



PATHWAYS TO ENGAGEMENT

Aboriginal and Torres Strait Islander
Protocols in Performing Arts Training

November 2019



Australian Government

Department of Communications and the Arts

Arts8

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Cover artwork

Connecting for Reconciliation
Bradley Kickett

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For over 65,000 years, Aboriginal and Torres Strait Islander people have lived in Australia and have continuously been practising and nurturing their cultural expressions through storytelling, performances, dance and music. Post contact, this connection remains strong, and revitalisation of cultures is a continuing process for Indigenous Australians. Indigenous Cultural Expression is a foundation of Indigenous identity. Indigenous culture is Australia's first culture. We should be proud as a nation to be living in a country where the world's oldest living cultures originated and continue to be nurtured.

Our nation's arts and cultural landscape should reflect the richness of Indigenous cultures. However, there is a lack of Aboriginal and Torres Strait Islander representation in the performing arts sector. Screen Australia reported in 2016 that, in relation to screen-based media, only 5% of main characters identify as Aboriginal and/or Torres Strait Islander.¹ Further, The Australia Council's 2016 Report, 'Showcasing Creativity', identifies that Aboriginal and Torres Strait Islander performing arts is underrepresented in Australian mainstream venues and festivals, representing only 2% of around 6000 programs in 2015.²

In Australia, there are seven national elite performing arts training organisations (ATOs) funded by the Australian Government through the Arts and Cultural Development Program. These ATOs operate as national centres of excellence in elite training in the performing arts. They are:

- › The National Institute of Dramatic Art (NIDA) [Kensington, Sydney]
- › The Australian Ballet School (ABS) [Southbank, Melbourne]
- › The Australian Youth Orchestra (AYO) [Sydney and Melbourne]
- › The Flying Fruit Fly Circus (FFFC) [Albury/Wodonga, NSW]
- › NAISDA Dance College (NAISDA) [Gosford, NSW]
- › The National Institute of Circus Arts (NICA) [Prahlan, Melbourne], and
- › The Australian National Academy of Music (ANAM) [South Melbourne]

Together with the Australian Film Television and Radio School (AFTRS), which is a separate statutory authority, these organisations comprise ARTS8 — Australia's elite national performing arts training organisations, driving innovation, advocating for excellence and collaboration in practice-led learning in the creative performing and filmic arts.

As leading national educators in the performing arts, ARTS8 organisations can play a pivotal role in ensuring continued cultural practice, and representation, of Aboriginal and Torres Strait Islander people and communities in the sector.

To this end, the Department of Communications and the Arts (the Department) engaged Terri Janke and Company, Lawyers and Consultants, to develop this Pathways to Engagement protocols document as a resource to support and encourage better processes for Aboriginal and Torres Strait Islander engagement within the ARTS8 organisations and to increase Indigenous participation in our national performing arts training organisations.

1 Screen Australia, Media Release, Milestone Study of Diversity on Television Released, 24 August 2016, <https://www.screenaustralia.gov.au/sa/media-centre/news/2016/08-24-study-of-diversity-on-tv-released>.

2 Australia Council, Showcasing Creativity, http://www.australiancouncil.gov.au/workspace/uploads/files/aca_223373_showcasing-creativi-5810348d1832d.pdf.

Protocols are appropriate ways of communicating and working with others. Protocols are ethical principles which have become industry and business standards. Protocols may also be included into contracts, used in projects and endorsed by organisations.

Protocols cannot specifically address all the issues that may arise in a particular business activity or project, but the framework it provides can be adapted and applied to specific situations. The Pathways to Engagement offers such a framework. It is intended to give direction but still allows enough flexibility to deal with situations as they arise.

Following these protocols can inform and help deepen an organisation's Aboriginal and Torres Strait Islander engagement journey. Protocols represent a shared language, founded on respect. Through protocols, organisations can collectively set a higher benchmark for engaging with Aboriginal and Torres Strait Islander people, communities and their cultural heritage, avoid misunderstandings and tensions, and build trust.

There may be risks for the ARTS8 organisations if their staff, management or business partners do not adhere to protocols; for example:

- › Cultural damage — the distribution to the wrong parties and misuse of Indigenous Cultural and Intellectual Property (ICIP) could have consequences for Indigenous stakeholders, including individuals, communities and groups.
- › Damage to the ARTS8 organisations' reputation and relationships.
- › Upsetting individuals, communities and groups by not showing appropriate respect or acknowledgement of cultural rights.
- › Outcomes or outputs of projects could be invalidated if it is not perceived by the community that appropriate consultation has been undertaken. Community support, written records of consultation and correct attribution provides evidence to the contrary.
- › Complexity of local politics may distract achieving outcomes. It is the ARTS8 organisations responsibility to contact the local Indigenous Community to determine who the Indigenous stakeholders are and if one individual or group has more authority or carries more weight than another, following appropriate processes as outlined in these Pathways to Engagement.

Created in close consultation with the Department and the ARTS8 organisations, Pathways to Engagement aims to provide a practical guiding framework to recognising and respecting Aboriginal and Torres Strait Islander people's rights and cultures, and empowering ARTS8 organisations (ATOs and AFTRS) staff and management in:

- › delivering a culturally safe environment for Aboriginal and Torres Strait Islander students
- › attracting, supporting and retaining Aboriginal and Torres Strait Islander talent in ARTS8 organisations' courses, staff and boards of management, and
- › sharing knowledge, networks and successes on Aboriginal and Torres Strait Islander engagement strategies across the ARTS8 organisations and develop a consolidated approach.

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We also acknowledge other Indigenous protocols, policies, standard-setting documents and international instruments, particularly:

- › United Nations Declaration on the Rights of Indigenous People 2007³
- › Any determinations on the subject matter published by the UN Permanent Forum of Indigenous Peoples in developing standards for the treatment of Indigenous cultural heritage⁴
- › World Intellectual Property Organisation’s Draft Provisions for the Protection of Traditional Cultural Expressions/Folklore and for the protection of Traditional Knowledge against misappropriation and misuse⁵
- › International Covenant on Economic, Social and Cultural Rights⁶
- › UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage 2003⁷
- › The Australia Council Protocols for producing Indigenous Australian Performing Arts⁸
- › Screen Australia’s Pathways & Protocols⁹
- › The NAISDA Aboriginal and Torres Strait Islander Cultural Protocol¹⁰
- › The Australian Film, Television and Radio School Aboriginal and Torres Strait Islander Policy¹¹
- › Drama Australia Aboriginal and Torres Strait Islander Guidelines for Drama/Theatre Education,¹² and
- › Special Broadcasting Service The Greater Perspective, Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities by Lester Bostock.¹³

3 United Nations, United Nations Declaration on the Rights of Indigenous Peoples. Available at: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

4 United Nations Permanent Forum on Indigenous Issues is an advisory body to the Economic and Social Council. See more at: <https://www.un.org/development/desa/indigenouspeoples/publications/desktop-publications.html>.

5 For decades, the World Intellectual Property Organisation Intergovernmental Committee (IGC) has been undertaking international negotiations to develop an international legal instrument to protect TCEs and TKs. See more at: <https://www.wipo.int/tk/en/igc/>.

6 United Nations General Assembly, International Covenant on Economic, Social and Cultural Rights. Text available on the United Nations Human Rights Office of the High Commissioner at: <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>.

7 United Nations Educational, Scientific and Cultural Organization, Text of the Convention for the Safeguarding of the Intangible Cultural Heritage, <https://ich.unesco.org/en/convention>.

8 Australia Council for the Arts, Protocols for Producing Indigenous Australian performing arts, <https://www.australiancouncil.gov.au/workspace/uploads/files/performing-arts-protocols-for-5b4bfd3988d3e.pdf>.

9 Screen Australia, Pathways & Protocols — A filmmaker’s guide to working with Indigenous people, culture and concepts by Terri Janke, <https://www.screenaustralia.gov.au/getmedia/16e5ade3-bbca-4db2-a433-94bcd4c45434/Pathways-and-Protocols>.

10 National Aboriginal Islander Skills Development Association Dance College, NAISDA Aboriginal and Torres Strait Islander Cultural Protocol, <https://naisda.com.au/cultural-protocols/>.

11 Australian Film Television and Radio School, Aboriginal and Torres Strait Islander Policy, <https://www.aftrs.edu.au/wp-content/uploads/2018/06/Aboriginal-and-Torres-Strait-Islander-Policy.pdf>.

12 Drama Australia, Aboriginal and Torres Strait Islander Guidelines for Drama/Theatre Education, <https://dramaaustralia.org.au/assets/files/ATSIguidelinesFinalSept07.pdf>.

13 Special Broadcasting Service, The Greater Perspective Protocol and Guidelines for the Production of Film and Television on Aboriginal and Torres Strait Islander Communities by Lester Bostock, https://www.wipo.int/export/sites/www/tk/en/databases/creative_heritage/docs/lester_bostock_film.pdf.

Overview of rights and protocols

1.1 Rights of Aboriginal and Torres Strait Islander people

The rights of Aboriginal and Torres Strait Islander people are enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration). Australia has adopted the Declaration as a framework to inform the recognition and protection of the rights of Aboriginal and Torres Strait Islander people and communities.

These rights include:

- › The right to self-determination — having a say in decisions that involve or affect Aboriginal and Torres Strait Islander cultures, people and communities (Article 3)
- › The right to access culturally appropriate methods of teaching and learning (Article 14)
- › maintaining the dignity and diversity of Aboriginal and Torres Strait Islander cultures, traditions and heritage in education and information (Article 15), and
- › The right to maintain, control, protect, practice, revitalise and develop their cultural heritage (Article 31).

Implementing the Declaration

In-depth guidance on implementing the Declaration can be found in:

- › the United Nations Global Compact's Business Reference Guide to the Declaration;¹⁴ and
- › the Australian Human Rights Commission and National Congress of Australia's First Peoples', Community Guide to the UN Declaration on the Rights of Indigenous Peoples.¹⁵

Practice points in these Pathways to Engagement Protocols, where relevant, will be drawn from these guidance documents.

1.2 Rights to cultural heritage

Specifically, relevant to the ART8 organisation's business is the right of Aboriginal and Torres Strait Islander people and communities to their cultural heritage. The terms 'cultural heritage', 'traditional knowledge' and 'traditional cultural expression' are interrelated terms, embodying the complexities and intricacies of Indigenous cultures and knowledge.¹⁶

14 United Nations Global Compact, A Business Reference Guide: United Nations Declaration on the Rights of Indigenous Peoples, https://www.unglobalcompact.org/docs/issues_doc/human_rights/IndigenousPeoples/BusinessGuide.pdf.

15 Australian Human Rights Commission and National Congress of Australia's First People's, 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.

16 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.

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Australian models for protection of cultural heritage, traditional knowledge and traditional cultural expressions use the language ‘Indigenous Cultural and Intellectual Property’ following the Our Cultures: Our Future Report.¹⁷

a. What is Indigenous Cultural and Intellectual Property?

Indigenous Cultural and Intellectual Property (ICIP) refers to all aspects of Indigenous peoples’ cultural heritage, including the tangible and intangible, including:

- › 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), and
- › documentation of Indigenous 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.¹⁸

The following diagram provides a general breakdown of ICIP rights:

Figure 1: ICIP breakdown



¹⁷ Terri Janke, Our Culture: Our Future — Report on Australian Indigenous Cultural and Intellectual Property Rights (Report, Australian Institute of Aboriginal and Torres Strait Islander Studies, 1999).

¹⁸ Terri Janke, Our Culture: Our Future — Report on Australian Indigenous Cultural and Intellectual Property Rights (Report, Australian Institute of Aboriginal and Torres Strait Islander Studies, 1999), page 3.

It is important to understand the nature of ICIP. ICIP comes from Country and is linked to place. There are many Aboriginal and Torres Strait Islander groups in Australia, each with different cultures, cultural heritage, traditional knowledge, and cultural expressions. ICIP includes the objects, the knowledge, the artwork, the iconography and the cultural practice.

Many generations may contribute to the development of ICIP. This means that ICIP is heritage that is communal, for the benefit of the community, and is communally owned.

ICIP is a living culture and the connection to living people who nurture and express that culture is an important factor. ICIP is not locked in time. Some themes may reach back in time but have a contemporary expression. Further new ICIP is being innovated and created in the world today. ICIP is a cultural foundation, and Aboriginal and Torres Strait Islander people have the cultural obligations to hold, practice and pass on their ICIP for future generations.

ICIP Rights

With regards to ICIP, Aboriginal and Torres Strait Islander people have the right to:¹⁹

- › own, control, maintain and expand 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 Indigenous customary laws
- › maintain the secrecy of Indigenous knowledge and other cultural practices
- › guard the cultural integrity of their ICIP
- › be given full and proper attribution for sharing their cultural heritage, 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.

These rights form the basis of the True Tracks® Guiding Principles and these ARTS8 Pathways to Engagement.

b. Identifying ICIP

Identifying ICIP is crucial to appropriately apply the best practice guidelines of these Pathways to Engagement Protocols. However, identification may not be that simple, especially in situations where traditional knowledge or traditional cultural expression has evolved and is being used in conjunction with modern forms of creativity, technological techniques, or commercial understanding.

The ARTS8 organisations already engage with Aboriginal and Torres Strait Islander people, communities and their ICIP in a number of ways. This includes through employment, procurement of goods and/or services, community outreach projects, education and mentoring programs, and performances.

¹⁹ Terri Janke, *Our Culture: Our Future*, Report on Australian Indigenous Cultural and Intellectual Property Rights (Report, Australian Institute of Aboriginal and Torres Strait Islander Studies, 1999), page 47.

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What is ICIP

Generally, information or material will be subject to these Protocols and require consent, where:

- › The information or material is that of an Aboriginal and Torres Strait Islander person or group concerning their cultural heritage, traditional knowledge, traditional cultural expression, connection to land or any other element of cultural heritage described in this Part of the Protocols, whether provided orally, visually or in writing.

For example, an Elder sharing a traditional story of their Country; Aboriginal and Torres Strait Islander people singing a song in their language.

- › The information or material features an Aboriginal and Torres Strait Islander person depicting, describing, or showing their cultural heritage, traditional knowledge, traditional cultural expression, connection to land or any other element of cultural heritage described in this part of the Protocols.

For example, recordings or photographs of Aboriginal and Torres Strait Islander women performing a dreaming story; an Aboriginal and Torres Strait Islander person telling a traditional story of their Country as part of a performance.

- › The information or material does not feature an Aboriginal and Torres Strait Islander person or people, but the image of, stories told, or land depicted relates to ICIP described in this Part of the Protocols.

For example, an Aboriginal and Torres Strait Islander artist's work depicting their totem; a description of the kinship system; a photograph showing Aboriginal and Torres Strait Islander rock art.

- › The material includes Aboriginal and Torres Strait Islander languages.

For example, sheet music or a script containing words from Aboriginal and Torres Strait Islander languages.

- › The material refers to the history of Aboriginal and Torres Strait Islander people in Australia, including images, recordings, text and fictionalised accounts of such histories.

For example, creative materials (such as poetry, artwork, films) that depict creation stories; a recording of a song depicting a traditional story; images (such as in a publication) depicting particular traditional Aboriginal and Torres Strait Islander sites — some of which may be sacred or secret sites.

- › The information or material contains, depicts or describes Aboriginal and Torres Strait Islander ceremonies, dance, song or other performances (whether performed by Indigenous or non-Indigenous persons).

For example, a recording of an Aboriginal and Torres Strait Islander person singing their ancestral Songlines; images or recordings of Aboriginal and Torres Strait Islander peoples performing traditional dance or a 'Welcome to Country' ceremony.

What might not be ICIP

There may be information or material which describe, depict or contain references to Aboriginal and Torres Strait Islander subject matter or shows Aboriginal and Torres Strait Islander people, but where that involvement is incidental or peripheral. Consent may not be required from Aboriginal and Torres Strait Islander people and communities where:

- › The information or material contains, depicts or describes an Aboriginal and Torres Strait Islander person or people performing a ceremony, dance, song or other activity which does not include any reference to an Aboriginal and Torres Strait Islander language or cultures.

For example, photographs or recordings of Aboriginal and Torres Strait Islander soldiers at an Anzac Day ceremony; Aboriginal and Torres Strait Islander musicians performing modern songs at a rock concert.

- › The information or material contains, depicts or describes an Aboriginal and Torres Strait Islander person or people, but where no reference to ICIP is made.

For example, an image of a rally for Aboriginal and Torres Strait Islander rights; an image of Aboriginal and Torres Strait Islander rangers on Country; recording of the 2017 Yabun Festival or Darwin Arts Festival (unless artwork containing traditional knowledge is shown); an image of an Aboriginal and Torres Strait Islander young adult participating in a career readiness workshop — NOTE: it is best practice to get consent from the subject of photographs or recordings regardless of whether ICIP is depicted.

- › The information or material contains, depicts or describes land or seas, but where no reference to ICIP is made.

For example, a map or other record of the local waterways systems of a region as described by a local Elder — unless it includes traditional knowledge as opposed to personal individual life stories about those waterways.

- › The information or material contains or depicts by way of background only cultural objects where those cultural objects are not discussed or otherwise referenced in the material.

For example, a piece of artwork in a gallery that is in the background and is incidental to (not the focus of) an image or recording — NOTE: where such images are used commercially (i.e. in a book or publication) or are widely disseminated, it is best practice to consult regarding use.

