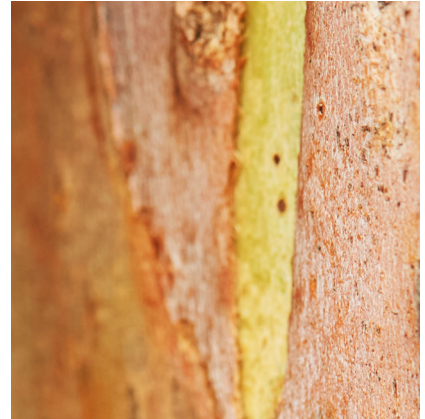


ABORIGINAL AND TORRES STRAIT ISLANDER CULTURAL AND INTELLECTUAL PROPERTY PROTOCOL

2023



ACKNOWLEDGEMENT OF COUNTRY

The University of Newcastle acknowledges the traditional custodians of the lands within our footprint areas. We respect the wisdom of Elders, past, present, and emerging.

The University of Newcastle extends this respect to the homelands of our Aboriginal and Torres Strait Islander students and staff.



FOREWORD

The University of Newcastle is committed to excellence in Aboriginal and Torres Strait Islander research. This excellence requires all staff to understand how to conduct ethical and respectful research with Aboriginal and Torres Strait Islander people and communities.

The Indigenous Cultural and Intellectual Property Protocol maps out the rights that Aboriginal and Torres Strait Islander People have in relation to their heritage, knowledge and cultural expression. This protocol articulates these rights to influence internal policies and processes. It also supports all academic activity and behaviour when working with Aboriginal and Torres Strait Islander people and communities.

An Indigenous Cultural and Intellectual Property Community Guide will accompany this protocol and the two documents should be used together.

In The University of Newcastle's Aboriginal and Torres Strait Islander Education and Research Framework, it was

highlighted that it is imperative that the right ecosystem is created for research. This protocol and community guide play a significant role in creating that ecosystem, developing trust and working in partnership with our communities.

It is hoped that existing research partnerships will be strengthened and new partnerships developed with local Aboriginal and Torres Strait Islander communities to create research that is culturally responsive and ambitious.

On behalf of The University of Newcastle I would like to thank Terri Janke and her team for working with our internal and external stakeholders in the development of this protocol and the community guide, it is something our communities can be extremely proud of.

Nathan Towney

Pro Vice-Chancellor, Indigenous Strategy and Leadership



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PART 1 - INTRODUCTION AND BACKGROUND

ABOUT THE UNIVERSITY OF NEWCASTLE

The University of Newcastle is a leading Australian university with a world-class reputation for excellence in teaching, research and support for our students. We were established to serve the needs of our communities in the Hunter Region and Central Coast, and offer services from our campuses across NSW and overseas.

Since our inception in 1965, the University has been guided by core values of deep engagement with our communities in order to make higher education accessible for all. These values drive the University's vision to promote diversity and fairness and to be ethically minded in all that we do.

Our campuses are situated on the traditional lands of many nations. Aboriginal and Torres Strait Islander (collectively Indigenous) people, are an important part of the shared identity of the University. We have established strong links to Indigenous communities through the work of the Wollotuka Institute, and have the highest rates of Indigenous enrolment and employment in the sector.

The University has a vision to create and sustain an environment where students and staff, whatever their social or cultural background, can thrive and achieve success. To achieve this vision with integrity, the University is committed to fostering a culture of value and respect for Indigenous peoples, cultures, worldviews, histories and experiences at the University. This Indigenous Cultural and Intellectual Property Protocol is a document designed to support the continued sharing and celebration of culture at the University (in research, teaching, campus design and community engagement) in ways that recognise and respect Indigenous people's inherent rights to their culture.



WHAT IS INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY?

Indigenous Cultural and Intellectual Property or ICIP refers to the rights that Indigenous people have in relation to all aspects of their heritage, knowledge and cultural expressions, 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.

Although ICIP can be separated into categories, it is often linked. For example, an artwork may be a visual representation of a story that contains information about a certain place and its food sources. The following diagram indicates the broad and holistic nature of ICIP:

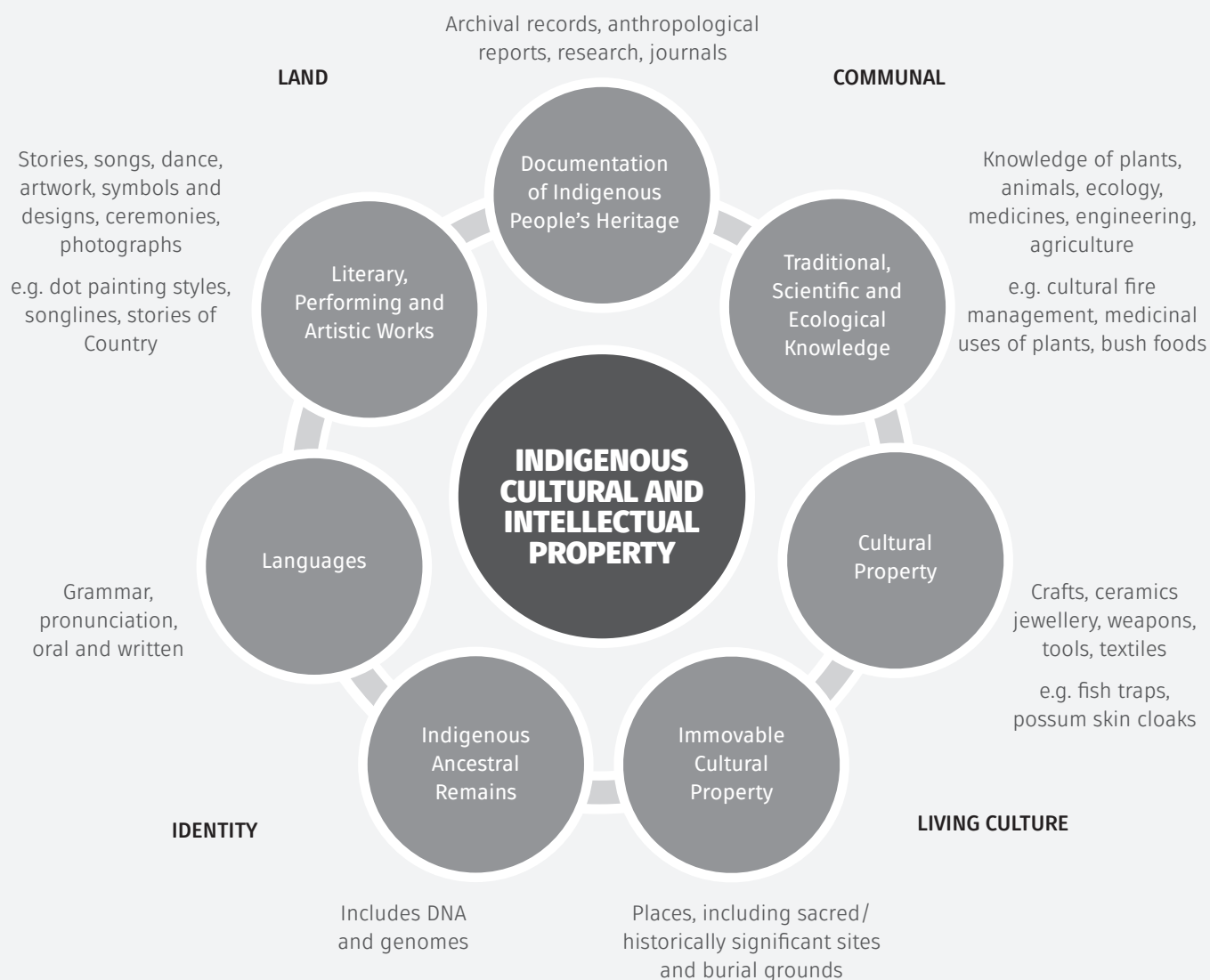
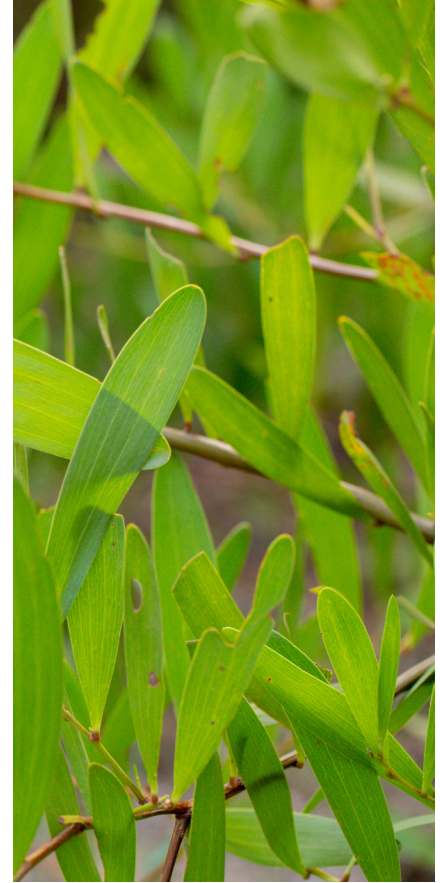


Figure 1: Categories of ICIP

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ICIP encompasses both the tangible (sites, objects) and intangible (knowledge, oral stories, performances). ICIP is linked to place and people, and is communally owned by the group it belongs to.

Attached to ICIP are obligations to care for ICIP so that it can be passed on to future generations. Whilst generally, all Indigenous people have a role to care for ICIP, certain persons of authority within each community may have specific rights to know and share knowledge, and to give or deny permission to use and share certain ICIP.

Indigenous cultures are not fixed or static – they are constantly evolving. This means that the nature of ICIP may also evolve. Indigenous people have the right to define what ICIP is. This means that modern and emerging knowledges that have been developed by Indigenous people based on history and culture can also be classified as ICIP.

United Nations Declaration on the Rights of Indigenous Peoples

The rights of Indigenous people are enshrined within international law instruments. **The United Nations Declaration on the Rights of Indigenous Peoples (Declaration)** sets out the rights that First Nations peoples of the world require for their survival, dignity and wellbeing.

Article 31 of the Declaration states that:

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

In Australia, and in The University of Newcastle’s Indigenous Cultural and Intellectual Property Protocol, the term Indigenous Cultural and Intellectual Property or ICIP encompasses cultural heritage, traditional knowledge, traditional cultural expression.

The Declaration was adopted by Australia in 2008 but it does not impose an obligation on signatories to create domestic law that gives effect to its articles. However, the Declaration is highly relevant and important when it comes to policymaking in Australia. It sets a standard of practice that should, and has, been considered and applied in Australia.

ICIP AND THE UNIVERSITY OF NEWCASTLE

The University engages with Indigenous people and their ICIP in a variety of ways, including:

- Conducting research with and about Indigenous people and their ICIP, in fields such as health, education, global histories and language;
- In the teaching environment, as part of delivering culturally rich learning opportunities;
- Through engagement with Indigenous communities in our region and through the co-development of economic and educational initiatives;
- The use of traditional knowledge into our campus design and planning processes;
- When Indigenous staff and students share their own ICIP as part of teaching and learning;
- Engaging with cultural materials held in our library and archival collections, galleries and Museum; and
- As part of our marketing and communications to promote the work of the University.

Past practices at the University have not met current standards for recognition of Indigenous peoples' rights to their ICIP. The University acknowledges our past failings and that it must actively work to prevent future cultural harm to Indigenous peoples.

PURPOSE OF THE UNIVERSITY OF NEWCASTLE ICIP PROTOCOL

Despite the growing awareness of ICIP in Australia, rights to ICIP are not protected under Australian law. There is no legal right for Indigenous people to be consulted about the use of their ICIP, to stop others from misusing ICIP, or to have a say in how their ICIP is represented or interpreted by others.

Given this lack of legal protection, the University acknowledges the importance of ethical standards in supporting Indigenous people to maintain, control, protect and develop their ICIP. The University of Newcastle's Indigenous Cultural and Intellectual Property Protocol (Protocol) is such a standard.

The Protocol is a framework that will assist the University to respectfully engage with Indigenous people and communities and their Indigenous Cultural and Intellectual Property (ICIP), in all aspects of the University's projects and activities. This Protocol is intended to give staff, students and the University's partners and collaborators the confidence to navigate ICIP issues with respect and care.

While the Protocol cannot specifically address all the ICIP issues the University's staff and students may face when working with Indigenous people and communities, it will support us to identify key ICIP issues, understand our own obligations in relation to ICIP, and know where to go for assistance.

The purposes of the Protocol form part of our vision for the University as follows:

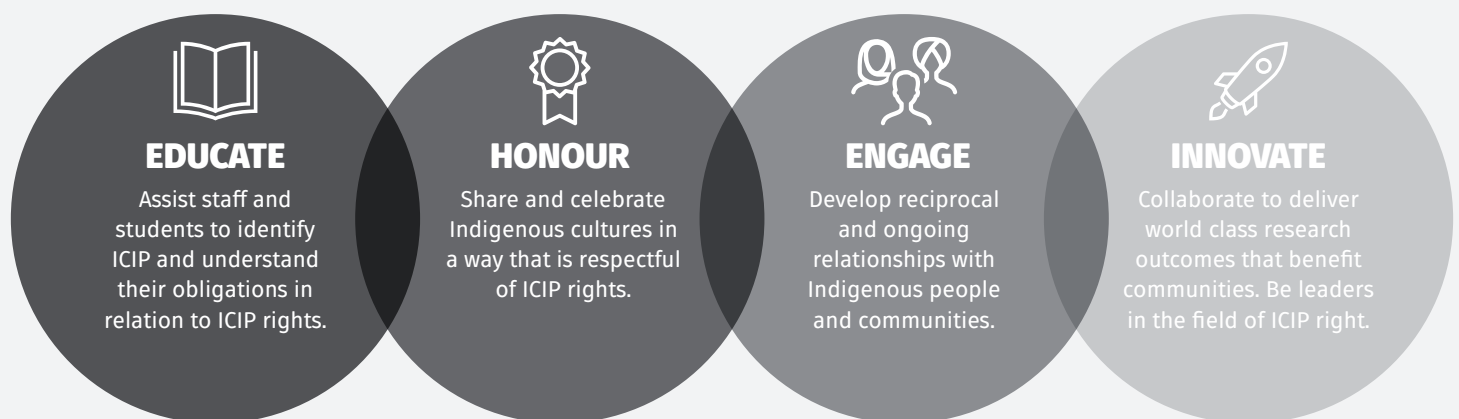
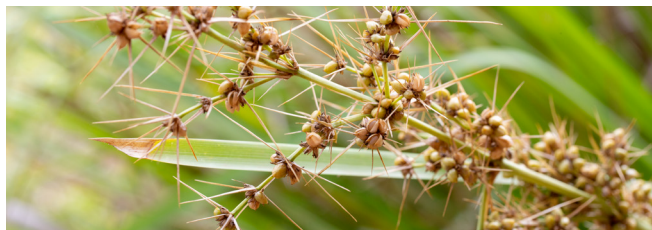


Figure 2: Purposes of the Protocol

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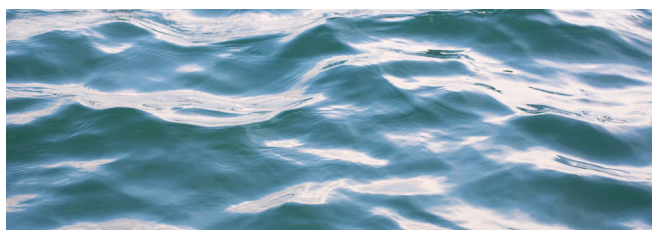


EDUCATE

The University is proud of our strong record in Indigenous higher education, innovation and engagement. We lead the sector in enrolments of Indigenous students and employment of Indigenous staff.

We are committed to widening participation, promoting diversity and fairness, and creating learning environment where students can thrive and achieve success. The University is committed to fostering a culture of value and respect for Indigenous peoples, cultures, worldviews, histories and experiences at the University.

By educating students and staff alike to understand what ICIP is, identify it in their work, and follow ethical obligations and processes, the University will foster increased levels of cultural competency among staff and students. This Protocol will also assist the University to create a culturally safe environment for Indigenous staff, students and community members.

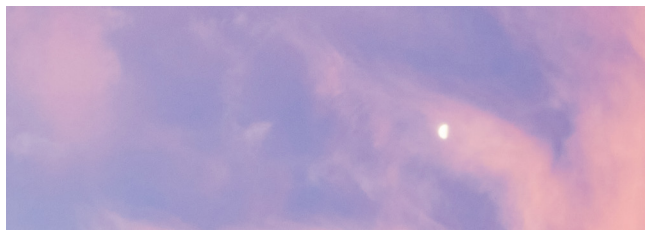


HONOUR

Indigenous peoples' cultures, worldviews, traditional knowledge, materials and experiences are used by the University in the teaching and learning environment, as well as part of the built environment of our campuses.

The University recognises the value of Indigenous knowledges, and the contributions of Indigenous people, to academia teaching and learning, and the cultural life of the University. In presenting, sharing and celebrating culture, the University acknowledges that it must do so in a way that meets current standards for recognition of Indigenous peoples' ICIP rights.

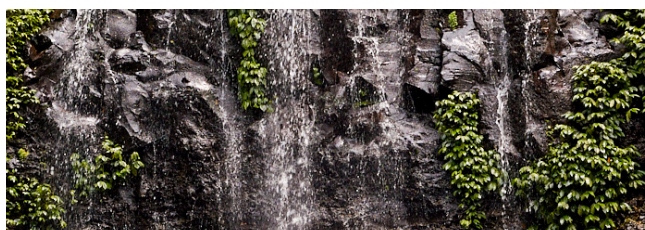
This Protocol is a tool to assist students and staff to consume, share or represent Indigenous knowledges, histories and cultures in ways that are authentic and empowering for Indigenous peoples and sanctioned in accordance with cultural protocol.



ENGAGE

We aim to develop and maintain our strong links to Indigenous communities. This Protocol is intended to give staff and students the cultural capability and to build trusting relationships with Indigenous people and communities. In turn, we aim to give Indigenous people the confidence that the University will manage their knowledge and cultural materials in accordance with appropriate protocol.

These aims are also supported by the University's **Community Guide to Indigenous Cultural and Intellectual Property**, developed in collaboration with the communities we work in and engage with.



INNOVATE

The best practice approach set out in this Protocol supports excellence in research, curriculum and our business activities. We aim to be leaders in the field of ICIP rights, sharing our knowledge with our collaborators and communities. This requires a continuous obligation to learning and improving – at an individual level and in our organisational structures and processes.

By building long-term reciprocal research partnerships with Indigenous people and communities and supporting Indigenous self-determination in research, the University envisages improved research outcomes that support and serve Indigenous and non-Indigenous people alike.

HOW TO IDENTIFY INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY

Staff and students must be able to identify ICIP in the University's projects, programs and activities in order to apply this Protocol, understand the level of collaboration and consultation required, and adequately plan for the use of ICIP, including establishing budgets and timeframes, and managing contractual issues.

The University should begin with an acknowledgement that all projects and activities conducted by the University take place on Aboriginal land. This will involve, at minimum, recognition that there may be wider perspectives to be considered or incorporated.

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

- the information or material is that of an Indigenous person or group concerning their cultural heritage, traditional knowledge, traditional cultural expression, connection to land or any other element of cultural heritage described in above whether provided orally, visually or in writing;

For example, an Elder sharing a traditional story of their country; Indigenous people relating language information and/or stories to staff members.

