultation and negotiations early, projects can be led by the identified priorities of the Aboriginal person or community. Agreed upon benefits should be clearly recorded in writing as a part of the consent process.

7.9 Long Term management of material incorporating ICIP

7.9.1 Aboriginal people have the right to ongoing maintenance and control of material incorporating ICIP created, used and stored at the department. Aboriginal people and Aboriginal communities should be given access to and rights to use department materials which incorporate their ICIP. This is a form of benefit sharing and respect for communal ownership of culture, and the roles and responsibilities Aboriginal people have to look after culture and pass it on. It is essential for the health and wellbeing of culture and to ensure Aboriginal people's priorities for culture are being met.

7.9.2 When creating or accessing materials incorporating ICIP, consider how these materials can be stored and managed in culturally appropriate ways.

7.9.3 In the early stages of a project, it is important to maintain good record keeping and consult with Aboriginal people and communities as to:

- How the material can be used and who it can be accessed by (including cultural restrictions regarding the use of the material);
- Whether the material contains culturally sensitive, confidential, or personal information;
- Where the material should be stored (for instance, in department archives, and/or by a community representative body); and
- How the material will be preserved (including whether in hard copy or digital archives).

7.10 Feedback, complaints and disputes

7.10.1 When creating material incorporating ICIP or making it available to others (including online), it is important to provide avenues for feedback, complaints, and disputes to be handled. This is key to risk management and ensuring that content is displayed, used or interpreted appropriately by the department.

7.10.2 For example, avenues for feedback, complaints, and disputes should be provided when:

- Using Aboriginal language(s) in the naming of places and buildings at the department;
- Using cultural knowledge of Country, agriculture, plant life or traditional land and water management practices in reports or other published material;
- When categorising, interpreting and making data and information collected from and about culture and Aboriginal people and communities available to the public; and
- Filming and photographing Aboriginal people, including when performing dance or ceremony, sharing Cultural knowledge or speaking about priorities for the community.

7.10.3 By providing avenues for feedback, complaints, and disputes, the department can ensure there are opportunities for ongoing maintenance and control as to how culture is interpreted and presented. It is important to take feedback and complaints seriously. Requests to take down or remove content from online platforms or to rectify incorrect interpretations of ICIP in published material should be actioned.



7.11 Dealings with Aboriginal artists

7.11.1 Aboriginal people's culture and identity are inextricably connected to Country and place. When acquiring, commissioning or licencing artworks, consider the location where the artwork will be used. For instance:

- Is it location-based?
- Is it a metropolitan or regional location?
- Is it part of a more general national campaign?

If the location is relevant, a local artist should be chosen. Consider if there is an Aboriginal Art Centre for the area that can be approached. If the use is more general (e.g., organisation-wide), the location may not be relevant, and a wider range of artists may be considered.

7.11.2 Consultation and consent are important when commissioning, acquiring or licencing artworks incorporating ICIP from Aboriginal artists. Where artwork incorporates ICIP, permission for use of the ICIP may also be needed from more than just the artist. At first instance, guidance concerning permission for use of any ICIP should be sought from the artist. However, also consider who may be affected by the project or the use of ICIP. Consultation may include a range of people, communities, groups and organisations, and should be ongoing throughout the life of the project. Consulting with select members of the community doesn't necessarily mean that the community as a whole support the project.

7.11.3 Before commissioning, acquiring, or licencing an artwork from an Aboriginal artist, consider why the department is undertaking the project, and its intended outcomes. For instance, is the project to respect Traditional Owners whose land the department is operating on, to enable the sharing of economic opportunities or social benefit to local Aboriginal people, or to foster reciprocal relationships with Aboriginal people and communities in which the department operates? This is essential to informing the artist as to the purpose and context of how the artwork will be used.

7.11.4 It is also important that IP ownership (e.g., copyright) is discussed upfront, in particular when commissioning new works or copyright material. This is to ensure best practice, and the protection of any ICIP that may be incorporated in the work.

Contracting Aboriginal artists

7.11.5 When contracting Aboriginal artists, ensure contracts are written in plain English, and determine whether multiple contracts are needed (for instance, an artist's agreement as well as a cultural consent agreement – where ICIP is communally owned).

7.11.6 It is best practice for the artist to retain copyright ownership of any artworks they create, including when commissioned or the work is purchased, and for a licence to be negotiated and provided to department for use of the work. This relates not only to physical art, but also art in electronic forms, for use on websites and emails.