1.3 Using Pathways to Engagement

As ARTS8 organisations may have different levels of established practices in relation to Aboriginal and Torres Strait Islander engagement, this Pathways to Engagement document is intended to be a neutral starting point — an opportunity to pause, think, and ask — in making good decisions and ethical choices when engaging with Aboriginal and Torres Strait Islander people, communities and their cultural heritage. Guidance is presented in 5 key sections:

Part 1 contains an overview of **the Rights of Aboriginal and Torres Strait Islander People**, particularly in relation to their cultural heritage.

Part 2 sets out the **Guiding Principles for Protocols**, which are the foundational principles underpinning engagement with Aboriginal and Torres Strait Islander people, communities and their cultural heritage.

Part 3 demonstrates **how protocols are developed and implemented** in performing arts training organisations through case studies, practice points, techniques, strategies and tips.

Part 4 focuses on the Guiding Principle of **Communication, Consultation and Consent**, providing in-depth practical guidance tips on the process of communicating, consulting with and obtaining consent of Aboriginal and Torres Strait Islander people and communities.

Part 5 compiles **resources** such as checklists and contacts for ongoing use throughout the Arts8 organisations' journey of effective engagement.

Guiding principles for protocols

The ARTS8 organisations recognise Aboriginal and Torres Strait Islander peoples' rights in accordance with the rights set out in the United Nations Declaration on the Rights of Indigenous Peoples.

The following 10 True Tracks® Guiding Principles developed by Terri Janke and Company underpin the ARTS8 organisations engagement with Aboriginal and Torres Strait Islander people, communities and their cultural heritage in providing elite performing arts training.

2.1 Respect

The ARTS8 organisations recognise and respect the custodianship of Aboriginal and Torres Strait Islander people over their lands and waters and the right to protect, maintain, control and benefit from their cultural heritage.

2.2 Self-determination

The ARTS8 organisations recognise and respect the right of Aboriginal and Torres Strait Islander people to self-determination and to be empowered in decision-making concerning business activities and projects that affect or incorporate their cultural heritage.

2.3 Communication, Consultation and Consent

The ARTS8 organisations acknowledge the need for ongoing engagement of Aboriginal and Torres Strait Islander people in the interpretation and use of their land and cultural heritage. This involves time and a commitment to communication, collaboration, consultation and obtaining free, prior and informed consent of Aboriginal and Torres Strait Islander people to achieve two-way mutual understanding and strong ongoing relationships.

2.4 Interpretation

The ARTS8 organisations support the right of Aboriginal and Torres Strait Islander people to be recognised, represented and involved in the interpretation of their cultures as the primary guardians and interpreters of their cultural heritage and to ensure cultural integrity over their cultural heritage. This includes, in the reflection, Aboriginal and Torres Strait Islander cultural heritage in education.

2.5 Cultural Integrity

The ARTS8 organisations acknowledge that respecting the integrity of Aboriginal and Torres Strait Islander cultural heritage is important for the continuing practice of cultures.

2.6 Secrecy and Confidentiality

The ARTS8 organisations acknowledge that Aboriginal and Torres Strait Islander 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 and Torres Strait Islander people's personal and cultural affairs is also to be respected.

2.7 Attribution

The ARTS8 organisations commit to respectfully acknowledging and attributing Aboriginal and Torres Strait Islander people as the traditional owners and custodians of their cultural heritage and lands.

2.8 Benefit Sharing

The ARTS8 organisations acknowledge the right of Aboriginal and Torres Strait Islander people and communities to benefit from the sharing of cultural heritage. The ARTS8 organisations acknowledge their responsibility to embed cultural exchange, including monetary and non-monetary benefits to Aboriginal and Torres Strait Islander individuals, groups and communities through its business activities and associated projects.

2.9 Maintaining Cultures

The ARTS8 organisations acknowledge that Aboriginal and Torres Strait Islander peoples' cultures are not static, but varied, thriving and constantly evolving, and that measures need to be taken so that Aboriginal and Torres Strait Islander people can maintain, revitalise and advance their cultures. Keeping the connections with Indigenous peoples will be important.

2.10 Recognition of Ongoing Rights

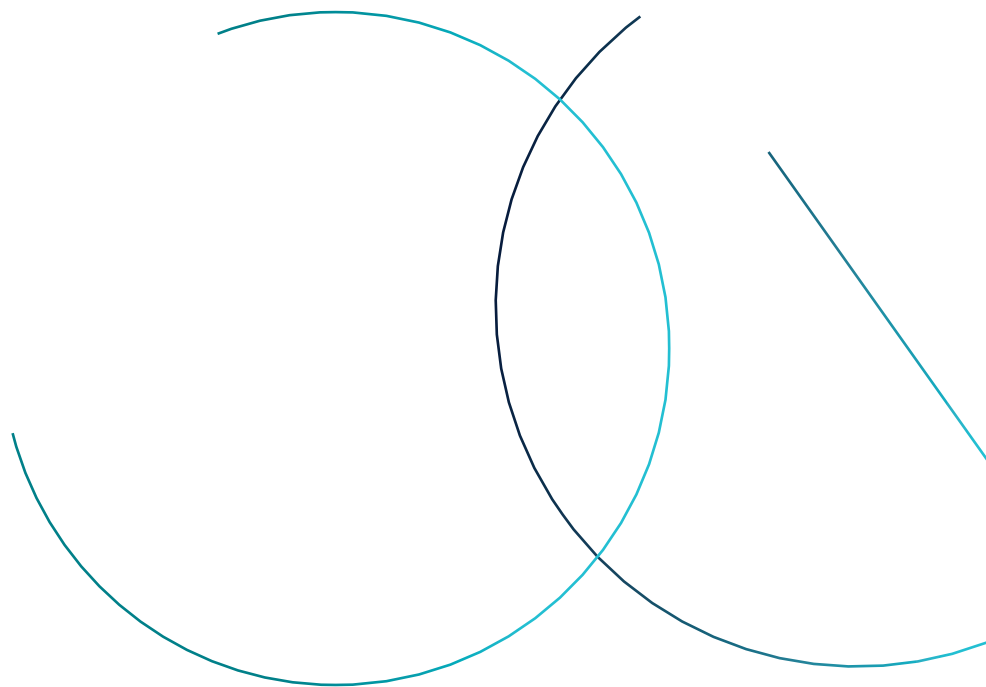
The ARTS8 organisations acknowledge that Aboriginal and Torres Strait Islander people and their communities should be recognised as traditional owners and custodians of their cultural heritage. Protection can be done by using the laws, protocols and contracts to help ensure recognition of cultural heritage. The ARTS8 organisations recognise that these rights are ongoing and thus the ARTS8 organisations' engagement must also be ongoing.

ICIP permission to use cultural content or records should be seen as permission to use for the designated project only. These permissions are a one off and are not to be considered to negate the requirement to revisit the ICIP custodian for permission to use; this is required to protect the cultural content from unauthorised exploitation.

The use of imagery or other items of cultural content from deceased individuals or families carries its own cultural sensitivities and any previous permissions most definitely need to be revisited.

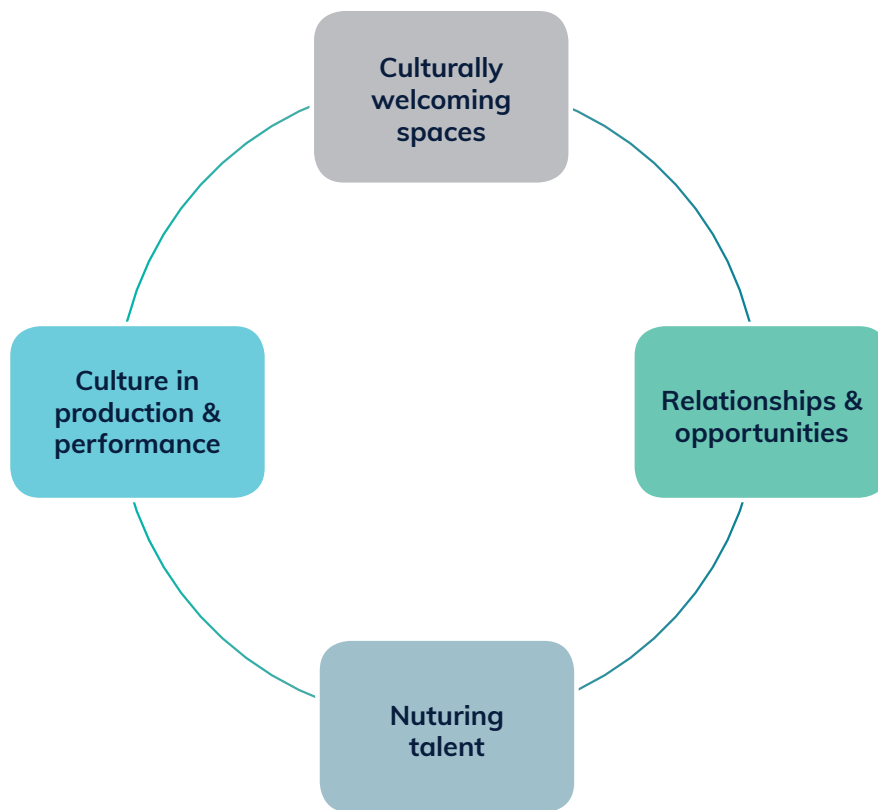
Guiding Principles: things to remember

- › These Guiding Principles are not linear or sequential — some interrelate and overlap, reflecting the nature of ICIP itself.
- › The Guiding Principles should, where possible, be embedded in the operations of an organisation, and applied throughout the life of any project, business activity, production and performance.



Implementing protocols in the ARTS8 organisations

Engagement of Aboriginal and Torres Strait Islander people and communities in performing arts training organisations involves focus on the following four areas:



The four focus areas

Consultations reveal these four areas as recurring themes and aspects where Aboriginal and Torres Strait Islander engagement is critical in the ARTS8 organisations, and where better support can be provided. Implementation of principles and protocols in this part focuses on each of these focus areas.

The interconnected nature of these issues mean that the themes discussed will often interrelate and connect across the identified focus areas. Fundamental, across these areas is the guiding principle of **Communication, Consultation and Consent**. **Part 4** provides practical, in-depth guidance to this principle to support the ARTS8 organisations.

3.1 Culturally welcoming spaces

ARTS8 organisations need to create working and learning spaces that make Aboriginal and Torres Strait Islander people, such as its staff, students and the local Indigenous community, feel that their cultures are welcomed and acknowledged.

This is particularly important as for many Aboriginal and Torres Strait Islander students, studying at the ARTS8 organisations mean that they are moving away from their families, communities and cultural connections.

Some questions and concerns include:

- › How can we meaningfully and respectfully acknowledge the land and history on which our organisation sits? How can we communicate this message?
- › How can we ensure that our learning spaces are welcoming so that Aboriginal and Torres Strait Islander students and staff feel connected to their environment, cohort and surroundings?
- › How do we raise cultural awareness and empathy in the organisation — not just of board and staff but also the student cohort?

In this section, to address these questions, we provide examples of some successful protocols, models and strategies used widely in the creative arts, corporate and education sector to create culturally welcoming spaces.

a. Promoting cultural safety

In 2016, Reconciliation Australia reported an increase in Aboriginal and Torres Strait Islander employees feeling that they, or a family member, have been racially discriminated against by an employer.²⁰ Further, only half of Aboriginal and Torres Strait Islander people feel that they can be true to their cultures or personal beliefs at work.²¹

A 2018 Research Report by Indigenous consulting firm 'Inside Policy for the Australia Council of the Arts' provides the following definition of cultural safety following a literature scan and consultation:

'a culturally safe environment is one where First Nations staff, peers, artists, arts organisations and communities feel their protocols, beliefs, knowledges, histories, practices and expressions are understood and valued.'²²

A culturally safe environment or space is one where Aboriginal and Torres Strait Islander people and communities feel empowered to be themselves. Universities Australia produced a report in 2011 that identifies cultural safety as a key component of a national best practice framework for Indigenous cultural competency in Australian universities.²³

20 Reconciliation Australia, Reconciliation Insights Employment, <https://www.reconciliation.org.au/wp-content/uploads/2017/11/Employment.pdf>.

21 Reconciliation Australia, Reconciliation Insights Employment, <https://www.reconciliation.org.au/wp-content/uploads/2017/11/Employment.pdf>.

22 Inside Policy, 'More than Competence: Perceptions & experiences of cultural safety in the peer assessment process' (Research report, Australia Council for the Arts, 12 July 2018) 10.

23 Universities Australia, National Best Practice Framework for Indigenous Cultural Competency, page 60. <https://sydney.edu.au/nccc/documents/national-framework-universities-australia.pdf>

Cultural safety is a right

The United Nations Declaration on the Rights of Indigenous Peoples provides that Aboriginal and Torres Strait Islander people have the right to the dignity and diversity of their cultures, traditions, histories and aspirations, and the appropriate reflection of these in education and public information.²⁴

Effective measures should be taken, in consultation and cooperation with the people and communities concerned, to combat prejudice, eliminate discrimination, and to promote tolerance, understanding of good relations among Aboriginal and Torres Strait Islander people and all other segments of society.

As the nation's elite performing arts training institutions, the ARTS8 organisations have roles to play in respecting this right. Below are some strategies that could be implemented to promote cultural safety in an organisation to help ensure that it is a culturally safe place for Aboriginal and Torres Strait Islander people to learn, work and participate in the performing arts.

Cultural awareness and competency

Cultural awareness training is a foundational part of preparing the workplace when engaging Aboriginal and Torres Strait Islander people and communities. Staff members are more likely to understand and appreciate the benefits of diversity, identify issues and find meaningful ways of working together if they are culturally aware.

Cultural awareness fosters empathy, which in turn helps create a culturally safe and inclusive work and learning environment.

Culture in curriculum

A key component to promoting cultural safety is the integration of Aboriginal and Torres Strait Islander perspectives across Australian learning curricula. This is considered by the National Best Practice Framework for Indigenous Cultural Competency as an urgent priority and was one of the recommendations made following the Royal Commission into Aboriginal Deaths in Custody.

Australia has a diversity of Aboriginal and Torres Strait Islander histories, which should be reflected and voiced in all ARTS8 Curricula. In the design and implementation of Curriculum, Indigenous academics, educators and cultural practitioners should be an integral part of the design and implementation process.²⁵

²⁴ United Nations Declaration on the Rights of Indigenous Peoples, Article 15(1).

²⁵ See further Royal Commission into Aboriginal Deaths in Custody, Recommendations, Recommendations 290 and 295.

Aboriginal and Torres Strait Islander perspectives in the performing arts

For dramatic and performing arts, Drama Australia has developed an Aboriginal and Torres Strait Islander Guidelines for Drama/Theatre Education to assist educators with incorporating Aboriginal and Torres Strait Islander perspectives in classroom learning.²⁶

Similar educational resources have also been developed by others such as:

- › Bangarra’s Educational Resource packages for its productions.²⁷
- › Queensland Ballet’s Dreaming Teacher Resource Kit.²⁸
- › Reconciliation Australia’s Narragunnawali online platform — providing guidance to educators and schools in their Aboriginal and Torres Strait Islander engagement journey.²⁹ This includes curriculum resources for music,³⁰ drama; and³¹ dance.³²

These examples highlight the need:

- › to **consult** with local elders and communities to understand the best approaches,
- › seek **permissions** for, using Aboriginal and Torres Strait Islander cultures in learning content
- › the local **relevance** of culture (i.e. stories, themes) used, and
- › ensuring that representations of cultures and stories in existing learning materials are **respectful and not harmful or derogatory** towards Aboriginal and Torres Strait Islander cultures and communities.

In Australia, there is a nationwide network of state/territory as well as local Aboriginal Education Consultative Groups that advocate for Indigenous interests in education and training that may be able to provide guidance with incorporating Aboriginal and Torres Strait Islander perspectives in learning curricula. See **Part 5 — Resources** for a detailed list.

b. Respecting connections to Country and culture

For Aboriginal and Torres Strait Islander people and communities, connections to Country and culture are fundamental to identity and belonging. These connections are inextricably linked to spirituality, family, language and one’s existence.

As a sign of respect, it is important to recognise these connections — both the tangible and intangible connections of the custodians to land and cultural heritage.

26 Drama Australia, Aboriginal and Torres Strait Islander Guidelines for Drama/Theatre Education, <https://dramaaustralia.org.au/assets/files/ATSIguidelinesFinalSept07.pdf>.

27 Bangarra, E-Resources, <https://www.bangarra.com.au/youth-outreach/education/resources>.

28 Queensland Ballet, Dreaming, <https://www.queenslandballet.com.au/files/files/QB%20Dreaming%20TRK.pdf>.

29 Reconciliation Australia, Narragunnawali, <https://www.narragunnawali.org.au/curriculum-resources>.

30 Narragunnawali, The Arts — Music, <https://www.narragunnawali.org.au/uploads/media/professional-learning/music-resource-guide-4dedbf9014.pdf>.

31 Narragunnawali, The Arts — Drama, <https://www.narragunnawali.org.au/uploads/media/professional-learning/drama-resource-guide-3fdb4a944a.pdf>.

32 Narragunnawali, The Arts — Dance, <https://www.narragunnawali.org.au/uploads/media/professional-learning/dance-resource-guide-548a8e966f.pdf>.

Embrace diversity of Indigenous cultures

Aboriginal and Torres Strait Islander people have the right to belong to a community, clan, nation in accordance with the traditions, protocols and customs of that community, clan or nation.³³ Within the ARTS8 organisations, it is important to identify which communities are represented, and to respect the rights of each of those communities.

Who is Aboriginal and Torres Strait Islander?