- the information or material features an Indigenous person or Indigenous people depicting, describing, or showing their cultural heritage, traditional knowledge, traditional cultural expression, connection to land or any other element of cultural heritage described above;

For example, recordings or photographs of Indigenous women painting a Dreaming story; an Indigenous person telling a traditional story of their country in augmented or virtual reality applications.

- the information or material does not feature an Indigenous person or Indigenous people, but the image of, stories told or land depicted relates to ICIP described above;

For example, an Indigenous artist's work depicting their totem; a description of the kinship system; a 3D virtual landscape depicting Indigenous rock art; an animation projected on a building that portrays the themes and stories of an Indigenous community.

- the material includes Indigenous languages;

For example, lists of Indigenous language words and their English translation; an app or software containing (i.e. to translate, preserve or showcase) words from Indigenous languages.

- the material refers to the history of Indigenous people in Australia, including images, recordings, text and fictionalised accounts of such histories;

For example, 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, on a desktop background) depicting particular traditional Indigenous sites – some of which may be sacred or secret sites.

- the information or material contains, depicts or describes Indigenous ceremonies, dance, song or other performances (whether performed by Indigenous or non-Indigenous persons);

For example, a recording of an Indigenous person singing their ancestral songline; images or recordings of Indigenous people performing traditional dance or a Welcome to Country ceremony.

WHAT MAY NOT BE ICIP

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

- the information or material contains, depicts or describes an Indigenous person or Indigenous people performing a ceremony, dance, song or other activity which does not include any reference to Indigenous language or culture;

For example, photographs or recordings of Indigenous soldiers at an Anzac Day ceremony; Indigenous musicians performing modern songs at a rock concert

- the information or material contains, depicts or describes an Indigenous person or Indigenous people, but where no reference to ICIP is made;

For example, an image of a rally for Indigenous rights; an image of Indigenous rangers on Country; recording of the 2019 Yabun Festival (unless artwork containing traditional knowledge is shown); an image on an Indigenous young adult participating in a language workshop

NOTE: it is best practice to get consent from the subject of photographs or recordings regardless of whether ICIP is depicted

Staff and students should seek clarification from the Office of Indigenous Strategy and Leadership or the Wollotuka Institute if there is uncertainty whether the information or material being dealt with contains ICIP and should be subject to this Protocol. Further guidance can be provided by the Indigenous people or communities the University is working with in the particular instance.





PART 2 – THE TRUE TRACKS® PRINCIPLES FOR INDIGENOUS ENGAGEMENT

The True Tracks® Principles, developed by Terri Janke and Company, are a flexible framework that can guide the University's use of ICIP and engagement with Indigenous people and communities. The Principles are not hierarchical and relate closely to each other, often overlapping – as is the nature of ICIP itself.

Where a project or activity involves the collection or use ICIP, the True Tracks® Principles should be considered at the outset of a project and incorporated from the planning stages through to delivery. They are intended to guide staff, students and the University's collaborators to consider the issues that may be applicable to a project or activity involving ICIP. Stakeholders should be encouraged to read this document before they work with the University on collaborative projects that involve ICIP or Indigenous people and communities.

Principle 1 - **RESPECT**

Indigenous peoples have the right to maintain, control, protect and develop their diverse cultures. ICIP rights should be considered in addition to any legal or intellectual property (IP) rights that exist in material that contains ICIP.

- University staff, students and researchers will acknowledge and respect ICIP rights by complying with this Protocol and other applicable policies, codes, guidelines and standards.
- When visiting Indigenous-owned lands, University staff, students and researchers are expected to conduct themselves with respect and in a professional manner. Visitors should consider whether a permit is required to access the land, and be aware of any expected standards of conduct, dress or behaviour.

Principle 2 - **SELF-DETERMINATION**

Indigenous people have the right to self-determination in relation to their ICIP. The University will encourage and empower Indigenous people in decision-making processes about projects that involve or affect their ICIP.

- Indigenous leadership in projects relating to ICIP is key to supporting self-determination. Where projects involve ICIP or content about Indigenous people, Indigenous people must be involved from the outset and throughout the life of the project.
- Indigenous people have the right to control the use of their ICIP. Staff, students and collaborators must seek free, prior and informed consent for all uses of ICIP.
- Different Indigenous communities may have their own specific cultural protocols that govern the access and use of ICIP. Staff, students and collaborators will adhere to customary laws and community-specific protocols as notified by Indigenous peoples.

Principle 3 - **COLLABORATION, CONSULTATION AND CONSENT**

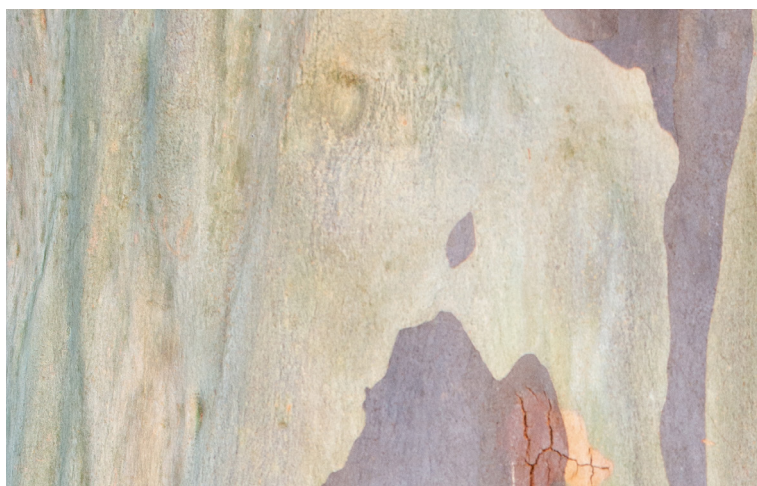
Free prior informed consent for use of ICIP should be sought from Indigenous peoples. This is best achieved through collaboration and co-design of projects. The University must inform Indigenous people about the risks and implications of giving consent to use ICIP.

- Where projects involve ICIP, staff, students and collaborators must obtain the free, prior and informed consent of the relevant Indigenous people and communities for the use of their ICIP.
- Consultation is a two-way process and the perspective of the community must be properly considered by staff, students or researchers who are planning projects. Consultation must take place during the planning stages of each project involving ICIP or Indigenous people. Staff, students or researchers must be prepared to make changes to the scope or focus of the project, timeline and budget based on the outcomes of consultation.
- Staff, students or researchers who are responsible for consulting with Indigenous people about a project must give Indigenous people sufficient time to make a decision about the project. Indigenous people will not be forced or pressured into making a decision.
- If there are changes to the scope, focus, timeline or budget of the project that has already been consented to by Indigenous people, groups or organisations, then University staff, students and collaborators must re-consult with the relevant Indigenous people and get consent for the specific use of the ICIP.
- University staff, students and researchers must accept 'no' as a valid answer from Indigenous people. Indigenous people may decide they not want to participate, or may withdraw their support, including after consultation has already begun.
- New uses of ICIP beyond the scope of what was originally agreed to by Indigenous people requires additional consultation and consent. University staff, students and researchers should review consent forms or other records of consultation to determine what uses are permitted.
- University staff, students and collaborators who work with Indigenous peoples should work to build trust and establish long-term, mutually beneficial relationships. Measures should be taken to continue relationships with Indigenous people and communities for future collaborations and co-design of research or other initiatives.

Principle 4 - **INTERPRETATION AND AUTHENTICITY**

As the primary guardians of their cultures, Indigenous people should be involved in any representation or interpretation of their ICIP.

- Depictions of Indigenous culture in University projects must be authentic, accurate and empowering for Indigenous people. Staff, students and collaborators will empower Indigenous people to interpret and present their own stories in culturally appropriate and relevant ways.
- Staff, students and collaborators will seek advice from relevant Indigenous owners and custodians, knowledge holders, cultural advisors and other members of the community on the proper interpretation of ICIP and its authentic use.
- Where projects incorporate ICIP, staff, students or researchers will consider the following matters:
 - whether the project is relevant to the Indigenous community it involves or is about;
 - the Indigenous perspectives that are represented and how Indigenous viewpoints can be amplified;
 - if the project portrays or interprets Indigenous cultures or themes, whether the depiction is appropriate, authentic and empowering for Indigenous people; and
 - what scope the project has for collaborations with Indigenous people.



Principle 5 - **CULTURAL INTEGRITY**

Maintaining the integrity of ICIP is important for the continuing practice of culture.

- the cultural requirements and restrictions which might apply to the use of ICIP in projects to ensure that the context of the use is not harmful or inappropriate; and
- how to maintain the integrity of the cultures, stories and themes depicted when ICIP is to be adapted or altered.
- The University acknowledges that it can be difficult to control how ICIP is accessed and used by third parties once it is published online. Staff, students or researchers must get the free, prior and informed consent from Indigenous peoples before making ICIP material publicly available on the internet.

Principle 6 - **SECRET, SACRED AND PRIVACY**

Indigenous peoples have the right to maintain their cultural practices relating to secret and sacred information and knowledge. The privacy and confidentiality of Indigenous people's personal and cultural affairs must also be respected.

- Some parts of Indigenous culture are not appropriate to be shared or publicly displayed. Customary laws or other restrictions may apply to:
 - culturally restricted information (e.g. sacred knowledge or gender specific knowledge; sacred sites and objects) which are subject to conditions under customary law;
 - images that may reflect or represent culturally restricted information, confidential information or personal or private information about individuals and;
 - personal or private information about individuals.
- Staff, students and collaborators must speak to elders or Indigenous peoples in authority to identify any sensitivities, sacred or religious issues.
- Staff, students and collaborators will follow cultural protocols or restrictions relating to secret and sacred material.
- Respect the privacy of Indigenous individuals. Staff, students and collaborators will consult with Indigenous peoples before sharing information of a private or personal nature, including biographical information.





Principle 7 - **ATTRIBUTION**

Indigenous people should be acknowledged as the owners and custodians of their ICIP.

- Indigenous custodians, knowledge holders or source communities of ICIP should also be attributed where possible, including individual, community and/or family acknowledgements as required.
- Researchers must attribute Indigenous source communities and custodians who share ICIP in research projects. This should be in a prominent place in all publications of the research.
- Staff, students and collaborators must consult with the relevant Indigenous person or community about how they wish to be attributed. Indigenous participants may choose not to be publicly attributed or acknowledged.
- When publishing or sharing ICIP, staff, students or researchers should consider whether it is appropriate to include a traditional custodians' notice or special acknowledgment to uphold the rights of Indigenous peoples in relation to their ICIP.

Principle 8 - **BENEFIT SHARING**

Indigenous people have the right to share in the benefits for use of their ICIP.

- In projects involving the use of ICIP, staff, students and collaborators must discuss benefit sharing upfront and agree upon the benefits to be shared as part of the consent process. Indigenous people should always be consulted as to what benefits they would prefer to receive.
- Benefits can be monetary (fees, royalties) or non-monetary but should always be relevant and useful for the source community.
- Each new use of ICIP requires sharing additional benefits with the source community.
- Indigenous people who:
 - share ICIP at the University by performing, speaking or sharing culture; or
 - are involved in projects (for example, as cultural advisors/ consultants, researchers, contributors or facilitators),have the right to be paid for their services. They will be paid appropriate rates that reflect their skills and input.
- Consent or clearance documents or formal agreements such as research agreements should identify the benefits that the individual and/or source community will receive for use of their ICIP or their involvement in the project.



Principle 9 - **MAINTAINING INDIGENOUS CULTURE**

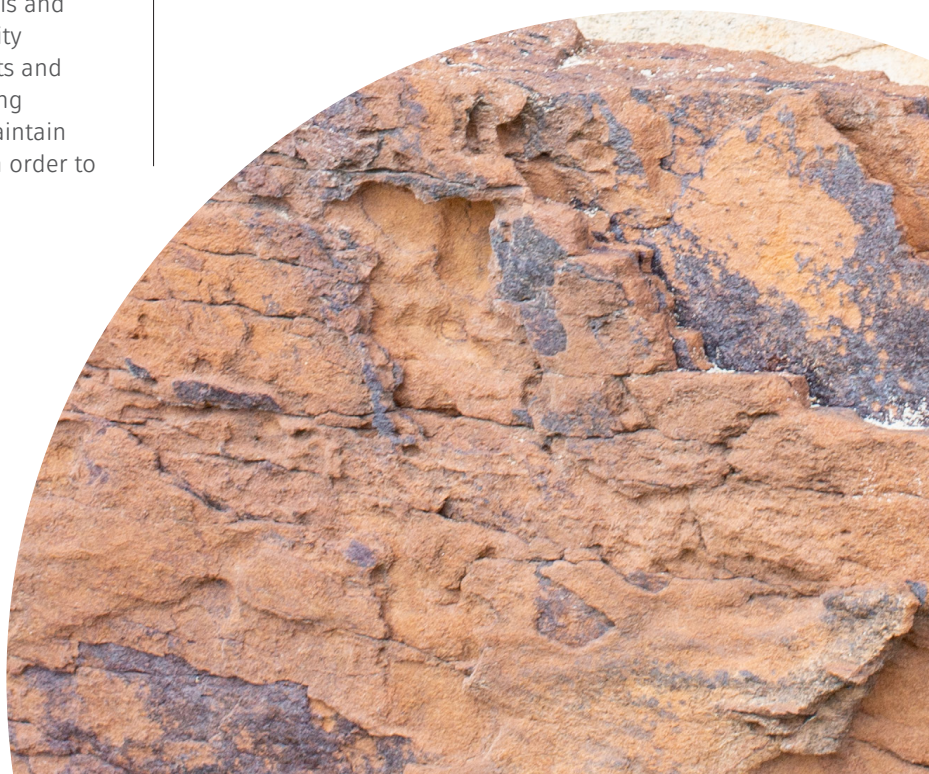
Indigenous cultures are not static and measures need to be taken so that Indigenous people can maintain, revitalise and advance their cultures.

- Staff, students and collaborators must only use ICIP consistently with the consent given in consultation. Each new or different use of ICIP requires re-consultation and consent for the specific use.
- The University undertakes to further increase Indigenous people's access to and engagement with ICIP in the University's collections so that Indigenous peoples can practise, revitalise and advance their cultures.
- Indigenous cultures are evolving and protocols and decision-making structures within a community will change over time. University staff, students and collaborators who are responsible for engaging with Indigenous peoples should build and maintain relationships with Indigenous communities in order to facilitate future consultations about ICIP.

Principle 10 - **RECOGNITION AND PROTECTION**

Use Australian law, protocols and policies to recognise and protect ICIP rights.

- Staff, students and collaborators will implement practical measures to recognise and protect ICIP. This includes, for example, the use of traditional knowledge notices, written licences or agreements and cultural consent forms for use of ICIP.
- The University will commit funding, resources, and accountability strategies to support the proper implementation of the Protocol.



PART 3 – THE UNIVERSITY OF NEWCASTLE’S INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY PROTOCOL

1. PRELIMINARY

- 1.1 This Protocol is referred to as The University of Newcastle’s Indigenous Cultural and Intellectual Property Protocol (“the **Protocol**”).
- 1.2 The Protocol applies to all people involved in the activities of the University including academic and professional services staff, researchers and students who engage with Indigenous peoples and their ICIP in University projects or activities.

2. DEFINITIONS

- 2.1 In this Protocol, unless otherwise indicated by the context, the definitions in this clause 2 apply.
- 2.2 **Indigenous Cultural and Intellectual Property** or **ICIP** means tangible and intangible cultural heritage that pertains to a particular Indigenous clan or community and is transmitted from generation to generation, as reflected in article 31 of the United Nations Declaration of the Rights of Indigenous Peoples, and including:
 - (a) traditional knowledge, such as scientific, ecological, agricultural, technical, secret, sacred and ritual knowledge;
 - (b) (traditional cultural expression, such as stories, song, dance and performance, designs and symbols, literature, ceremonies, secret and sacred material
 - (c) languages;
 - (d) human remains and tissues;
 - (e) documentation of Indigenous peoples’ heritage in all forms of media such as films, sound recordings, photographs, artistic works, books, reports and records taken by others;
 - (f) lands, seas and waterways; and
 - (g) genetic resources, organisms, flora, fauna, and seeds used and nurtured by Indigenous people throughout the generations.
- 2.3 **Indigenous peoples** refers to persons of Australian Aboriginal or Torres Strait Islander descent and the clans or language groups and communities that they belong to.
- 2.4 **Indigenous Works** means copyright works that express or detail ICIP.
- 2.5 **Secret and Sacred Material** means ancestral remains, secret and sacred objects, or information, records or material of a secret or sacred nature, as identified by Indigenous people.

3. ICIP AND INTELLECTUAL PROPERTY

- 3.1 Copyright works and materials may be created in the course of a project or activities undertaken by the University, including, but not limited to:
 - (a) Literary works; e.g. books, reports and written materials, theses, databases, field notes;
 - (b) Artistic works, designs and craft, sculpture, performing arts, musical works and dramatic works;
 - (c) Films and video recordings in any format including films and video recordings in any format, recorded using any equipment or technology;
 - (d) Sound recordings; recorded conversations and performances; and
 - (e) Published editions.

- 3.2 Where works or materials referred to in clause 3.1 are Indigenous Works, the University acknowledges that ICIP rights as well as intellectual property (IP) rights exist and must be upheld by following this Protocol.
- 3.3 The University makes no claim to the ICIP embodied in Indigenous Works.

4. DISCUSS IP OWNERSHIP UPFRONT

- 4.1 Where the University works with Indigenous people to create Indigenous Works, it must discuss copyright ownership^[1] with the Indigenous people as part of the consultation and consent processes.

Indigenous people to be copyright owners of Indigenous Works

- 4.2 Unless otherwise negotiated and agreed to, Indigenous people must own the copyright in Indigenous Works created as part of a project or activity. This is to:
 - (a) recognise the Indigenous ownership/custodianship of the ICIP being passed on;
 - (b) give Indigenous owners and custodians the ability to control and protect material containing ICIP under Australian copyright law; and
 - (c) ensure that in the future, the ICIP contained in the Indigenous Works may be accessed and used by Indigenous individuals, their family or community for cultural maintenance and other purposes.
- 4.3 The Indigenous individual or organisation who is the copyright owner of the Indigenous Works will be required to provide an appropriate licence back to the University for use of the materials in University projects and activities as required and agreed.
- 4.4 Before entering into a licence arrangement referred to under clause 4.3, the University must clearly explain how, under the terms of the licence, the University will be allowed to use the Indigenous Works e.g., in teaching. Where the licence is for use in research, the University must meet the standards of clauses 8 and 9 of this Protocol.

Where copyright ownership of Indigenous Works is not Indigenous people

- 4.5 Where the University, staff or students, or other third parties are to be the copyright owner of Indigenous Works, this must be clearly explained verbally or in writing to, and agreed by, the relevant Indigenous owners and custodians of the ICIP. This must be done before the Indigenous Works are created and as part of the consultation and consent processes.
- 4.6 Where it is agreed that the University or another party is to be the copyright owner of newly created materials, images or sound recordings, the University must still obtain permission to use the ICIP in the Indigenous Works.
- 4.7 Intellectual property clauses in the University's template or standard agreements must be reviewed and amended in order for Indigenous people or organisations to own copyright.

