




CREATE NSW

ABORIGINAL ARTS & CULTURE PROTOCOLS



we acknowledge the Aboriginal peoples and traditional owners of the land we now call New South Wales, and we celebrate the history and contemporary creativity of the world's oldest living culture.

Cover and internal artwork from *Warruwi* (detail) by Lucy Simpson



your arts,
your culture

your rights,
your business

ABORIGINAL IDENTITY

There are many definitions of Aboriginal Identity and people identify in different ways. For the purposes of these Protocols we are using the term 'Aboriginal' that represents Aboriginal and Torres Strait Islander people living in NSW. The term 'Indigenous' is used by the United Nations as it is an intergovernmental global organisation and is only used here in the context of Indigenous Cultural and Intellectual Property (ICIP).

For more information artslaw.com.au

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INTRODUCTION

Aboriginal people have been maintaining, enhancing and sharing their unique culture for thousands of generations. This has always been governed through a wide range of protocols for ways to do cultural business through the guidance and direction from those with cultural authority such as Elders, cultural knowledge holders and keepers. This resulted in the longest living and continuous cultures in the world, a fact that is widely celebrated today.

Today, Aboriginal artists and cultural practitioners continue that important role in maintaining, enhancing and transmitting culture as they seek to develop their own practice and find inspiration through their culture and environment. However, these artists and cultural practitioners must now navigate a variety of issues and new environments that impact on not only their abilities but the need to ensure that this work continues with strong foundations of cultural authority, agency and relevance for Aboriginal communities.

This means that we need to continue to work out the right way for cultural business in our contemporary society by championing Aboriginal self-determination in the cultural space. It means that the rights of Aboriginal people need to be understood in developing and sharing cultural work and then acted on. Questions such as why we are doing this work and who will benefit from it need to be asked and answered.

Through this direction, we can ensure that the NSW Aboriginal cultural sector will continue to grow and thrive built on the foundations of authority, agency and relevance.

Create NSW acknowledges that it must play a strong role in supporting the right way for cultural business and has worked with the NSW Aboriginal cultural sector to develop these NSW Aboriginal arts and cultural protocols.

WHO ARE THESE PROTOCOLS FOR?

Many Aboriginal protocols are developed to give guidance and direction to the broader sector in the right way to work and do business with Aboriginal people and communities.

It was decided that whilst this approach is still important, it is also important that greater support and guidance is provided to Aboriginal artists, Aboriginal arts organisations and Aboriginal arts workers to help equip them with the right tools to ensure their interests and cultural rights are acknowledged and acted upon when developing or contributing to arts and cultural projects and programs.

Driven by self-determination, these protocols have been developed as a series of suggested questions within five key principles that Aboriginal artists, arts workers and organisations should consider as a minimum standard. These five principles have been identified as the most important elements to ensure there is Aboriginal self-determination embedded within the Aboriginal project or program. They are:

1 Cultural Authority and Agency

Where does the ownership lie within the project/program and who controls the direction that the project/program takes?

2 Recognising Rights and Maintaining Culture

Are the rights of people being acknowledged and protected?

3 Prior Informed Consent and Consultation

Are Aboriginal people being engaged in the right way and are their wishes being observed?

4 Integrity of Aboriginal Culture

Is cultural knowledge and information being respected and managed in the right way?

5 Attribution and Sharing Benefits

Are the right people getting the benefits?

The protocols have also been broken into two sections that reflect where the type of work many Aboriginal artists and art workers originate from; either

Aboriginal people developing their own projects or

Aboriginal people being asked to be a part of a project.

Links have also been provided where Aboriginal artists and art workers can seek additional information and support in the areas covered.

WHAT WE WANT TO ACHIEVE WITH THESE PROTOCOLS?

Create NSW plays an important role in supporting the NSW Aboriginal cultural sector through providing direct investment through funding programs, developing strategies and policies for cultural development and advice and guidance to Aboriginal artists, arts workers and organisations.

Create NSW acknowledges that a strong and vibrant Aboriginal cultural sector starts with supporting self-determination for the Aboriginal sector to manage, maintain and preserve Aboriginal cultures and ensure that the right way to do cultural business is supported, understood and acted on.

With these protocols, Create NSW seeks to work with the Aboriginal cultural sector to champion a new **body of practice** that has Aboriginal self-determination and Aboriginal cultural authority and agency at its foundation.