An Aboriginal and/or Torres Strait Islander person is defined as someone who is of Aboriginal and/or Torres Strait Islander descent, who identifies as Aboriginal and/or Torres Strait Islander and who is accepted by the Aboriginal and Torres Strait Islander community where they live.³⁴

Note that Aboriginal and Torres Strait Islander people come in all range of skin colours, and often identify themselves as coming from regional clan groups. For example, a person may say, 'I am Wiradjuri' if they have family heritage originating from Central New South Wales. Some Aboriginal and Torres Strait Islander people are not able to identify their clan origins due to being removed from their families under past government policies.

Using terminologies

'Aboriginal and Torres Strait Islander', 'First Nations', 'First Peoples' or 'Indigenous' are commonly used terms to refer to Aboriginal and Torres Strait Islander people. Using capital letters (i.e. as a proper nouns) is the appropriate way to use these terms. The term 'ATSI' is generally not used to refer to Aboriginal and Torres Strait Islander people.

The Department of the Prime Minister and Cabinet provides the following guidance:³⁵

- › **Aboriginal people(s)** is a widely used term to refer to Aboriginal people and their descendants.
- › **Torres Strait Islander people(s)** refers to descendants of the Torres Strait Islands, located north of Queensland.
- › The term 'Aboriginal' is not inclusive of Torres Strait Islander people, so reference to **Aboriginal and Torres Strait Islander people** should be made where necessary.

Across Australia, there are different preferences to terminologies used to refer to Aboriginal and Torres Strait Islander people so make sure you discuss preferences in terminologies.

33 United Nations, United Nations Declaration on the Rights of Indigenous Peoples, Article 9.

34 Department of Aboriginal Affairs, Report on a Review of the Administration of the Working Definition of Aboriginal and Torres Strait Islanders (1981), Commonwealth of Australia, Canberra, cited in J Gardiner-Garden, The Definition of Aboriginality: Research Note 18, 2000–01 (2000) Parliament of Australia, 2.

35 Department of the Prime Minister and Cabinet, Communicating with Aboriginal and Torres Strait Islander Audiences, <https://www.pmc.gov.au/resource-centre/indigenous-affairs/communicating-aboriginal-and-torres-strait-islander-audiences>.

PART 3 Implementing protocols in the ARTS8 organisations

It is important to recognise that there are many different Aboriginal and Torres Strait Islander communities and cultures. Each of these cultures has its own cultural heritage and cultural protocols in relation to that cultural heritage.

The Australian Institute of Aboriginal and Torres Strait Islander Studies' map of Indigenous Australia shows this diversity.³⁶

Welcome to Country

Respecting Aboriginal and Torres Strait Islander connections to Country³⁷ can be done through a 'Welcome to Country', usually conducted prior to events, speeches, presentations or meetings.

A 'Welcome to Country' can only be performed by an Indigenous representative of the traditional owners with the permission of the traditional owners or community Elders. Local Elders should be engaged to conduct a 'Welcome to Country' and this can be done by speaking with the Local Aboriginal Land Council where the event is hosted and asking who would be best to do this. See **Part 5 — Resources** for relevant contacts.

Acknowledgement of Country

An 'Acknowledgement of Country' is a way that all people can show respect for Aboriginal and Torres Strait Islander cultures and heritage and the ongoing relationship the traditional custodians have with the land. At the commencement of a meeting or function, a chair or speaker begins by acknowledging that the meeting is taking place on the Country of the traditional custodians.

Examples of Acknowledgement of Country

Acknowledgements to Country can be general (if you are unsure of the name of the traditional owner group, or if there are two or more groups to acknowledge) or specific if you know the traditional owners:

- › General Acknowledgement: 'I'd like to begin by acknowledging the traditional owners and custodians of the land on which we are meeting today. I would also like to pay my respect to their Elders past and present.'
- › Specific Acknowledgement: 'I'd like to begin by acknowledging the traditional owners and custodians of the land on which we are meeting today, the (Nation), OR the (People) of the (nation), and pay my respects to their Elders past and present.'

Acknowledgements of Country can also be made on emails, websites and publications. For example, AFTRS has an Acknowledgement to Country on its website's home page.³⁸

³⁶ Australian Institute of Aboriginal and Torres Strait Islander Studies, AIATSIS map of Indigenous Australia, <https://aiatsis.gov.au/explore/articles/aiatsis-map-indigenous-australia>.

³⁷ Country/Countrys is the term we have chosen to use to describe Aboriginal Countrys, spaces and places. It is capitalised and pluralised to give respect to Aboriginal and Torres Strait Islander diversities. The term Country embodies ecological systems so much a part of Indigenous Knowings: it is not just limited to geographical space and place. We choose to spell the plural differently to embrace the distinctiveness of concepts.' (Blair, N. 2015. p.xvi)

³⁸ See the Australian Film Television and Radio School website here: <https://www.aftrs.edu.au/>.

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Language words and placenames

The use of Aboriginal and Torres Strait Islander words on signage, or as room or building names can help foster a culturally inclusive space. For example, Nura Gili is the name of the centre for Aboriginal and Torres Strait Islander programs at the University of New South Wales, the words Nura Gili are from the language of the Eora Nation in Sydney, which mean 'place of fire and light.'³⁹

Doing so can serve as a reminder that everyone in the space is on Aboriginal and Torres Strait Islander land. Use of language words can also be a way to help revitalise and preserve languages from extinction.

Prior to doing so, organisations should first consult with local Aboriginal and Torres Strait Islander communities to obtain input and consent for the use. For in depth guidance on consultation and consent processes, see **Part 4 — Communication, Consultation and Consent**.

Celebrate cultures

Aboriginal and Torres Strait Islander people have the right to practice and revitalise their cultural traditions and customs.⁴⁰ Celebration of cultures and traditions within organisations supports this right and fosters an inclusive space

Below are some important dates and commemorations of Aboriginal and Torres Strait Islander cultures.

Figure 2
Summary of important dates for Aboriginal and Torres Strait Islander people

Date	Significance
26 January	Indigenous Australians view Australia Day as Survival Day . The day focuses on the survival of cultural heritage and acknowledges the invasion of Australia.
13 February	National Apology Anniversary . The anniversary of the formal apology delivered on the 13th February by former PM Kevin Rudd to Australia’s Indigenous peoples and the Stolen Generations.
15 March	National Close the Gap Day is an Aboriginal and Torres Strait Islander health campaign that encourages organisations, workplaces, communities and schools to take meaningful action in support of achieving Indigenous health equality by 2030. ⁴¹
26 May– 3 June	National Reconciliation Week . This week begins with National Sorry Day and ends with Mabo Day.

³⁹ University of New South Wales, Nura Gili About Us, <http://www.nuragili.unsw.edu.au/about-us>.
⁴⁰ United Nations, United Nations Declaration on the Rights of Indigenous Peoples, Article 11(1).
⁴¹ OXFAM Australia, Close the Gap, <https://www.oxfam.org.au/what-we-do/indigenous-australia/close-the-gap/>.

Date	Significance
26 May	National Sorry Day. The day marks the anniversary of the 1997 Human Rights and Equal Opportunity Commission National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families. The report was called Bringing Them Home.
3 June	Mabo Day. The day commemorates the High Court's 1992 decision which recognised the existence of Native Title Rights.
First week of July	NAIDOC (National Aboriginal and Torres Strait Island Day Observance Committee) Week is a celebration of Indigenous cultures and an opportunity to bring government and community attention to issues.
4 August	National Aboriginal and Torres Strait Islander Children's Day is an opportunity for all Australians to show their support for Indigenous children and to celebrate and acknowledge that they are the carriers of rich cultural stories and tradition for the future. ⁴²
9 August	International Day of the World's Indigenous People encourages people around the world to support and spread the UN's message of the protection and promotion of the rights of Indigenous peoples.

Case Study: Australian Film Television and Radio School (AFTRS) Celebrating Indigenous filmmakers

There are plenty of opportunities to use the inherent nature of the performing arts to showcase and celebrate culture.

AFTRS is the national film and television school who has a long record with working with Indigenous peoples. Celebrating significant events for Aboriginal and Torres Strait Islander cultures is embedded in the AFTRS Aboriginal and Torres Strait Islander policy. The Policy states, as one of its objectives, that it aims to increase cultural competency at AFTRS which includes through acknowledging nationally significant events like NAIDOC.⁴³

In 2017, AFTRS celebrated NAIDOC Week by showcasing 5 short films by their Indigenous alumni including Ivan Sen and Rachel Perkins.⁴⁴ The films were shown through ABC on iView as part of a NAIDOC collection of films.

42 The Secretariat of National Aboriginal and Islander Child Care, National Aboriginal and Torres Strait Islander Children's Day, <http://aboriginalchildrensday.com.au/>.

43 Australian Film Television and Radio School, Aboriginal and Torres Strait Islander Policy, <https://www.aftrs.edu.au/wp-content/uploads/2018/06/Aboriginal-and-Torres-Strait-Islander-Policy.pdf>.

44 Australian Broadcasting Corporation, AFTRS Presents: NAIDOC Week 2017, <https://iview.abc.net.au/collection/1453>.

Visual arts as a vehicle

For Aboriginal and Torres Strait Islander people, the visual arts are a vehicle for storytelling, transmitting knowledge and cultural expression. Visual representation of culture in organisations can also be a way of being more culturally welcoming and inclusive.

Case Study: Tjamu Tjamu Artwall

Tjamu Tjamu (2009) is an artwork by Jackie Kurtjyuntja Giles Tjapaltjarri which depicts his birthplace in the Gibson Desert, Northern Territory.

The work was commissioned by AFTRS, and it appears as a large-scale installation on an external building wall at AFTRS in Moore Park, Sydney. It has a bold presence that incorporates an Indigenous narrative into the fabric of the building.⁴⁵

'AFTRS is charged with a mission to foster the creation of national stories through screen and broadcast productions — which are a significant vehicle for cultural expression. As a national institution AFTRS' decision to choose to incorporate 'another voice' and mode of narrative, via the commissioning of an Indigenous artwork that will be located in a public context, is very significant.'⁴⁶

Hetti Perkins on the importance of Tjamu Tjamu

Organisations may commission or purchase Aboriginal and Torres Strait Islander arts and crafts as part of its engagement strategy — this may be for display in offices, as gifts, or use in publications.

Current Australian laws do not adequately protect Aboriginal and Torres Strait Islander arts and crafts, resulting in a lot of inauthentic products being made and sold to consumers without any laws and legal rights being infringed. Aboriginal and Torres Strait Islander people have voiced concerns about this issue for decades. A December 2018 report by the House of Representatives Standing Committee on Indigenous Affairs estimates that around 80% of Aboriginal and Torres Strait Islander souvenirs sold in Australian gift shops (such as boomerangs and didgeridoos) are inauthentic.⁴⁷ This harms important sources of livelihood of Aboriginal and Torres Strait Islander artists.

45 Australian Film Television and Radio School, Tjamu Tjamu Artwall <<https://www.aftrs.edu.au/news/2016/tjamu-tjamu-artwall/>>

46 Australian Film Television and Radio School, Tjamu Tjamu Artwall <<https://www.aftrs.edu.au/news/2016/tjamu-tjamu-artwall/>>

47 The Parliament of the Commonwealth of Australia, Report on the impact of inauthentic art and craft in the style of First Nations peoples, <https://www.aph.gov.au/~media/02%20Parliamentary%20Business/24%20Committees/243%20Reps%20Committees/Indigenous/InauthenticArtReport/Final%20report.pdf?la=en>.

Beware of inauthentic arts

Before buying an Aboriginal and Torres Strait Islander work or arts/crafts product, talk to the artwork seller about the origins of the work.

Ask questions such as:

- › Who is the artist? This information should be contained in a Certificate of Authenticity that comes with the artwork, along with:
 - » the title of the work
 - » details of the work (e.g. size, medium, date created)
 - » the artist's language group and Country
 - » a story or description of the work from the artist
 - » a photo of the artist
 - » any cultural protocols and information relevant to the work.
- › Was the work made in Australia?
- › Was the artwork sourced from an art centre? If so, which arts centre?
- › Is the artist represented by an art centre or gallery? If so, which one?
- › Is the representative art centre or gallery a member of known and trustworthy associations?
- › What benefits do the artist get? How much of the proceeds from the sale of the work goes to the artist?

The Indigenous Art Code is a national organisation with a core remit to support ethical trading in Aboriginal and Torres Strait Islander art. The Code regularly updates its information on how to buy Aboriginal and Torres Strait Islander art ethically on its website: <https://indigenousartcode.org/how-to-buy-ethically/>.

The Code suggests that buyers ask three key questions:

1. Who is the artist?
2. Where is the artist from?
3. How does the artist get paid?

Further, the Australian Competition and Consumer Commission has information guides that focus on consumer rights in relation to Indigenous art and craft including a suggested list of steps and questions to ask a seller. Information is regularly updated and can be found here: <https://www.accc.gov.au/system/files/Indigenous%20arts%20and%20crafts.pdf>.

Using Aboriginal and Torres Strait Islander flags

Another way to show respect and recognition of Aboriginal and Torres Strait Islander cultures is by displaying the Aboriginal and Torres Strait Islander flags.

Who owns the flags?

The Aboriginal and Torres Strait Islander flags are official flags of Australia and their use is controlled by the Flags Act 1953 (Cth).

Both flags are also works protected by the Copyright Act. Harold Thomas, the creator of the Aboriginal flag controls the use of the flag through licensing and litigation. The Torres Strait Island Regional Council owns copyright in the Torres Strait Islander flag.

Prior to using the copyright in the Aboriginal and Torres Strait Islander flags (eg reproducing the flags on products, documents etcetera), organisations should seek permission from its copyright owners to avoid copyright infringement.

It is also important to remember not to alter the flags in your representations.

For guidance about using the flags and seeking permission, refer to the Australian Government's Department of Prime Minister and Cabinet website: www.pmc.gov.au/government/australian-national-symbols/australian-flags.

Respect cultural sensitivities

It is important to be aware that different cultural protocols may be attached to information relating to Aboriginal and Torres Strait Islander cultural heritage. For example, information may be restricted to those in the community with senior status or restricted to specific genders. Some aspects of Aboriginal and Torres Strait Islander cultures may also be secret or confidential. Aboriginal and Torres Strait Islander people have the right to keep sacred and secret their spiritual and religious traditions, customs and ceremonies.⁴⁸

For example, in many Aboriginal and Torres Strait Islander communities, the reproduction of names and photographs of deceased Indigenous people is not permitted during the mourning practices. There are also sensitivities around using the name or showing images of Indigenous people who have been deceased for a long time. A cultural sensitivity warning notice may be added to learning materials.

Using cultural sensitivity warnings

A cultural sensitivity warning may be published on materials which feature images of people who have passed away to advise Aboriginal and Torres Strait Islander readers and viewers of the content of such materials:

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

The NAISDA website, for example, contains a cultural warning on the homepage and asks that questions be directed to NAISDA about photographs and images used.⁴⁹

⁴⁸ United Nations Declaration on the Rights of Indigenous People, Article 12.

⁴⁹ National Aboriginal Islander Skills Development Association Dance College, <https://naisda.com.au/>.

However, where an organisation wishes to use the name or use an image of a deceased Indigenous person, you should consult with the person's family about the use of the name to determine if it is culturally appropriate. If the family is not known, the community should be consulted. See **Part 4 — for more on Communication, Consultation and Consent**.

c. Embedding protocols in the organisation

Developing formal statements of commitment, policies and strategies for Aboriginal and Torres Strait Islander engagement help align the organisation's framework with cultural values and protocols. These should be developed in consultation with communities, and/or with the guidance of an advisory group or committee.

Reconciliation Action Plans

Reconciliation aims to promote an understanding of the history between Indigenous and non-Indigenous Australians. Formal discussions about reconciliation began in 1991 with the establishment of the Council for Aboriginal Reconciliation.⁵⁰

Case Study: Department of Communications and the Arts RAP 2018–2019

The Department of Communications and the Arts has developed a Reconciliation Action Plan for 2018–2019 in collaboration with the Indigenous Staff Network.

The vision includes continuing to develop and maintain beneficial relationships with Aboriginal and Torres Strait Islander communities and stakeholders and providing employment and development opportunities in Department's programs and the workplace. It seeks to continue recognising the important contribution of Aboriginal and Torres Strait Islander peoples to workplace culture, acknowledging unique skill sets as a valuable asset, and promoting inclusive and diverse culture to raise the workplace profile with a high level of cultural awareness.⁵¹ It also states the importance of effective consultation with Aboriginal and Torres Strait Islander staff in regard to decisions and activities that affect them.

The measurable deliverables are:

- › Increase and maintain representation of Indigenous employees at 4.5% of the department's workforce in 2018.
- › Establish a strong foundation for the delivery of future RAPs that respond to feedback from the Indigenous Staff Network and in close consultation with Reconciliation Australia.
- › Raise staff cultural awareness through targeting training and participation in NAIDOC and Reconciliation Week.

Continue working across the Australian government to embrace opportunities for our Indigenous staff to participate in learning and development initiatives.⁵²

50 Council for Aboriginal Reconciliation Act 1991 (Cth).

51 Department of Communications and the Arts, Reconciliation Action Plan, <https://www.communications.gov.au/who-we-are/department/reconciliation-action-plan>.

52 Department of Communications and the Arts, Reconciliation Action Plan, <https://www.communications.gov.au/who-we-are/department/reconciliation-action-plan>.