5. WRITTEN AGREEMENTS REQUIRED WHEN RECORDING INDIGENOUS WORKS

- 5.1 The University may photograph, record or film Indigenous people, sites and country.
- 5.2 Where the University takes photographs or films of Indigenous people, it must get permission to publish their images using the standard University of Newcastle photography consent form.
- 5.3 Other times, the University may photograph, record or film Indigenous people sharing their ICIP, including for example including Indigenous people speaking in language, performing stories, song or dance, or sharing knowledge, techniques and other cultural information. These photographs, films or recordings are newly created Indigenous Works.
- 5.4 When recording ICIP for University projects or activities, the University must enter into a written agreement with the person being recorded. The agreement should include terms such as the following:
 - (a) who will own copyright in the resulting Indigenous Work (see clause 4);
 - (b) how the resulting Indigenous Work will be used, stored and shared by the University;
 - (c) the benefits that will be shared with the Indigenous person and/or the source community for the use of their ICIP by the University (i.e. fee, copy of resulting Indigenous Work);
 - (d) that the Indigenous person being filmed, photographed or recorded:
 - i. gives their consent to be photographed, filmed or recorded;
 - ii. gives their consent for the use of any ICIP or personal information included in the Indigenous Work for the specific agreed purposes;
 - iii. identifies whether there are any restrictions on how the recording or the ICIP contained in the recording can be used;
 - iv. identifies how they would like to be attributed, including family, group or community acknowledgement; and
 - v. nominates a next-of-kin the University may contact in the event of their passing. This ensures that the

- University can respect cultural mourning protocols, and
- (e) that the University will:
 - i. provide the Indigenous person with the opportunity to review and comment on the proposed use of the ICIP in the Indigenous Work; and
 - ii. re-consult with the Indigenous person being recorded for uses of the ICIP in the Indigenous Work not specifically covered in the agreement.

6. USE OF EXISTING INDIGENOUS WORKS

- 6.1 Where the University proposes to use or reproduce existing Indigenous Works (regardless of whether or not the copyright is owned by Indigenous people), it will:
- (a) seek written permission to use the ICIP from the relevant owners or custodians of the ICIP in the Indigenous Works;
 - (b) pay appropriate fees to the relevant owners and custodians to use or reproduce the ICIP the Indigenous Works, if required; and
 - (c) attribute the ICIP owners or custodians as directed by the relevant Indigenous people.

7. CO-AUTHORSHIP

- 7.1 Where a 'significant intellectual or scholarly contribution^[2]', including a significant contribution of ICIP is imparted orally by an Indigenous person for the production of Indigenous Works (such as a book, report, written materials or other outcomes), they should be:
- (a) asked permission for use and provide any cultural protocols or restrictions on use;
 - (b) given an opportunity to review and comment on the compiled Indigenous Work;
 - (c) attributed as a co-author/creator;
 - (d) share the copyright in the Indigenous Work, including the published versions (where the University or its staff, students or collaborators retain copyright); and
 - (e) be compensated for their involvement by being paid or receiving other non-monetary benefits.

8. ICIP AND RESEARCH

- 8.1 The University is committed to research with and about Indigenous peoples and their ICIP that is culturally approved, meets the needs of the community, and is founded on the basis of free, prior and informed consent.
- 8.2 University researchers and research collaborators must consider and implement the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research^[3] and the University's Research Guide^[4].
- 8.3 Where research involves Indigenous people or their ICIP, including research undertaken on Indigenous Works in the University's collections, researchers must:
- (a) begin consultation and consent processes early to involve potential Indigenous participants in co-developing or advising on the research proposal;
 - (b) provide Indigenous peoples with all full and relevant information about the research in an easy-to-understand format so that Indigenous people, groups and communities can make an informed decision about whether to participate in the project;
 - (c) consult widely enough to ensure that the research project gains the perspectives of the whole community it affects;
 - (d) obtain free, prior, and informed consent from Indigenous people for use of their ICIP in the research project;
 - (e) record written consent from relevant Indigenous peoples for the use of ICIP in research projects. This can be done through written clearance forms, letters of support, file notes about the consultation process or other satisfactory means;
 - (f) before publication of any research results, allow Indigenous research collaborators the opportunity to read, interpret and comment on the findings; and
 - (g) only use the ICIP in the research findings for the agreed purposes.
- 8.4 Consultation must include discussions about copyright ownership of the resulting research materials, and managing the use of and access to research findings. Researchers should record the agreement in writing.
- 8.5 Any new proposed use of research findings must be taken back to the source community for further consultation. Free, prior and informed consent should also be sought for these new uses.

9. PROVIDING INFORMATION ABOUT RESEARCH PROJECTS

- 9.1 University researchers must obtain informed consent for research involving Indigenous people. In order to do so, researchers must provide full and relevant information about the research in a clear and easy-to-understand format, including the following information:
- (a) the staff and students working on the project and any project partners or funders;
 - (b) the objectives of the research, expected outcomes and delivery;
 - (c) what level of collaboration, work or participation is required of Indigenous people and communities;
 - (d) the 'why' in terms of what mutual benefits or outcomes the project will achieve for Indigenous communities and the University^[5];
 - (e) any costs the relevant Indigenous people and communities are expected to incur;
 - (f) how the relevant Indigenous people and communities will be attributed for their contributions;
 - (g) for projects involving ICIP:
 - i. what ICIP will be used and the nature of the use, including the intended aim and whether the ICIP will be made public, whether the ICIP will be incorporated into works (e.g. copyright works) and what the implications of this are (e.g. who will own the copyright);
 - ii. the use of any resulting Indigenous Works, including the scale of the project, the context of use, the intended audience, the medium of the project and the intended outcome, where relevant;
 - iii. include details of all proposed uses where known, for example in theses, published works or in presentations and conferences;
 - iv. where ICIP data or outputs in any format from projects will be safely stored, managed, disposed or perpetually preserved, and who at the University will be responsible for the preservation of such material;
 - (h) what benefits (monetary and non-monetary) will the Indigenous people and communities receive from their time, contributions and the use of ICIP, if any; and
 - (i) all known information about copyright ownership of resulting works, including:
 - i. which person or entity will own copyright and other intellectual property rights in the materials to be created during (or as a result of) the research; and
 - ii. any contractual or other rights, interests, obligations or restrictions that relate to intellectual property that is created as part of a research project, including:
 - ii.i. whether the research is to be submitted for academic qualifications;
 - ii.ii. whether the University, research institution, funding body or other third party will own copyright or take a licence in the resulting copyright or other intellectual property created in the course of the research project; and
 - ii.iii. whether there are intended commercial outcomes from the research project.

10. IP ARRANGEMENTS MUST BE STATED IN A RESEARCH PROPOSAL

- 10.1 Researchers must disclose the following information in the research proposal:
- (a) what materials will be created to which copyright will subsist;
 - (b) the ownership of copyright and other intellectual property rights to be created during (or as a result of) the research;
 - (c) proposals for the sharing of copyright in Indigenous Works with the relevant Indigenous peoples;
 - (d) whether the research findings and resulting materials will be published (and if so when, how and where they will be published);
 - (e) whether there is a requirement to transfer ownership of copyright to the publisher of the research; and
 - (f) if published, whether there will be commercial returns generated from the publication (e.g. sale of book, or film distribution).

11. ICIP IN THE UNIVERSITY COLLECTIONS

- 11.1 The University holds ICIP material in our library, galleries, art, archival and displayed collections (the University's Collections).
- 11.2 The University supports the rights of Indigenous peoples to access their ICIP material. Indigenous people shall be provided with adequate information about and access to the items held in the University's Collections, where access is in line with the relevant usage policy.
- 11.3 The University recognises and respects the right of Indigenous people to be involved in decision making

concerning the use, acquisition or display of their ICIP material. Staff will consult in an appropriate and ongoing manner with the relevant Indigenous communities when displaying, developing and managing ICIP material in collections and will ensure that such consultation is informed, ethical and respectful.

11.4 As far as is possible, Library Staff will manage collections in accordance with the Aboriginal and Torres Strait Islander Library Information and Resource Network (ATSILIRN) Archivist and Library Protocols, including by providing opportunities for Indigenous people to access, categorise and advise on the use of the library collection. This includes creating opportunities for Indigenous people to comment on, contextualise or correct inaccuracies in the collections.

11.5 University staff who are responsible for managing art collections will be guided by the Australia Council for the Arts' **Protocols for using First Nations Cultural and Intellectual Property in the Arts** and **First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries**.

11.6 When displaying ICIP material from the University's collections, the University will:

- (a) promote Indigenous peoples' voice and perspectives; and
- (b) engage Indigenous people as project leads or paid advisors in projects, programs and events that relate to the interpretation or use of ICIP material.

11.7 The University collections staff should be aware that they may be privy to secret, sacred, private or confidential information. Staff must ensure that such material is not published, displayed or made publicly available for general viewing without permission.

11.8 The University will repatriate Secret and Sacred Material or other significant objects on a case-by-case basis, with community support and in accordance with the directions of the relevant Indigenous people, communities or organisations.

12. DIGITISATION OF UNIVERSITY COLLECTIONS AND OTHER MATERIALS AND RELATED DATA MANAGEMENT

12.1 The University promotes the use of digital technologies as a means to provide Indigenous people with increased access to their ICIP. However, the University acknowledges the need to safeguard Indigenous peoples' rights to maintain, control, protect and develop their ICIP in all of our digitisation projects and activities, including those undertaken in collaboration with other cultural institutions.

12.2 The University will consider and comply with the University's Digitisation and Data Management Guide^[6] across all stages of University digitisation projects.

13. ICIP IN TEACHING AND LEARNING

13.1 University curriculum will acknowledge and reflect the diversity of Indigenous cultures through representation of a wide range of Indigenous cultural material, stories, histories and perspectives.

13.2 Staff who propose to use ICIP in curriculum will follow this ICIP Protocol, including:

- (a) obtaining free, prior and informed consent or support of Indigenous peoples to include ICIP in teaching or in written resources^[7];
- (b) enabling opportunities for Indigenous perspectives (both individual and communal) to be included when sharing ICIP as part of the curriculum (e.g. use of video and transcriptions and pictures, class incursions and excursions);
- (c) acknowledging the source community and any individual Indigenous person/s who contribute their ICIP to the curriculum, including teaching, resources etc;
- (d) respecting the integrity of the ICIP shared by not altering or adapting the ICIP without permission;
- (e) as far as is possible, using written agreements to ensure the Indigenous custodian or knowledge holder is the copyright owner in written materials that incorporate their ICIP;
- (f) respecting mourning protocols about continued use of ICIP in the event that a particular custodian or knowledge holder passes away;
- (g) making arrangements with the University for proper remuneration of Indigenous people who share their ICIP after consultation and negotiation; and
- (h) reminding students of their obligations to comply with this ICIP Protocol and encouraging students to read and comply with other relevant Indigenous protocols.

14. USE OF INDIGENOUS LANGUAGES

14.1 The University respects the collective rights of Indigenous groups to their languages.

14.2 Where the University wishes to use Indigenous language words or undertake research in relation to Indigenous

languages, it will consult with the relevant Indigenous community about the use of their language and gain free, prior and informed consent for the proposed use.

14.3 The University will not register any language words as trade marks without the prior written consent of the relevant language group.

15. ICIP AND THE BUILT ENVIRONMENT

15.1 When designing, developing and managing spaces on our campuses, the University seeks to create an environment that is reflective of the continuing connections that the traditional owners and custodians have to their lands and to show respect for this connection to the University.

15.2 The University may use ICIP in our placemaking on our main campus and other campuses, including but not limited to:

- (a) stories, language or images in building design;
- (b) incorporating knowledge of places of Indigenous Peoples;
- (c) using language names for places or buildings;
- (d) using materials associated with lands of Indigenous Peoples; or
- (e) displaying artistic or other works (including objects).

15.3 When proposing to use ICIP in the design, build and management of University spaces, the University will:

- (a) create meaningful opportunities for traditional owners and custodians to be involved in the design, build and management of University spaces, so that their perspectives may be heard from the beginning of the project planning and throughout;
- (b) seek free, prior and informed consent from the owners or custodians for use of their ICIP;
- (c) consider the perspectives being brought to the project and the stories being told;
- (d) collaborate with relevant owners and custodians to confirm that the proposed use of the ICIP is appropriate, including in relation to the location; and
- (e) properly attribute and share benefits with owners or custodians of ICIP material used in University spaces.

16. ICIP IN MARKETING AND COMMUNICATIONS

16.1 University staff who use ICIP material in promotion of the University and our activities have obligations to ensure ICIP is treated respectfully, including:

- (a) seeking free, prior and informed consent to use ICIP from the relevant Indigenous individuals and groups. The consent must be specifically for the purposes of marketing the University or our activities;
- (b) allowing sufficient time for consultation and consent processes;
- (c) ensuring that ICIP is not used in a way that is out of context, harmful or culturally inappropriate; and
- (d) not altering or adapting ICIP material without permission (e.g. cropping an artwork to fit onto a website banner or a publication);

16.2 University staff should also consider the context in which they re-use recordings, films, photos and images of Indigenous people. Indigenous people must agree to the use of their name, image, likeness, voice, biography or ICIP in marketing by the University.

17. DECEASED PERSON'S IMAGES AND REFERENCES

17.1 Indigenous communities may prohibit the reproduction of recordings, names, images, likenesses and biographical information of deceased Indigenous people during mourning practices. There may also be sensitivities around using the name or showing recordings, images or likenesses of Indigenous people who have been deceased for a long time.

17.2 Special care should be taken when dealing with references to, and recordings or images of deceased Indigenous people.

17.3 The University should consult representatives of the family or their community to use the deceased person's recordings, name, image, likeness and biographical information.

17.4 If permission to use the recordings, name, image, likeness or biographical information is given, this should be documented in writing or another form of recording, outlining the conditions for use. Such conditions may include using the same for limited purposes, using alternative names, covering or obscuring the face of the deceased person or using appropriately worded warning notices.

17.5 The University will use warning notices where appropriate to advise Indigenous readers or viewers of the fact content makes reference to deceased persons.

18. ONLINE PUBLICATION OF ICIP

- 18.1 The University acknowledges that when ICIP is published online, it becomes more difficult to control and there is the chance that the ICIP could be de-contextualised, re-used, inappropriately circulated or otherwise misused.
- 18.2 Where ICIP material is to be made available on the Internet (for example, on the University website, social media, in online collections etc.), Indigenous people who speak for the ICIP must have consented for the material to be used in this way.
- 18.3 Staff, students or researchers who are responsible for consulting with Indigenous peoples on each project must explain the implications of making the ICIP available online as part of getting free, prior and informed consent. It may be necessary to re-consult with Indigenous people - the clearances originally obtained with Indigenous people may not have extended to adaptation of material to online forms.
- 18.4 Staff, students or researchers who publish ICIP online must take measures to limit the ease of copying of the ICIP material where the intention of the Indigenous owners or custodians is to limit circulation of the material. Such measures could include:
- (a) watermarking or using low quality images;
 - (b) encryption or other ways to limit access, e.g. disabling of right click function;
 - (c) any other appropriate suggestions recommended by experts, e.g. the Copyright Advisor, Scholarly Publishing Team, or University IT Team.

[1] For more information on the general rules of intellectual property ownership, please see the Copyright Information Guide in the Resources section of this document.

[2] As per section 2.1 of **Authorship: A guide supporting the Australian Code for the Responsible Conduct of Research**. 2019, National Health and Medical Research Council, Australian Research Council and Universities Australia. Commonwealth of Australia, Canberra.

[3] Australian Institute of Aboriginal and Torres Strait Islander Studies, AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research, 2020, <https://aiatsis.gov.au/sites/default/files/2020-10/aiatsis-code-ethics.pdf>. See also the Australian Institute of Aboriginal and Torres Strait Islander Studies, Guidelines for the ethical publishing of Aboriginal and Torres Strait Islander authors and research from those communities, 2015, <https://aiatsis.gov.au/sites/default/files/docs/asp/ethical-publishing-guidelines.pdf>

[4] Please see the Research Guide in the Resources section of this document.

[5] Indigenous leadership should be present in the “why” – see the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research, the Australian Institute of Aboriginal and Torres Strait Islander Studies, 2020.

[6] Please see the Digitisation and Data Management Guide in the Resources section of this document.

[7] For more information, please see the Guide to Consultation and Consent in the Resources section of this document.





PART 4 - IMPLEMENTATION AND FEEDBACK

The Office of Indigenous Strategy and Leadership and the Research and Innovation Division are responsible for maintaining and supporting implementation of this Protocol across the University.

The University will conduct regular training of staff, students, researchers, and where appropriate, partners, affiliates, collaborators and contractors, on the implementation of this ICIP Protocol and the obligations contained within it.

So that this Protocol remains up-to-date and a best practice

guide, the University (Director, Aboriginal and Torres Strait Islander Research Strategy and Leadership) will coordinate a regular review of its content and implementation, in consultation with staff and Indigenous people and communities.

The University welcomes feedback in relation to the operation of the Protocol. We will respond to any enquiries, complaints or other feedback in a timely and respectful way. Feedback may be directed to

PVCIndigenous@newcastle.edu.au

PART 5 – CASE STUDIES



CASE STUDY: THE BAWAKA COLLECTIVE

INTRODUCTION

Established in 2006, the Bawaka Collective is comprised of both Indigenous and non-Indigenous women who have come together to connect, create and learn. Their collaboration is underpinned by a relationship of trust, respect and mutual benefits.

In the words of the Bawaka Collective, 'Bawaka Country is the diverse land, water, human, and non-human animals, plants, rocks, thoughts and songs which make up the Yolŋu homeland of Bawaka in North East Arnhem Land, Australia.' The research collective members are four Indigenous sisters, elders, and caretakers for Bawaka Country; Laklak Burarrwanga, Ritjilili Ganambarr, Merrkiyawuy Ganambarr-Stubbs, Banbapuy Ganambarr, and Djawundil Maymuru. Adopted into the family as granddaughter, sister, and daughter, the non-Indigenous members of the collective are human geographers and academics from the University of Newcastle and Macquarie University; Kate Lloyd, Sandie Suchet-Pearson and Sarah Wright.

The Bawaka Collective was forged with a deep focus on the transformative potential of Indigenous-led tourism to strengthen communities, progress self-determination and contribute towards inter-cultural understandings through the communication of Yolŋu knowledge for non-Indigenous audiences. In constant collaboration, the collective has written 3 books and numerous academic articles. Their second book, *Welcome to My Country*, has sold more than 10,000 copies and appeals to both academic and more popular audiences. The book provides a rich understanding of some of the patterns, relationships, motions, and rhythms of time and space that underpin the ways that Yolŋu relate to their country.

The Bawaka Collective's latest book, *Songspirals: sharing women's wisdom of Country through Songlines* was launched in August 2019 at Garma Festival in north-east Arnhem Land is the joint winner of the 2020 Prime Minister's Literary Awards, non-fiction category. According to the Bawaka Collective, 'Songspirals are ancient songs, poems, ceremonies and maps that allow Aboriginal people to navigate vast distances along with radically different ways of understanding humans and their place within the environment.' The book invites the reader on a journey of song spirals, tears, understanding, surprises and wisdom.

Through their work over the years, the Bawaka Collective has made valuable cross-cultural connections with groups and individuals in Australia and beyond. In 2019, the Collective gathered with Indigenous knowledge-holders, Elders and scholars from across Australia, Turtle Island/ North America, Malaysian Borneo and Aotearoa/ New Zealand, and some of their non-Indigenous collaborators to build on existing and emerging relationships and deepen connections.