7.11.7 ICIP ownership should always remain with the Aboriginal artist or rights holder (generally the Traditional Owners or custodians of that knowledge). Permission or consent for use of any ICIP incorporated in the artwork must also be sought. It is best to be guided by the artist as to the appropriate consultation and consent process to gain consent for use of ICIP.

7.11.8 The use of any artwork commissioned or licenced by the department should be as narrow (and specific) as possible, with a specified purpose and limited duration. This ensures the artist can continue to use the work and is consistent with best practice. This also works to limit the breadth of the licence granted e.g., to copy, publish, digitise, edit or adapt the work.

7.11.9 It is also important to ensure that appropriate information has been recorded and stored to accompany the artwork, including:

- artist attribution,
- display and maintenance of the work,
- names of any subjects or collaborators,
- any accompanying story to the work including signage and explanatory or interpretive text, and
- any cultural protocols or sensitivities around the artwork. This may also include uses that are not permitted by the artist.



7.12 Marketing and communications

7.12.1 Consent must be obtained from the Aboriginal person collaborating with the department or creating materials incorporating ICIP for the reproduction (copying) and use of those materials (including artworks, designs, photographs, films and recordings) in marketing or publicity purposes. Use of materials incorporating ICIP must only be in accordance with the terms of any licence agreement or talent/recording release. Consider whether ICIP is incorporated in the work, and if so, seek consent from relevant people in authority about the proposed use. Context of use is also important.

7.12.2 Also consider:

- How does the department want to use the material for marketing and promotion?
- Is the work protected by copyright? If so, is a licence for use in place with the Aboriginal person sharing ICIP, and/or the copyright owner? (These people may be different).
- Does the work contain ICIP? If so, has cultural consent been sought? If so, what is the extent of the consent for use of ICIP? If not, cultural consent will need to be sought.
- What story is being told or knowledge being shared? Is it an appropriate story to be shared?
- What is the context? Has it been edited or altered to change the context? Is it appropriate for the location?
- Is the Aboriginal person sharing ICIP, the relevant community and/or copyright owner attributed in the use?
- What benefits have been returned to the Aboriginal person sharing ICIP, the relevant community and/or copyright owner for use?

Online publication

7.12.3 For reproduction of works containing ICIP online, consideration must be had as to how to protect against misuse or misappropriation of ICIP by third parties. It may be appropriate to incorporate a Traditional Custodian's Notice to put people on notice that the material online contains ICIP and cannot be reproduced or otherwise used without permission of the appropriate Aboriginal person or community.

Merchandise

7.12.4 Seek permission to reproduce material incorporating ICIP in merchandise that is for sale. A separate licensing arrangement should be entered into with the Aboriginal person or organisation who shared or owns the material, or who is the copyright owner. Additional payment or royalties from sale of merchandise should also be negotiated. Best practice recommends a minimum royalty of 15%-20% of the Recommended Retail Price (RRP) for the Artist.

7.13 Going on Country to take samples or collect data

7.13.1 Before going on Country to take samples or collect data, FPIC should be negotiated with Traditional Owners. Permission is required to take samples of plants and animals from Aboriginal lands and waterways. Consult with Traditional Owners, explain the proposed work, seek feedback, and ask for consent.

7.13.2 It is important to follow cultural protocol when working on Country. Effort must be made not to take or collect anything which has not been consented to during consultation, and do not visit any areas where you are not permitted to go.

7.13.3 Collaborating with Traditional Owners and custodians in work on Country is one way to maintain reciprocal, respectful relationships with Aboriginal people. This also ensures ongoing guidance on cultural protocol. Consider ways to engage Aboriginal people in department projects involving land and water management. For instance, employing Aboriginal rangers as guides on Country, cultural advisors or project partners. Also consider ways of maintaining cultural connections and control of samples and information collected. This might include communicating the results of samples collected, collaborating in analysis and interpretation, and sharing project outcomes with Traditional Owners. Consent should also be obtained to publish the results of any findings.

7.13.4 Cultural knowledge of plants and animals, land and waterways should also be respected and protected. Follow this Protocol when recording or using any ICIP shared, including cultural knowledge, in field notes, project reports and materials.

7.14 Language and place making

7.14.1 Languages are the living cultural heritage of Indigenous people, belonging to communities, clans, and families and passed down between generations. Culture is also embedded within language, sharing with it cultural knowledge, and knowledge relating to Country's sites, lands, waterways. Language is the ICIP of local Aboriginal communities, and their sovereignty over and priorities for language must be respected.