Just as Aboriginal culture is living and continues to evolve, these Protocols have been developed to be a living document. Create NSW will continue to work with the NSW Aboriginal cultural sector to update the protocols annually to ensure that the continued growth and new and emerging areas are covered.

To contribute to this ongoing work with your views, ideas and guidance, email Create NSW at protocols@create.nsw.gov.au

Create NSW acknowledges that a strong and vibrant Aboriginal cultural sector starts with supporting self-determination

FIVE PRINCIPLES

ABORIGINAL PEOPLE DEVELOPING THEIR OWN PROJECT

Create NSW has developed the following five principles for these Protocols:

1 CULTURAL AUTHORITY AND AGENCY

Where does the ownership lie within the project/program and who controls the direction that the project/program takes?

2 RECOGNISING RIGHTS AND MAINTAINING CULTURE

Are the rights of people being acknowledged and protected?

3 PRIOR INFORMED CONSENT AND CONSULTATION

Are Aboriginal people being engaged in the right way and are their wishes being observed?

4 INTEGRITY OF ABORIGINAL CULTURE

Is cultural knowledge and information being respected and managed in the right way?

5 ATTRIBUTION AND SHARING BENEFITS

Are the right people getting the benefits?

1 CULTURAL AUTHORITY AND AGENCY

Aboriginal people have the authority and agency to control their culture. This principle aims to support and strengthen self-determination (humanrights.gov.au) for you, the Aboriginal artist or Aboriginal arts worker.

This requires you to think about who will lead the project and what roles people can play in all stages of the project. It is designed to ensure you have the authority within your project regarding your own culture.

This principle asks the following questions when planning your project:

Management and Control:

- 1 What is the structure of the project in terms of decision-making?
- 2 Who are the other key creatives on the project? What do they do? Do they have power of decision-making in the project?
- 3 Are you involving other Aboriginal people in all stages of the project?

Dealing with different cultural elements:

- 4 Is your project collaborative? If so, did you obtain the consent of all the contributors and their communities in the initial development phase of the project?
- 5 Do the other Aboriginal artists or contributors draw on their own culture when contributing to the project? Have you checked that they have attachment in the culture they refer to?
- 6 Have you got a plan on how you will address alternative cultural views of your project?

Use of Cultural materials and intellectual property

- 7 Are you using or drawing upon your Indigenous Cultural and Intellectual Property (ICIP) (artslaw.com.au), such as images, symbols, songs, dance, stories or knowledge? Did you discuss and gain consent for the use of this ICIP from your traditional custodians/ community this property?
- 8 Are you using old photographs, recordings and archival material from archives or family collections? Have you followed the clearance processes of libraries, archives and museums and spoken to relevant Aboriginal people, traditional custodians/ community about your proposed use of these materials in your project?
- 9 If cultural items or artworks are used in your project, has the authenticity of the work been checked and verified by an appropriate authority?

2 RECOGNISING RIGHTS AND MAINTAINING CULTURE

ICIP rights should be recognised in protocols, policies, contracts and legal agreements (contracts artslaw.com.au, ICIP artslaw.com.au). Australian policy and law should be used to recognise and protect these rights. This includes copyright laws (artslaw.com.au, copyright.com.au).

This principle requires you to think about your rights and how you should be protecting yourself and your community, as ICIP supports Aboriginal people to maintain control of their culture.

This principle asks the following questions when planning your project:

ICIP:

- 1 Do you understand what your ICIP rights are? Have you applied these rights to your project?
- 2 How can your project set up systems for control over ICIP material?
- 3 Does your project involve a public outcome such as an exhibition, album release, performance, book release or an event? How do you intend to control and manage the ICIP?

Consultation and Engagement

- 4 Have you developed a consultation plan?
- 5 Have you identified Aboriginal people and organisations who can give cultural clearances to use traditionally and collectively owned material, including language words?
- 6 Have you consulted widely when using collectively owned material or knowledge? Have you checked to see if ownership belongs to two or more groups, and that use of the material or knowledge could require more conversations with other groups?

- 7 How do you intend to continue the relationships and strong Aboriginal community engagement after the project is completed?
- 8 Have you identified the Aboriginal people in authority for specific stories, geographic locations, styles, songs, knowledge and imagery? Have you consulted them and told them the proposed use and discussed any adaptations?
- 9 Does your project involve a visit to an Aboriginal community or lands? If so, did you obtain permission from the local land council/ trust/ relevant community council? You should also consider whether you need permissions if you are visiting Aboriginal organisations and places in urban areas.