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Established in the early 2000s, Reconciliation Australia is an independent, national not-for-profit organisation promoting reconciliation by building relationships, respect and trust between the wider Australian community and Aboriginal and Torres Strait Islander peoples. They administer the Reconciliation Action Plan (RAP) program in Australia. RAPs provide a framework for organisations to realise their vision for reconciliation.

For more on RAPs, visit the [Reconciliation Australia website](#).⁵³

Protocols and Policies

Commitments to engage with Aboriginal and Torres Islander people and communities can be formalised through the development of an engagement policy or protocol.

Policy and protocols documents can provide best practice frameworks to establish standards of engagement. Following the policy can be made mandatory through contracts (i.e. including the policy document in the organisation's agreements with staff members, contractors, consultants, business partners, etcetera).

Case Study: Australia Council's Protocols for working with Indigenous artists

The Australia Council requires applicants working with Indigenous artists and content to follow Indigenous cultural protocols.⁵⁴ It is a condition of grant funding that applicants adhere to these protocol guides relevant to music, writing, visual arts, media arts and performing arts. These highly regarded documents endorse Indigenous cultural and intellectual property rights and are a significant point of reference in the arts. They clearly outline the legal, ethical and moral considerations for Indigenous engagement and the use of Indigenous cultural material.

Another example is the AFTRS Aboriginal and Torres Strait Islander Policy document,⁵⁵ which applies to all employees and students. It defines several key principles, such as respect and cultural safety, and establishes objectives regarding Aboriginal and Torres Strait Islander engagement.

Universities Australia has developed an Aboriginal and Torres Strait Islander strategy for 2017–2020 that outlines the responsibilities universities have to Australia's Aboriginal and Torres Strait Islander people and contains several initiatives to increase Aboriginal and Torres Strait Islander involvement.⁵⁶ So there are also many Australian universities that have implemented Aboriginal and Torres Strait Islander protocols and policies to strengthen their Indigenous engagement and processes.

⁵³ Reconciliation Australia, Reconciliation Action Plan, <https://www.reconciliation.org.au/reconciliation-action-plans/>.

⁵⁴ Australia Council for the Arts, Protocols for Working with Indigenous Artists, <https://www.australiacouncil.gov.au/about/protocols-for-working-with-indigenous-artists/>.

⁵⁵ Australian Film Television and Radio School, Aboriginal and Torres Strait Islander Policy, <https://www.aftrs.edu.au/wp-content/uploads/2018/06/Aboriginal-and-Torres-Strait-Islander-Policy.pdf>.

⁵⁶ Universities Australia, Indigenous Strategy 2017–2020, https://socialsciences.arts.unsw.edu.au/media/SOSSFile/FINAL_Indigenous_Strategy.pdf.

3.2 Relationships and opportunities

Over the years, the ARTS8 organisations have established a range of relationships with Aboriginal and Torres Strait Islander communities. However, organisations have expressed the need for further support in building strong and lasting relationships.

Some questions and concerns include:

- › How can we connect with communities?
- › Where are the networks?
- › What is the best way to connect and work with communities?
- › Where can we find Aboriginal and Torres Strait talent?
- › How do we bridge the gaps between Western and Aboriginal and Torres Strait Islander performing arts training, which can often be perceived as detached from one another?

In response to these questions, this section provides an overview of the many ways the ARTS8 organisations can establish new relationships and work with communities. This is to supplement the range of community outreach initiatives and programs already happening within the ARTS8 organisations.

Communication, consultation and consent

Communication, consultation and consent are key to building relationships and opportunities. These principles are explored in greater detail under Part 5 of these Protocols.

a. Working with leaders

Engaging Aboriginal and Torres Strait Islander community representatives and leaders is a key engagement pathway. A representative or leader can be engaged to lead a project, provide their valuable perspectives through an advisory committee, as an ambassador, a consultant, arts expert or a board member. It is important to recognise the diversity of Indigenous leadership, Aboriginal people working in the community are leaders as are those represented in their media. The aim is to enable an Indigenous voice in spaces where key decision are made. This also allows for self-determination.⁵⁷

That is, Aboriginal and Torres Strait Islander people should have a say in decisions that affect them, such as the telling or representation of Aboriginal and Torres Strait Islander stories, cultures and identity in productions and performances.

A representative or leader can be engaged to lead a project, provide their valuable perspectives for example through an advisory committee, as a consultant, arts expert or a board member.

⁵⁷ United Nations, United Nations Declaration on the Rights of Indigenous Peoples, Article 3.

Self-determination

Self-determination means empowering Aboriginal and Torres Strait Islander peoples in decision-making processes. This right involves a process of choice for Aboriginal and Torres Strait Islander people — to choose, participate in and control the development of their political, economic, social and cultural paths.⁵⁸

In development of curriculum, Aboriginal and Torres Strait Islander academics, educators and cultural practitioners should be engaged to ensure all curriculum has Aboriginal and Torres Strait Islander perspectives.

Board members, advisory groups and committees

Aboriginal and Torres Strait Islander board members, advisory groups and committees have important roles in helping to guide engagement, policies and planning in an organisation. According to the Yagunda Barbindi Survey⁵⁹, 6% of the ARTS8 organisation's board members are Aboriginal and Torres Strait Islanders, represented through NAISDA. There is also Aboriginal and Torres Strait Islander representation on four (4) ARTS8 organisation committees and groups.

Advisory groups and committees are typically made up of community and industry professionals who can provide advice on engagement strategies and matters relating to Aboriginal and Torres Strait Islander communities. Such representatives can help to review protocols, advise on consultation and consent processes, as well as empower Aboriginal and Torres Strait Islander voices in business and strategic planning.

Some options to bolster representation in this regard include:

- › Inviting representatives of local Aboriginal land councils to sit on an organisation's board;⁶⁰
- › Establishing a collective advisory group or panel between the ARTS8 organisations to inform organisations' business, operations and projects.
- › Establish a collective of Aboriginal and Torres Strait Islander academics and educators to work with all ARTS8 organisations in curriculum development. This collective would have its own set of engagement protocols with local communities in regards to information in the curriculum.

The Yirramboi First Nations Art Festival, for example, has an Elders Council comprised of Elders of the central Kulin Nations and Elders of the arts community who provide guidance and advice to Yirramboi staff and programs.

Advisory groups can also provide important Aboriginal and Torres Strait Islander perspectives in an organisation's learning curricula and syllabus.

58 Australian Human Rights Commission and the National Congress of Australia's First Peoples, The Community Guide to the UN Declaration on the Rights of Indigenous People, https://declaration.humanrights.gov.au/sites/default/files/document/publication/declaration_community_guide.pdf.

59 The Yagunda Barbindi Survey was conducted by ArtsReady in 2018 to better understand the current level of engagement by the ARTS8 with Aboriginal and Torres Strait Islander people.

60 Terri Janke and Company, First Peoples and Australian Museums and Galleries.

Case Study: the Australian Curriculum and Aboriginal and Torres Strait Islander Histories and Cultures

Recent curriculum work at NAISDA (National Aboriginal and Islander Skills Development Association) has embraced Lilyology to assist staff in navigating the relational nature of writings, curriculum structures and formats that appear in linear structure but have relational links which are important to acknowledge. The mosaic engages metaphors and images that perform a meta-story against a grand narrative. They provide a map where the parts of something may seem important but so is the world/grand view.⁶¹

The curriculum development to ready NAISDA for re-accreditation afforded an opportunity to reconceptualise how NAISDA as an organisation centred, engaged and did Indigenous Knowings. Previously the curriculum was responsive to accreditation authority rules and regulations, and frameworks. The content obviously had Indigenous contexts but this was limited to 'fit within' what was expected by the western regulatory authorities. Lilyology gave staff, Board of Studies members and the Curriculum/Accreditation consultants the chance to re-envision their curriculum content and process because it centers Indigenous Knowings not western regulatory frameworks, and goes beyond simply grafting on the acceptable stories without the depth of context through an understanding of Indigenous Knowings. Anything less simply exoticises Indigenous content and experiences. Lilyology in practice gave access and understanding to differences as well as the map for the flow of cultural units as the core allowing other activities to be linked in to this core rather than linked in to western frameworks, boxes or bricks from the Brickwall. It gave the Aboriginal staff member a safe place to voice his Knowings to the point that he said: it comes from the roots, the roots of the Lily when speaking about the map before us as a Board of Studies. He said 'when you start to feel it you carry it with you' It gave the Vocational Educational Training consultant; the 'authority' on the sector regulations and standards to make compliance as a registered training authority rigorous, the space to converse, listen, dialogue, reflect on the centred Lily rather than the VET standards.

The Dialogue was circular not determined by western concept of agenda, spiralling back on the Lily with the staff member stating 'I came in this morning with a list of things to do and a plan and sequence for how this meeting would go, and it isn't going this way and I feel great about it'. We centred our Storying around the Lily, spoke of the Brick Wall ... and then breathed a relatedness to feeling what we were doing not responding to Brick Wall requirements — remembering his earlier comment: 'when you start to feel it you carry it with you'. The Storying has seen a rich and deep interconnected web emerge that places Indigenous Knowings more at the centre of what we do; more at the centre than western regulations that we try to 'fit into'.⁶² All staff as well as a range of practitioners, community representatives, institutional representatives and administrators actively engaged in this process for the Advanced Diploma showcasing the power of curriculum development if the processes embrace culture, storying and time.

61 Blair, N, *Privileging Australian Indigenous Knowledge: Sweet Potatoes, Spiders, Waterlilies, and Brick Walls*, 2015, page 226

62 Blair, N, *Privileging Australian Indigenous Knowledge: Sweet Potatoes, Spiders, Waterlilies, and Brick Walls*, 2015, page 227

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Ambassadors, champions and advisors

Organisations can support Aboriginal and Torres Strait Islander leadership by implementing programs that engage with Aboriginal and Torres Strait Islander ambassadors and advisors. They can provide valuable guidance and share their knowledge regarding Indigenous issues and agendas, as well as advising on where the organisation can develop relationships with the community.

Ambassadors can also be role models to help inspire and motivate Aboriginal and Torres Strait Islander performers and youth. They should be appropriately paid and acknowledged for their services and contribution of cultural expertise to the organisation.

Case Study: William Barton and AYO

An Aboriginal and Torres Strait ambassador within the ARTS8 organisations is esteemed composer and didgeridoo player, William Barton. He has toured and performed with the Australian Youth Orchestra over the years.⁶³

William has also been instrumental in AYO's success in building relationships with local Aboriginal and Torres Strait Islander communities. In collaboration with William and his mother, Bidjara woman and opera singer Aunty Delmae Barton, AYO has worked with Peninsula Specialist College. In 2018, Australian Youth Orchestra musicians from its Momentum Ensemble worked with both Indigenous and non-Indigenous students at the College, collaborating on and performing pieces inspired by Aboriginal and Torres Strait Islander stories and cultures using didgeridoos and classical instruments.⁶⁴

Elders-in-residence

Elders-in-residence programs provide significant opportunities to engage with influential Aboriginal and Torres Strait Islander community leaders and recognise the contributions that they have made and continue to make to their community.

AFTRS launched its Elder-in-Residence program in 2017 on the 50-year anniversary of the 1967 Referendum. The Program is a service for AFTRS' staff and students, who are encouraged to drop in and speak to the resident Elder to gain valuable cultural perspectives in their activities and their work.⁶⁵ Bruce Pascoe was the inaugural Elder in Residence for 2017.

Elders can act as cultural advisors, mentors, community representatives and ambassadors within an organisation. The UNSW Art & Design 2018 Elder in Residence, for example, is Uncle Vic Chapman (Australia's first Indigenous School Principal, artist, community cultural leader) who visits the campus each Friday to work with students in the Cicada Press printmaking studio.⁶⁶

63 Australian Youth Orchestra, William Barton, <http://www.ayo.com.au/content/william-barton/gjs0ux>

64 Australian Youth Orchestra, Momentum Ensemble 2018: A unique collaboration with Peninsula Specialist College, <http://www.ayo.com.au/content/momentum-ensemble-collaborates-with-peninsula-specialist-college/gjgbow>.

65 Australian Film, Television and Radio School, Orientation Guide 2018, <https://www.aftrs.edu.au/wp-content/uploads/2018/06/Orientation-Guide-2018.pdf>, page 11.

66 University of New South Wales, Indigenous Community, <https://artdesign.unsw.edu.au/about-us/indigenous-community>.

b. Employing Aboriginal and Torres Strait Islander staff

Employing Aboriginal and Torres Strait Islander staff members can broaden an organisations networks and relationship building opportunities with community. Below are some strategies to assist the ARTS8 organisations to bolster its Aboriginal and Torres Strait Islander employment.

Specific guidance can also be found in the resource Getting it Right Employing Indigenous Australians: A Guide for Employers by GROW Sydney ACC, in partnership with the Department of Education, Employment and Workplace Relations.⁶⁷

Recruitment strategies

Culturally appropriate strategies such as 'special measures' positions can be put in place when recruiting Aboriginal and Torres Strait Islander job candidates.

Special measures

Anti-discrimination laws at both federal and state levels allow employers to adopt 'special measures' within their policies (such as targeted recruitment strategies) to assist disadvantaged racial groups by providing greater access to opportunities in the workplace.

The Australian Human Rights Commission developed a publication, Targeted Recruitment of Aboriginal and Torres Strait Islander people: A Guideline for Employers, that provides step-by-step guidance to help employers use these 'special measures: provisions in anti-discrimination laws.

As stated in the Guideline, if a targeted recruitment strategy meets these requirements of a 'special measure', it is lawful under anti-discrimination laws (with the exception of NSW, where an employer is required to seek an exemption — see below):

1. It is necessary because members of a racial group are disadvantaged
2. It will promote equal opportunity for members of that racial group
3. It has the sole purpose of promoting equal opportunity (and will be done in good faith
4. It is reasonable and proportionate (including reasonably likely, appropriate and adapted to achieve its purpose), and
5. It will stop once its purpose has been achieved.

The exception to this is New South Wales, as the Anti-Discrimination Act 1977 (NSW) requires NSW employers to apply for an exemption under the Act to conduct targeted recruitment. See the Guideline online (<https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/targeted-recruitment>) for more information on the requirements.

⁶⁷ GROW Sydney ACC and the Department of Education, Employment and Workplace Relations, Getting it Right Employing Indigenous Australians: A Guide for Employers, http://nceta.flinders.edu.au/files/9513/5786/7682/Employing_Indigenous_Aust.pdf.

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Another strategy is by having 'identified' positions. That is, advertising positions that can only be filled by Aboriginal and Torres Strait Islander people.

Identified positions

Identified positions are jobs determined by an employer to be filled only by certain people, such as people with a particular attribute or people of a particular race.

For example, if an organisation hires an Indigenous Engagement Officer, identifying the position for Indigenous people can be lawful if the position is taken for the sole purpose of advancing Indigenous rights and ensuring Indigenous people's equal enjoyment of human rights.

Job advertisements for Indigenous Identified Positions must clearly state that it is an Indigenous Identified Position, that you are seeking an Aboriginal and Torres Strait Islander person to fill the role.

Finding candidates

Other strategies to maximise exposure of job listings to potential Aboriginal and Torres Strait Islander applicants include using a wider range of media and networks. See **Part 5 — Resources** for suggested advertising platforms targeted to Aboriginal and Torres Strait Islander job seekers.

c. Procuring from Aboriginal and Torres Strait Islander businesses

Supporting Aboriginal and Torres Strait enterprise should also be a part of the ARTS8 organisations' commitment to Aboriginal and Torres Strait Islander engagement.

Consider the following:

- › What goods can be supplied by Indigenous businesses?
- › What services can be provided by Indigenous businesses?
- › Are there project-specific roles that can be fulfilled by Indigenous contractors?
- › Can any of our existing suppliers and subcontractors enter into contracts with Indigenous businesses?

Case study: Department of Communications and the Arts and Carbon Creative

The Indigenous creative agency Carbon Creative worked with the Department of Communications and the Arts in the design, layout and print of the Department's 2018–2019 RAP.⁶⁸ They commissioned Noongar artist Bradley Kickett to create an artwork to be included in the publication that conveyed the essence of the RAP.

⁶⁸ Carbon Creative, Uniting through connection and expression, <https://www.carbon-creative.com.au/work/uniting-through-connection-and-expression>.

Finding Indigenous businesses

Aboriginal and Torres Strait Islander businesses can be found through Supply Nation. Supply Nation is an Australian not-for-profit organisation that aims to grow the Indigenous business sector by promoting supplier diversity. Supply Nation maintains a database⁶⁹ of Indigenous businesses that meet the current standards of registration and certification.

Concepts expanded: What is an Indigenous business?

Registered Indigenous businesses are those that are 50% Indigenous-owned and are registered with Indigenous Business Direct. They have been verified by Supply Nation and are approved and published online on the Indigenous Business Direct register.

Certified Indigenous businesses are those that are 51% or more Indigenous-owned, managed and controlled. It sets a higher standard for Indigenous ownership and is the definition and criteria for an 'Indigenous business' endorsed by Supply Nation. To be certified, businesses must undergo an extensive application and checking process. These are the Indigenous businesses that use the Supply Nation Certified logo as an identifier. They have also been verified by Supply Nation and are approved and published online on the Indigenous Business Direct register.

See the Supply Nation website for more information on the registration and certification process.⁷⁰

There are also member-based organisations such as the Indigenous Chambers of Commerce across Australia and state governments that list member Indigenous businesses on their directories. See **Part 5 — Resources** for a list of Aboriginal and Torres Strait Islander business directories.