7.14.2 The department developed the Aboriginal Dual Names Standards and Guidelines ('the Guidelines') in 2022 in recognition of the rights of Indigenous people and local Aboriginal communities to determine the appropriate use of Indigenous language and place names. The Guidelines were developed with the aim of contributing to the OPOC Strategy and enacting the principles contained in this Protocol.

7.14.3 The department staff are to follow the Aboriginal Dual Names Standards and Guidelines when engaging in place naming projects of the lands and waterways of Country, or other projects involving language (including the naming of meeting rooms, building names, department estates).

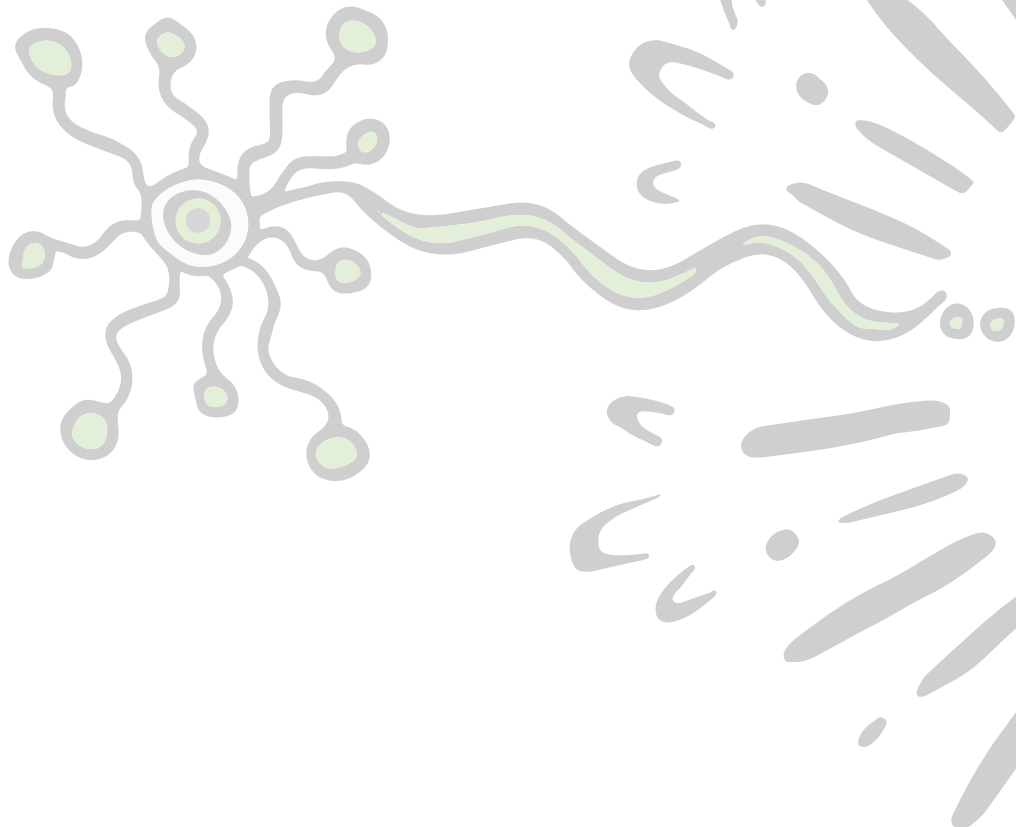
7.15 Implementation and review of ICIP protocols

7.15.1 This Protocol is to be applied and implemented across all department groups, agencies and entities. Employees are responsible for the implementation of this Protocol in their area of work.

7.15.2 The Aboriginal Outcomes Directorate will oversee the implementation of the department ICIP Protocol and will regularly review the Protocol to ensure it remains relevant and continues to lead best practice.

7.15.3 The department is committed to resourcing and supporting staff to understand ICIP rights and how they implement this Protocol. The department will conduct regular training of its staff and, where appropriate, partners, affiliates and contractors, on the implementation of the Protocol and the obligations contained within it. As implementation of the Protocol progresses, case studies will become available, enabling further discussions to occur, supporting staff to strive for continuous improvement.

7.15.4 The department welcomes feedback in relation to the operation of the Protocol and will respond to any enquiries, complaints or feedback in a timely and respectful manner. Feedback may be directed to: aboriginal.outcomes@dpie.nsw.gov.au.



8

8. Resources and Guides



8.1 Tips to Building Strong, Long-term Relationships

1

Consultation has to be 'at pace' with Traditional Owners.