Indigenous Cultural and Intellectual Property supports Aboriginal people to maintain control of their culture

3 FREE PRIOR INFORMED CONSENT AND CONSULTATION

Free prior informed consent for use of ICIP should be sought for your project. This involves consultation with the owners of the cultural knowledge, materials, stories, and/ or expression. This consultation includes ongoing communication and informing custodians about the implications of consent.

This principle requires you to have proper acknowledgements and permissions to start the project. It ensures you have the support of the appropriate Aboriginal leaders, elders, traditional custodians and/ or communities.

This principle asks the following questions when planning your project:

Planning:

- 1 Why are you telling this story? Are you the right person to tell and pass on this cultural story? What are your reasons for doing this?
- 2 How does the project acknowledge the Aboriginal communities where the project is located?
- 3 Are you writing about a particular Aboriginal person in history or in the community? Have you communicated with the family or descendants about the project?
- 4 Does your project deal with communally owned material (e.g. ritual knowledge, creation stories, songs, dance, or traditional or tribal communal designs)? If so, how will you seek consent from the traditional custodians or other relevant Aboriginal people/groups?

Process:

- 5 Consider the following:
 - a How do you inform the relevant Aboriginal person/ people/ communities about the implications of consent? Is consent reversible?
 - b How much time do you allow for obtaining cultural clearance and are you prepared for the possibility that approval will be denied or conditional on substantial changes to your project?
 - c Do you make sure that consent comes from the right person or organisation? Have you consulted widely and identified a number of people and organisations? Have you addressed consulting with the community as a whole rather than just consulting with one family or factional group?
 - d Do you have unanimous consent or are there some sections of the community that do not agree? Have you considered the risks of going ahead without unanimous consent?
- 6 Does your project contain or depict culturally sensitive material, secret and sacred material or gender-based works? Are you aware of cultural obligations when dealing with this material?

Management agreements and licensing:

- 7 Have you obtained consent in writing and kept a written record of your discussions? Have you used specific Aboriginal agreements and contracts for consultations and collaborations with other Aboriginal artists and communities? (artslaw.com.au/artists-in-the-black/)

4 INTEGRITY OF ABORIGINAL CULTURE

Maintaining the integrity of cultural information or knowledge is important to Aboriginal people. You have the right and responsibility to protect both cultural and sacred knowledge in accordance with customary laws and cultural obligations. Privacy and confidentiality concerning aspects of people's personal and cultural affairs should also be respected. Importance and respect should be given to Aboriginal cultural practices such as dealing with deceased people and sensitive information.

It is important to consider how a proposed use might affect future use by others who are entitled to inherit the culture. This principle requires you to think about the effects of your project, this includes in the long term.

This principle asks the following questions when planning your project:

Cultural perceptions:

- 1 How will the ICIP in the project be interpreted? How will you be guided or mentored? Have you included stages for relevant people to check over material? Do you have a risk management plan if you have material that might be misinterpreted, reinforce negative stereotypes or inappropriate or outdated perspectives and terminology?
- 2 Have you discussed any restrictions on use of cultural elements with the relevant Aboriginal groups, such as the local lands council, language centres or arts and cultural centres? This material should not be used unless approval has been obtained from Aboriginal owners. Do you have a written agreement with them?
- 3 Does your project have inclusive processes, empowering the role and voice of young people while working with Elders?
- 4 How do your projects themes and issues respect Aboriginal worldviews?

Personal information:

- 5 Does your project contain any reference to personal/confidential information about individual Aboriginal people? If so, how are you going to seek consent from anyone who might be affected by the disclosure (the individual themselves, their family, community/ organisations) prior to writing about, publishing or presenting the information?
- 6 Does your project feature any deceased Aboriginal person? Is it a biography or are you using images of a particular Aboriginal person? If so, how are you going to obtain clearance from their family/ community prior to publication?

Secret and Sacred materials and knowledge:

- 7 Have you identified what might be culturally sensitive, sacred or secret material in your project? Be aware there are different meanings for sacred and secret, depending on which Aboriginal community you are dealing with in NSW.

5 ATTRIBUTION AND SHARING BENEFITS

It is respectful to acknowledge yourself and any other Aboriginal people working on the project, as custodians of ICIP including Aboriginal cultural knowledge and expression, by giving them attribution.