However, searching on Supply Nation's database and engaging with Supply Nation certified businesses eliminates the need to enquire about and verify the authenticity of the businesses as Aboriginal and Torres Strait Islander businesses that are certified undergo an extensive application, interview, checking and verification process before they are certified and listed online. Organisations should undertake its own enquiries and due diligence if using other directories and engaging businesses from those directories.

d. Engaging with communities

The consultations reveal a variety of programs and community engagement activities that exist within the ARTS8 organisations including engaging ambassadors, direct relationships with schools, working with school/university Aboriginal and Torres Strait Islander units and peak bodies.

Below are some tips and practice points to further enrich these initiatives and inform future engagement strategies.

⁶⁹ Supply Nation, <https://supplynation.org.au/>.

⁷⁰ Supply Nation, Why Indigenous businesses should register with Supply Nation, <https://supplynation.org.au/benefits/supplier/#eligibility>.

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Work collaboratively

By working collaboratively with Aboriginal and Torres Strait Islander communities, organisations can develop mutually beneficial projects and initiatives that support engagement. These can be cultivated over the long-term to build trust and mutual respect.

Program/engagement initiative development — Checklist

Applying the 10 Guiding Principles, consider the following when planning engagement initiatives with Aboriginal and Torres Strait Islander communities?

- › **Respect** — why is the program or initiative being planned? Is it respectful?
- › **Self-determination** — is the program or initiative Aboriginal and Torres Strait Islander-led? Is there an Aboriginal and Torres Strait Islander voice in the design and implementation of the program or initiative?
- › **Communication, consultation and consent** — have we spoken with communities? Do we understand the communities' needs and goals?
- › **Cultural interpretation and integrity** — are we using Aboriginal and Torres Strait Islander cultures in the proposed program? Do we have permission for this use? Are we interpreting culture appropriately?
- › **Benefit-sharing** — how does the community benefit from the project or initiative?

This can help build enduring relationships and partnerships with Aboriginal and Torres Strait Islander communities.

Connect locally

Organisations should engage locally and connect with local Aboriginal and Torres Strait Islander communities in the areas where the organisation does business. Local representation of Aboriginal and Torres Strait Islander people and communities can be found through local bodies such as:

- › Aboriginal and Torres Strait Islander community organisations
- › Aboriginal land councils
- › Aboriginal Education Consultative Groups
- › Aboriginal medical services
- › Arts, cultural and language centres, and
- › Aboriginal and Torres Strait Islander units of local schools and councils.

For relevant contacts, see **Part 5 Resources — Contacts: Compiled list of land councils and Contacts: Compiled list of key peak bodies and organisations.**

Having relationships with local Aboriginal and Torres Strait Islander communities can also assist organisations with organising Welcome to Country ceremonies, facilitating consultation and consent issues (i.e. providing guidance on who to talk to), and identifying opportunities for collaboration.

Case Study: Burranha Bila Buraay

Burranha Bila Buraay (Bouncing River Kids) is the FFFC's long term local program for Aboriginal and Torres Strait Islander kids. The Program has been running once a week for the last nine years, where local Aboriginal and Torres Strait Islander Albury high school students attend circus classes at FFFC.

The program was established through funding under the NSW Aboriginal Arts and Cultural Strategy of the NSW Government. FFFC works in partnership with Albury City Council and local schools, and the program is supported by local Elder and Aboriginal Learning Support Officer at Albury High School, Valda Murray. Students who attend have become ambassadors and mentors to other young people taking the message and learnings back to communities.

Broaden the reach

The ARTS8 organisations can play a major role in sharing the performing arts with Aboriginal and Torres Strait Islander communities that would not otherwise have access or exposure to such programs. Examples include cultural immersion programs and involvement with Aboriginal and Torres Strait Islander festivals. These initiatives can be platforms for education, networking, cultural celebration and deepened connections.

Case Studies: Reaching out remotely

NAISDA's Nationally accredited **Cultural Residency Program** connects NAISDA developing artists with remote communities to foster cultural development and connections. The program focuses on reciprocal engagement, capacity building and knowledge sharing. It involves Cultural Tutors from various communities participating in on-campus residencies each year at NAISDA, to share knowledge and culture with NAISDA developing artists. Developing artists (DAs) then visit and immerse themselves in the Cultural Tutor's homeland to deepen connections formed.⁷¹ The impact of this cultural leaning is also fused throughout the NAISDA curriculum, integrated in all units and helps guild students learning throughout the curriculum. The connections formed and learning from these cultural residencies impact and inform all the units DAs engage with.

FFFC worked with the Barunga Festival in 2014, which is an annual major cultural and arts festival in the Northern Territory. FFFC was involved in the Barunga Festival Circus Project and worked with 84 students from Preschool to Year 11 at the Barunga School over five weeks to develop circus and performance skills in preparation for performances at Barunga Festival. The project helped the students build confidence, increased school attendance rates and aimed to create long-term opportunities for children to connect with the FFFC and other circus groups.⁷² It led to the formation of a partnership between the Gurrumul Yunupingu Foundation and the FFFC.

71 NAISDA, Cultural Residencies, <https://naisda.com.au/programs/residencies/>.

72 Gurrumul Yunupingu Foundation, Programs 2014, <https://www.gurrumulfoundation.org.au/programs/>.

3.3 Nurturing talent

One of the key identified areas where ARTS8 organisations need support is in looking after the cultural, social and emotional needs of organisations' Aboriginal and Torres Strait Islander talent (that is, Aboriginal and Torres Strait Islander students and staff members).

For students in particular, it is identified that the need for support is heightened by the rigorous nature of performing arts training. Some of the issues and questions identified include:

- › How can we better support Indigenous applicants in the audition/application process?
- › How can we better support Indigenous students before they start their studies? During their studies?
- › The rigorous nature of performing arts training can be overwhelming. How can we support our Aboriginal and Torres Strait Islander students through this?

Lack of this support can often lead to poor performance in studies, and low retention rates of Aboriginal and Torres Strait Islander students.

Throughout these Protocols, strategies are provided to assist with these issues — by making organisations a culturally welcoming place (see **Part 3.1 Culturally welcoming spaces** of these Protocols) and building relationships to provide avenues and opportunities for further Aboriginal and Torres Strait Islander engagement within organisations (see **Part 3.2 Relationships and opportunities** of these Protocols).

To supplement these, this section provides specific strategies for the ARTS8 organisations in relation to supporting the social and emotional wellbeing of its Aboriginal and Torres Strait Islander students and staff members. Lack of support in emotional and social well-being can often lead to poor performance in studies, and low retention rates of Aboriginal and Torres Strait Islander students and staff.

a. Supporting prospective talent

Support for Aboriginal and Torres Strait Islander students and staff includes support prior to the commencement of their study or employment with the ARTS8 organisations, such as during application and audition processes.

Below are some strategies that can be put in place to do this.

Application and audition support

To encourage Aboriginal and Torres Strait Islander students to enter study, organisations should provide additional support to assist students applying and/or auditioning to study at the ARTS8 organisations. In line with ensuring culturally welcoming environments, application processes and criteria can include considerations relating to Aboriginal and Torres Strait Islander applicants.

Case study: Culture in the application and audition process

A number of existing initiatives to support prospective Aboriginal and Torres Strait Islander students within the ARTS8 organisations include:

- › NAISDA provides applicants with an audition pack containing information and checklists to enable a smoother process;⁷³ NAISDA also engages with the individual, family throughout the initial engagement process. This connection to the individual and family continues throughout the students study depending on need.
- › NICA's Inside Track is a mailing list that supports prospective students in the preparation for a successful audition by providing subscribers with a variety of resources. These include behind-the-scenes videos of study at NICA, student and graduate vlogs, skills tutorials, and Q&A's with NICA's Head of Circus;⁷⁴
- › NIDA recognises culture in the audition process, by allowing auditionees to audition in language. This helps create a culturally safe space and breaks down barriers. The NIDA website also includes the statement 'NIDA welcomes Aboriginal and Torres Strait Islander applicants' in its online admission criteria.

Further strategies that could be implemented include:

- › A section or link on the organisation's website specifically for Aboriginal and Torres Strait Islander prospective students, including guidelines on the audition process
- › A dedicated Indigenous or culturally trained contact person could also provide further assistance, for example in the completion of forms, if so required
- › Preparation of resources such as handbooks or information sheets
- › Holding information days or sessions for Aboriginal and Torres Strait Islander prospective students.

Student scholarships and fellowships

Organisations can offer scholarships or fellowships for Indigenous students to help with course fees. These create significant opportunities for creative talent to prosper and serve as a gateway for Aboriginal and Torres Strait Islander students more generally.

For example, NIDA currently offers the 'The Luminis Foundation Indigenous Fellowship for Cultural Leadership' to support the participation of Aboriginal and Torres Strait Islander students.

Pre-employment support

Sometimes prospective Aboriginal and Torres Strait Islander job candidates require additional support and assistance when preparing for their entry into the workforce. Depending on the specific needs of the candidate, this can be in relation to preparing job applications or preparing for interviews. Organisations should be able to provide further information on the position, role requirements and the relevant department.

There are also external and government organisations that can help with providing pre-employment assistance to Indigenous job seekers such as providing advice and resources on writing cover letters, resumes and building interview skills. See **Part 5 — Resources**.

⁷³ National Aboriginal Islander Skills Development Association, 2018 NAISDA Audition Pack, <https://naisda.com.au/2017/07/31/2018-naisda-audition-pack/>.

⁷⁴ National Institute of Circus Arts, Inside Track, <https://mailchi.mp/nica.com.au/insidettrack>.

b. Looking after new and existing talent

It is important that the ARTS8 organisations contribute to a positive sense of Aboriginal and Torres Strait Islander student and staff identity. The development and wellbeing of Aboriginal and Torres Strait Islander students and staff members, both new and existing, can be supported through the following measures.

The paper, 'Making school meaningful for Indigenous learners', by Ailsa Bride MacFie⁷⁵ in the UNESCO Observatory Multi-Disciplinary Journal in the Arts provides some strategies to support Aboriginal and Torres Strait Islander students including:

- › Building relationships with Aboriginal and Torres Strait Islander students and their families — as a priority, get to know the student's family, community and languages
- › Demonstrating kindness and positive body language — direct questioning or eye contact may be considered offensive and threatening
- › Supporting students coping with grief
- › Understanding that Aboriginal and Torres Strait Islander students may have different meanings for success and achievement, and
- › Developing teaching methods appropriate for Aboriginal and Torres Strait Islander students — this could include flexible course delivery options, peer teaching, assessment methods to cater to cultural differences such as conducting oral assessments rather than written assessments
- › NAISDA has a lifelong learning approach and strategy to its graduates. NAISDA invites graduates back to teach, create and further their skills for both the development of current students of the college as well as the ongoing wellbeing and connectivity of the now artist.

The most fundamentally important factor in providing appropriate strategies to support Aboriginal and Torres Strait Islander learners is to have knowledge of, and appreciation of the different world views these learners have. Indigenous Knowings are different to Western knowledge; not better than, not subservient to ... just different.

Family and cultural obligations

Organisations must recognise that Aboriginal and Torres Strait Islander students and staff members may navigate dual roles between their study environment and their communities.

Concepts expanded: Sorry business

For Aboriginal and Torres Strait Islander people, the time around a person's death has cultural customs and practices attached to it. This community cultural practice, called sorry business, is important and it extends from immediate to extended family, community members and friends with whom an Aboriginal and Torres Strait Islander student or staff member has community or cultural ties.

ARTS8 organisations must recognise and be responsive to the rights of Indigenous students and staff to practice their cultural traditions without discrimination.

⁷⁵ Ailsa Bride MacFie, Making school meaningful for Indigenous learners, https://education.unimelb.edu.au/_data/assets/pdf_file/0008/2889647/003_MACFIE_V2.pdf.

PART 3 Implementing protocols in the ARTS8 organisations

Strategies and policies should be put in place to allow students to fulfil cultural responsibilities and obligations. For students, this might mean providing flexible modes of learning or delivery of course content, as well as flexibility in assessment tasks.

For staff members, the provision of cultural leave as well as staff support during sorry business and meeting other cultural obligations where necessary. Organisations can develop policy documents that outline the relevant criteria for submitting requests and determine the scope for such leave, including conditions when it may be paid or unpaid. This may be prescribed by a modern award.

The Fair Work Ombudsman has produced helpful resources⁷⁶ to assist both employers and Aboriginal and Torres Strait Islander employees.

Culturally appropriate medical services

Organisations should seek to support individual Aboriginal and Torres Strait Islander students and staff members who may need help with health issues.

The Australian Government National Aboriginal and Torres Strait Islander Health Plan 2013–2023 recognises Aboriginal and Torres Strait Islander perspectives of health as being holistic, and including the community's social, emotional and cultural wellness as well as the individual's, as outlined in the 1989 National Aboriginal Health Strategy (NAHS).⁷⁷

Organisations should be aware of, and connect with, culturally appropriate medical services for its Aboriginal and Torres Strait Islander students and staff members. Around Australia, there is a network of over 140 Aboriginal medical services (AMS), providing community-controlled and culturally appropriate health care to Aboriginal and Torres Strait Islander communities. AMSs are managed by professional Aboriginal and Torres Strait Islander health professionals and provide access to culturally specific services and other community programs. AMSs provide holistic services, and can also provide culturally safe mental health services for Aboriginal and Torres Strait Islander people. For relevant contacts, see **Part 5 — Resources**.

Career development and pathways

ARTS8 organisations can provide Aboriginal and Torres Strait Islander students with information sessions on career pathways including grant funding and job opportunities. In the case of NAISDA, skills in grant writing and connection to industry through secondments and the Artists in Residence units is vital to the students entry into the industry.

For staff members, organisations can support staff career and professional development of Aboriginal and Torres Strait Islander staff by:

- › providing complimentary internal and external training courses — to help with upkeep and building skills
- › holding information sessions on professional development opportunities and pathways
- › create leadership and senior management opportunities for Indigenous employees, and
- › developing a mentorship program.⁷⁸

⁷⁶ Fair Work Ombudsman, Aboriginal & Torres Strait Islander peoples, <https://www.fairwork.gov.au/find-help-for/aboriginal-and-torres-strait-islander-people>.

⁷⁷ Commonwealth of Australia, National Aboriginal and Torres Strait Islander Health Plan 2013 — 2023, [https://www.health.gov.au/internet/main/publishing.nsf/content/B92E980680486C3BCA257BF0001BAF01/\\$File/health-plan.pdf](https://www.health.gov.au/internet/main/publishing.nsf/content/B92E980680486C3BCA257BF0001BAF01/$File/health-plan.pdf). The holistic nature of Aboriginal health is discussed in the landmark document, the 1989 National Aboriginal Health Strategy, the principles of which continue to be relevant.

⁷⁸ Generation One, Everybody's Business A Handbook for Indigenous Employment, <https://www.reconciliation.org.au/wp-content/uploads/2017/11/2013-Everybodys-Business-Employer-Handbook.pdf>.

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Mentoring and peer support

Mentoring and peer support programs can provide a valuable support structure for Aboriginal and Torres Strait Islander students and staff and help with students' retention rates.

They facilitate a space for connection and open communication surrounding student or staff development. Including the expression of concerns, to ensure that students and staff feel supported by the institution they have chosen to study at or work with. Mentors may be Elders, ambassadors or Aboriginal and Torres Strait Islander champions within an organisation.

Staff retention

As part of its RAP 2018–2019, the Department Communications and the Arts aims to continue to adopt the Australian Government Aboriginal and Torres Strait Islander Employment Strategy to promote recruitment and retention of Indigenous peoples as staff.⁷⁹ It aims to increase and maintain the representation of Aboriginal and Torres Strait Islander employees at 4.5% of its workforce in 2018.

ARTS8 organisations can use employment strategies to help to increase retention rates of new and existing staff to ensure that Aboriginal and Torres Strait Islander employees can reach their full professional potential. This can include target figures and goals involving the maintenance of a culturally safe and inclusive work environment.

Prevent employee burnout

Indigenous employees are often called upon by their colleagues to give advice on Indigenous matters that lie outside of their set workload and job description. This can lead to employee burnout.

To prevent this, Universities Australia recommends organisations to develop the skills of non-Indigenous staff members by implementing the relevant culturally competency training that includes information about working with Aboriginal and Torres Strait Islander people.⁸⁰ This ensures that every employee is on the same page. Any additional workload that is assigned to an Indigenous staff member should be negotiated in a respectful manner and factored into workload planning.

3.4 Culture in production and performance

Having protocols in place when engaging with Aboriginal and Torres Strait Islander cultural heritage, or ICIP, in production and performance is crucial to an organisation's engagement strategy.

This section of the Protocols provides guidance in these scenarios, focusing on the following points:

- › General information on the legal framework relating to performing arts
- › The gaps in the laws for protecting ICIP
- › Protocols and practical guidance tips for using ICIP in ARTS8 organisations production and performance.

⁷⁹ Department of Communications and the Arts, Reconciliation Action Plan, <https://www.communications.gov.au/who-we-are/department/reconciliation-action-plan>.

⁸⁰ Universities Australia, Indigenous Strategy 2017–2020, https://socialsciences.arts.unsw.edu.au/media/SOSSFile/FINAL_Indigenous_Strategy.pdf.

How can ICIP be used in production and performance?

ICIP may be used in productions and performances in a number of ways. Examples of this include:

- › collaborations with Aboriginal and Torres Strait Islander peoples (e.g. a community, or with performers), or
- › performances or productions that explore Aboriginal and Torres Strait Islander themes or cultural heritage (i.e. scripts that use Aboriginal and Torres Strait Islander stories, language or depictions).