1. RESPECT

Respect has been an overarching component within the communication between the Indigenous and non-Indigenous members of the Bawaka Collective. The literary works produced by the Collective showcase the experiences of Indigenous people and reinforces the validity of contemporary stories of Indigenous lives. Through remaining honest in all dealings and sharing their own life experiences, the non-Indigenous researchers ensure that the Indigenous members of the Collective feel respected and safe in telling their stories and contributing their ICIP.

2. SELF-DETERMINATION

Throughout every stage of the work produced by the Collective, the right of Indigenous people to self-determination has been upheld. Indigenous control of their literary publications was facilitated at the inception of the Collective; the decision to form the Collective was made by the Indigenous members. The non-Indigenous members of the Collective ensured that a high degree of control of the literary works would remain in Indigenous hands. The research agreement stipulates that the Indigenous authors own and control their ICIP and make decisions about publication of research material.

3. PRIOR INFORMED CONSENT AND CONSULTATION

It is essential that non-Indigenous individuals communicate and consult with Indigenous people in authority on the representation and use of their cultural expression and obtain their consent for projects prior to their commencement. This principle has been followed by the Bawaka Collective throughout their projects through collaborative meetings and negotiations in which the Indigenous members of the Collective were informed on the implications of giving consent to use ICIP. All decisions are formalised within the research agreement.

The Bawaka Collective was born after extensive consultation with the Indigenous community located in North East Arnhem Land. During the early stages of the collaboration, the non-Indigenous visited Bawaka Country and expressed their desire to follow the lead of the Indigenous community regarding how the Collective members would collaborate, the mutual benefits and the role played by each individual.

4. INTERPRETATION AND INTEGRITY

The Bawaka Collective acknowledges that maintaining the integrity of cultural heritage information or knowledge is important to Indigenous people. The Collective followed this principle by ensuring that the Indigenous members of the Collective and the Indigenous individuals being consulted maintained creative control on the interpretation of cultural information. Throughout each project, all members of the Collective were in constant collaboration to ensure the cultural accuracy of the literary works produced.

5. SECRET/SACRED AND PRIVACY

The Bawaka Collective respects the right of Indigenous people to keep secret their sacred and ritual knowledge, as well as keep personal and cultural affairs private if they choose to. The Collective seeks permission from all Indigenous people who could potentially be affected by the publication of personal and/or confidential information. The Indigenous members of the Collective consulted with others on Bawaka Country and obtained permissions regarding referencing certain individuals to respect their right to personal privacy.

The Bawaka Collective also followed this principle by supporting and empowering the Indigenous members of the Collective to take control of determining how sensitive information is handled and how cultural practices can be followed most effectively. Indigenous members of the Collective also obtained guidance from outside of the Collective and consulted their families on various situations as they arose.

6. ATTRIBUTION AND COPYRIGHT

Indigenous people have the right to be named as the custodians of their ICIP, as well as be credited for their contributions to a project. The Bawaka Collective credited Indigenous people within the Introduction of their book, *Songspirals: sharing women's wisdom of Country through Songlines*, which expresses the Collective's gratitude to the individuals and groups who were consulted during the writing process. The Introduction also specifies that the Copyright remains with the Collective members and the information in the book is not to be reproduced without prior consent being granted.

7. MAINTAINING INDIGENOUS CULTURES

In maintaining Indigenous cultures, importance should be placed on and respect given to the maintenance of Indigenous cultural practices. The Bawaka Collective ensured that copies of the literary works were made available to all of the individuals who were consulted and were mindful of keeping connections as new requests for the works will arise.

8. RECOGNITION AND PROTECTION

Australia's current Intellectual Property law and policy must be used to recognise and protect ICIP and Indigenous people should share in the benefits for their contribution to literary works and for the use of their cultural material. These principals have been followed by The Bawaka Collective through the utilisation of research agreement which is continually updated. The research agreement outlines that the Indigenous members of the Collective retain all rights to their ICIP and are financially compensated for their work.

CONCLUSION

This case study demonstrates the importance of partnerships between Indigenous and non-Indigenous people, and the benefits that genuine relationship building can have for research and collaborative projects. In the words of Laklak Burarrwanga,

"by working together we would help build long lasting relationships that could continue through the generations. The children, grandchildren and great grandchildren of the women both from Bawaka and the universities could grow up together, teach each other and all lead together."



This case study was developed by Hollie Hughes, a final year Law Student at the University of Newcastle. Hollie holds a Bachelor of Communication (News and Digital Media) and has a deep interest in the world of Intellectual Property Law, particularly ICIP and is very grateful to have been given the opportunity to work on this project. Hollie wishes to thank the Bawaka Collective for their time and without whom, this case study wouldn't have been possible.

CASE STUDY:

SPIRIT OF PLACE

INTRODUCTION

'Spirit of Place: Aboriginal Sites of the Hunter Region' is a photobook that records engravings, rock art, stone arrangements and the landscape from sites within Yengo and Wollemi National Park and surrounding areas. This region is connected to multiple First Nations Peoples – Wonnarua, Darkinjung, Awabakal and Dharug. However, all the sites depicted in the book are Wonnarua sites.

Spirit of Place is the result of an ongoing collaboration between Wonnarua Elder Warren Taggart and non-Indigenous photographers Carol Carter and Allan Chawner. Carol first began photographing engravings in the Hunter Region in the 1980s and worked closely with the newly established Awabakal Cooperative. Through this, Carol established and maintained relationships with the local Aboriginal community.

Carol and Allan wanted to use their skillset in photography to further record Aboriginal engravings but knew this had to be done under the approval and direction of knowledge holders in the local community. Using these existing networks, they were able to connect with Warren Taggart. Warren is a Wonnarua custodian of the Baiame Caves and knowledge holder with the cultural authority to share this knowledge. 2021 will be their seventh year of working together.

The idea for the book came after the region was affected by bushfires in 2018. The fires inhibited the team's ability to return to these sites and the book was created to compile their photographs for Warren. However, after posting the draft book to his Facebook page in early 2020 there was an extremely positive response to the book from members of the Aboriginal community who also wanted access to this resource.

Warren, Carol, and Allan then began further consultation with the community to ensure that this knowledge could be shared in a respectful and ethical way. *Spirit of Place* is intended to be an educational resource for schools, educational institutions, museums, libraries, and community. This project aims to increase awareness of the importance of the Hunter region as an area of significant Aboriginal heritage and preserve this knowledge for future generations.

1. RESPECT

Carol and Allan only photographed the sites under the direction of a custodian. They sought appropriate cultural authority through Warren and the project was based on a relationship of mutual respect between Indigenous and non-Indigenous parties.

2. SELF-DETERMINATION

Indigenous people have the right to self-determination in their cultural heritage and should be empowered in decision-making processes affecting their cultural heritage. Carol and Allan recognised that Indigenous peoples have control over their ICIP by seeking permission and guidance from Warren and consultation with community.

3. COLLABORATION, CONSULTATION AND CONSENT

In the creation of *Spirit of Place* the ongoing collaborative relationship within the team generated a positive and respectful environment that allowed for ongoing consultation and affirming of consent regarding the sharing of traditional knowledge and cultural expression.

The Covid-19 pandemic made it difficult to consult with the broader community, but the team used their existing networks to gain community perspectives. Warren Taggart circulated a draft book within the community in 2020 with Deidre Heitmeyer, local Aboriginal educator, and her son Michael Heitmeyer. Feedback was provided and changes were made to the book to reflect community perspectives.

Expert advice was sought from Professor John Maynard, who is a Worimi man, Chair of Aboriginal History at the University of Newcastle, and Director of Purai Global Indigenous History Centre. Feedback was also sought from Dr Raymond Kelly Senior, Gumbaynggir and Thangatti man and Deputy Head of the Wollotuka Institute at the University of Newcastle.

Dr Jilian Huntley is an archaeologist with the Australian Research Council who wrote an essay in *Spirit of Place* on the nature of rock art. She shared her essay and plans about the book with Wonnarua people she had an existing relationship with and sought their feedback.

4. INTERPRETATION AND AUTHENTICITY

Spirit of Place demonstrates that Indigenous people are the primary guardians and interpreters of their culture by centring Warren's perspective and knowledge throughout the book.

The book also explains why certain choices have been made in the portrayal of certain sites, for example several engravings are photographed at night with different lighting angles. This is to emphasise the engraving and this stylistic choice is explained in the introduction of the book by Warren Taggart.

5. CULTURAL INTEGRITY

Through this project and previous work, the team have collaborated with New South Wales Parks and Wildlife who have kept a data system of the location of certain sites. Since Warren is a knowledge holder, he has been given the authority to restrict who has access to this data. This gives him the capability to maintain the integrity of the ICIP collected.

It is a deliberate choice to not name most of the sites photographed or disclose their location. The team behind the project were aware through consultation of the risk increased site visitation can bring and they did not want to contribute to further harm against these sites. This is to maintain the privacy and integrity of these spaces.

6. SECRET, SACRED AND PRIVACY

Aspects of Indigenous cultures are not appropriate to share with the public and are bound to cultural practices and customary law relating to secret or sacred knowledges. Therefore, as *Spirit of Place* is intended to be a public document for the purposes of education there are no secret knowledges or sites contained within it.

7. ATTRIBUTION

Attribution is the act of properly acknowledging Indigenous peoples as the owners and custodians of their ICIP. Warren is the primary knowledge holder acknowledged in *Spirit of Place* alongside his Dad, Stan 'Tommy' Taggart. Throughout the book Warren regularly acknowledges specific stories passed to him by his father such as the story associated with the Greedy Lizard site.

8. BENEFIT SHARING

Spirit of Place is a project based in the spirit of generosity and sharing so it was agreed upon that the book would not be sold for profit. The money funding the publishing of the book was obtained through a grant from United Wambo Joint Venture-Glencore. The benefit here is the preservation of knowledge for the broader community and attribution of that knowledge to the Taggart family.

9. MAINTAINING INDIGENOUS CULTURE

As Indigenous cultures are not static cultures projects must maintain relationships and dialogues with holders of ICIP, to anticipate further consultations that ensure the work continuously reflects Aboriginal people and communities. *Spirit of Place* is an example of what a strong collaborative relationship can look like and the maintenance of this provides the capability for future dialogues.

10. RECOGNITION AND PROTECTION

This principle refers to practical use of non-Indigenous law, protocol, and policy to protect ICIP rights. In this project Warren is given sole copyright over the book whereas Carol and Allan are publishers. Using the Copyright Act 1968 in this way provides recognition and protection for Warren and his families ICIP.

CONCLUSION

The key lessons to take away from this case study is the importance of developing authentic relationships based on mutual trust and transparency. This provides the possibility for more effective collaboration that suits the needs of ICIP holders and their knowledge. Utilising existing networks grounds a relationship in a greater level of trust and connection, while also ensuring that you're more likely to speak to ICIP holders with the appropriate level of cultural authority.



This case study was developed by Phoebe McIlwraith, a proud Bundjalung and Worimi Saltwater woman and 4th year Law student at the University of Newcastle. This was possible through the generous time given by Carol Carter as the project representative for Spirit of Place and the permission given from Warren Taggart to have this project used as a case study.

CASE STUDY: **'HEALING...OUR WAY' AND 'SERVING OUR COUNTRY'**

PROJECTS BY PROFESSOR JOHN MAYNARD

John Maynard is a Worimi man and a University of Newcastle Emeritus Professor. He was chair of Indigenous Studies and Head of Wollotuka School of Aboriginal Studies at the University of Newcastle. He was involved in the University of Newcastle's projects 'Healing... Our Way' and 'Serving Our Country' and was a critical factor to their success.

'Healing...Our Way' involved the creation of a CD-ROM as a learning tool to University of Newcastle medicine students to be educated in the delivery of Aboriginal and Torres Strait Islander medical services. 'Serving Our Country' started as a family history project of the Worimi people for John Maynard, which turned into a comprehensive book revealing the buried history of Aboriginal and Torres Strait Islander people's involvement in the Australian Defence forces since the Boer War.

Both of these projects were important for raising awareness toward current and historical issues facing Aboriginal and Torres Strait Islander individuals. 'Healing...Our Way' educated medical students on the cultural implications of providing medical services to remote Aboriginal communities, while 'Serving Our Country' captured research from more than 200 Aboriginal and Torres Strait Islanders to reveal their ancestor's commitment to the Australian Defence forces during wartime that had been largely neglected by the Australian Government. Both projects encapsulated different ICIP materials and applied the principles as follows: -

1. RESPECT

Both projects involved researching and collecting interviews and cultural stories from different Aboriginal communities, from Port Stephens, all the way to Broome and Kalgoorlie. Through asking for access into different Aboriginal communities and spending time to gain the respect and trust of such communities, John Maynard was able to raise awareness and recognise the contribution of historical Aboriginal military servicemen in 'Serving Our Country'.

He further raised awareness in 'Healing...Our Way' about culturally sensitive medical practices by travelling through different remote Indigenous communities and seeking input from Elders of the tribes involved and recording Indigenous material.

2. SELF-DETERMINATION

Indigenous control was an integral component from the outset of both of these projects. 'Healing...Our Way' was steered by the Aboriginal Liaison Office, Faculty of Medical and Health Sciences and the Aboriginal Medical Service. Similarly, 'Serving Our Country' was directed by an Indigenous Liaison Officer and reported to an Aboriginal Advisory Committee.

Both of these projects involved regular discussions with local Aboriginal communities and formed ongoing relationships to ensure these projects empowered the wider community. Through interviews and collating research, these projects instilled pride in the communities they discussed, by recognising their participation and providing key research findings.

3. PRIOR INFORMED CONSENT AND CONSULTATION

Key community Elders were engaged with both of these projects and prior informed consent was gained from each Aboriginal individual interviewed. Prior consultation was sought to ensure consent was informed and community members were made aware of the considerations of contributing ICIP material.

To gain the necessary consent, John Maynard spent substantial time with each Aboriginal community to ensure a relationship of trust and connection was established. In particular, two weeks of time was spent with significant Elders at remote communities to ensure they had developed the necessary trust and relationship to be able to gain the appropriate consent to interview and access their cultural stories for 'Healing...Our Way'.

4. INTERPRETATION AND INTEGRITY

John Maynard consulted family members, community members and all Elders involved to ensure he had their permission before publishing any research findings or interview material. From the research and material created in 'Healing...Our Way' ongoing conferences were held to ensure all material was current and expressed the continued desired outcomes of the Aboriginal and Torres Strait Islanders community members interviewed throughout the project.

5. SECRECY AND CONFIDENTIALITY

For *'Serving Our Country'* archival material was used for the book and other sensitive material was collected and filmed for *'Healing...Our Way'*. In both these projects John Maynard ensured confidentiality was maintained and followed cultural protocols to ensure any sensitive material was not shared publicly and remained a private matter for the Aboriginal and Torres Strait Islander communities involved.

6. ATTRIBUTION

John Maynard ensured all contributions from Aboriginal communities alongside the location were acknowledged in his book *'Serving Our Country'*. An acknowledgements section was included within the book which recognised the contribution of all Indigenous members who provided cultural material. Certain groups and locations were given special mentions to further acknowledge their significant contribution to the projects.

The *'Healing...Our Way'* CD recognised and paid tribute to all the Aboriginal individuals and communities who shared Indigenous knowledge to contribute toward the educational resource.

7. SHARING BENEFITS

While Indigenous people who contributed knowledge and material in both these projects were not given royalties, they were able to access the research and outputs, and use them to benefit their communities.

8. MAINTAINING INDIGENOUS CULTURE

John Maynard's extensive historiography work through the *'Serving Our Country'* project preserves cultural ties by recognising and enshrining the lost stories of the military contributions of Aboriginal and Torres Strait Islander peoples from the Boer War and wartimes thereafter. Through creating a comprehensive timeline of historical information, John Maynard ensured Aboriginal wartime history was not erased but remains protected in his book for future Aboriginal and Torres Strait Islander generations to access.

'Healing...Our Way' aimed to maintain Indigenous culture by establishing an objective to redress under representation of Indigenous students in Australian medical schools. After the CD was produced as an educational resource, multiple conferences and discussion panels were held to ensure it reached its goal of increasing recruitment of Aboriginal students into medicine and maintaining cultural competencies in the education of non-Indigenous University of Newcastle medical students.

9. RECOGNITION AND PROTECTION

John Maynard's work in *'Healing...Our Way'* and *'Serving Our Country'* legally recognised its contributors by enacting legal agreements that protected individual Aboriginal contributions. Both works recognised the Aboriginal and Torres Strait Islander communities mentioned as the custodians of the land upon which the works were written and filmed. The book itself, *'Serving Our Country'* has copyright vested in John Maynard, which empowers him to disseminate and reproduce the material alongside his co-workers. The book properly references all forms of ICIP involved in its production.

CONCLUSION

This case study highlights the value of relationship building in projects involving ICIP. John Maynard spent considerable time with each Aboriginal community who shared their ICIP with him, to build a relationship of trust and connection. This supported a more rigorous process of free, prior and informed consent. It also meant Aboriginal people had proper input and control over the narrative presented in a ground-breaking work on a period of Aboriginal history.



This case study was developed by Brittany Broadhurst, a 5th year Law Student at the University of Newcastle, living on the unceded land of the Awabakal and Worimi peoples.

PART 6 - RESOURCES



TEMPLATE TRUE TRACKS® ICIP PROJECT PLAN

Principle	How we will put the principle in practice for the project?
Respect Recognition and respect of custodianship of Indigenous people over their land and water and the right to protect, maintain, control and benefit from their cultural heritage.	<ul style="list-style-type: none"> • How will the project respect cultural heritage?
Self determination Indigenous people have the right to self-determination in their cultural heritage and language words. Indigenous people should be encouraged and empowered in decision-making processes about projects that affect their cultural heritage.	<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
Consent & Consultation Free prior informed consent for use of cultural heritage should be sought from Indigenous people. This involves ongoing consultation, negotiation and informing custodians about the implications of consent.	<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?
Interpretation Indigenous people are responsible for maintaining their culture and the interpretation of their ICIP.	<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?
Cultural integrity Maintaining the integrity of cultural heritage is important to Indigenous people.	<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?
Secrecy and privacy Indigenous people have the right to keep secret their sacred and ritual knowledge in accordance with their customary laws. Privacy and confidentiality concerning aspects of Indigenous people's personal and cultural affairs should be respected.	<ul style="list-style-type: none"> • How will the project deal with restrictions and sensitivities on use of cultural heritage?
Attribution It is respectful to acknowledge Indigenous people as custodians of Indigenous cultural knowledge by giving them attribution.	<ul style="list-style-type: none"> • How will contributors be credited and acknowledged for their contributions?
Benefit sharing Indigenous people have the right to share in the benefits from the use of their culture, especially if it is being commercial applied, the economic benefits from use of their cultural heritage should also flow back to the source communities.	<ul style="list-style-type: none"> • What benefits do contributors receive for their contributions?
Maintaining Indigenous culture In maintaining Indigenous 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 Indigenous cultural practices such as cultural expressions, continued use of language by others.	<ul style="list-style-type: none"> • How will the project contribute to maintaining culture and rights to cultural heritage?
Recognition and protection 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.	<ul style="list-style-type: none"> • How will the project ensure that protection of cultural heritage is ongoing?