This section is about ensuring that the value of ICIP is respected and that Aboriginal people are properly recompensed for their contributions. Aboriginal people have the right to share in the benefits from the use of their culture, especially if it is being commercially applied.

The economic benefits from use of culture should also flow back to the source communities. Remuneration for that knowledge and advice should be at the appropriate industry rates. Where possible, other benefits can also be included so that community benefits. For example, tickets to shows and return of knowledge or materials to community.

This principle asks the following questions when planning your project:

Attribution:

- 1 Are you attributing Aboriginal custodians, Elders, communities or other Aboriginal individuals for any contribution which they may have made to the development of the project or use of their cultural material (e.g. providing cultural clearance, telling their stories, providing expert advice on aspects of Aboriginal culture)? If so, how do you attribute their assistance, and have you determined that assistance requires remuneration?
- 2 Are there any works of joint authorship in the project (e.g. more than one artist who would have copyright interest in the work)? If so, how are you obtaining the consent of the other artist before (for example, the right to licence reproduction of the work)?
- 3 Is there copyright which may be owned or attributed to another person or community, if so then recognition, attribution and returns may need to be considered and negotiated. As attribution is not just about ICIP but other collaborations that may be joint copyright.

Licensing:

- 4 When licensing other artists for the use of copyright material such as artwork/photography/traditional knowledge/music:
 - a Have you negotiated a written contract with all the artists involved?
 - b Are you giving the artists the opportunity to obtain legal advice? (artslaw.com.au)
- 5 Does your project need advice on copyright licensing issues?
 - c Are your artists and contributors in the project to receive royalties? Does anyone else receive royalties?
 - d Are written agreements used to govern the payment of royalties?
 - e Are you going to discuss copyright ownership and contributions upfront?
 - f Are any of the Aboriginal artists or contributors registered with a copyright collecting society? For example, Copyright Agency for Visual Arts has Resale Royalties (resaleroyalty.org.au) and APRA AMCOS has music royalties for musicians (apraamcos.com.au)
- 6 Does your project reproduce any traditional artwork, songs, stories, traditional knowledge, or traditional dance? If so, how are you going to obtain ICIP clearance from a relevant source community? Is a written agreement used? Are you keeping records of the rights granted? Are you asking for copies of the reproductions?

Remuneration:

- 7 Are you establishing an equitable relationship that will utilise other Aboriginal key creative skills, and remunerating them for their work? Are they being paid at the Industry rate?

FIVE PRINCIPLES

ABORIGINAL PEOPLE BEING ASKED TO BE PART OF A PROJECT

Create NSW has developed the following five principles for these Protocols:

1 CULTURAL AUTHORITY AND AGENCY

Where does the ownership lie within the project/program and who controls the direction that the project/program takes?

2 RECOGNISING RIGHTS AND MAINTAINING CULTURE

Are the rights of people being acknowledged and protected?

3 FREE PRIOR INFORMED CONSENT AND CONSULTATION

Are Aboriginal people being engaged in the right way and are their wishes being observed?

4 INTEGRITY OF ABORIGINAL CULTURE

Is cultural knowledge and information being respected and managed in the right way?

5 ATTRIBUTION AND SHARING BENEFITS

Are the right people getting the benefits?

1 CULTURAL AUTHORITY AND AGENCY

Aboriginal people have the authority and agency to control their culture.

The following is guidance and advice when you're an Aboriginal artist being asked to be a part of a project that has or covers Aboriginal cultural elements.

It has been designed to give you the right tools to ensure that the appropriate level of cultural authority you have is recognised and embraced within the project. It also helps you give guidance on when the project requires to seek further cultural directions.

Within this principle the following questions are suggested when you are being asked to be part of an Aboriginal cultural project:

Management and Control:

- 1 What is the reason for doing this project? What are the Aboriginal cultural elements within the project? Have they been deemed appropriate to be used in the project and by whom?
- 2 What will your role be in the project? Are there other Aboriginal people involved in any stages of the project and what will their role be?
- 3 Who is leading the project? In terms of Aboriginal cultural elements, what is the structure of the project in terms of decision-making?
- 4 What are the expectations on you or other Aboriginal people in providing cultural guidance or advice to the project? Are you comfortable with the level of cultural authority you have to make these decisions? Are there other processes in place to ensure the right cultural authority is engaged?