For further guidance on identifying ICIP in performances, please see **Part 1.2 — under Identifying ICIP**.

a. Performing arts, ICIP and the law

There are Australian laws that are relevant to the performing arts industries, including copyright, and performers' rights. People working in the performing arts need to be aware of these laws in order to understand their rights and obligations.

Below is a snapshot of these laws. These laws go some way to protecting ICIP, **however there are gaps and limitations to how the law protects ICIP**. These shortfalls in the law make having best practice protocols and processes very important to protect ICIP in performing arts practice.

Copyright and moral rights

Copyright protects artistic, literary, dramatic and musical works, as well as film, sound recordings, broadcasts and published editions. In the performing arts, copyright protects works like scripts, sheet music, lyrics, musical scores, dance notations, video or audio recordings of performances.

A work needs to be 'original' and recorded in 'material form' (i.e. documented in some way — recorded on video or written down in a dance notation or sheet music). Generally, the owner of copyright in a work is the creator — unless the work was created as part of their employment (in which case the employer will own the copyright), or it is put in writing that copyright is assigned to someone else (for example, under a services agreement).

Moral rights go hand-in-hand with copyright and refer to the personal rights of the creator of a copyright work to be attributed as the creator of the work, to stop someone else from being credited as the creator, and to ensure that their work is not subject to derogatory treatment (i.e. acts that are harmful to the creator's honour or reputation). There are also moral rights for performers, discussed below.

Copyright and moral rights: limits to ICIP protection

Copyright and moral rights do not protect the underlying ideas, collectively-owned stories, cultural themes, information or techniques that are communicated in copyright works. It only protects the expression of those ideas, stories and themes.

For example, using a traditional story depicting a dance choreography or dramatic performance technically would not infringe copyright. So long as the material itself (i.e. the movements/sequence of movements, or the notations) is not copied, the stories contained in the dance choreography can be re-used without infringing copyright and without permission.

Copyright protection also only generally lasts for 70 years after the life of the creator. Rights to culture, to ICIP, remain forever — beyond the existence of copyright.

This is also the case in the laws of many other countries. Some people even incorrectly believe that ICIP is within the public domain and people should be able to use it freely.

Performers' rights

Performers' rights recognise the rights of performers to control the recording of their live performances in sound and visual means. Performances can capture and include expressions of folklore, stories and songlines. Under the Copyright Act, performers' rights are:

- › The right to consent or refuse consent to the recording of their live performance (and distribution of that recording to the public), and
- › Sharing copyright ownership in sound recordings of live performances.

Performers in live and recorded performances also have moral rights to their performance — the right to be attributed as a performer, the right to not have their performance be falsely attributed, and the right to not have their performance subject to derogatory treatment.

Performers' rights: limits to ICIP protection

Performers' rights protections are limited as while consent can be obtained from performers to record their performances, they often are left in position where they have no control over how the recording is used (unless this is specifically negotiated, performer's consents are usually wide).

There may also be ICIP contained in performances that require the permission of its traditional custodians to be disseminated in recordings or films. Unless cultural protocols are followed and permissions are sought from the traditional custodians, Aboriginal and Torres Strait Islander people could lose control over their ICIP and recordings could be made against the wishes of the community.

Language laws

Aboriginal language law in New South Wales, the Aboriginal Languages Act 2017 (NSW),⁸¹ recognises that Aboriginal people are the custodians of Aboriginal languages and have the right to control their growth and nurturing. The law also recognises the significance of Aboriginal languages and the importance of preventing their loss, whilst implementing measures for language protection and revitalisation.

To this end, the Act creates a NSW Government Agency to oversee Aboriginal language activities at local, regional and State levels and develop a strategic plan for the growth and nurturing of Aboriginal languages.

Language laws: limits to ICIP protection

Whilst the language law demonstrates an important step taken by government in recognising the importance of Aboriginal languages to the cultures of Aboriginal and Torres Strait Islander people, the processes for consultation are yet to be implemented.

In any case, the use of Aboriginal languages will still require the following of protocols.

Heritage laws

Heritage law in Victoria, the Aboriginal Heritage Protection Act 2006 (VIC),⁸² recognises the intangible and non-material aspects of ICIP, which can be protected under the Act from unwanted commercial exploitation. The Act establishes a register of intangible forms of Aboriginal Heritage which enable Aboriginal communities to apply for protection of their songs, stories, languages and other cultural heritage. To be registered, the heritage must not be publicly known. Once registered, anyone wanting to commercialise the intangible heritage must get permission and reach an agreement with the registered owner. As these provisions are new changes to the law, their scope of protection is yet to be tested. However, this potentially means that any uses of intangible cultural heritage that derives a profit or uses other than for personal purposes require agreements with the registered owners.

A similar law, the Draft Aboriginal Cultural Heritage Bill 2018 (NSW) is also currently being developed in NSW.

Heritage laws: limits to ICIP protection

These heritage laws are limited to intangible aspects of heritage, or ICIP, that is not widely known to the public and requires that the heritage is first registered with the nominated Authority in order to be protected. Protection is also focussed only on the commercialisation of cultural heritage.

⁸¹ Aboriginal Languages Act 2017 (NSW), Preamble. Legislation text available at <https://www.legislation.nsw.gov.au/acts/2017-51.pdf>.

⁸² Aboriginal Heritage Protection Act 2006 (VIC), Part 5A. Legislation text available at: [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/51dea49770555ea6ca256da40-01b90cd/481F4F0770858034CA257169001D1F4A/\\$FILE/06-016a.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/51dea49770555ea6ca256da40-01b90cd/481F4F0770858034CA257169001D1F4A/$FILE/06-016a.pdf).

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Summary

The lack of legal rights and adequate legal protections for ICIP makes the use of protocols, like these Pathways to Engagement, and contract law very important in protecting the cultural rights of Aboriginal and Torres Strait Islander peoples.

b. Protocols for using ICIP in production and performances

Using the 10 True Tracks® Principles, below are specific protocols to guide the ARTS8 organisations when using ICIP in the organisations' production and performances.

Protocols in performing arts

It is also noted that there are established ICIP Protocols in the performing arts, such as:

- › **the Screen Australia's Pathways and Protocols**⁸³ — this relates to specific protocols in film practice when Aboriginal and Torres Strait people and communities (i.e. as cast, extras, crew members, subjects) or cultural heritage (i.e. as the content, subject matter, story), or lands (i.e. as the filming site) are involved.
- › **the Australia Council for the Arts Protocols for Indigenous Australian performing arts**⁸⁴ — this relates to performance projects that are in collaboration with Aboriginal and Torres Strait Islander performing artists or using Aboriginal and Torres Strait Islander cultural heritage, or ICIP.

While specific guidance for the ARTS8 organisations is provided in this document, organisations should inform themselves of the above best practice frameworks where relevant.

Respect

ICIP should be respected in production and performance — remember that Aboriginal and Torres Strait Islander people and communities have rights to own, control and protect their cultural heritage. For example, NAISDA's Cultural Protocol sets out the principle of respect as fundamental to its work:

NAISDA respects Aboriginal and Torres Strait Islander customs and cultural protocols and upholds the importance of kinship and cultural knowledge by fostering a philosophy of Aboriginal and Torres Strait Islander inclusion throughout the organisation.

NAISDA Aboriginal and Torres Strait Islander Cultural Protocol⁸⁵

⁸³ Screen Australia, Pathways & Protocols, <https://www.screenaustralia.gov.au/getmedia/16e5ade3-bbca-4db2-a433-94bcd4c45434/Pathways-and-Protocols>.

⁸⁴ Australia Council for the Arts, Protocols for producing Indigenous Australian performing arts, <https://www.australiacouncil.gov.au/workspace/uploads/files/performing-arts-protocols-for-5b4bfd3988d3e.pdf>.

⁸⁵ National Aboriginal Islander Skills Development Association Dance College, Cultural Protocols, <https://naisda.com.au/cultural-protocols/>.

Self-determination

Production and performances that involve ICIP should be Aboriginal and Torres Strait Islander-led and empowering for the communities they affect.

Case Study: Warumuk — in the dark night (2012)

'Warumuk — in the dark night' is a strong example of Indigenous creative leadership and self-determination. Stephen Page, Bangarra Artistic Director, led this collaborative project between Bangarra and the Australian Ballet as part of the Australian Ballet's 50th anniversary.

This was the first time that Indigenous stories formed the central focus of a collaborative work between the two organisations, Bangarra serving as the caretaker and cultural custodian of the stories. The score, composed by Indigenous composer David Page, celebrated the resilience of Aboriginal songs and languages.⁸⁶ The costume designer Jennifer Irwin closely followed Bangarra's cultural protocols to consider the use of style, colour, and respect dancers' totems.⁸⁷ The show toured nationally and internationally and is part of a long-standing partnership between the two organisations.

Aboriginal and Torres Strait Islander leadership in the project should begin as early in the project as possible and where ICIP is used, early engagement is required. This can be through engaging Aboriginal and Torres Strait Islander writers, script consultants, and/or script assessors.⁸⁸

It is also important to note that where multiple communities are involved, there may be specific protocols in each community that govern the access and use of ICIP. ICIP access and use may be subject to factors such as gender, seniority within a community and mourning protocols.

Communication, consultation and consent

Prior to using any ICIP, it is vital to thoroughly consult and collaborate with the relevant source community or communities and get their free, prior and informed consent for the use of ICIP. This includes use of ICIP in production, performance, as well as in projects and engagement strategies more generally.

Case study: AFTRS Consultation video

The importance of communication, consultation and consent is encapsulated in a Consultation video resource developed by AFTRS.⁸⁹ The ARTS8 are encouraged to view and learn from this resource to help inform their engagement initiatives.

Storytellers who tell stories using Aboriginal and Torres Strait Islander themes, cultural heritage or involving an Aboriginal and Torres Strait Islander community or land must work collaboratively with custodians.

⁸⁶ Bangarra, Infinity / Warumuk — in the dark night, <https://www.bangarra.com.au/whatson/productions/infinity>.

⁸⁷ The Australian Ballet, Designing Infinity: Jennifer Irwin by Anna Sutton, <https://australianballet.com.au/behind-ballet/designing-infinity-jennifer-irwin>.

⁸⁸ Screen Australia, Pathways and Protocols, <https://www.screenaustralia.gov.au/about-us/doing-business-with-us/indigenous-content/indigenous-protocols>.

⁸⁹ Australian Film Television and Radio School, Consultation, <https://www.aftrs.edu.au/about/aftrs-indigenous/consultation/>.

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Further in-depth guidance on implementing this principle is provided in **Part 4 — Communication, consultation and consent** of these Protocols. A consultation plan is also provided in **Part 5 — Resources** as a tool for organisations when consulting with Aboriginal and Torres Strait Islander people and communities.

Interpretation

When using ICIP in performance or production, the ARTS8 organisations should ensure that interpretations of ICIP, and the stories, knowledge and themes depicted in the ICIP, are culturally appropriate.

ICIP interpretation: checklist of issues

When representing and interpreting ICIP in performances and productions, the Arts8 should take into account the following considerations:

- › How will the production or performance represent and interpret Aboriginal and Torres Strait Islander themes, subject matter and/or ICIP? Is it appropriate?
- › What connections to Country are acknowledged? What Aboriginal and Torres Strait Islander perspectives (including cross-cultural perspectives) should be taken into account?
- › Are the terminologies used current or outdated?
- › ICIP is largely place-based, so a lot of stories, knowledge and cultural expressions are linked to place. How are these place-based narratives being maintained in projects?

Cultural integrity

In any interpretations of ICIP, the ARTS8 organisations must ensure that the integrity of the cultures, stories and themes depicted are maintained. You should seek advice on cultural requirements and restrictions which might apply to the use of ICIP in productions and performances. Stereotypes and harmful portrayals should be avoided.

The key is to make sure that representations and depictions of Aboriginal and Torres Strait Islander cultures are not only authentic, but also empowering for Aboriginal and Torres Strait Islander people.

Secrecy and Confidentiality

Sacred or secret material refers to materials that have spiritual significance to Aboriginal and Torres Strait Islander 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.⁹⁰

It is usually inappropriate for sacred or secret materials or knowledge to be shared. Speak to the source communities regarding sacred or secret knowledge issues and ensure that scripts, performances and productions abide by the communities' cultural protocols regarding the appropriate safeguards.

⁹⁰ Terri Janke and Maiko Sentina, *Indigenous Knowledge: Issues for Protection and Management*, IP Australia, Commonwealth of Australia, 2018.

Attribution

ARTS8 organisations should always acknowledge Aboriginal and Torres Strait Islander people and source communities sharing their ICIP.

This includes considering what opportunities there are for the individual and/or contributing community to be involved with the production, performance or project. This may include things like:

- › invitation to attend the production/performance launch, opening night or promotional events
- › opportunities to speak about the person or community's involvement
- › credits or accompanying stories included in the performance/production brochure or other marketing materials
- › an acknowledgement at the start of the performance/production.

Consult with the source Aboriginal and Torres Strait Islander person and/or community on how they wish to be attributed for their involvement and contributions.

Case study: Department of Communications and the Arts' RAP artwork

The Department of Communications and the Arts features a commissioned artwork by Noongar artist, Bradley Kickett. The resulting document strongly features Kickett's painting 'Connecting for Reconciliation' and includes attribution to the artist — a page dedicated to the story and significance of the artwork, as well as his biographical information.

Benefit sharing

Benefits for use of ICIP can take the form of monetary benefits such as fees and wages, as well as non-monetary benefits such as capacity building, workshops or contributions to community projects.

The community should always be consulted as to what benefits they would prefer to receive and this should be agreed upon as part of the consent process. These benefits should be clearly identified in written, contractual agreements with the individual or source community.

New uses of ICIP require new benefits

Each new use of ICIP requires sharing additional benefits with the individual or source community.

This may also require further consultation and consent if the proposed use is outside the scope of consent already provided. See **Part 4 — Communication, consultation and consent**.

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Maintaining cultures

The ARTS8 organisations should only use ICIP in its performances and productions consistently with ICIP permissions obtained through consultation. It is important that ARTS8 organisations' use of ICIP does not impede on the rights of future generations of Aboriginal and Torres Strait Islander people and communities entitled to use it.

ICIP rights are perpetual and do not cease upon the death of an individual knowledge holder or creator. In order to facilitate future consultations, it is necessary to maintain a relationship with the community.

Strategies include:

- › Providing regular updates to the community on the progress of the project
- › Keeping communication lines open — providing a dedicated contact person for the source individual or community, or clear avenues for feedback or complaints.

This is vital to maintain the trust of the community.

Identifying the next-of-kin

Where relevant, individual collaborators sharing their ICIP should also be given the opportunity to nominate a next of kin for you to seek consent from if they are incapacitated or have passed away. This can be done, for example, by including next-of-kin clauses into the relevant contract.

Please refer to **Part 5 — Resources** for an example next-of-kin clause.

Recognition of ongoing rights

ARTS8 organisations should activate the principles and protocols in this Pathways to Engagement, encourage implementation by staff members, partners and other performing arts industry stakeholders to acknowledge and provide ongoing protection of ICIP rights.

Other strategies for ongoing recognition of ICIP rights include:

- › Ensuring that any new proposed use of ICIP not already agreed to should be taken back to the source individual and/or community for further consultation and permissions. Their free, prior and informed consent should also be sought for these new uses, and
- › When negotiating ICIP permissions, the ARTS8 organisations should be mindful to give adequate time for communities to fully understand the consequences of giving consent.

Communication, consultation and consent

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

Communication, consultation and consent will always be fundamental to all ARTS8 projects and initiatives involving Aboriginal and Torres Strait subject matter, cultures, people and communities. It is crucial to creating culturally welcoming spaces, building relationships, nurturing Aboriginal and Torres Strait Islander talent, as well as in engagement through an organisation's projects, production and performance work.

Resonating throughout the consultations were questions around communication, consultation and obtaining consent including:

- › How do we find the touch points in communities?
- › Who do we approach and consult with in communities?
- › How can we engage Aboriginal and Torres Strait Islander communities in a culturally sensitive way?
- › How do we communicate our organisation's culture appropriately to communities?

To address these questions, this part provides communication, consultation and consent strategies to help the ARTS8 organisations understand the workings and structures within Aboriginal and Torres Strait Islander communities so that organisations are in a better position to understand how they can connect and build relationships.

4.1 Identifying who to talk to in communities

It is important to identify the relevant Aboriginal and Torres Strait Islander people (that is, the relevant people, communities, groups and organisations) who will be involved in and/or affected by a project or business activity.

This usually starts with the local community representatives and the source communities.

a. Ask questions

Don't be afraid to ask questions. Often asking questions can help provide direction in your projects.