ICIP CLAUSE FOR CONTRACTS

1. SERVICES AGREEMENTS

- 1.a. For the purposes of this agreement, 'ICIP' refers to cultural heritage belonging to Australian Aboriginal and Torres Strait Islander ("Indigenous") peoples. Cultural heritage comprises all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory. The heritage of an Indigenous people is a living one, and includes:
 - 1.a.a. Literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages and designs);
 - 1.a.b. Scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and the phenotypes of flora and fauna);
 - 1.a.c. All items of movable cultural property;
 - 1.a.d. Human remains and tissues;
 - 1.a.e. Immovable cultural property (including sacred and historically significant sites and burial grounds); and
 - 1.a.f. Documentation of Indigenous peoples' heritage in archives, film, photographs, videotape or audiotape and all forms of media.
- 1.b. The parties acknowledge and agree that to the extent that ICIP is included, incorporated, referenced or captured in the **[Project/Work]**:
 - 1.b.a. Ownership of ICIP will remain with the Traditional Owners or Custodians of the ICIP;
 - 1.b.b. The parties will respect the rights of Indigenous people as stated in Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples;
 - 1.b.c. The parties will comply, and ensure that their employees, agents and contractors comply, with The University Indigenous Cultural and Intellectual Property Protocol, as updated or amended from time to time, in all uses of materials containing ICIP;
 - 1.b.d. The parties will obtain the required consent from the Traditional Owners or Custodians to use the ICIP in relation to the **[Project/Work]**; and
 - 1.b.e. The relevant Traditional Owners or Custodians must continue to be recognised as the owners of the ICIP, unless otherwise advised by the Traditional Owners or Custodians of the ICIP.
- 1.c. A copy of The University of Newcastle's Indigenous Cultural and Intellectual Property Protocol is supplied in the Appendix.

2. EMPLOYMENT OR VOLUNTEER AGREEMENTS

- 2.a. For the purposes of this agreement, 'ICIP' refers to cultural heritage belonging to Australian Aboriginal and Torres Strait Islander ("Indigenous") peoples. Cultural heritage comprises all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory. The heritage of an Indigenous people is a living one, and includes:
 - 2.a.a. Literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages and designs);
 - 2.a.b. Scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and the phenotypes of flora and fauna);
 - 2.a.c. All items of movable cultural property;
 - 2.a.d. Human remains and tissues;
 - 2.a.e. Immovable cultural property (including sacred and historically significant sites and burial grounds); and
 - 2.a.f. Documentation of Indigenous peoples' heritage in archives, film, photographs, videotape or audiotape and all forms of media.

- 2.b. The **[employee/volunteer]** acknowledges that Indigenous people have the right to control, own and maintain their ICIP in accordance with Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples.
- 2.c. The **[employee/volunteer]** warrants that they will comply with The University of Newcastle Indigenous Cultural and Intellectual Property Protocol in respecting Indigenous peoples' rights to control their ICIP and agrees that ownership of any ICIP will remain with the Traditional Owners or Custodians of the ICIP.
- 2.d. The **[employee/volunteer]** will ensure that in any use of ICIP as part of their employment, they have the requisite consent to use the ICIP in relation to the University's business activities and/or projects.
- 2.e. The **[employee/volunteer]** will attribute the relevant Traditional Owners or Custodians in any use of the ICIP in relation to the University business activities and/or projects unless advised otherwise by the Traditional Owners or Custodians of the ICIP.
- 2.f. This clause survives expiry or termination of the agreement.

3. NEXT-OF-KIN CLAUSE FOR CLEARANCE FORMS OR AGREEMENTS

- 3.a. The University of Newcastle respects Indigenous peoples and communities' cultural mourning protocols and agree that in the event of death or incapacitation of the Creator/Contributor/Knowledge Holder during the term of this agreement, The University will discuss the ongoing use of the Creator/Contributor/Knowledge Holder's name, any approved likeness and any approved biography in connection with Project/Program/Work with the **Creator/Contributor/Knowledge Holder's** next of kin as follows:
 - 3.a.a. Name: **[insert details]**
 - 3.a.b. Relation: **[insert details]**
 - 3.a.c. Address: **[insert details]**
 - 3.a.d. Contact number: **[insert details]**
 or such other representative of the **Creator/Contributor/Knowledge Holder** who will have the required legal capacity to perform the **Creator/Contributor/Knowledge Holder's** obligations under this agreement.

4. CULTURAL SENSITIVITY WARNING NOTICE

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

5. SAMPLE TRADITIONAL CUSTODIAN'S NOTICE

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

6. RELEVANT STANDARD-SETTING DOCUMENTS

The Protocol aims to set best practice by reference to the following standard-setting documents:

- 6.a. United Nations' Declaration on the Rights of Indigenous Peoples (2007),
- 6.b. the World Intellectual Property Organisation's Draft Provisions for the Protection of Traditional Cultural Expressions/Folklore (TCEs) and for the protection of Traditional Knowledge (TK) against misappropriation and misuse,
- 6.c. Australian Institute of Aboriginal and Torres Strait Islander Studies' Code of Ethics for Aboriginal and Torres Strait Islander Research (2020),
- 6.d. National Health and Medical Research Council, Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders (2018),
- 6.e. Convention on Biological Diversity: Article 8(j) and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (2010),
- 6.f. Museums Australia, Continuous Cultures, Ongoing Responsibilities: Principles and guidelines for Australian museums working with Aboriginal and Torres Strait Islander cultural heritage (2005), and
- 6.g. Aboriginal and Torres Strait Islander Library, Information and Resource Network's Protocols for Libraries, Archives and Information Services (2010).

7. PROTOCOLS AND REPORTS

- 7.a. Aboriginal and Torres Strait Islander Library, Information and Resource Network Inc, Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services 1995 (revised 2010), <http://atsilirn.aiatsis.gov.au/protocols.php>
- 7.b. Australia Council, **Protocols for Using First Nations Cultural and Intellectual Property in the Arts**.
- 7.c. 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
- 7.d. Australian Institute of Aboriginal and Torres Strait Islanders Studies, **Code of Ethics for Aboriginal and Torres Strait Islander Research** and **A Guide to applying The AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research** (2020).
- 7.e. Australian Institute of Aboriginal and Torres Strait Islanders Studies, **Ethical Publishing Guidelines**, (2015).
- 7.f. Department of Communications and the Arts **First Languages, Law & Governance Guide** (2019).
- 7.g. International Year of Indigenous Languages 2019 (IYIL) en.iyil2019.org/
- 7.h. Screen Australia, **Pathways and Protocols: A filmmaker's guide to working with Indigenous people, culture and concepts** (2009).

8. PROTECTION OF ICIP RIGHTS

- 8.a. Ninti One 2012, What is Free Prior Informed Consent?, http://www.nintione.com.au/resource/BP7_Free-Prior-Informed-Consent.pdf.
- 8.b. 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
- 8.c. Terri Janke, Our Culture, Our Future, Michael Frankel and Company, Sydney (1999) - <http://www.terrijanke.com.au/our-culture-our-future>
- 8.d. 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>.
- 8.e. 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
- 8.f. World Intellectual Property Organisation, Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions/Folklore – <http://www.wipo.int/tk/en/>

9. FURTHER RESOURCES

- 9.a. Australian Institute of Aboriginal and Torres Strait Islander Studies: www.aiatsis.gov.au
- 9.b. AIATSIS Map of Indigenous Australia <https://aiatsis.gov.au/explore/articles/aiatsis-map-indigenous-australia>
- 9.c. Batchelor Institute, CALL Collection - <http://callcollection.batchelor.edu.au/>

GUIDE TO CONSULTATION AND CONSENT

1. INTRODUCTION

The University of Newcastle Indigenous Cultural and Intellectual Property Protocol requires staff, students and collaborators to consult with and get free, prior, informed consent from Indigenous people and communities for use of their ICIP in projects or activities of any kind.

This Guide provides practical guidance on the suggested processes staff, students and collaborators should follow when they are required to consult and get consent.

It is intended to provide guidance on the key aspects of consultation and collaboration, such as identifying the right people to consult with, respectfully engaging with Indigenous people and communities, and satisfying the requirements of free, prior, informed consent.

However, every situation is unique, and it is important that University staff, students and collaborators are guided by Indigenous people at the University, within its networks, and in the community, to know that they are following a suitable consultation and consent process.

2. WHY CONSULT?

Consultation is a key element of obtaining the free, prior, informed consent of Indigenous peoples for use of their ICIP. Consultation is the process of engaging with Indigenous people and communities to explain proposed projects and activities, exchange information, and discuss key issues in relation to the project or activity – in particular, any use of ICIP by the University.

By undertaking consultation, University staff, students and collaborators can:

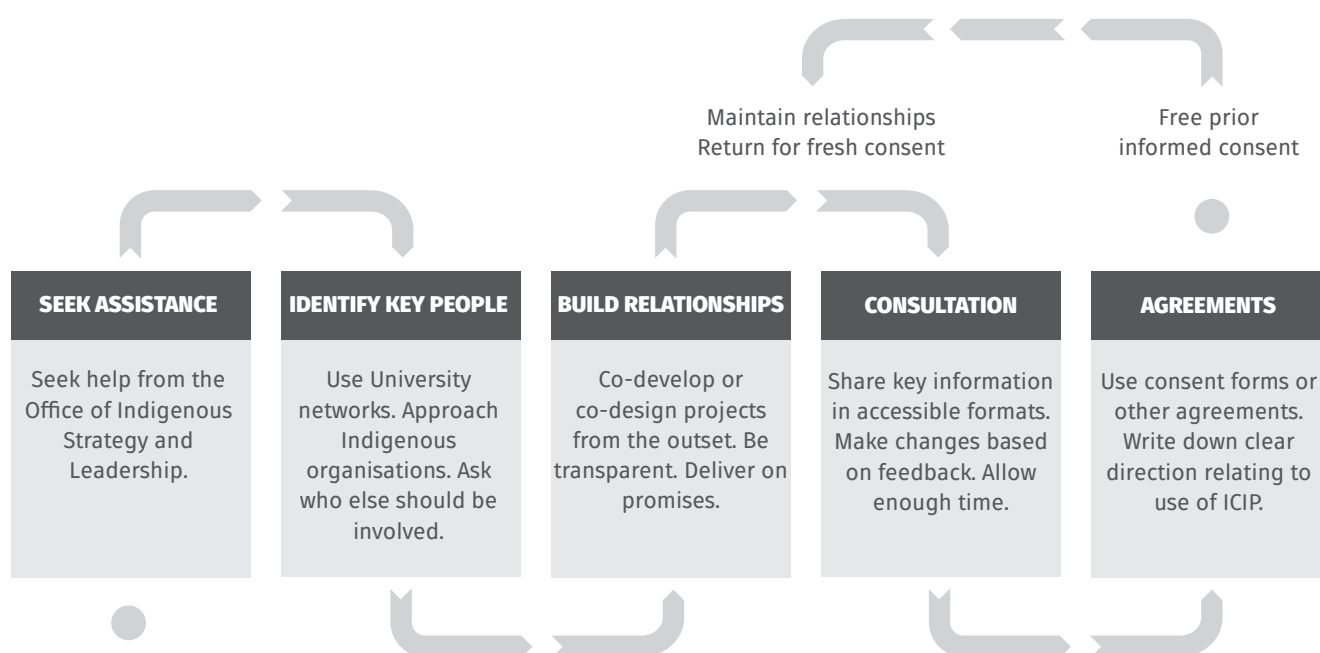
- understand the needs and priorities of the community in relation to the project and the ICIP;
- determine what requires consent and the correct people to provide that consent; and
- share important information about the proposed project or activity to make sure that the Indigenous people or communities giving consent are able to fully understand what they are consenting to.

Meaningful consultation starts at the outset of a project or activity. The University wishes to develop long-term, mutually beneficial relationships with Indigenous communities. Consultation can give effect to this. When consultation begins early, Indigenous people have more of a say in the focus and nature of a particular project. This allows the needs and priorities of Indigenous stakeholders to be incorporated in the planning stages of a project. Early engagement also prevents consultation from becoming transactional, or 'tick the box' at the final stages of a project.

Respectful and meaningful engagement and consultation with Indigenous stakeholders will ensure that the University is successful when it undertakes projects involving Indigenous people and their ICIP. It will also ensure that any use of ICIP by the University is done in a way that is respectful, authentic, prevents the ICIP from unauthorised use, and protects the ICIP for the future.

3. HOW TO CONSULT

The following diagram summarises the key steps for University staff, students and collaborators to follow when seeking free, prior, informed consent for use of ICIP:



Where to start at the University

The University supports Indigenous governance on Indigenous matters. Staff, student or collaborators who need assistance engaging with Indigenous communities can contact the following University advisor for assistance:

Office of Indigenous Strategy and Leadership

Pro Vice-Chancellor Indigenous Strategy and Leadership Nathan Towney

PVCIndigenous@newcastle.edu.au

The University advisors will generally provide information as to a suitable process to follow, or who to contact. Their recommendations can be utilised as a starting point but cannot be a substitute for wider consultation and collaboration.

4. IDENTIFY KEY PEOPLE: WHO SHOULD BE CONTACTED?

To determine who are the right Indigenous people to collaborate with, first identify and speak to relevant Indigenous parties who will be involved in or affected by the project or activity, starting with the source communities. This may include a range of people, communities, groups and organisations.

As the project or activity may affect a range of people or communities, it is important to consult widely to ensure that the project or activity gains the perspectives of the whole community it affects.

There are existing infrastructures and decision-making authorities that exist within Indigenous communities, although these may differ from place to place. These organisations can offer a starting point for identifying Indigenous stakeholders relevant to a project or activity and can advise on possible next steps.

The University can seek advice regarding who to consult and the extent of appropriate consultation from the following:

- Where known, traditional owners, cultural or language custodians or particular communities;
- Cultural advisors, including Indigenous individuals, communities and custodians with whom the University has ongoing relationships;
- Local Indigenous Advisory Groups;
- Indigenous organisations such as representative bodies of particular communities such as local, regional or state Aboriginal Land Councils, e.g.

Wanaruah Local Aboriginal Land Council

(02) 6543 1288

Awabakal Local Land Council

(02) 4965 4532

Mindaribba Local Land Council

(02) 4015 7000

Bahtabah Local Aboriginal Land Council

(02) 4971 4800

Worimi Local Land Council

(02) 4033 8800

Biraban Local Aboriginal Land Council

(02) 4950 4806

- Indigenous arts, language and cultural centres;
- The Australian Institute of Aboriginal and Torres Strait Islander Studies;
- State and national libraries, archives, art galleries and museums;
- Government bodies including Aboriginal Affairs NSW.

5. WHO SHOULD CONSENT BE SOUGHT FROM?

Identifying people in authority

A common issue experienced by those seeking to use ICIP is the process of identifying all relevant people in authority to consult with and obtain consent from.

It is important for University staff, students and collaborators to do preliminary research on who to contact and the relevant stakeholders for given projects and activities, working to identify who it is that consent to use ICIP must be obtained from.

This includes identifying processes, channels, structures and organisations that are available should there be initial uncertainty. Staff, students and collaborators should also follow the recommendations and advice of Indigenous organisations, advisors or connections who they may contact.

It is best practice to ask of every person or organisation contacted whether there are further people, communities or organisations that should be contacted in relation to the project or activity.

Consulting widely to get all perspectives:

Consulting with select members of the community does not necessarily mean the community as a whole approves of the project or activity. Consulting widely helps to gain the perspectives of the community as a whole.

The scale of the project or activity being undertaken will influence the extent of consultation with Indigenous parties. Generally, the larger the project, the greater and wider the consultation required.

What if there are multiple Indigenous groups?

Situations may arise, particularly in larger projects, where multiple Indigenous groups should be consulted and require consent.

Where there are multiple Indigenous groups with conflicting interests, it is often best to operate through established Indigenous governance structures such as land councils, Indigenous corporations or prescribed bodies corporate.

ICIP consultation plans can be useful for projects where ICIP consultation and consent required involves multiple Indigenous groups or stakeholders. ICIP consultation plans can assist the University to identify relevant stakeholders, maintaining documents and recording consultation responses.

What if the relevant Indigenous people cannot be found?

The University should seriously reconsider the use of ICIP material in situations where the relevant Indigenous stakeholders cannot be identified or contacted.

In these circumstances, project leaders should seek advice and input from as wide a variety of Indigenous stakeholders as reasonably necessary to inform themselves about the appropriateness of and any issues that may arise from use of Indigenous subject matter or ICIP, including:

- Advice from advisors, Indigenous consultants and Indigenous authorities;
- Support from those Indigenous stakeholders who have given their consent (if they have the authority to do so); and

- Letters of support from secondary Indigenous stakeholders, such as Aboriginal Land Councils or other authority structures.

6. HOW TO EFFECTIVELY AND RESPECTFULLY CONSULT WITH INDIGENOUS PEOPLE

During collaboration, consultation and consent processes, staff, students and collaborators need to make sure they provide relevant Indigenous stakeholders with all the relevant information concerning the project or activity as soon as it is known. This is crucial to making sure that Indigenous peoples have all the information to make informed choices about whether and how to participate in the project or activity.

TIP: THE PROJECT BRIEF

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

- The University working on the project or activity and any partner organisations or funding bodies;
- The objectives of the project or activity, expected outcomes and delivery;
- What level of collaboration, work or participation is required of Indigenous people and communities;
- The ‘why’ in terms of what mutual benefits or outcomes the project or activity will achieve for Indigenous communities and the University;
- For projects or activities involving ICIP:
 - what ICIP will be used and the nature of the use, including the intended aim and whether the ICIP will be made public, whether the ICIP will be incorporated into works (e.g. copyright works) and what the implications of this are (e.g. who will own the copyright);
 - The use of any resulting works, including the scale of the project or activity, the context of use, the intended audience, the medium of the project or activity and the intended outcome, where relevant;
 - Include details of all proposed uses where known, for example in education projects, published works, in marketing including online; and
 - Due diligence research information concerning the particular ICIP to be used as part of the project or activity.
- The project or activity budget;
- Any costs the relevant Indigenous people and communities are expected to incur;
- How the relevant Indigenous people and communities will be attributed for their contributions;
- What benefits (monetary and non-monetary) will the Indigenous people and communities receive from their time, contributions and the use of ICIP, if any.

Format of Information

Information can be provided through written details, email, letters, phone calls or face-to-face discussions and meetings, whether conducted individually or in groups.

It is crucial to provide information in a format that is easy to understand. Use plain English and as much verbal explanation as possible. Do not use jargon or technical terms. In face-to-face communication speak clearly and with enough volume.

Staff should consider whether there are language barriers which may impact upon the delivery of information to Indigenous people. If required, use an interpreter and pay them for their services.

Information should be provided in a clear enough manner that enables Indigenous stakeholders to understand the implications of the particular use of their ICIP.

Engaging expertise

If required, engage local Indigenous cultural consultants or professionals to facilitate communications between the University and the Indigenous persons or community. This also helps to support self-determination in projects and activities because it provides Indigenous people with the opportunity to direct the University in accordance with protocol.

Be flexible

Genuine consultation and consent processes can lead to changes to the project or activity brief, timeline and budget. The consultation process may be lengthy as the Indigenous community requires time to consider, consult further, and reach a consensus. Be sure to explain any budget and time restraints during the consultation process and be flexible to changes.

Allow enough time

Sufficient time must be given to Indigenous stakeholders to come to a decision about particular uses of their ICIP. Consultation can be a lengthy process, which may hold back other aspects of a project or activity. Time should be allowed in consultation timeframes to accommodate this, so that Indigenous peoples do not feel pressured into making a decision without proper consideration of the material, the project or activity and the outcomes.