Dealing with different cultural elements:

- 5 Have you been made aware of other Aboriginal people and communities that are involved in the project and that they have or have been provided the appropriate cultural consent within the project?
- 6 What are the processes if consent is not provided by those with the appropriate cultural authority on cultural elements?

Aboriginal engagement:

- 7 Has there been an Aboriginal engagement framework developed that outlines how the project will engage with Aboriginal people and communities relating to the content and cultural elements within the project? This should be from initial planning stages to delivery and reporting of the project.

2 RECOGNISING RIGHTS AND MAINTAINING CULTURE

ICIP rights should be recognised in protocols, policies, contracts and legal agreements. Australian policy should be used to recognise and protect these rights. This includes copyright laws.

This principle requires you to think about your rights and how you should be protecting yourself and your community, as ICIP supports Aboriginal people to maintain control of their culture.

Within this principle the following questions are suggested when you are being asked to be part of an Aboriginal cultural project:

ICIP:

- 1 Do all parties understand what ICIP rights are and how they apply to this project?
- 2 Has Indigenous Cultural and Intellectual Property (ICIP), such as images, symbols, songs, dance, stories or knowledge been identified within the project and the appropriate processes established to deal with ICIP?
- 3 If not, how will the project deal with ICIP through an ICIP plan? Is the project able to engage an ICIP expert to develop the right procedures for the project to develop an ICIP checklist or plan?

This principle requires you to think about your rights and how you should be protecting yourself and your community

3 FREE PRIOR INFORMED CONSENT AND CONSULTATION

When dealing with Aboriginal culture and engaging with Aboriginal people and communities it is essential that free prior informed consent is sought for any project. This involves using both cultural materials, stories or knowledge and the ICIP that lies within them. Also, an understanding of how Aboriginal people are involved in the project and what all parties' expectations need to be agreed.

Consultation with the owners of the cultural knowledge, materials, stories, and/ or expression is also essential, and this consultation includes ongoing communication and informing custodians about the implications of consent.

This principle requires that the project you are being asked to be a part of has proper acknowledgements and permissions to start the project. It ensures that the project has the support of the appropriate Aboriginal leaders, elders, traditional custodians and/ or communities.

Within this principle the following questions are suggested when you are being asked to be part of an Aboriginal cultural project:

Planning:

- 1 Who is telling this story and are they the right person/people to tell and pass on this cultural story? What are your reasons for doing this?
- 2 How does the project acknowledge the Aboriginal groups where the project is located?
- 3 Is the project about a particular Aboriginal person in history or in the community? Has the family or descendants of this person been contacted and consulted with about the project?
- 4 Does this project deal with communally owned material (e.g. ritual knowledge, creation stories, songs, dance, or traditional or tribal communal designs)? If so, how will consent from the traditional custodians or other relevant Aboriginal people/groups be obtained?

Process:

- 5 Consider the following:
 - a How are the relevant Aboriginal person/ people/ communities told about the implications of consent? Is consent reversible?
 - b How much time is allowed for obtaining cultural clearance and are people prepared for the possibility that approval will be denied or conditional on substantial changes to your project?
 - c How does the project ensure that that consent comes from the right person or organisation? Has the project consulted widely and identified a number of people and organisations? Is consulting with the community as a whole rather than just consulting with one family or factional group been considered?
 - d Does more than one Aboriginal group have custodianship of an image or item? If so, has consent been sought from every group?
 - e Is there unanimous consent or are there some sections of the community that do not agree? Has the risk of going ahead without unanimous consent been considered?
- 6 Does the project contain or depict culturally sensitive material, secret and sacred material or gender-based works? If so, has special communication procedures been developed to obtain consent?

Management agreements and licensing:

- 6 Has the project obtained consent in writing and kept a written record of all discussions? Have specific Aboriginal agreements and contracts for consultations and collaborations with other Aboriginal artists and communities been used?

4 INTEGRITY OF ABORIGINAL CULTURE

Maintaining the integrity of cultural information or knowledge is important to Aboriginal people. Aboriginal people have the right and responsibility to protect the sacred knowledge in accordance with customary laws. Privacy and confidentiality concerning aspects of people's personal and cultural affairs should also be respected. Importance and respect should be given to Aboriginal cultural practices such as dealing with deceased people and sensitive information.