Questions to ask

Consider the following key questions:

- › What is the name of the Country we are on?
- › What language(s) do people from this Country speak?
- › Where and/or who can I go to for more information about this Country? Is there a local Aboriginal Land Council I can approach to establish a connection for consultation?
- › Are there any Elders or significant people in the community who I can go to for advice and authority on the project and any issues that may come up?
- › Will I require to engage with a local interpreter?
- › What are the local cultural protocols around:
 - » engaging with non-Aboriginal and Torres Strait Islander projects and businesses?
 - » sharing cultural knowledge outside the community?
- › What things are the community working towards and how can I ensure this project aligns with this? How can I make sure my project has a positive impact on the community?

b. Community governance structures

There are existing representative bodies, infrastructures and decision-making authorities within Aboriginal and Torres Strait Islander communities. However, this may differ between communities. ARTS8 organisations should seek advice regarding who to consult and the extent of appropriate consultation, from:

- › Where known, traditional owners/custodians or knowledge holders
- › Cultural advisors, including Aboriginal and Torres Strait Islander individuals, communities and custodians with whom the organisation has ongoing relationships with (i.e. trusted Aboriginal and Torres Strait Islander leaders and partners)
- › Representative bodies of particular communities like local, regional or state Aboriginal Land and Community Councils, prescribed body corporates, and the Australian Institute of Aboriginal and Torres Strait Islander Studies
- › Aboriginal and Torres Strait Islander peak organisations in the relevant areas of practice, such as:
 - » Art centres — there are regional and local Aboriginal and Torres Strait Islander art centres that represent many artists across Australia
 - » Peak performing arts bodies — there are state-based and national representative bodies representing Aboriginal and Torres Strait Islander performing artists
 - » Language and cultural centres — there are over 100 Aboriginal and Torres Strait Islander language groups, most with their own language networks and centres. There are also tourism operator councils that represent Aboriginal and Torres Strait Islander tourism
 - » Educational bodies — all states and territories are represented by Aboriginal educational consultative groups

- » Community controlled health services — there is a national network of over 140 Aboriginal community-controlled health services in all states and territories.
- » Land management service providers — this includes Aboriginal and Torres Strait Islander rangers, native title organisations such as registered native title body corporates.

For a useful list, and further detail on, Aboriginal and organisations and bodies to contact, see **Part 5 — Resources**.

c. Build trust

Building trust with Aboriginal and Torres Strait Islander stakeholders is crucial to engagement. While this may take time, establishing and building trust helps with developing long-term working relationships. In this way organisations can help ensure they have trusted partners, as starting points, to assist in pointing organisations to the right directions for consultation and engagement. ARTS8 organisations can tap into these networks and seek culturally appropriate guidance on consultation and consent in their projects.

4.2 Consultation processes and methods

Consultation is the process of reciprocal exchange of views, ideas and information on a particular matter or issue. Consultation means working together, listening to what the other party has to say and acting upon it.

There is no one size fits all approach

It is important to note that there is no one-size fits all approach to communicating, engaging with and consulting Aboriginal and Torres Strait Islander people and communities. The right approach depends on factors such as:

- › the subject of the consultation (i.e. the nature of the project, the extent of Aboriginal and Torres Strait Islander content and subject matter being used)
- › the capacities and resources of the organisation
- › the particular Aboriginal and Torres Strait Islander people, communities and organisations involved and their needs.

Consultation may be conducted as face-to-face meetings in person or online, through telephone conversations, email correspondence or Skype and video conferencing. Consultation is an interactive and multi-layered process that aims to deliver a range of outcomes. ARTS8 organisations should be flexible in their approach.

Communication strategies and modes of communicating vary depending on the particular individuals and communities being consulted. Each community or language group will have their own cultural protocols which will need to be respected and followed when communicating and conducting consultations. The Department of Prime Minister and Cabinet's resource, *Communicating with Aboriginal and Torres Strait Islander Audiences*,⁹¹ provides further guidance on communication strategies.

⁹¹ Department of Prime Minister and Cabinet, *Communicating with Aboriginal and Torres Strait Islander Audiences*, <https://www.pmc.gov.au/resource-centre/indigenous-affairs/communicating-aboriginal-and-torres-strait-islander-audiences>.

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a. Deep listening

It is part of Aboriginal and Torres Strait Islander tradition and cultural practice to engage in deep listening — to stop, think, slow down and engage in meaningful and respectful discussions. In the Ngangikurungkurr community in the Daly River region, Northern Territory, this tradition is called dadirri.⁹²

Deep Listening should be embedded in all stages of curriculum development, process and delivery. Deep listening allows a two way sharing of knowledge and the time to reflect and absorb which allows mutual respect and equitable participation.

b. Consultation scope and planning

The scale of the project or initiative being undertaken by an organisation will influence the extent of Aboriginal and Torres Strait Islander consultation. For example, a project that involves multi-organisation collaboration to perform an Aboriginal and Torres Strait Islander story in language should have a well-thought out and developed consultation plan.

Consultation plans are particularly useful for projects where consultation and consent is required from multiple Aboriginal and Torres Strait Islander communities or stakeholders. A template consultation plan is provided in **Part 5 — Resources**.

Having a consultation plan can assist organisations 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.

Tip: Rule of thumb

As a general rule of thumb, the larger the project and the greater the use of Aboriginal and Torres Strait Islander cultures/content, the wider the consultation required.

c. Priority of consultation

Where there are many relevant Aboriginal and Torres Strait Islander people, communities and organisations identified for consultation, or where the relevant stakeholders cannot be identified, organisations may prioritise the consultation process as follows:

- › Where specific Aboriginal and Torres Strait Islander people, communities or organisations with a direct interest or connection to the subject matter or content are identified, consultation with them is the priority.
- › Where multiple Aboriginal and Torres Strait Islander stakeholders are identified, consultation should be wide to give all stakeholders an opportunity to respond.
- › Where the relevant Aboriginal and Torres Strait Islander people or communities cannot be located to be consulted, organisations should seek advice and input from **as wide a variety of Aboriginal and Torres Strait Islander stakeholders** as reasonably necessary to inform themselves about the appropriateness of, and any issues that may arise from, use of Aboriginal and Torres Strait Islander subject matter or content.

⁹² Miriam-Rose Ungunmerr, Dadirri — Inner Deep Listening and Quiet Still Awareness, <http://www.miriamrosefoundation.org.au/about-dadirri>.

d. Providing information

As part of the consultation process, organisations should provide as much information as known at the time to the relevant Aboriginal and Torres Strait Islander people and communities. This is important in order for the people and communities involved to be informed in giving their consent.

The project: what should Aboriginal and Torres Strait Islander people and communities know about it?

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

Who

- › Who is involved, for example the production/performance team

Why

- › The 'why' in terms of how it relates to mutual benefits for Aboriginal and Torres Strait Islander communities and the organisation
- › Due diligence research information concerning the particular ICIP to be used — what research and planning has been undertaken?

How

- › How is ICIP going to be used? This includes 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, are also relevant.

What

- › What is the proposal, project idea or brief?
- › What work or level of participation is required of Indigenous people and communities?
- › Project details
 - » What is the project budget?
 - » What are the costs, if any, the relevant Aboriginal and Torres Strait Islander people and communities are expected to incur
- › What benefits (monetary and non-monetary) and credits (acknowledgements, attributions) will the Indigenous people and communities receive from their time, contributions and the use of ICIP, if any
- › What benefits (monetary and non-monetary) will the Indigenous people receive?

e. Format of information

Organisations should provide information in an easily understandable format which may change depending on the Indigenous 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 Aboriginal and Torres Strait Islander stakeholders that have been consulted understand the implications of the particular use.

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f. Engaging expertise

It may be helpful to engage local Aboriginal and Torres Strait Islander consultants and professionals to facilitate the communications between the organisation and the community. This includes, for example, engaging the services of an Aboriginal and Torres Strait Islander cultural and arts experts or lawyer to assist with negotiations and contracts.

g. Sacred or secret material

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

h. Allow enough time

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

i. Get feedback

Invite Aboriginal and Torres Strait Islander people to provide feedback on the project in its initial and development stages to ensure that communities are represented appropriately.

j. 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.

k. Keep records of consultation

As a risk management exercise, organisations should keep rigorous records of consultation with relevant Aboriginal and Torres Strait Islander people and communities in relation to using ICIP for a project.

It is recommended that organisations also develop and maintain an ICIP risk register.

4.3 Obtaining free prior informed consent

Ultimately, projects, productions, performances and other business activities involving ICIP must obtain the free, prior and informed consent (FPIC) of the relevant Indigenous people and communities for the use of their ICIP. This is the international standard of obtaining consent from Indigenous people, enshrined in the UNDRIP and other international instruments.⁹³

⁹³ 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, the Convention on Biological Diversity and the International Labour Organisation Convention 169, which are some of the leading international instruments recognising Indigenous rights.

Tip: Further guidance on free, prior and informed consent

The UN Global Compact has also produced a resource, the Business Reference Guide to the United Nations Declaration on the Rights of Indigenous Peoples⁹⁴ that provides in-depth guidance on the principle of free, prior and informed consent.

See also **Part 5 — Resources** for a Project Checklist for project considerations.

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

a. When is consent required and recommended?**Consent required**

Where copyright-protected works (i.e. musical works, choreographies, visual artworks, photographs, recordings or written materials) are used or reproduced

Consent from the copyright owners will be legally required to use the intellectual property rights in these works

Consent recommended

Where the material or work being used isn't subject to intellectual property laws (i.e. an old song recording where copyright has expired and it is in the public domain, or a language word or oral story that does not meet copyright requirements) but the material contains ICIP

Consent from the traditional owners or custodians of the ICIP is recommended

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

- › Creating productions or performances with Aboriginal and Torres Strait Islander subject matter or containing identifiable Aboriginal and Torres Strait Islander languages, traditions, beliefs, songs and stories or other ICIP
- › Collaborative projects
- › Use of Aboriginal and Torres Strait Islander subject matter or ICIP in production or performance, or in learning materials
- › Projects or materials depicting real-life events of Aboriginal and Torres Strait Islander people, and
- › Projects or materials about an identifiable Aboriginal and Torres Strait Islander person or group of people.

⁹⁴ United Nations Global Compact, A Business Reference Guide United Nations Declaration on the Rights of Indigenous Peoples, https://www.unglobalcompact.org/docs/issues_doc/human_rights/IndigenousPeoples/BusinessGuide.pdf

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In these cases, rights should be negotiated with the relevant Aboriginal and Torres Strait Islander people and/or communities, and consent obtained (preferably in writing) covering the issues outlined in these Pathways to Engagement Protocols. There may be implications in trade practices, copyright, defamation law without this consent.

Consent in relation to use of ICIP material is an ongoing obligation. Consent for a specific use does not necessarily extend to additional uses of that ICIP material.

Tip: Consent is dynamic and ongoing

Where an organisation wants to use ICIP material for a new or additional use outside the scope of the original consent given, it should re-consult with the identified Indigenous 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.

b. Documenting ICIP consents

When consent is obtained for use of ICIP, it is important to ensure that this is put into a written agreement that clearly specifies all terms agreed to, including the use of ICIP, ownership of any new, resulting works from the use of ICIP, intended uses and the fees.

Depending on the specific Aboriginal and Torres Strait Islander people or community that an organisation is working with, as well as the scope of the project, ICIP consents may take many different forms, such as:

- › written cultural clearances, memoranda of understanding, collaboration agreements, consent forms or licence agreements, setting out the terms of the consent
- › written email or letter of support
- › written record made by an organisation's project leaders or staff of the consent (given verbally over the phone or in person) and signed off by the relevant Aboriginal and Torres Strait Islander person or community representatives
- › audio or audio-visual recording of the consent being given by the relevant Aboriginal and Torres Strait Islander person or community representatives
- › letters, emails, facsimiles or other correspondence documenting the consent
- › a written file note made by an organisation's staff of the conversation with the relevant Aboriginal and Torres Strait Islander person or community representatives providing consent (this form of record should only be considered as a last resort).

Tip: Persons in authority

Where an individual is providing consent or support on behalf of a group of Aboriginal and Torres Strait Islander stakeholders i.e. a community as a whole, organisations 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 attached to the ICIP material to be used should be adhered to by the organisation. This extends to ensuring any third-party use of the relevant ICIP material does not conflict with the consent given to the organisation by the ICIP custodians or traditional owners.

c. Copyright vs ICIP consents

Copyright consents required under law may be different to ICIP consents required by Aboriginal and Torres Strait Islander communities. The table below summarises the differences.

Copyright consents	ICIP consents
<p>Required under Australian copyright law — to use works protected by copyright law</p> <p>For example, works like an artwork, book, song, film or a dramatic work</p> <p>Consent generally sought from the author of the copyright work or maker of films, sound recordings</p>	<p>Required under customary law — to use ICIP expressed in a copyright work</p> <p>For example, traditional symbols, stories, language, songlines shared in an artwork, book, song, film or dramatic work</p> <p>Consent sought from the relevant Indigenous community/traditional owners. This may not be the author or maker of the work</p>

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As there may be a distinction between the author 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 Indigenous 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.

d. 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 Aboriginal and Torres Strait Islander people, communities and/or organisations and consensus cannot be reached
- › One or more Aboriginal and Torres Strait Islander stakeholders withholds consent
- › The organisation seeking consent has been unable to identify or locate the relevant Aboriginal and Torres Strait Islander people and/or communities who are able to speak for the ICIP material.

To assist organisations, determine the appropriateness of the use of the ICIP material in these circumstances:

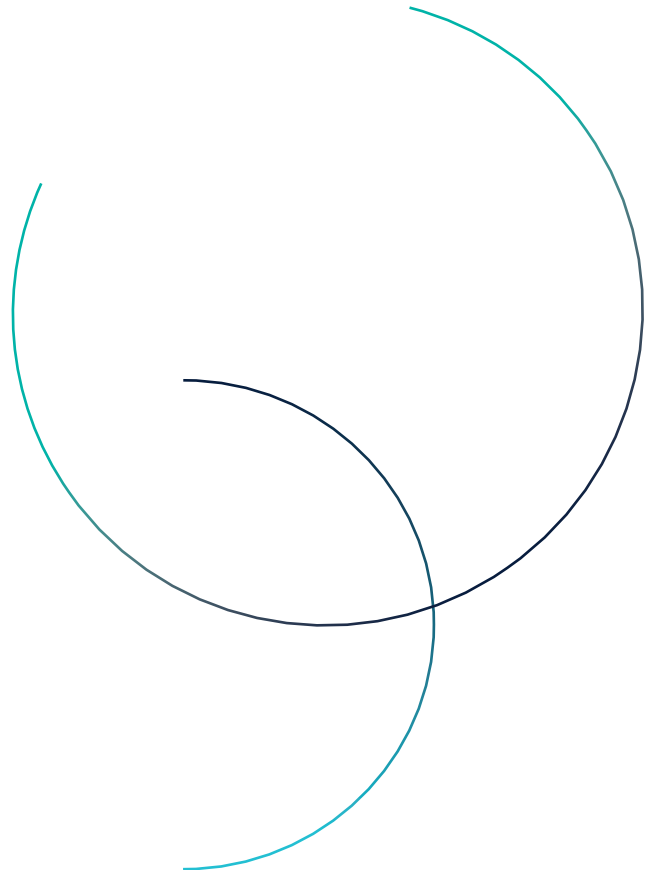
- › Advice should be obtained from Aboriginal and Torres Strait Islander advisers and consultants
- › Advice should be sought from the organisation's trusted Aboriginal and Torres Strait Islander partners or advisors
- › Support should be sought from those Aboriginal and Torres Strait Islander stakeholders who do consent, and
- › Letters of support should also be sought from secondary Aboriginal and Torres Strait Islander stakeholders (i.e a Letter of Support from the relevant Aboriginal Land Council).

Organisations should determine who, internally, will be responsible for making the final determination as to use of the ICIP material where there are issues with consultation or obtaining consent for its use.

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

Where organisations decide to use ICIP material where it has not been able to identify or locate the relevant Aboriginal and Torres Strait Islander people, communities or organisations who may speak for the material, or where the organisation has been unable to identify or contact the rights holder of the material, it must endeavour to use any such material in an ethical and responsible manner.

Any subsequent notification of cultural protocols or concerns about use of the ICIP material should be investigated by the organisation and, if necessary, the ICIP material must cease to be used and/or removed from public access.



Resources

5.1 Contacts: compiled list of land councils

Land councils, regional authorities and native title groups may often be able to assist in identifying the correct Indigenous stakeholders 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

New South Wales

- › NSW Aboriginal Land Council 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>

Northern Territory

- › Anindilyakwa Land Council (Groote Archipelago) www.anindilyakwa.com.au
- › Central Land Council www.clc.org.au
- › Northern Land Council www.nlc.org.au
- › Tiwi Land Council www.tiwilandcouncil.com

Queensland

- › Cape York Land Council www.cylc.org.au
- › Northern Peninsula Area Council (Cape communities) www.nparc.qld.gov.au
- › North Queensland Land Council www.nglc.com.au
- › Torres Strait Regional Authority www.tsra.gov.au
- › Torres Strait Island Regional Council www.tsirc.qld.gov.au
- › Torres Shire Council www.torres.qld.gov.au

Western Australia

- › Goldfields Land and Sea Council www.glsc.com.au
- › Kimberly Land Council www.klc.org.au
- › Ngaanyatjarra Council Aboriginal Corporation (WA) www.ngaanyatjarra.org.au
- › South West Aboriginal Land and Sea Council www.noongar.org.au
- › Yamatji Marlpa Aboriginal Corporation www.ymac.org.au

South Australia

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

Victoria

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

Tasmania

- › Tasmanian Aboriginal Centre www.tacinc.com.au

5.2 Contacts: compiled list of key peak bodies and organisations

There are many Aboriginal and Torres Strait Islander 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 Aboriginal and Torres Strait Islander -led structures that have growing capabilities may be able to assist with identifying the Indigenous stakeholders for a particular project or make decisions.

This is a non-exhaustive list of organisations, but provides starting points for the ARTS8 organisations in identifying relevant Indigenous stakeholders. Representation and decision-making bodies vary between the industry areas, regions and communities. Links to an organisation's websites are provided where found.