2

Allow for backup meeting including individual follow ups.

3

Provide information in ways that the community can understand and access.

4

Allow for men and women's business meetings to deal with sensitive data as needed.

5

Key concepts

- Connect
- Respect
- Include
- Build relationships
- Share stories
- Listen and understand
- Apply and act

Importantly: Develop your project and deliverables in collaboration with Aboriginal people

Before

- ✓ Identify appropriate people with appropriate authority to make decisions
- ✓ Learn about their cultural contexts and decision-making processes about Country, and understand their priorities and aspirations
- ✓ Inform yourself on the appropriate cultural protocols to follow
- ✓ Build appropriate time frames into project planning and program delivery, factoring in time for relationship building
- ✓ Budgets should include fees for Aboriginal people who share their knowledge and cultural expression
- ✓ Don't approach Aboriginal people with a fully formed proposal discussing community priorities and opportunities for collaboration

During/Always

- ✓ Invest time in meeting with communities on Country
- ✓ Be transparent, honest and authentic
- ✓ Appreciate cultural protocols and the diversity of Aboriginal cultures
- ✓ Be guided by community wishes, Elders, and involve enough people in decision making
- ✓ Consider how you will protect culture and cultural knowledge accessed or shared

After

- ✓ Credit and acknowledge Aboriginal people and communities for their input or cultural knowledge shared
- ✓ Compensate Aboriginal people and communities for their expertise and time
- ✓ Create opportunities for relationships to continue post the life of a specific activity or project

8.2 What is FPIC?

Free

Freedom from coercion, intimidation, manipulation, undue influence or pressure. Sufficient time is given to consult within Aboriginal communities and seek independent advice if necessary.

Prior

Consent sought in advance of authorisation or commencement of activities.

Prior consent for new modifications or alterations to projects already underway.

Informed

Information provided to Aboriginal people covers the nature, size, pace, duration of the proposal/project, including positive and negative impacts. Information should be accessible.

Consent

The right to give or withhold consent, in a manner that is not fettered by significant procedural conditions.

FPIC is an ongoing process, not a one-off authorisation. It requires open lines of communication between Aboriginal groups and their collaborative partners to maintain information channels and continue to negotiate project decisions.

8.3 Guide to consultation and consent in projects



Project proposal

- Identify key stakeholders and widen consultation if necessary (including Elders, youth and women)
- Consult on the proposed project and how the project can meet community priorities
Identify opportunities for capacity building
- Communicate in a clear and culturally appropriate way, in a language understood by the community

Consent check: Does that community consent to the project proposal?



Project co-design

- Negotiate key obligations and responsibilities and measurements for success
- Agree on terms of project, including copyright ownership, benefit sharing, time frames, methodologies and deliverables
- Empower First Nations leadership and self-determination in decision making
- Understand community preferences and consents about knowledge obtained in the project

Consent check: Is the community satisfied with the terms of the project?



During project

- Apply the plan for engagement
- Act on capacity building opportunities
- Ensure full and active participation from all groups
- Maintain open lines of communication
- Facilitate First Nations leadership and self-determination in decision making

Consent check: Have any of the terms, outcomes or impacts of the project changed?

Consent check: Is the community happy with how the project is proceeding?



Post-project

- Deliver final products to community for feedback and approval before publication
- Evaluate what went well and what should be improved
- Ensure data is stored/archived appropriately
- Continue to seek consent for new uses of ICIP and IP
- Maintain relationship with community

Consent check: Is the community happy for the project to be finalised/published?

Note: Best practise engagement means seeking consent at every stage. FPIC means that if any stage the answer is NO, the project does not proceed to the next stage.

8.4 Project checklist

When undertaking projects in collaboration with Aboriginal people, communities or representative bodies, or using ICIP in projects, consider the following project checklists for ensuring ICIP is protected and respected.

1. Planning the project

Respect

- Consider, what is the purpose of the project?
- Why are you using ICIP material?
- How does this affect Aboriginal people and communities?
- Have you sought advice on the cultural issues that need to be addressed through consultation?
- Is this project proposal welcomed by the community?
- Has there been a similar project conducted previously with this community?

Self-determination and Aboriginal control

- Does your project offer collaborative opportunities to Elders, Aboriginal knowledge holders, youth?
- Are Aboriginal people involved in the planning and development of the project?
- Does your project involve a visit to Country or community?
- Have you sought permission from the landowners to access the location?