It is important to consider how a proposed use might affect future use by others who are entitled to inherit the culture. This principle requires an awareness about the effects of the project, this includes in the long term.

Within this principle the following questions are suggested when you are being asked to be part of an Aboriginal cultural project:

Cultural perceptions:

- 1 Have any cultural restrictions on use of cultural materials, stories or knowledge been considered and identified with the relevant Aboriginal groups, such as the local lands council, language centre or arts and cultural centre? Cultural material should not be used unless approval has been obtained from Aboriginal owners. Is there a written agreement with them?
- 2 How will the ICIP in the project be interpreted? Refer to Principle 3.
- 3 Is the project inclusive such as, empowering the role and voice of young people while working with Elders?
- 4 How do the project themes and issues respect and reflect Aboriginal worldviews?

Personal information:

- 5 Does the project contain any reference to personal/confidential information about individual Aboriginal people? If so, what will be the process to seek consent from anyone who might be affected by the disclosure (the individual themselves, their family, community/ organisations) prior to writing about, publishing or presenting the information?
- 6 Does the project feature any deceased Aboriginal person? Is it a biography or are you using images of a particular Aboriginal person? If so, how will clearances from their family/community be obtained?

Secret and Sacred materials and knowledge:

- 7 Has the project identified what might be culturally sensitive, sacred or secret material in the project? Be aware there are different meanings for sacred and secret, depending on which Aboriginal community you are dealing with in NSW.

5 ATTRIBUTION AND SHARING BENEFITS

It is respectful to acknowledge all Aboriginal people working on the project, as custodians of ICIP including Aboriginal cultural knowledge and expression, through attribution.

This section is about ensuring that the value of ICIP is respected and that Aboriginal people are properly recompensed for their contributions. Aboriginal people have the right to share in the benefits from the use of their culture, especially if it is being commercially applied.

The economic benefits from use of culture should also flow back to the source communities. Remuneration for that knowledge and advice should be at the appropriate industry rates. Where possible, other benefits can also be included so that community benefits. For example, tickets to shows and return of knowledge or materials to community.

Within this principle the following questions are suggested when you are being asked to be part of an Aboriginal cultural project:

Attribution:

- 1 Is there an equitable relationship established that will utilise other Aboriginal key creative skills, and remunerating them for their work? Are Aboriginal people being paid at the Industry rate?
- 2 Are Aboriginal custodians, Elders, communities or other Aboriginal individuals attributed for any contribution which they may have made to the development of the project or use of their cultural material (e.g. providing cultural clearance, telling their stories, providing expert advice on aspects of Aboriginal culture)? If so, how has their assistance been attributed?
- 3 Does an image, song, performance, script or story originate from a cultural group? If so, how is the group as the cultural source attributed? What if there is more than one group? How will the overlap be dealt with?

- 4 Are Aboriginal people and/or community asked how they wish to be attributed with ownership of the artwork or cultural material?
- 5 Are there any works of joint authorship in the project (e.g. more than one artist who would have copyright interest in the work)? If so, how will consent be obtained of the other artist before (for example, the right to licence reproduction of the work)?

Licensing:

- 6** When licensing other artists for the use of copyright material such as artwork/photography/traditional knowledge/music:
 - a** Has a written contract with all the artists involved been negotiated?
 - b** Have artists been given the opportunity to obtain legal advice?
 - 7** Does the project need advice on copyright licensing issues?
 - a** Will artists and contributors in the project to receive royalties? Does anyone else receive royalties?
 - b** Are written agreements used to govern the payment of royalties?
 - c** Has copyright ownership and contributions been discussed upfront?
 - 8** Are any of the Aboriginal artists or contributors registered with a copyright collecting society? For example, Copyright Agency for Visual Arts has Resale Royalties (resaleroyalty.org.au) and APRA AMCOS has music royalties for musicians (apraamcos.com.au)
 - 9** Does the project reproduce any traditional artwork, songs, stories, traditional knowledge, or traditional dance? If so, how is ICIP clearance going to be obtained from a relevant source community? Is a written agreement used? Are all records of the rights granted being kept? Are copies of the reproductions being asked for by the ICIP holders?
 - 10** Is there copyright which may be owned or attributed to another person or community, if so then recognition, attribution and returns may need to be considered and negotiated. As attribution is not just about ICIP but other collaborations that may be joint copyright.
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 GLOSSARY

 DIRECTORY



GLOSSARY

Copyright

Copyright automatically gives you, the creator of a work, legal protection and is free. Copyright lasts for your lifetime and up to 70 years after your death. This means, nobody can use or change your work, unless you say they can. If you say that someone can use your work, or if someone says you can use their work, it is best to make a contract in writing. No one is allowed to use your work without your permission.