Music

Music regional peak bodies and associations:

- › Broome Musicians Aboriginal Corporation (Kimberley Region)
- › Central Australian Aboriginal Media Association (CAAMA) <http://caama.com.au/>
- › Songlines Music Aboriginal Corporation (Victoria) <http://songlines.net.au/>
- › Abmusic Aboriginal Music Corporation (Western Australia) <https://www.abmusic.com.au/>

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Performing arts

- › BlakDance <https://www.blakdance.org.au/> — national peak body for Indigenous dance.

State Indigenous theatre companies:

- › Bangarra Dance Theatre (Sydney) <https://www.bangarra.com.au/>
- › Marrugeku (Sydney) <https://www.marrugeku.com.au/about/>
- › Moogahlin Performing Arts (Sydney) <http://www.moogahlin.org/>
- › Muggera (Sydney) <https://www.muggera.com/>
- › Ilbjerri Theatre Company (Melbourne) <http://ilbjerri.com.au/>
- › Yirra Yaakin (Perth) <https://yirrayaakin.com.au/>

Circus arts:

- › BLAKflip <https://www.circusoz.com/sidesault/blakflip.html>

Indigenous performing arts training organisations:

- › The Aboriginal Centre for the Performing Arts (Brisbane) <http://acpa.edu.au/about/>

Arts

Regional art centres and associations:

- › Desart (the Association of Central Australian Aboriginal Art and Craft Centres, Alice Springs, NT) <https://desart.com.au/>
- › Ananguku Arts and Culture Aboriginal Corporation (Adelaide, SA) <https://www.anangukuarts.com.au/>
- › Association of Northern, Kimberly and Arnhem Aboriginal Artists (Darwin, NT) <http://ankaaa.org.au/>
- › Indigenous Art Centre Alliance (Parramatta Park, QLD) <https://iaca.com.au/>
- › Saltwater Freshwater Arts Alliance (Coffs Harbour, NSW) <https://iaca.com.au/>
- › Aboriginal Art Centre Hub of Western Australia (Midland, WA) <http://aachwa.com.au/>

Indigenous Art Code (Woolloomooloo, NSW) <https://indigenousartcode.org/> which maintains ethical standards for Indigenous art dealings.

Writing

- › First Nations Australia Writers Network www.fnawn.com.au

Languages

- › First Languages Australia <http://www.firstlanguages.org.au/> — peak national body.

State and regional representation language bodies:

- › 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>

Education

State and Territory Education Consultative Groups:

- › NSW Aboriginal Education Consultative Group <https://www.aecg.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

Indigenous Units and centres in universities across Australia: <http://natsihec.edu.au/membership/units/>

Media and journalism

Aboriginal and Torres Strait Islander 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.tsim4mw.org.au/>

Aboriginal and Torres Strait Islander newspapers:

- › Koori Mail <http://koorimail.com/>
- › National Indigenous Times <https://nit.com.au/>

Procurement and business

- › Supply Nation <https://supplynation.org.au/>

Indigenous Chambers of Commerce and Indigenous Business Registers:

- › New South Wales Indigenous Chamber of Commerce <https://nswicc.com.au/directory/>
- › Victorian Aboriginal Chamber of Commerce <http://www.kinaway.com.au/>
- › Victorian Government Aboriginal Business Directory: http://directory.business.vic.gov.au/aboriginal/?_ga=1.65023467.434423705.1473225356#.WDfiTj95hE
- › South East Queensland indigenous Chamber of Commerce <http://www.seqicc.com.au/ibd/>

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- › Queensland Black Business Finder <http://www.bbf.org.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
- › Mandurah Hunter Indigenous Business Chamber of Commerce <https://mandurahhbc.com.au/ibn.php>

Sciences, 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/>

Peak health body:

- › National Aboriginal Community Controlled Health Organisation <https://www.naccho.org.au/>

Health services

- › Over 140 Aboriginal Community Controlled Health Services/Aboriginal Medical Services across Australia <http://www.naccho.org.au/member-services/naccho-member-services/>

Employment and job advertising

Direct online advertisements:

- › Our Mob http://ourmob.net/add-listing/?listing_type_id=Job
- › Indigenous Employment Australia <http://atsijobs.com.au/submit-job/>

Social media — while this is a more informal approach, it could reach untapped markets.

Examples include:

- › <https://www.facebook.com/TheKooriGrapeVine/>

Indigenous print media and radio (see above, **Media and Journalism**).

Indigenous recruitment agencies — there are many Indigenous owned and managed recruitment agencies that can help organisations find Aboriginal and Torres Strait Islander candidates for roles.

This includes:

- › Aboriginal Employment Strategy <http://www.aes.org.au/looking-for-staff/>
- › Pipeline Talent <http://pipelinetalent.com.au/>
- › Blakworks Employment Solutions <http://www.blakworks.com.au/>
- › First Grade Recruitment <http://www.firstgrade.com.au/>
- › LBF Consulting <http://www.lbfconsulting.com.au/>
- › Indigenous Careers + Employment <http://www.indigcareers.com.au/staff/>
- › Yarn'n Aboriginal Employment Services <http://www.yarnn.com.au/employers.aspx>

Pre-employment service providers

- › The Australian Government has committed funding to deliver **Vocational, Training and Employment Centres** (VTECs). VTECs support highly disadvantaged Indigenous job seekers into a sustainable job and they can work with organisations to identify what support services needed to prepare potential Indigenous candidates for employment: <http://generationone.org.au/vtec>
- › The Department of the Prime Minister and Cabinet also has an **Indigenous Employment Hotline on 1802 102**
- › The Department of Jobs and Small Business also operates **jobactive** (<https://www.jobs.gov.au/jobactive>), an online hub and resource centre that connects Australian job seekers to employers and provides free employment preparation services to job seekers. They also have an **Employment Services Information line** for job seekers on **13 62 68** and an **Employer Hotline** on **13 17 15**

5.3 Sample notices and clauses

Cultural sensitivity warning notice

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

Sample traditional custodian's notice

'This work embodies the cultural heritage of the [NAME] community. It was created with the consent of the custodians of the community and is used according to cultural protocols.

[NAME] community have rights to maintain, control, protect and develop their cultural heritage in accordance with Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples. Dealing with any part of this 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 uses of this work, contact [NAME] community.

Next-of-kin clause

Organisation name respects Indigenous peoples' and communities' cultural death protocols and agree that in the event of death or incapacitation of the **Collaborator** during the Term, **Organisation name** must discuss the ongoing use of the **Collaborator's** name, any approved likeness and any approved biography in connection with **Production/Performance** with the **Collaborator's** next of kin as follows:

Name: [insert details]

Relation: [insert details]

Address: [insert details]

Contact number: [insert details]

or such other representative of the Collaborator who will have the required legal capacity to perform the **Collaborator's** obligations under this agreement.

5.4 Consultation plan

The following consultation plan is provided to assist the Arts8 organisations with planning consultations, where projects and activities of Arts8 organisations involve ICIP and require consultation with and consent from Aboriginal and Torres Strait Islander people for its use.

[Project name]

[Project description]

True Tracks® Consultation Plan

Principle	How we will put the principle in practice for the project
<p>Respect</p> <p>Recognition and respect of custodianship of Aboriginal and Torres Strait Islander people over their land and water and the right to protect, maintain, control and benefit from their cultural heritage.</p>	<ul style="list-style-type: none"> › How will the project respect cultural heritage?
<p>Self determination</p> <p>Aboriginal and Torres Strait Islander people have the right to self-determination in their cultural heritage and language. Indigenous people should be encouraged and empowered in decision-making processes about projects that affect their cultural heritage.</p>	<ul style="list-style-type: none"> › How will the project empower Indigenous contributors in the decision-making process? <ul style="list-style-type: none"> » Regular project updates » Opportunities for feedback and comment » Avenues for complaints
<p>Consent & Consultation</p> <p>Free prior informed consent for use of cultural heritage should be sought from Aboriginal and Torres Strait Islander people. This involves ongoing consultation, negotiation and informing custodians about the implications of consent.</p>	<ul style="list-style-type: none"> › Who will be consulted? › What information will be provided to the stakeholders about the project? › How will consultations and consents be recorded? › How will ongoing consultations and consents be facilitated? › What is the plan if consent isn't obtained?
<p>Interpretation</p> <p>Aboriginal and Torres Strait Islander people are responsible for maintaining their cultures and the interpretation of their ICIP.</p>	<ul style="list-style-type: none"> › What are the protocols around interpreting culture (e.g. contexts, spelling, meaning, pronunciation), restrictions and how are these respected in the project?

Principle	How we will put the principle in practice for the project
<p>Cultural integrity</p> <p>Maintaining the integrity of cultural heritage is important to Aboriginal and Torres Strait Islander people.</p>	<ul style="list-style-type: none"> › How will projects keep the cultural integrity of cultural heritage used? Are the correct cultural/historical contexts used? › Are connections to place/Country acknowledged?
<p>Secrecy and privacy</p> <p>Aboriginal and Torres Strait Islander 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 and Torres Strait Islander people's personal and cultural affairs should be respected.</p>	<ul style="list-style-type: none"> › How will the project deal with restrictions and sensitivities on use of cultural heritage?
<p>Attribution</p> <p>It is respectful to acknowledge Aboriginal and Torres Strait Islander people as custodians of Indigenous cultural knowledge by giving them attribution.</p>	<ul style="list-style-type: none"> › How will contributors be credited and acknowledged for their contributions?
<p>Benefit sharing</p> <p>Aboriginal and Torres Strait Islander people have the right to share in the benefits from the use of their cultures, especially if it is being commercially applied. The economic benefits from use of their cultural heritage should also flow back to the source communities.</p>	<ul style="list-style-type: none"> › What benefits do contributors receive for their contributions?
<p>Maintaining Indigenous culture</p> <p>In maintaining Aboriginal and Torres Strait Islander 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 and Torres Strait Islander cultural practices such as cultural expressions, continued use of language by others.</p>	<ul style="list-style-type: none"> › How will the project contribute to maintaining culture and rights to cultural heritage?

Principle	How we will put the principle in practice for the project
<p>Recognition and protection</p> <p>Australian policy and law should be used to recognise and protect rights to cultural heritage. For example, copyright laws, protocols and contracts can be used to help ensure cultural heritage recognition and protection.</p>	<ul style="list-style-type: none">› How will the project ensure that protection of cultural heritage is ongoing?

5.5 Project checklist

Stage 1 — planning the project		Yes	No	Action items / notes
RESPECT				
Have you considered why the project is being undertaken, why you are using Indigenous subject matter, the perspectives you bring to it, and how it affects Indigenous people and communities?				
Have you sought advice on the cultural issues that need to be addressed through consultation?				
INTERPRETATION, INTEGRITY AND AUTHENTICITY				
Have you conducted research on the project, including the Indigenous subject matter or material proposed to be used?				
Does your project reflect the cultural value of the subject matter?				
Does your project empower Indigenous people?				
Did you establish that any ICIP in the project is used in the correct cultural and historical context?				
INDIGENOUS CONTROL, COMMUNICATION, CONSULTATION AND CONSENT				
Does your project deal with communally owned material (eg ritual knowledge, creation stories, songs or traditional or communal designs)?				

Stage 1 — planning the project		Yes	No	Action items / notes
If so, how will you consult with and seek consent from the traditional owners or other relevant Indigenous people/groups?				
Have you identified the relevant Indigenous people, communities and/or organisations?				
Did you make sure that consent comes from the right persons or faction(s) within a community?				
Where more than one Indigenous group is involved, did you seek consent from every group?				
Did you ask the relevant Indigenous stakeholders whether he/she requires an interpreter? If so, did you ask them to identify a suitable person to translate?				
Did you engage the services of an interpreter? If so, did you pay them for their services?				
Are you prepared for the possibility that approval will be denied or conditional on substantial changes to your project?				
Have the suggestions of and feedback from relevant Indigenous stakeholders been considered and incorporated?				

Stage 1 — planning the project

Yes No

Action items / notes

Are there specific cultural protocols attached to the use and access of ICIP. Consider:

- › Can ICIP be used without the free prior informed consent of the knowledge holder or their community? Or does the community require that anyone wishing to use the ICIP material consult with and seek permission from the community?
- › Can ICIP be used for commercial purposes without benefit to the community?
- › Are there cultural restrictions to the ICIP that limit its use (eg ICIP that is sacred or secret material, information specific to a clan/ language group, access restricted by gender, for a particular purpose or time, or only available to the initiated)?
- › Are there cultural requirements for ICIP to be used only with a cultural sensitivity notice (ie if it contains confidential, personal or private information about individuals and communities and/or their ICIP)?
- › Are there mourning protocols that prohibit the access of ICIP or require the use of a cultural sensitivity notice (ie because it describes, depicts or contains words, descriptions or images that may be considered sensitive or offensive in today's context)?

SECURITY AND CONFIDENTIALITY

Is the subject matter or material culturally sensitive? Is it sacred or secret?

Have you discussed any restrictions on use of subject matter or material with the relevant Indigenous people and communities who might be affected by the disclosure?

Stage 1 — planning the project		Yes	No	Action items / notes
Does your project contain any reference to personal or confidential information about individual Indigenous people?				
If so, did you seek consent from anyone who might be affected by the disclosure (the individual themselves, their community/relatives) before using the information?				
Does your project feature any deceased Indigenous person? If so, did you obtain clearance from their family/community prior to use?				
Stage 2 — the project/contract		Yes	No	Action items / notes
Is there a contract?				
INTELLECTUAL PROPERTY RIGHTS				
Does the contract clarify the project materials being created and who owns the IP rights in the material?				
Does the contract deal with any registered IP rights e.g. trade marks and who will own those rights?				
RECOGNITION OF ONGOING RIGHTS				
Does the contract clarify that IP rights are owned by the Indigenous creator(s) and ICIP rights are retained by the Indigenous custodians?				
Has the scope of the licence sought by the organisation to use any resulting works been negotiated and clearly reflected in the contract?				

Stage 2 — the project/contract	Yes	No	Action items / notes
<p>Have you considered whether the inclusion of a Style Guide is appropriate for the project?</p> <p>If so, have you considered (and does the contract reflect) whether the creator will assisted with and/or be paid additional fees for the creation of a Style Guide?</p>			
SECURITY AND CONFIDENTIALITY			
<p>Where the project deals with sensitive matter, are the agreed uses and protocols reflected in the contract?</p>			
ATTRIBUTION			
<p>Does the contract clearly identify how the Indigenous artist (and if relevant, traditional custodians) will be credited in the project?</p>			
BENEFIT SHARING			
<p>Does the contract appropriately reflect the benefits (monetary or non-monetary) that the Indigenous artist (and where possible the community) will receive for their involvement in the project?</p>			
MAINTAINING INDIGENOUS CULTURES			
<p>Does the contract identify a next-of-kin for the artist?</p>			

Stage 3 — after the project		Yes	No	Action items / notes
ATTRIBUTION				
Are you complying with its ongoing obligations to attribute the artist/ relevant Indigenous person/community?				
COMMUNICATION, CONSULTATION AND CONSENT				
Have you considered whether its ongoing uses of the work are within the scope of the licence granted in the contract?				
If not, have you re-negotiated, and received the prior written consent from the creator, the new scope (and any additional fees)?				

5.6 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

Research

Australian Institute of Indigenous 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>

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, cultures and concepts](#), 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>

World Indigenous Peoples' Conference on Education (WIPCE)

The Coolangatta Statement on Indigenous Peoples' Rights in Education, was presented at the World Indigenous Peoples' Conference on Education (WIPCE), Hilo, Hawai'i, 6 August 1999 — <http://press-files.anu.edu.au/downloads/press/p15621/pdf/ch191.pdf>

5.7 Protection of ICIP rights

United Nations Declaration on the Rights of Indigenous Peoples — 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 and 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

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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>

United Nations Global Compact, Indigenous People's Rights and the Role of Free Prior Informed Consent: A Good Practice Note endorsed by the United Nations Global Compact Human Rights and Labour Working Group on 20 February 2014 — https://www.unglobalcompact.org/docs/issues_doc/human_rights/Human_Rights_Working_Group/FPIC_Indigenous_Peoples_GPN.pdf

Ninti One 2012, What is Free Prior Informed Consent? — http://www.nintione.com.au/resource/BP7_Free-Prior-Informed-Consent.pdf

5.8 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

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

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

Reconciliation Australia, Fact sheet: Capturing data on your Aboriginal and Torres Strait Islander employees — https://www.reconciliation.org.au/workplace/wp-content/uploads/2014/03/Fact-sheet_Capturing-data-on-Aboriginal-and-Torres-Strait-Islander-employees-FINAL.pdf

Australian Institute of Aboriginal and Torres Strait Islander Studies — www.aiatsis.gov.au

Batchelor Institute, CALL Collection — <http://callcollection.batchelor.edu.au/>

Arts Law Centre of Australia, When Art and Law Collides: Developing Script Protocols at Ilbjerri Theatre Company — <https://www.youtube.com/watch?v=l7K7la7jraU>

Reconciliation Australia, Narragunnawali — <https://narragunnawali.org.au/>

The Coolangatta statement on Indigenous People's Rights in Education. Presented at the World Indigenous Peoples' Conference on Education (WIPCE), Hilo, Hawaii, 6 August 1999 — <http://press-files.anu.edu.au/downloads/press/p15621/pdf/ch191.pdf>

PATHWAYS TO ENGAGEMENT

Aboriginal and Torres Strait Islander
Protocols in Performing Arts Training



Australian Government

Department of Communications and the Arts

Arts8