9. APPROPRIATE CONDUCT WHEN CONSULTING IN COMMUNITY

Access to Land

Depending on the location of Indigenous communities, entry permits or other permissions may be required for access to Aboriginal lands. Prior to visiting communities on Aboriginal land in New South Wales, staff, students and collaborators must determine whether they require a travel permit or community permission in order to visit.

Behavioural Protocols

When establishing a first point of contact with an Indigenous community, it is important to seek guidance from consultants, advisors and Elders and ask if there are any cultural or behavioural protocols or customs to be aware of. In some cases this may not be necessary, but can provide an assurance for the University.

Behavioural protocols and customs when visiting Indigenous communities and communication with Indigenous peoples should be respected and upheld by University representatives. Consider the following points which provide a general guide to appropriate conduct when undertaking consultation:

- Use audio or verbal communication wherever possible.
- Listen well and wait for your turn to speak.
- Honour the importance of Elders. Be formal and respectful when interacting with older people and Elders.
- Where possible, communicate in the preferred language of the community. This may require an interpreter.
- Always seek permission before taking any photos or recordings.
- Be respectful of protocols around men's and women's business.
- Ask Indigenous people how they wish to be acknowledged or referred to.
- Do not use outdated or offensive terminology.

10. SUPPORTING MATERIALS TO ASSIST WITH CONSULTATION

Written Consent Forms

Where consent is received for the use of ICIP, it is preferable to use a written contract that clearly specifies and states all the terms agreed to. This includes the specific and approved use of cultural heritage or ICIP, copyright and ownership of the resulting work, benefit sharing arrangements, intended uses of the resulting work and any fees associated.

There are also other ways of recording consent, including audio or visual recordings of consent being given orally by the relevant Indigenous stakeholders or representatives, letters of support, or written file notes of the conversation with the relevant Indigenous stakeholders where consent was provided. Written file notes, however, should only be considered as a last resort and should be signed by the Indigenous stakeholders.

It is important that ICIP consent records are appropriately stored and maintained.

11. AFTER CONSULTATION AND CONSENT

Keep ICIP Consent Records After

Keep ICIP Consent Records After consent is obtained from Indigenous communities and stakeholders for the use of ICIP material in relation to a specific project or activity, it is important that the records of the ICIP consent are kept and maintained.

Records of ICIP consents in all forms should be kept securely and easily identifiable, and should be connected with the relevant ICIP materials and its associated project or activity, even after completion. Community-specific rules attached to the ICIP materials should also be included in the ICIP consent records, and ICIP consented to that contains Sacred or Secret Material should be labelled and stored with care.

Maintain the relationship

For the purpose of effective and meaningful engagement and collaboration, and in order to facilitate future consultations, it is necessary to maintain relationships with Indigenous peoples and communities who have played a role in the development and progress of a project or activity. This includes all stakeholders who have consented to the use of their ICIP materials in the creation of a project, activity or in research. Here, maintaining the trust of the community is crucial.

There are a few ways that the University can seek to maintain relationships with Indigenous communities. These include providing updates on the progress of the project or activity and the use of their ICIP, and working with the community or contractually agreeing to put in place a process that requires consent through each stage of the project or activity.

Long-term and lasting relationships with Indigenous stakeholders are essential for meaningful and reciprocal collaboration with Indigenous peoples. Maintaining the relationships can help The University with consulting for new ICIP uses or future projects or activities. Building and fostering genuine relationships with Indigenous communities may also provide the benefit of establishing new contacts, which may be helpful with future identification of stakeholders or where issues arise.

Re-consult for new uses

Consent obtained from Indigenous stakeholders for the use of any ICIP material in a specific project or activity or in a specific way does not extend to any additional or future uses of the material. Where the University wish to use the ICIP material for an additional or new use which is outside of the scope originally consented to, re-consult with the identified Indigenous stakeholders or representatives to ensure that free, prior and informed consent is given for each new use.

THE UNIVERSITY OF NEWCASTLE RESEARCH GUIDE

1. INTRODUCTION

The University of Newcastle promotes research with Indigenous Australians that is mutually beneficial, robust, transparent and respectful of Indigenous Cultural and Intellectual Property (ICIP).

This Guide supports the University's ICIP Protocol by providing staff, students, or University collaborators conducting research (Researchers) with practical guidance around the key issues to consider throughout the research life cycle. It should be read in conjunction with the University's ICIP Protocol and the Communication, Consultation and Consent Guide.

Who is the Guide relevant to?

This Research Guide is relevant to all Researchers who propose to undertake research projects or activities:

- 1.a. involving Indigenous people;
- 1.b. that deals with or incorporates ICIP, e.g. language, stories, songs, dance, artworks, cultural practices, ceremonies, sites, objects, artefacts, family histories, agricultural, scientific or ecological knowledge (of plants and animals, medicines, land management), including any ICIP held in collections;
- 1.c. on or involving existing datasets or archival material about Indigenous people or their ICIP; or
- 1.d. on or in or in relation to Indigenous lands or waters, including accessing country to take samples.

For more guidance as to what research should be the subject of this Guide, see the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research: **What is Aboriginal and Torres Strait Islander Research?**^[1]

The Guide can also be used to assist Researchers to think about key ICIP, intellectual property and data issues that may arise due to the nature of the research partnerships – for example the rights, under contract, that funding agencies or industry partners have to intellectual property generated as part of the research.

2. KEY CONSIDERATIONS FOR INDIGENOUS RESEARCH

It is key that all University research conducted on Indigenous land and with Indigenous people is conducted on the basis of free, prior informed consent of Indigenous partners, communities and participants.

Researchers have responsibilities to:

- 2.a. Consider why they wish to engage with Indigenous people and their ICIP for the research project, how the project is beneficial to the relevant Indigenous people or group, and whether the intended project and use is culturally appropriate;
- 2.b. Consult widely with Indigenous people and groups concerning the researcher's intentions and feasibility of the research project;
- 2.c. Obtain the free, prior and informed consent from those Indigenous people and groups they are engaging and working with;
- 2.d. Support Indigenous self-determination in research projects by developing the research proposal and project ethics protocol in collaboration and conjunction with the Indigenous people or groups the subject of or involved in the research;
- 2.e. Enter into appropriate research, collaboration and/or access and benefit sharing agreements with Indigenous people and groups;
- 2.f. Respect the importance of Indigenous data sovereignty;
- 2.g. Discuss intellectual property (including copyright) ownership of all research material to be developed upfront and decide how such material will be managed, used and stored, including in relation to review and consent requirements, further development post the research project and how to manage potential commercialisation;
- 2.h. Understand and comply with all legal, ethical and cultural requirements;

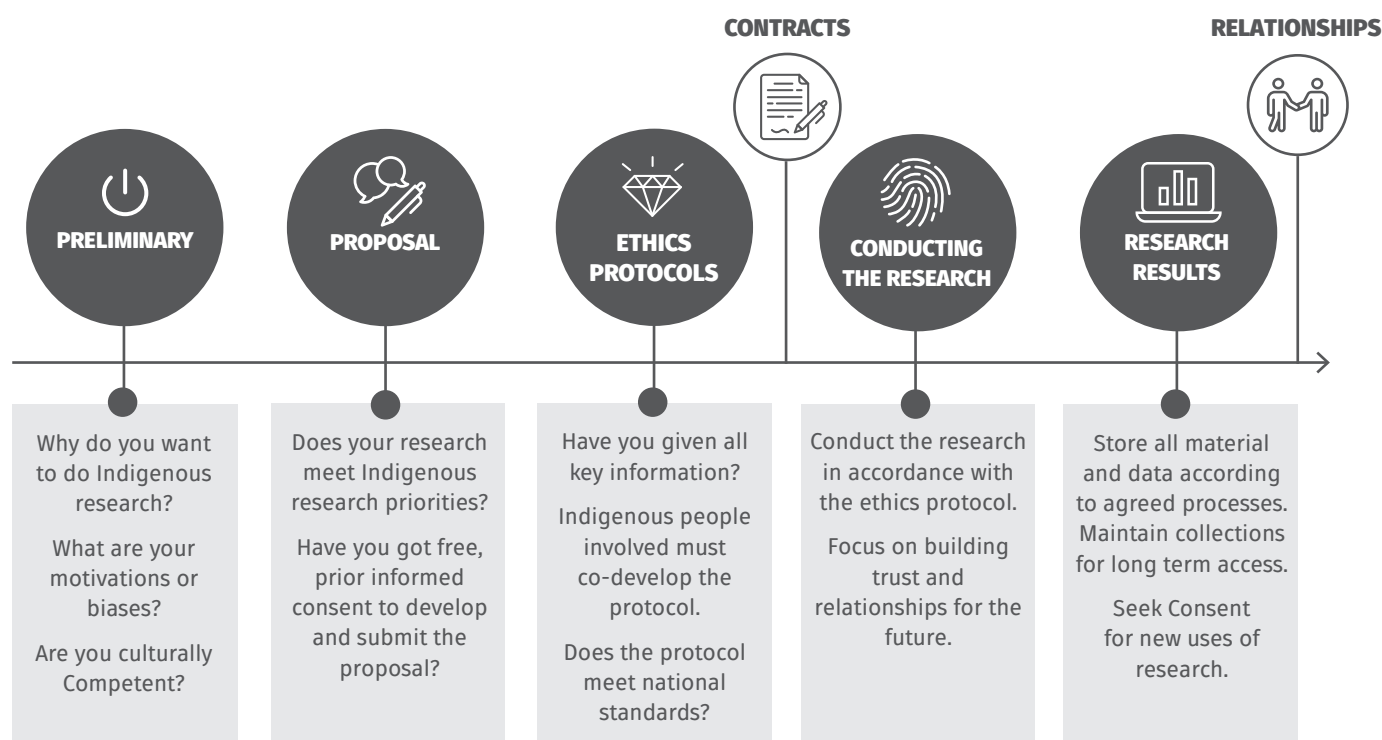
[1] AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research, 2020.
<https://aiatsis.gov.au/research/ethical-research/code-ethics>

- 2.i. Clearly and appropriately communicate all key information to Indigenous collaborators, including establishing clear timeframes for ongoing consultation, project development, conducting research, collation of findings and obtaining consent;
- 2.j. Allow time for feedback on development of the project, the research processes and procedures to be followed, the research results and any future publication of the results, including how results may be published, future development of findings and potential commercialisation opportunities relating to the findings;
- 2.k. Attribute Indigenous groups and participants for their ICIP and involvement in the project development, research and outcomes and outputs (in addition to moral rights attribution for Indigenous co-authors, co-inventors and copyright owners);
- 2.l. Adhere to confidentiality and privacy requirements;
- 2.m. Adhere to community protocols, including in relation to deceased persons and secret and sacred material;
- 2.n. Pay Indigenous participants, collaborators and advisors for their time according to appropriate industry rates, and share other non-monetary benefits such as research capacity building and knowledge transfer;
- 2.o. Establish benefit sharing (monetary and non-monetary) arrangements with the relevant Indigenous group for access to lands, waters, people and ICIP;
- 2.p. Establish appropriate dispute resolution processes agreed to with the relevant Indigenous people and groups;
- 2.q. Provide access to research results in as practical and appropriate manner and as advised by the relevant Indigenous people or group;
- 2.r. Discuss how the research materials and publications can be maintained in order to provide access to the research by future generations of Indigenous people;
- 2.s. Go back to Indigenous groups to obtain free, prior informed consent for new uses of the research results, including use in future publications and commercialisation opportunities.

3. KEY ISSUES FOR INDIGENOUS RESEARCH

Researchers can stop and think through ICIP issues at key junctures of the research project to ensure the project properly gives effect to ICIP rights.

The below diagram summarises the key stages in the course of a research project that Researchers must consider and implement mechanisms to protect ICIP rights:



Preliminary

- 3.a. Research that involves Indigenous people or groups, their lands, waters and ICIP requires the researcher to recognise and respect Indigenous rights to country and ICIP.
- 3.b. Indigenous people are the subject of large parts of academic research by non-Indigenous people. Researchers wishing to work with Indigenous people must

- 3.c. interrogate their own motivations for working with Indigenous people and their ICIP, and the perspectives or biases that they, as non-Indigenous Researchers, bring to the project.
- 3.d. Researchers need to do preliminary work to ensure:
- 3.e. They understand and have capacity to work within Indigenous people, knowledge systems and governance in order to manage key issues that may arise during the life of the project, in particular consultation and consent processes;
- 3.f. They can identify ICIP and whether ICIP will be collected as part of the research project and the implications of this;
- 3.g. They recognise the legal and ethical obligations required of them – under Australian laws, local protocols and the University's ICIP Protocol;
- 3.h. They understand the cultural obligations that may apply to working with Indigenous people and their ICIP.
- 3.i. Throughout the research process, the focus should be on building and maintaining relationships with Indigenous people and groups. This should be considered at all stages and consultation must occur regularly throughout the life of the project to ensure the project and what it is trying to achieve remains on track.

Develop Research Proposal

- 3.j. The best research involving Indigenous people is that which is developed by and with Indigenous people. The research proposal should address Indigenous research priorities, unless otherwise agreed to by Indigenous people or groups who will be involved.
- 3.k. Researchers must develop their proposal in collaboration with the Indigenous people or groups who will be involved or obtain free, prior informed consent to conduct the research in accordance with the proposal. This involves:
 - 3.k.a. Establishing the key people who will be involved, operating through existing University networks to establish relationships with Indigenous individuals or organisations
 - 3.k.b. Seeking advice on cultural issues that may apply to the research project.
- 3.l. Researchers must establish clear processes and timeframes around the research, including processes for consultation and obtaining consent for involvement and/or use of Indigenous people or groups and ICIP in the research project.
- 3.m. Researchers need to manage expectations around whether and when the research project will proceed, and be considerate of the time Indigenous people put in during the development stages. Indigenous people should be paid for their assistance and input where possible.

Develop Ethics Protocol

- 3.n. Given that ICIP is not recognised under a standalone Australian law, a research project's ethics protocol (Research Ethics Protocol) becomes a vital document for upholding Indigenous peoples' rights to maintain, control, protect and develop their ICIP.
- 3.o. Researchers must develop a Research Ethics Protocol in collaboration with the relevant Indigenous people or groups, and ensure that it covers key issues such as:
 - 3.o.a. What process must be followed to consult, obtain and record consent to the research and use of ICIP?
 - 3.o.b. What information about the research (including uses, ownership of materials, publication, access to results) will be provided to participants? What format must the information be in?
 - 3.o.c. What are the agreed timeframes for obtaining consultation and consent from the relevant Indigenous individuals and groups?
 - 3.o.d. How will the research be Indigenous-led? Who will be the key people? Are there other Indigenous people or groups that need to be consulted?
 - 3.o.e. What are the local cultural restrictions on access to and use of ICIP or conduct of research? How will these be upheld?
 - 3.o.f. Who will own the intellectual property in research materials? What agreements are required to give effect to this?
 - 3.o.g. How will Indigenous data sovereignty be respected? Is it clear where and how data will be collected, stored, and managed long-term? Who will have access to data?
 - 3.o.h. What rights will Indigenous participants have to comment on the research findings before they are published? How will this be achieved by the Indigenous participants? What are the timeframes for review?
 - 3.o.i. What rights will Indigenous participants have to comment on how the research findings are to be used?

- 3.p. How will Indigenous people and groups be attributed in the research, including:
 - 3.p.a. Participants
 - 3.p.b. Collaborators and advisors
 - 3.p.c. Indigenous groups and communities
 - 3.p.d. Owners and custodians of ICIP material used in the research?
 - 3.p.e. What benefits (monetary and non-monetary) will Indigenous collaborators and Indigenous groups or communities receive for their development and involvement in the research?
 - 3.p.f. How will the research support Indigenous research capacity building, employment and skills and knowledge transfer?
 - 3.p.g. How will disputes or complaints will be resolved?
 - 3.p.h. How will research data and materials, including publication of research results, be stored? How will Indigenous people be able to access this material in the future?
 - 3.p.i. How will free, prior informed consent be obtained for future use of the research, including commercial opportunities?
- 3.q. At a minimum, Ethics Protocols must be compliant with the University's ICIP Protocol and national best practice protocols outlined in the University's ICIP Protocol, for example the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research.

Contract Negotiation

- 3.r. Contracts are required to give legal effect to the agreed terms of the research that are decided upon in the research Ethics Protocol.
- 3.s. The University standard contracts need to be amended to uphold rights to ICIP, in particular:
 - 3.s.a. Intellectual property clauses to give effect to Indigenous ownership of research materials;
 - 3.s.b. Acknowledgement and protection of ICIP rights;
 - 3.s.c. Data sovereignty and use of ICIP with consent; and
 - 3.s.d. Recognition of the binding effect of the University's ICIP Protocol.
- 3.t. The researcher needs to consider whether Access and Benefit Sharing Agreements are required under law (e.g. access to genetic resources and taking samples from Indigenous lands or waters).
- 3.u. The Researcher will also need to develop appropriate ICIP compliant-template agreements to be used as part of the research e.g. ICIP Community Consent Forms; ICIP Contributor Consent Forms.
- 3.v. Researchers need to understand and disclose information of any contractual or other rights, interests, obligations or restrictions that relate to or impact upon intellectual property rights that is created as part of a research project. This includes any rights, interests, obligations or restrictions imposed upon or granted by the researcher, the University, research institution or funding bodies.

Conducting the Research

- 3.w. All research must be conducted in accordance with the project Ethics Protocol, the law, the University's ICIP Protocol, national best practice guidelines, the **United Nations Declaration on the Rights of Indigenous Peoples** and cultural protocols identified by the Indigenous participants.
- 3.x. Researchers must conduct themselves appropriately when in community and abide by laws (e.g. dry communities), local protocols and customs and be guided by local Indigenous advisors and consultants.
- 3.y. Researchers must build relationships throughout the research project by being respectful, establishing clear channels for communication and providing regular updates on the project.
- 3.z. Researchers must follow all processes and requirements around collection of ICIP and obtaining free, prior informed consent for use.

Storing, Writing and Sharing Research

- 3.aa. Research that involves Indigenous people or groups and their ICIP must be representative of and reflect Indigenous perspectives. This involves:
 - 3.aa.a. Respecting Indigenous peoples rights to maintain, control, protect and develop their ICIP in accordance with the United Nations Declaration of the Rights of Indigenous Peoples;
 - 3.aa.b. Working with Indigenous people and groups to develop the research project (as discussed above);
 - 3.aa.c. Ongoing consultation and collaboration throughout the life of the project;
 - 3.aa.d. Transparency of research practices and project results;
 - 3.aa.e. Providing Indigenous people with the opportunity to review the research before it is finalised or

- published (including later publications involving the research material) in order to give feedback;
- 3.aa.f. Allowing for written comment from Indigenous people where findings are disputed or interpreted differently;
- 3.aa.g. Understanding that Indigenous people may withdraw their consent at any time.
- 3.ab. Researchers must seek advice from relevant Indigenous owners and custodians, knowledge holders, cultural advisors, members of the community and other stakeholders on the proper interpretation of ICIP and its authentic use in the collection of research and the publication of research - including use of Indigenous languages; ensuring use of place names are correct and respecting confidentiality and privacy, secret and sacred material, and mourning protocols;
- 3.ac. Indigenous people need to be able to access research results and all ICIP collected as part of the research project, both now and in the future. The researcher has obligations to maintain clear records and facilitate access to research materials by Indigenous participants. This may include discussing ways to provide the research material to the relevant Indigenous people or groups in a practical and useful way.
- 3.ad. Clear rules around access to and use of the research results by Researchers and the University must be negotiated and agreed to with Indigenous people or groups. There may be specific restrictions on particular ICIP material collected, and there may be concerns about methods of publication, misuse and future commercialisation.