Interpretation, integrity and authenticity

- Have you conducted background research relevant to the project including the cultural contexts and subject matter?
- Does your project reflect the cultural value of the subject matter?
- Is the project appropriate for the location, site or context?

Communication, consultation and consent

- Have you identified the relevant Aboriginal stakeholders?
- Do you need to engage the services of an interpreter?

- Does your project deal with communally owned ICIP material?
- How will you consult with and seek consent from the Traditional Owners or other relevant Aboriginal people/groups? Have you consulted with all relevant Aboriginal people/communities who might be affected by the project?
- For recordings, photographs or films, do you have current consents to use that material?
- Have you discussed cultural mourning preferences and Next of Kin information with the subjects of that material?
- For material held in existing archives, do you have current consents to use that material?
- Have you checked with the surviving family or community representatives of the people or clans referred to in the material from existing archives?

Secrecy and confidentiality

- Did you seek consent to disclose any personal information used in the project? (i.e. about the individual themselves, their community/relatives)
 - Have you obtained clearances from the family/ community of any deceased Aboriginal person features in the project?
 - Have you asked whether the subject matter or material is culturally sensitive? Is it sacred or secret?
 - Have you discussed any restrictions on use of ICIP material?
-

2. During the project

Self-determination and Indigenous control

- Are you being flexible and adaptable in your project approach and methodology?
- Are Aboriginal people involved in all stages of the project, including in key leadership and creative roles?

Interpretation, integrity and authenticity

- Are you using any Language of an Aboriginal Language group?
- Is your Language appropriate? Are the words spelled and pronounced correctly?

- Are you aware of any cultural protocols that may apply to the knowledge or ICIP in your project, such as men's and women's business?

- Do you have processes in place to respect and comply with those cultural protocols?

Communication, consultation and consent

- Is there an engagement model in place (regular scheduled updates, contact persons, etc.) to allow for open lines of communication and knowledge exchange?

- Is FPIC being implemented at all stages and levels of the project, in line with the department Consultation and FPIC Guide in Project Design?

- Are there effective and culturally safe grievance mechanisms in place for resolution of any disputes relating any use of ICIP?

Secrecy and confidentiality

- Is culturally sensitive subject matter being used within the scope of consents given by the Traditional Owners/custodians?

Attribution

- Have you discussed how all participants would like to be acknowledged/credited?

- Does attribution credit Traditional Owners/custodians of communal knowledge?

Benefit sharing

- Are there appropriate mechanisms for sharing benefits (monetary or non-monetary) with Aboriginal people and communities in recognition of their contribution to the project?

- Do Aboriginal contributors and their communities have access to project outcomes?

Maintaining culture

- Are you keeping clear detailed records of Aboriginal people, clans, places, next of kin, nature of the material, records of consents, permitted uses, and where new or future consents will be required?

- Have you given the Aboriginal contributor/community access to project outcomes and rights to use project outcomes for the ongoing maintenance of culture?

- Are you storing the project outcome according to the cultural protocol and consent given?

3. Finalising the project

Self-determination and Aboriginal control

- Are there any conditions that the Aboriginal contributors or relevant traditional owners/custodians would like to apply to the final project?

- Are any intellectual property rights in the material held by the Aboriginal contributors?

- What mechanisms are included in the contract to maintain Aboriginal control and ongoing FPIC processes?

Communication, consultation and consent

- Have you re-consulted the relevant Aboriginal contributors, participants, and any relevant Traditional Owners/custodians?

- Have Aboriginal contributors/communities viewed and given feedback on the project before it is concluded or published? Have you included their changes and feedback in the final product?

- Have you discussed all potential uses of the project outcome and ICIP with the community including any potential future uses?

- Do you have permission to use and share all elements of the ICIP incorporated in this project?

Interpretation, integrity and authenticity

- Have you discussed the terms of labelling, marketing and promotion of the project and of each Aboriginal person's contribution and their community/ies?

- Have you discussed cultural mourning protocols? Do you have Next of Kin information for the subject for any future consents that may be required?

- Have cultural sensitivity and Traditional Custodians notices been placed on the project if appropriate?

Attribution

- Have you acknowledged the contributors in project outcomes?

- Have you attributed the correct Aboriginal contributor/community, in accordance with their wishes on how they want to be attributed?

Benefit sharing

- Are the Aboriginal contributors and communities receiving royalties or other benefits flowing from the project?

- Is there a written benefit sharing agreement in place?