If someone uses your work without your permission, this is called copyright infringement. The law gives you protection if your copyright is infringed.

artslaw.com.au/info-sheets/info-sheet/copyright/

Indigenous Cultural and Intellectual Property (ICIP)

This is important for the continuation of culture and living culture focus. ICIP refers to all the rights that Aboriginal people have, and want to have, to protect their traditional arts and culture. The idea of ICIP is based on the principle of self-determination. ICIP is said to include the following rights:

- Right to protect traditional knowledge and sacred cultural material
- Right to ensure that traditional laws and customary obligations are respected, particularly when money is made from ICIP
- Right to be the primary guardians and interpreters of ICIP
- Right to be paid or benefit for use of ICIP, particularly if it has been used in a way which is inconsistent with traditional laws or without the community's permission
- Right to full and proper attribution or naming of the community connected with the ICIP
- Right to prevent insulting, offensive and misleading uses of ICIP in all media

- Right to control the recording of cultural customs and expressions, and language which may be essential to cultural identity, knowledge, skill and teaching about Aboriginal culture

Licensing

A licence is a permission from one person (often called a “licensor”) to another (often called a “licensee”) allowing the other person to do something. Without this permission, the licensee would not legally be able to do any of the permitted acts. A “work” includes an artwork, a piece of writing, a song or a script. (artslaw.com.au)

Royalties

A share paid to the copyright owner out of the proceeds resulting from the reproduction, publication, communication to the public or performance in public of his or her work. For example, a writer may be paid a percentage of the sale price of a book by the publishing company.

Sacred and Secret material

In Aboriginal knowledge systems, there is information that is referred to as 'secret and sacred' under customary laws. It may be made available only to the initiated, used at a particular time or for a specific purpose. It may be information that can only be seen and heard by particular clan members (such as men or women or people with certain knowledge).

terrijanke.com.au/more-than-words

Self-Determination

Self-determination is the right of all peoples to 'freely determine their political status and freely pursue their economic, social and cultural development' (Article 1 of the **International Covenant on Civil and Political Rights**). Self-determination is a collective right (belonging to a 'peoples') rather than an individual right.

Most Aboriginal people in Australia want self-determination **within** the existing nation. This would require recognition by the Government of their distinct cultures and forms of social organisation, governance and decision-making. It would mean transferring responsibility and power for decision-making to Aboriginal communities, so they can make decisions in relation to issues that affect them.

humanrights.gov.au/right-self-determination

Traditional custodians

Traditional custodians today are descendants of these original inhabitants and have continuing spiritual, cultural, political and often physical connection with particular land where their ancestors lived.

terrijanke.com.au/indigenous-cultural-protocols-and-arts

Traditional owners

Traditional owners and custodians are the terms used to describe the original Aboriginal or Torres Strait Islander peoples who inhabited an area.

terrijanke.com.au/indigenous-cultural-protocols-and-arts


 DIRECTORY
First Nations Organisations**BlakDance**

BlakDance is the national peak body for Indigenous dance in Australia.

T 07 3252 4849
E admin@blakdance.org.au
W blakdance.org.au

First Nations Writers Network

First Nations Australia Writers' Network (FNAWN) is the peak body for Aboriginal and Torres Strait Islander writers, poets and storytellers. It provides advocacy and skill development opportunities to support and sustain First Nations Australians writing and storytelling.

E chairperson@fnawn.com
W fnawn.com.au

Terri Janke and Company website

Terri Janke and Company is an Indigenous legal firm that empowers clients to achieve success in business and innovation.

T 02 9693 2577
E tjc@terrijanke.com.au
W terrijanke.com.au

Mainstream Organisations**Australasian Performing Right Association, Australasian Mechanical Copyright Owners Society (APRA AMCOS)**

The APRA AMCOS is a key business partner to Australian music creators and has more than 90,000 members, who are songwriters, composers and music publishers. It licenses organisations to play, perform, copy or record members' music and distributes the royalties to members. APRA AMCOS also supports Sounds Australia and the Live Music Office, and advocates for the Australasian music industry.