Maintain Relationships for Future Research

- 3.ae. Relationships with Indigenous people and communities that are built upon throughout the life of a research project should be maintained into the future.
- 3.af. Consider how the research results may be applied in new ways, built upon, or commercialised, but according to Indigenous research priorities and with free, prior informed consent of Indigenous participants and ensuring Indigenous data sovereignty.
- 3.ag. New or future benefits must be shared for new uses of ICIP in research materials.

4. RESEARCH CHECKLIST

Preliminary

- ☐ Consider whether the research is necessary and empowering:
 - ☐ Why is the research being undertaken and why do I want to focus on Indigenous subject matter?
 - ☐ Does my intended research fit the research priorities of the relevant Indigenous community?
 - ☐ How will the research affect Indigenous people and communities – is it necessary? For whom? Is it beneficial for Indigenous people? How?
 - ☐ What are the perspectives and biases that I bring to the research? What gaps are there in my understanding of Indigenous knowledge systems?
- ☐ Read the University's ICIP Protocol to gain a general understanding of Indigenous Cultural and Intellectual Property and consider the issues involved
- ☐ Read relevant international guidelines, e.g. the **United Nations Declaration on the Rights of Indigenous Peoples**, United Nations Convention on Biological Diversity and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization
- ☐ Read any national, local or regional research protocols as relevant, e.g. the AIATSIS **Code of Ethics for Aboriginal and Torres Strait Islander Research** and **A Guide to applying The AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research**
- ☐ Consider what legal and ethical obligations will need to be met if the research proceeds, including:
 - ☐ What are my obligations under Federal and State laws dealing with Indigenous heritage, native title and biodiversity?
 - ☐ How will the research recognise Indigenous knowledge, ICIP, rights to country, and cultural and custodial obligations?
 - ☐ Do I understand what free, prior informed consent means and the processes I will need to follow?

Developing the Research Proposal

- ☐ Develop the research proposal in collaboration with Indigenous people or organisations who will be collaborators in the research
- ☐ Follow free, prior informed consent processes to obtain approval for the research as proposed

- ☐ Be prepared for the possibility that approval will be denied or conditional on substantial changes to the research proposal
- ☐ Be clear on how the research will address specific Indigenous research priorities
- ☐ Seek advice on the cultural issues that may need to be addressed in the research from Indigenous collaborators, advisors or Indigenous people that the University has existing relationships with
- ☐ Clearly explain the risks and benefits, and manage expectations around whether the research will proceed
- ☐ Establish clear timeframes around consultation and obtaining community consent for research

Developing an Ethics Protocol

- ☐ Jointly develop the Human Research Ethics Protocol and consider the following issues as part of development of the Protocol:
 - ☐ Key information to be provided to participants and the format of the information
 - ☐ How consent for research or ICIP will be obtained and strategies for ongoing communication and consultation
 - ☐ Agreed timeframes for consultation and consent
 - ☐ How consent will be recorded
 - ☐ How the research will be Indigenous led – name the key people and their role
 - ☐ Local cultural and/or legal restrictions or protocols surrounding use of ICIP, working with the community or on country
 - ☐ Intellectual property ownership and data sovereignty
 - ☐ Review and feedback on research findings before publication and agreed timeframes
 - ☐ Approval for publication methods and future development and commercial opportunities
 - ☐ Attribution of Indigenous research participants, key collaborators and advisors and group attribution of the owners and custodians of ICIP material used in the research
 - ☐ Benefit sharing – monetary and non-monetary
- ☐ Dispute resolution
- ☐ Storage and management of research materials
- ☐ Agreed rules for future access to and uses of research materials by the University, project partners and Indigenous people

Contract Negotiation

- ☐ Understand obligations to the University and funding bodies under the research Funding Agreement
- ☐ Enter into a Research Agreement and/or Access and Benefit Sharing Agreement with key Indigenous organisations and other project partners.
- ☐ Consider what standard the University agreements and clauses require amendment to give effect to the Research Ethics Protocol:
 - ☐ Does the contract clarify the research materials being created and who owns the IP rights in the material?
 - ☐ Does the contract clarify that ICIP rights are retained by the Indigenous custodians?
 - ☐ What consultation, approval or consent is required for use of IP and ICIP?
 - ☐ What about future or commercial uses?
 - ☐ How will the research Ethics Protocol, the University's ICIP Protocol or other protocols be incorporated as a binding part of the Research Agreement?
- ☐ Develop project agreements or other forms for the purpose of recording consent from Indigenous people
 - ☐ Who owns IP?
 - ☐ What ICIP is incorporated?
 - ☐ What are the agreed uses?
 - ☐ Does the agreement or form identify a next-of-kin for the relevant Indigenous person, knowledge holder or custodian and mourning protocols?

Conducting the Research

- ☐ Follow the Research Ethics Protocol and the directions of local advisors and guides at all times
- ☐ Obtain necessary permissions to access country
- ☐ Where the research involves collection and use of ICIP, consider:

Consultation and Consent

- ☐ Have I identified the relevant Indigenous people, communities and/or organisations to consult and collaborate with?
- ☐ Did I make sure that consent comes from the right persons or faction(s) within a community?
- ☐ Where more than one Indigenous group is involved, did I seek consent from every group?
- ☐ Did I ask the relevant Indigenous people whether they require an interpreter? If so, did I ask them to identify a suitable person to translate?
- ☐ Did I engage the services of an interpreter? If so, did I pay them for their services?

Cultural Protocols and Restrictions

- ☐ Is the subject matter or material culturally sensitive? Is it sacred or secret?
- ☐ Have I discussed any restrictions on use of subject matter or material with the relevant Indigenous stakeholders who might be affected by the disclosure?
- ☐ Does the research contain any reference to personal or confidential information about individual Indigenous people?
- ☐ Does the research feature any deceased Indigenous person? If so, did I obtain clearance from their family/community prior to use?
- ☐ Keep clear records of consents to use ICIP and payments made to partners or participants

Storing, Writing and Sharing Research

- ☐ How will the research materials be stored? How will they be made available to Indigenous people?
- ☐ Who from the University can access the research materials? What are the rules?
- ☐ Did I establish that any ICIP in the research (including language, place names) is used in the correct cultural and historical context?
- ☐ Have the suggestions of and feedback from relevant Indigenous stakeholders been considered and incorporated after following the agreed process?
- ☐ Have I complied with the obligations to attribute Indigenous people in accordance with the Research Ethics Protocol?
- ☐ If the research materials are to be held digitally or online, how will the digital collection be managed and maintained? What will this involve and whose responsibility is it?

Maintain Relationship for Future Research

- ☐ Have I considered ways to continue or apply the research according to Indigenous research priorities?
- ☐ Have I considered whether ongoing uses of the research materials are within the scope of the permission granted?
 - ☐ If not, have I re-negotiated, and received the free, prior written consent from the relevant Indigenous collaborator, participant, knowledge holder/custodian or group for new uses of the ICIP?
- ☐ What new or additional benefits are being shared for new uses of the ICIP?

DIGITISATION AND DATA MANAGEMENT

1. INTRODUCTION

The University of Newcastle promotes the use of digital technologies as a means to provide Indigenous people with increased access to their Indigenous Cultural and Intellectual Property (ICIP).

The University acknowledges the need to safeguard Indigenous peoples' rights to maintain, control, protect and develop their ICIP in all of its digitisation projects and activities. This includes recognition and respect for Indigenous rights to information and data that is about them and their ICIP.

This Guide supports the University's ICIP Protocol by providing practical guidance around the key issues to consider throughout each stage of a project involving digitisation of ICIP or creation of digital material containing ICIP. It should be read in conjunction with the University's ICIP Protocol, the Communication, Consultation and Consent Guide, and where digital collections are to be created as part of research projects, the University's Research Guide.

This Guide applies to all University projects that involve the digitisation of Indigenous Cultural and Intellectual Property (ICIP), or the collection or creation of data relating to Indigenous people or their ICIP. Staff, students, and collaborators will be expected to consider and comply with the processes outlined in this Guide.

1.a. What is digitisation and data and how is it relevant to the University?

Digitisation is the process of converting material or information into a digital format. Digitisation may involve turning a physical object or item into a digital format, or updating the format of an existing digital item in order to preserve and maintain it.

Digitisation activities of the University that relate to Indigenous Cultural and Intellectual Property include the digitisation of material such as:

- Artistic works, crafts and jewellery;
- Languages;
- Cultural objects (ceramics, weapons, totems, tools, textiles, ceremonial dress, musical instruments, artefacts);
- Information that describes or documents Indigenous peoples' heritage – reports, articles and written notes, books, photographs, films, sound recordings and broadcasts;
- Records and other archival material.

Data management is relevant to digitisation projects, as corresponding data (including metadata) is created when an object or item is converted into a digital form, and when each digital item is copied, uploaded or saved.

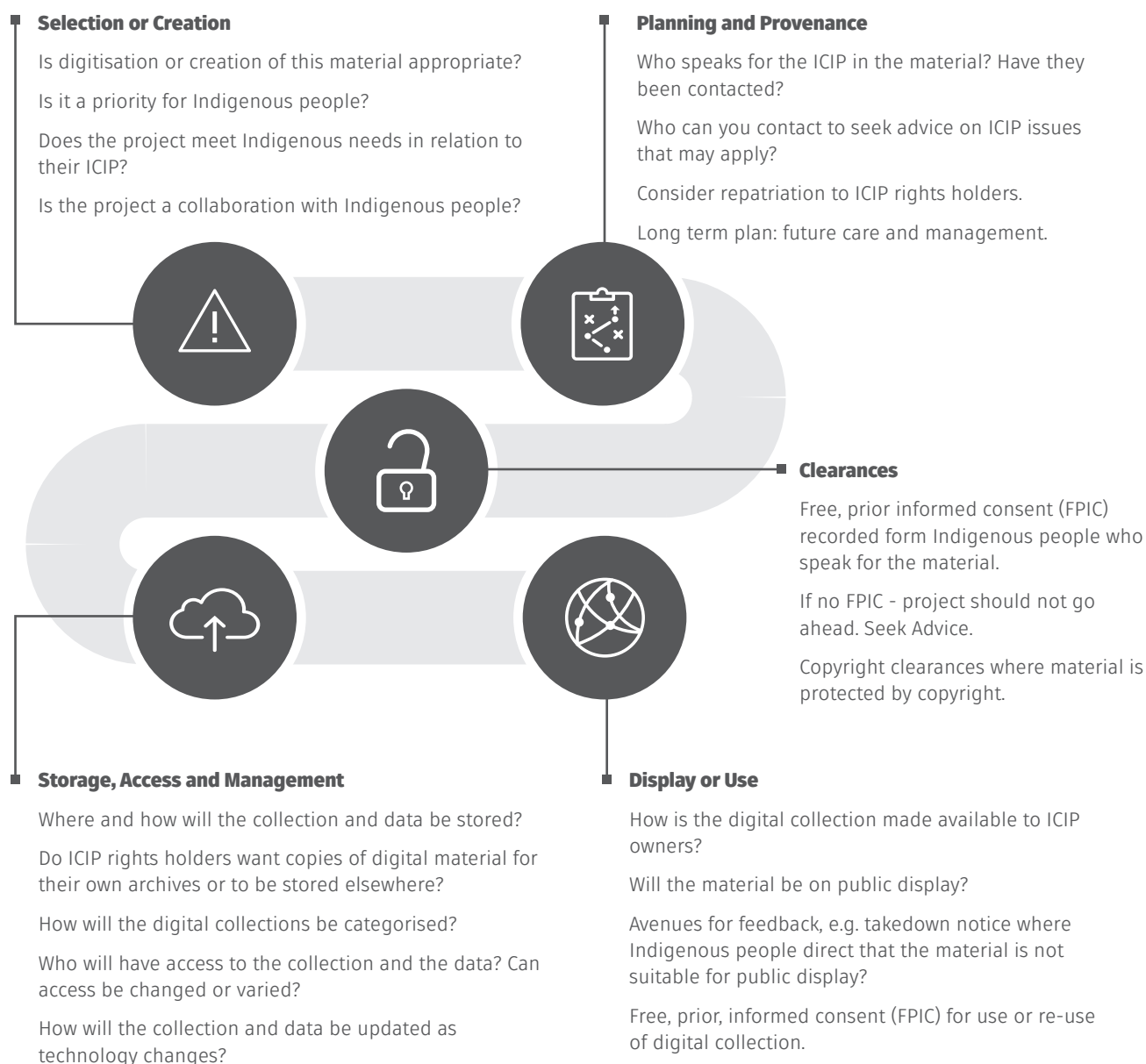
Increasingly, material is produced using digital means and exists in a digital form from creation. Data management and Indigenous Data Sovereignty are key to projects where new information, material and corresponding data is created that contains or relates to ICIP. This might include any data about Indigenous people, communities, lands and resources, knowledge and cultural expression that is collected as part of or is incorporated in a research project or activity. Indigenous Data Sovereignty is the right of Indigenous peoples to govern the collection, ownership and application of data about them or their ICIP.

As with physical collections, all digital collections and datasets need to be cared for to ensure they continue to be accessible and usable. This could involve converting the material to new formats, updating software or hardware, and maintaining proper records relating to the material. Digital collections need to be categorised and described in ways that make it easy to manage into the future. Finally, digital collections and data require long term management in relation to storage and ongoing care.

It is not appropriate to digitise ICIP without the permission of the traditional owners and custodians of that ICIP, and reasonable efforts must be made to comply with the best practice obligations outlined in this Guide and the University's ICIP Protocol in any digitisation project.

2. KEY CONSIDERATIONS FOR DIGITISATION PROJECTS

The following graphic provides a summary of the key ICIP considerations that apply across the life of a University of Newcastle digitisation project:



2.a. Selection of Materials

Indigenous Data Sovereignty should be respected in line with Article 31 of the **United Nations Declaration on the Rights of Indigenous Peoples**.

To give effect to these rights, digitisation of ICIP material must be conducted on the basis of free, prior informed consent of the Indigenous people who speak for the material. The processes for obtaining appropriate consent in digitisation projects is covered in detail below, however, this consideration is important from the outset – firstly in the selection of material to be digitised. Projects that involve the creation of new digital material or data require similar consideration.

When selecting material to be digitised, it is important to understand the wishes of the relevant Indigenous owners and custodians. Is the digitisation necessary and a priority for Indigenous people? Do they know that digitisation of the material is being proposed? Is the digitisation of the material appropriate? Best practice projects are undertaken in collaboration and with the guidance of owners and custodians of the ICIP in the material to be digitised.

Where the owners and custodians of the ICIP in the collection are not known (e.g. legacy materials, orphan works, old photographs) digitisation projects should only be undertaken to promote and support increased access to these collection items, in order to identify the relevant owners and custodians. In these circumstances, the University must collaborate with Indigenous people to undertake discovery and repatriation projects.

Staff, students and collaborators should consider whether they require further education or guidance, for example from the **Aboriginal and Torres Strait Islander Data Archive Protocols**.

2.b. Planning and Provenance

The planning stages of a project need to identify both the Indigenous people whose ICIP has been identified for a digital collection or digitisation (so as to obtain free, prior informed consent) and the provenance of the material to be digitised.

The planning stages will help to identify the intellectual property, ICIP and ownership issues that will need to be managed throughout digitisation or creation of digital material and data, as well as in relation to the long-term care of the digitised material or dataset. These issues may relate to:

- 2.b.a. who speaks for the ICIP in the material, or the data collected,
- 2.b.b. whether more than one family or group can speak for the ICIP,
- 2.b.c. whether there are any disputes over the origin or ownership of the ICIP,
- 2.b.d. whether it is culturally appropriate to digitise or create the digital material or data,
- 2.b.e. whether the material should instead be repatriated to the relevant traditional owners and custodians,
- 2.b.f. whether there are restrictions on access and use of the material, both as it currently exists or once digitised, and
- 2.b.g. whether copies of the material will be available to the traditional owners and custodians, and associated storage and archive considerations.

Firstly, identify the Indigenous owners or custodians of the material. They must be contacted to give their free, prior informed consent before the material is digitised. They can also assist with providing advice on the cultural issues that may need to be addressed during the digitisation project – including around access, display and care of the collection.

If the Indigenous owners and custodians of the ICIP are not known, strongly reconsider selection of material for digitisation. Contact the University's Indigenous advisors to seek advice and support for the project (see the University's ICIP Protocol for further information and contact details).

The planning stages of the project must also establish a long-term plan for management of the digital collection and/or data. The most important consideration is where the digitised material or data will be stored.

- 2.b.h. Are there existing University databases or repositories?
- 2.b.i. Consider whether it is appropriate to store digitised materials on the University's file storage systems.
- 2.b.j. What other archives or digital keeping places are available to house the digital collections?
- 2.b.k. What is the preference of the Indigenous owners and custodians?

It is also important to consider who will have access to the material once it is stored. This must be discussed in consultation with Indigenous owners and custodians to ensure sensitivities around restricted Indigenous knowledge are implemented.

Like physical collections, digital collections must also be maintained, including by being updated to new formats when necessary. Sustainable choices of formats and preservation strategies should be considered in order to promote long-term access of digital collections by Indigenous people, but must be balanced with cultural considerations. Before undertaking digitisation projects, consider who will have the ongoing responsibility to:

- 2.b.l. Make sure the conditions on access and use are maintained and respected;
- 2.b.m. Update the digital collection as new technologies emerge;
- 2.b.n. Manage requests for access and use to the digital collection or data; and
- 2.b.o. Go back to Indigenous people for permission to use digital collections in new ways.

Finally, it is best practice to establish provenance of the material to be digitised. This includes conducting due diligence checks to establish that there is evidence of ownership of both intellectual property (IP) and the legal title to the physical item. Checks can be undertaken to identify whether there are any disputes over the origin, authenticity and ownership of the item. It may be necessary to consult with organisations or previous owners in addition to the relevant Indigenous people who speak for the material.

Issues identified in the planning stages need to be negotiated and agreed upon as part of obtaining free, prior informed consent from the relevant Indigenous owners and custodians of the ICIP to be digitised.

2.c. Legal and Ethical Clearances

The outcome of free, prior informed consent processes is the written (or otherwise recorded) consent to digitise or create the relevant material and a clear understanding of the processes that must be followed: throughout the life of the project and for the long-term care of the digital collection and associated data (including metadata).

Refer to the University's Communication, Consultation and Consent Guide for more detail on how to obtain free, prior informed consent, but consider the following issues:

- 2.c.a. What ICIP is incorporated in the material?
- 2.c.b. Have you identified the relevant Indigenous people, communities and/or organisations to consult and collaborate with?
- 2.c.c. Have you made sure that consent comes from the right persons, families or groups within a community?
- 2.c.d. Where more than one Indigenous group is involved, did you seek consent from every group?

Once all the relevant stakeholders have been identified, key issues that must be considered and negotiated include:

- 2.c.e. Who will own the IP in the digital material created?
- 2.c.f. Where existing material (e.g. photographs or other digital formats) is not protected by copyright, who will own the IP in the digitised version?
- 2.c.g. What are the cultural protocols or restrictions on access to and use of ICIP in the material? How can these be upheld throughout the digitisation process?
- 2.c.h. Does the contract or consent form clarify that ICIP rights are retained by the Indigenous owners and custodians?
- 2.c.i. What are the agreed uses? How will future or commercial uses be negotiated?
- 2.c.j. Once digitised, are the materials suitable for public display? What are the agreed rules around display?
- 2.c.k. How will the Indigenous owners and custodians benefit from the digitisation of their ICIP?
- 2.c.l. How will the Indigenous owners and custodians be attributed in relation to their ICIP when digitised?
- 2.c.m. Does the contract or consent form identify a next-of-kin for the relevant Indigenous owner or custodian authorising digitisation, access and use of the ICIP and mourning protocols?
- 2.c.n. Does the material to be digitised feature any deceased Indigenous persons? If so, obtain clearance from their family/community prior to use.

Consent may be given by an organisation or group and cover the digitisation, storage, access and use of a wide range of material – for example, a collection of items. However, it may also be necessary to obtain individual consents (e.g. where the item or object relates to an individual person or a family). Discuss how and from whom written consent needs to be obtained, and establish clear timeframes around obtaining community consent for the project.

In addition to ICIP consents, legal clearances may also be required under Australian law e.g. where existing material is protected by copyright, a licence from the copyright owner to reproduce the material in digital form (and allow others to access and use the material) will be required. Consider the University's ICIP and Intellectual Property Guide for more information.

2.d. Preparing the Material for Digitisation

There are opportunities for Indigenous people to be involved in preparing the materials to be digitised. In this way, any issues or restrictions relating to the material that are identified as part of the consultation and consent processes above can be managed in accordance with cultural protocols.

Consider:

- 2.d.a. Are there any restrictions around who has the authority to view the item or object to be digitised?
- 2.d.b. Is the material culturally sensitive, sacred or secret?
- 2.d.c. Are there gendered restrictions around who can view the material?
- 2.d.d. In addition, consider whether the material relates to confidential or personal information about Indigenous individuals, and privacy obligations under Australian law.

There may be a person or persons within the Indigenous communities you are working with who are the most appropriate people to view and handle the material to be digitised. By identifying and creating opportunities for Indigenous people in the preparation of the materials to be digitised, the University will open up its collections to Indigenous people and create shared benefits in projects containing ICIP, for example access and benefit sharing, and skills and knowledge transfer.

2.e. Storage, Access and Collections Management

Digital collections and data that contains ICIP needs to be stored and maintained in a way that upholds Indigenous peoples' rights to their ICIP. This means categorising and storing digital collections and data in a manner consistent with and respectful to Indigenous peoples' cultural protocols, particularly with respect to secret and sacred material, and their personal legal rights to confidentiality and privacy.

Categorisation

In the past, the collections of ICIP material held by collecting institutions, libraries and archives have been categorised according to the perspectives and understandings of non-Indigenous people. These classifications have made it more difficult for Indigenous people to access collections, as information and descriptions may be inaccurate, incomplete or do not align with Indigenous ways of knowing. Further, over time classifications become outdated.

Best practice categorisation and classification of digital collections requires collaboration with Indigenous people. There may be opportunities for Indigenous people to be involved in categorising digitised materials that relate to their group or community. When ICIP material is categorised or labelled according to Indigenous perspectives and knowledge (e.g. language and cultural identifiers), Indigenous peoples' right to access digital collections, both now and in the future, and Indigenous digital sovereignty is supported and respected.

Access

Another key consideration for digital collections and data include how to uphold varied levels of access to ICIP material according to Indigenous cultural protocols. For example, this could be to restrict access to secret, sacred or sensitive Indigenous knowledge. The conditions for use may be negotiated to include an agreed person/s or group who may view and access the restricted material for limited purposes, e.g. updating the digital collection to new formats.

As part of consultation and consent processes, it is important to have a clear strategy around whether and how access to agreed items in digital collections can be restricted. This may be through password protection or through varying levels of access permissions. At a minimum, restricted material must be clearly marked and categorised as such and stored separately to the rest of the collection.

Once the conditions for access to ICIP material are agreed to with the relevant Indigenous owners and custodians, it is the responsibility of the collections managers to ensure that all staff or other persons who have access to the digitised materials understand and follow the restrictions.

Use

In addition to being accessed by those caring for the collection, digitised materials and data may also be sought out for use – in research, new exhibitions or for other reasons. These uses might be by the University, or third parties.

Consultation and consent processes at the beginning of the project will help to identify permitted uses of the digital collections and data held, both by the University and by third parties. University staff or other people responsible for managing the collection may be required to act as a gatekeeper for third parties who wish to access and use the information or data. It may be necessary to develop conditions for use by third parties in order to avoid overwhelming Indigenous communities with requests.

Free, prior informed consent must be obtained for new uses of the digitised material or data. The University can direct third parties to obtain the free, prior, informed consent from Indigenous owners and custodians directly, or facilitate this process. Other conditions may also be attached to use of the digitised material or data – such as attribution of the traditional owners or custodians, or by allowing the Indigenous people to review and give feedback on the proposed use of the ICIP, to ensure authentic and accurate use by the third party. The University's ICIP Protocol or other relevant protocols could be made binding as a condition of access and use.

Long term care

Like physical collections, digital collections and data must be cared for into the future. Digitised materials and data require updating to new formats as technology changes and improves. The University needs to have a long-term storage plan in place to ensure storage and preservation into the future.

Other considerations for long term management include monitoring whether ongoing access to and use of the digital collections or data are in accordance with the University's ICIP Protocol and any conditions recorded as part of the free, prior informed consent processes. Consider whether ongoing uses of the digitised materials are within the scope of the permission granted by the ICIP owners and custodians or whether free, prior informed consent is required for future uses.

2.f. Display and Feedback

The University will work with Indigenous communities to facilitate access to digital collections that are not suitable for public display. Access to digital collections may be facilitated through technologies such as community databases or keeping places, or by

Prior to making its digital collections available to the public, the University must consult with the Indigenous people who have authority to speak for the ICIP in the collections to confirm the material is suitable for public display. These discussions should take place from the outset of the project to comply with the obligations of free, prior informed consent.

Where material is made available online or via other digital platforms or databases, users must be directed to the University's ICIP Protocol, or other ICIP protocols or educational material to inform them of the importance of obtaining free, prior informed consent for use of ICIP. Users should also be warned about the risks of sharing ICIP material in an online environment. Other protective measures include Traditional Custodians Notices (see University's ICIP Protocol for examples) and implementing strategies to protect digitised material from being copied or shared (e.g. de-active right click functionality and watermark material).

Finally, where digital collections are made available, it is necessary to create avenues for Indigenous people to provide feedback and comment on what is being shared. This may be by way of a takedown notice, comment or feedback box, or by listing key contact details and requesting feedback. Feedback from Indigenous people should be implemented following an agreed review process.

3. DIGITISATION CHECKLIST

Preliminary and Selection of Materials

- ☐ Consider whether the digitisation is necessary and a priority for Indigenous people:
 - ☐ Why do you want to digitise this material? Is it necessary?
 - ☐ Will digitisation of this material support Indigenous people to access their ICIP? How?
 - ☐ Does your selection of material to digitise fit with the priorities of the relevant Indigenous community? How will you collaborate with Indigenous people to ensure that ICIP material of importance is digitised?
 - ☐ Is the digitisation of the material appropriate?
- ☐ Read the University's ICIP Protocol and accompanying Guides to gain a general understanding of Indigenous Cultural and Intellectual Property and consider the issues involved.
- ☐ Read any national, local or regional research best practice protocols that may also be relevant, e.g.
 - ☐ Aboriginal and Torres Strait Islander Data Archive Protocols;
 - ☐ Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services;
 - ☐ Australian Institute of Aboriginal and Torres Strait Islander Studies Guidelines for the Ethical Research in Australian Indigenous Studies;
 - ☐ National Health and Medical Research Council's ethical research guidelines.
- ☐ Consider what legal and ethical obligations will need to be met - Do you understand what free, prior informed consent means and the processes you will need to follow?

Planning and Provenance

- ☐ Who speaks for the material? Can they be contacted to give free, prior informed consent?
 - ☐ If these people are not known, reconsider selection of material and seek support and advice from the University's Indigenous advisors.
- ☐ Who can you contact to seek advice on ICIP issues that may apply?
- ☐ What is the long-term plan for management of the digital collection and data?
- ☐ What is the plan for copyright ownership, storage, access, use and display?

Provenance

- ☐ Have you undertaken due diligence checks?
- ☐ Is there evidence of IP ownership of the item or object?
- ☐ Is there clear chain of legal title to the physical item or object?
- ☐ What is the previous history of the object?
- ☐ Have creators of the object been consulted to ensure authenticity, attribution and provenance? If so, provide evidence/documentation

- ☐ Have Indigenous communities been consulted about the provenance of the item or object? If so, provide evidence/documentation
- ☐ Have other appropriate stakeholders, organisations, community or cultural groups been consulted?
- ☐ Legal and Ethical Clearances
- ☐ Follow free, prior informed consent processes to obtain approval for the digitisation:
 - ☐ What ICIP is incorporated in the material?
 - ☐ Have you identified the relevant Indigenous people, communities and/or organisations to consult and collaborate with?
 - ☐ Did you make sure that consent comes from the right persons, families or groups within a community?
 - ☐ Where more than one Indigenous group is involved, did you seek consent from every group?
 - ☐ Did you ask the relevant Indigenous people whether he/she/they require 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?
- ☐ Seek advice on the cultural issues that may need to be addressed during the digitisation project – including around access, use, display and care of the collection.
- ☐ Clearly explain the risks and benefits, and manage expectations around what can be achieved through digitisation of the material
- ☐ Establish clear timeframes around consultation and obtaining community consent for the project
- ☐ When negotiating contracts or consent forms for digitisation of ICIP material, consider and address:
 - ☐ Who will own the IP in the digitised material (photographs or other digital formats) where the item or object is not protected by copyright?
 - ☐ What are the cultural protocols or restrictions on access to and use of ICIP in the material? How can these be upheld throughout the digitisation process?
 - ☐ Does the contract or consent form clarify that ICIP rights are retained by the Indigenous owners and custodians?
 - ☐ What are the agreed uses? What about future or commercial uses?
 - ☐ Once digitised, are the materials suitable for public display? What are the agreed rules around display?
 - ☐ How will the Indigenous owners and custodians benefit from the digitisation of their ICIP?
 - ☐ How will the Indigenous owners and custodians be attributed in relation to their ICIP when digitised?
 - ☐ Does the contract or consent form identify a next-of-kin for the relevant Indigenous owner or custodian authorising digitisation, access and use of the ICIP and mourning protocols?
 - ☐ Does the material to be digitised feature any deceased Indigenous persons? If so, obtain clearance from their family/community prior to use.
- ☐ Obtain copyright clearances (i.e. a licence from the copyright owner to reproduce, adapt and share the material) where the material is protected by copyright.
- ☐ Keep clear records of consents to digitise ICIP and payments made.

Preparing the Material for Digitisation

- ☐ Are there protocols or restrictions attached to the material?
 - ☐ Is the material culturally sensitive? Is it sacred or secret?
 - ☐ Have you discussed any restrictions on access and use of material with the relevant Indigenous stakeholders who might be affected by the disclosure?
 - ☐ Does the material to be digitised contain any reference to personal or confidential information about individual Indigenous people?
- ☐ Do you require assistance to prepare and digitise in accordance with cultural protocols?
 - ☐ Who has the authority to view the material, item or object?
 - ☐ Are you the appropriate person to be handling this material?
 - ☐ What opportunities are there for Indigenous people to be involved in preparation of the material to be digitised?

Storage, Access and Collections Management

- ☐ How will the digitised materials be stored?
- ☐ How will the digitised materials be categorised? Is it according to Indigenous perspectives and understandings, e.g. language and cultural identifiers?
 - ☐ Consult and collaborate with Indigenous people on the description and categorisation of the digitised materials
- ☐ What opportunities are there for Indigenous people to describe and categorise material that relates to themselves or their communities?
- ☐ Who will have access the digitised materials and the data?
 - ☐ Can material be restricted from access and use within the University?
 - ☐ Can access and use conditions be updated or changed?
 - ☐ Can there be varying levels of access and use?
 - ☐ How will the digitised materials be made available to Indigenous people?
 - ☐ How will you respond to requests for access to and use of the digitised material? What is the process?
- ☐ How will the collection and data be updated as technology changes? Who is responsible for caring for the digital collection?
- ☐ Have you considered whether ongoing uses of the digitised materials are within the scope of the permission granted? Check the written consents obtained.
- ☐ How will you seek permission from Indigenous owners and custodians to use or re-use the digital collection or data?
- ☐ What conditions attach to use of the digital collection
- ☐ What new or additional benefits are being shared for new uses of the ICIP?
- ☐ Display and Feedback
- ☐ How will the digitised materials be made available to Indigenous people?
 - ☐ Community-only platforms
 - ☐ Collections available for viewing at the University
- ☐ Will the digitised materials be on public display?
 - ☐ Free, prior informed consent required
 - ☐ Restrictions to prevent sharing and re-use
 - ☐ Use traditional custodian notices and warnings.
- ☐ If the digitised materials are to be shared online, what avenues for feedback or complaints will be established to ensure that material is categorised and shared appropriately?
 - ☐ Feedback and comments form or contact
 - ☐ Takedown notice where material is not appropriate for public display
 - ☐ Categorisation of digitised materials e.g. traditional knowledge labels
- ☐ Have the suggestions of and feedback from relevant Indigenous people been considered and incorporated after following the agreed process?

COPYRIGHT INFORMATION GUIDE FOR STUDENTS AND STAFF

1. INTRODUCTION

This guide is for University of Newcastle students, staff and community stakeholders. It is designed to provide a high-level overview of copyright law, including what it is, how rights are granted and given away, and how copyright is infringed. It is designed to empower individuals to understand how to better utilise and protect their own work and works of others. Readers may also be guided by the University of Newcastle's **Copyright Compliance Policy** and **Copyright Compliance Guidelines**. This guide is not legal advice but is general information. If you require advice that is tailored to your circumstances, the University Library's **Copyright Advisor** provides support for **copyright**, and the University of Newcastle Legal Centre offers free legal advice.

2. WHAT IS COPYRIGHT?

Copyright is an intellectual property right that gives the creator (or owner) exclusive rights to their work. The rights are conferred by Commonwealth legislation under Copyright Act 1968 (Cth) (Copyright Act).

Why does it exist?

Copyright is designed to give creators economic rights over their work, to encourage them to innovate and create.

When does it exist?

Copyright exists as soon as an original work is created. It is not dependent on any formalities, it does not require any registration and there is **no need to pay anyone to register copyright**.

What does copyright protect?

Copyright protects creations that fit in one of the below categories to be protected under the law:

- Literary works - books, essays, reports, journal articles, conference materials, dictionary compilation, databases, software coding and websites;
- Dramatic works - scripts, screen plays and film scenarios;
- Musical works - songs including scores and notated music;
- Artistic works - artworks and photographs;
- Film and television broadcasts - films, documentaries, animated films and cartoons,
- Sound recordings and radio broadcasts - the recording and non-musical sounds.

3. WHAT ARE THE REQUIREMENTS FOR PROTECTION?

Copyright will only protect the categories of materials that are listed above. In addition, the work or creation must meet certain requirements in order to be protected. It must be recorded in **material form** (this means written down or recorded in some way). This means oral stories and songs, or general information, is not protected.

Additionally, the copyright material must be **original** (i.e. not copied). This means you have put a level of **skill, labour, and effort** into making the creation.

Copyright does not protect facts, names, titles, ideas, styles, information or techniques. This means that a particular painting style cannot be protected by copyright. This includes many Indigenous art styles such as dot art or x-ray which anyone can use to inspire their own artwork without legal repercussions.

4. HOW LONG DOES COPYRIGHT LAST FOR?

Copyright rights protect works for particular times. Once that timeframe has expired, the material enters the public domain and can be used freely by anyone, for any purpose.

- The copyright in **original works** (literary, artistic, musical and dramatic) is generally the life of the author plus 70 years.
- The copyright in a cinematograph **film** lasts for 70 years after the date the film was first published.
- The copyright in a **sound recording** lasts for 70 years after the date the sound recording was first published.

5. WHO OWNS COPYRIGHT?

Generally the author or creator of copyright material will own copyright in the works. This would be the artist who paints the artwork, the author who sits down to write the book, or the filmmaker who directs the movie.

There may also be joint copyright owners such as in the case when multiple authors have contributed to a work. Such cases arise in co-authored papers or films, i.e. in the soundtrack, branded images, and screenplay.

There are, however, exceptions to this general rule:

Employees

- When employees create copyright works as part of carrying out their regular roles and duties as an employee, their employer will generally own copyright in that material. University staff should read the **University Intellectual Property Policy** to see how this general rule is altered. For example, the University will retain ownership to research data and findings, but not artistic works.

Contractors

- If a creator of copyright material is a contractor, freelancer or volunteer, then copyright will retain with them.
- Copyright can also be assigned (given away) or licensed (allow other people to use it) through a contract.

6. WHAT RIGHTS DO YOU GET TO YOUR COPYRIGHT MATERIAL?

As a copyright owner, you are the only person that is allowed to use your copyright work in certain ways. These are set out in the Copyright Act, and they are different depending on the type of material.

Generally speaking, as the owner of copyright in your created materials, you are the only person who can:

- Make copies of the work;
- Share the work – including by publishing it or putting it online;
- Adapt the work – this means by using parts of the work in new creations, or translating the work into new languages.
- If your work (e.g. a written piece of music) is recorded as a sound recording, you are the only person allowed to rent out that sound recording.

The table below is a summary of the rights a copyright owner will get to the different kinds of copyright works:

	Literary work	Artistic works	Musical works	Dramatic works	Films	Sound	Broadcasts	Published editions
Making copies	●	●	●	●	●	●	●	●
First public release or exhibition	●	●	●	●				
Putting online, broadcasting	●	●	●	●	●	●	●	
Performing or showing/playing in public	●		●	●	●	●		
Adapting (e.g. translation, different literary forms, transposing)	●		●	●				
Enter into commercial rental arrangements	●		●	●		●		

Physical ownership

It is important to remember that copyright is different to the physical ownership of a copyright work. When you create a copyright work, you can sell the physical item but the copyright stays with you. Copyright itself can be bought and sold – you can only do this through a written contract that is signed by you, the copyright owner.

For example, if you purchase an artwork from an artist, you are allowed to use it for personal use such as hanging it in an office or at your home. If you want to use the artwork in other ways, you will likely need the permission of the copyright owner. If you want to take photographs of the artwork (i.e. make a copy of the artwork) and put it online, you need permission to do so. If you do not get this permission, you may have infringed on the artist's copyright. The artist can come after you and ask you to take down the photograph. They may sue you if you have made money off of the copyright work (for example sold t-shirts with a photograph of the artwork on it).

7. IMPORTANT THINGS TO KNOW ABOUT COPYRIGHT

Copyright is a valuable asset and you should protect your own copyright and make sure you are not infringing on another person's copyright when you use existing material. Always consider:

- Does my employer own the copyright in this work? Have I entered into a contract (e.g. a services agreement) where I give away my copyright?
- Am I signing away my rights to copyright? ALWAYS check the terms of any contract you are asked to sign to make sure you keep your copyright. Do not sign anything you don't understand.
- Am I using other people's work in my copyright work? You may need to get permission to do so, otherwise you may be infringing upon their copyright.
- Are other people allowed to use my copyright work? If so, you may give them a licence. You may request that they pay you to be able to use your copyright work.



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