T 02 9935 7900
E apra@apra.com.au
W apraamcos.com.au

ArtsLaw

Arts Law is a not-for-profit community legal centre that offers free or low cost specialised legal advice, education and resources to artists and arts organisations across Australia.

T 02 9356 2566 or 1800 221 457 (toll-free)
E artslaw@artslaw.com.au
W artslaw.com.au

Arts on Tour

Arts on Tour's overarching purpose is to bring culturally distinctive and resonant performing arts experiences to regional and remote towns across Australia and maximise the lasting impact of this activity for communities and audiences, artists and the sector.

T 02 9699 7133
E marketing@artsontour.com.au
W artsontour.com.au

Ausdance NSW

Ausdance NSW is the key support & advocacy body, for the creation, presentation and practice of dance in NSW.

T 02 9256 4800
E admin@dance.net.au
W ausdancensw.com.au

Australia Council for the Arts

The Australia Council for the Arts is the Australian Federal Government's arts funding and advisory body.

T 02 9215 7000 or 1800 226 912 (toll-free)
E enquiries@australiacouncil.gov.au
W australiacouncil.gov.au

Copyright Agency Limited

The Copyright Agency is an Australian not-for-profit organisation that has been standing up for creators for more than 40 years. We enable the reuse of copyright-protected words and images in return for fair payment to creators.

T 02 9394 7600 or 1800 066 844 (toll-free)
E memberservices@copyright.com.au
W copyright.com.au

Information and Cultural Exchange (ICE)

ICE is unique nationally and internationally in that they are able to offer a rich synergy of community engagement, cultural production, digital technology, training and artist development.

T 02 9897 5744
E info@ice.org.au
W ice.org.au

Media, Entertainment and Arts Alliance (MEAA)

MEAA is the largest and most established union and industry advocate for Australia's creative professionals.

T 1300 656 513
E members@meaa.org
W meaa.org

Museums and Galleries NSW

Museums & Galleries of NSW supports and promotes volunteer, artist run and professionally staffed public museums and galleries, and Aboriginal cultural centres.

T 02 9252 8300 or 1800 114 311 (toll-free for regional NSW)
E comms@mgnsw.org.au
W mgnsw.org.au

MusicNSW

MusicNSW is the state music body in NSW and empowers and connects artists to the industry through a range of programs and services.

T 02 9953 5279
W musicnsw.com

National Association for the Visual Arts (NAVA)

The National Association for the Visual Arts (NAVA) is the national peak body protecting and promoting the professional interests of the Australian visual and media arts, craft and design sector.

T 02 9368 1900 or 1800 046 282 (toll-free)
E nava@visualarts.net.au
W visualarts.net.au

Regional Arts NSW

Regional Arts NSW is the peak body and service agency for arts and cultural development in regional NSW. They are an independent not-for-profit organisation governed by their regional membership of 14 Regional Arts Development Organisations.

T 02 9270 2500
E admin@regionalartsnsw.com.au
W regionalartsnsw.com.au

Screen Australia

Screen Australia is the Australian Federal Government's key funding body for the Australian screen production industry. Its functions are to support and promote the development of a highly creative, innovative and commercially sustainable industry.

T 02 8113 5800 or 1800 213 099 (toll-free)
E info@screenaustralia.gov.au
W screenaustralia.gov.au

Screenrights

Screenrights is a not-for-profit membership organisation that provides rights and royalty management services to the screen industry.

T 02 8038 1300
E info@screenrights.org
W screenrights.org

Writing NSW

Writing NSW is the state's leading provider of services to writers, including courses, seminars and workshops, writing groups, festivals and events, grants and prizes, and information and advice.

T 02 9555 9757
E info@writingnsw.org.au
W writingnsw.org.au

Award rates

Payment of fees and salaries to artists, creatives and arts workers should be consistent within industry standards. For detailed rates, please consult the guides provided that are specific to your artform or refer to your Service Organisation for the most current up-to-date minimum rates.

SECTOR	SOURCE	LINK
Visual Arts	National Association for the Visual Arts (NAVA)	visualarts.net.au
Museum	National Association for the Visual Arts (NAVA)	visualarts.net.au
Literature	Australian Society of Authors (ASA)	asauthors.org
Theatre	Media Entertainment & Arts Alliance (MEAA)	meaa.org
Live Performance Award	Fair Work Ombudsman	fairwork.gov.au



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CREATE NSW

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