

Fact sheet: Indigenous Cultural and Intellectual Property (ICIP)

What is ICIP?

Indigenous Cultural and Intellectual Property (ICIP) means **all parts of Indigenous knowledge and culture that you want protected and recognised** including:

- **Cultural objects and property** such as paintings, Indigenous human remains, artefacts, rock art
- **Cultural knowledge** such as knowledge about country, sacred sites, plants and animals and how to look after them or use them, knowledge of weather patterns, knowledge of kinship systems
- **Cultural practices and ways of communicating culture** such as songs, stories, dance, ceremony, making bush medicine, hunting

Why is it important to look after ICIP?

Indigenous people often work with researchers, business people, government workers and other project partners. Indigenous people's cultural and intellectual property can be used for many purposes, for example, to help learn about and look after the environment, or to develop products to sell, including tourism. Many Indigenous people also want to write down and record their knowledge for future generations to learn from.

Indigenous people own their ICIP and have strong rules about how it is passed on to others. These rules are an important part of looking after country the 'right way' and by the right people; it is important that the rules are followed and respected. It can get harder to keep these rules strong once ICIP is written down or recorded on film or audio.

It is important to agree on rules about how to look after ICIP when working together with other people and organisations. Some reasons for making strong rules about looking after your ICIP include:

- Once things are written down or recorded it can be hard to keep them confidential
- Some ICIP can be secret, sacred or sensitive and cannot be shared with everyone
- The purpose for writing down or recording ICIP might not have been explained properly to ICIP owners

- If you share your ICIP with others it might be written down, filmed or used without permission
- Permission might be given for one purpose, and then used for other purposes without permission
- The wrong people might be asked for permission to write about or record ICIP. There might be many ICIP owners, but permission is only given by one person
- ICIP might be used to benefit others without recognising the ICIP owners or passing any benefits on to them
- ICIP might be written down or recorded and not given back to the owners. ICIP owners, including young people in the future, might not know where to go to look for this ICIP. It is best for young people to learn from the old people the proper way and be involved in the work
- ICIP can get lost in offices once it has been written down or recorded

How can we look after ICIP?

Australian laws give limited protection to ICIP. The Copyright Act is the most relevant intellectual property law for Indigenous knowledge and culture. The Copyright Act:

- Protects ownership of ICIP that is written down or recorded on film/audio
- Gives copyright to the person who makes the recording
- Allows for *shared* copyright, so ICIP owners need to talk up to make sure their rights are recognised
- Only works for information not written down or recorded before

Other laws that might help protect ICIP in some situations include the Patents Act, Designs Act, Plant Breeders Rights Act and Trademarks Act.

One way of looking after your ICIP is through a legal **agreement or a contract**. These can be used to make sure any benefits (e.g. money) coming from a project where Indigenous people's knowledge has been used are shared with those knowledge holders. An agreement or contract should be made before ICIP is shared, written down or recorded. It is best to talk to a lawyer about making a benefit sharing agreement or contract.

Protocols, policies and guidelines are a good way of looking after ICIP. Protocols are not law, but they can set up rules for how to look after and recognise ICIP. Protocols, policies and guidelines are being developed by different organisations to help them work well with Indigenous people and help look after ICIP. For example Territory NRM, Parks and Wildlife Commission NT and Desert Knowledge Australia have all developed ICIP protocols.

These protocols include rules about:

- Respecting Indigenous peoples rights to own, define and control ICIP

- Making sure the right people are spoken to and involved (e.g. through Land Council)
- Prior informed consent: making sure Indigenous people have been told all about the project, how ICIP will be used, possible risks and benefits of the ICIP being recorded
- Making sure Indigenous owners of ICIP are not pushed or rushed to give permission
- Making sure ICIP is only written or recorded with permission from owners and that there is permission for each purpose that the ICIP will be used. ICIP owners can say NO
- Helping young people to get involved in learning about their ICIP
- How and where the ICIP will be stored: if any ICIP that is written or recorded should be destroyed, where these instructions are written and kept
- Who can see the ICIP that is written or recorded in the future and who they have to ask to see it
- Which ICIP owners should be named and acknowledged on books/films
- Benefit sharing rights and opportunities for the ICIP owners if the project might make money

How can we find out more about ICIP?

For more information talk to your Land Council, Territory NRM or visit:

- Territory NRM ICIP reports: <http://www.territorynrm.org.au/about-us/tnrm-publications-library>
- Northern Land Council: www.nlc.org.au/articles/cat/research-permits/
- Central Land Council: www.clc.org.au/articles/cat/special-purpose-permits/
- NAILSMA: <http://www.nailsma.org.au/hub/resources/publication/nailsma-research-guidelines-and-protocols-2007>
- Desert Knowledge CRC protocols: <http://www.desertknowledgecrc.com.au/resource/DKCRC-Aboriginal-Intellectual-Property-Protocol.pdf>

Example checklist for looking after ICIP

- The project/research has been explained to me and I/we understand how long it will take and what will happen
- I/we understand and agree to the rules (e.g. protocols, guidelines) about ICIP that the project/research workers will follow
- I/we understand what I/we will be doing in the project/research
- I/we understand the purposes that our ICIP will be used for
- I/we understand the benefits and risks of sharing our ICIP for these purposes
- I/we have given written permission for ICIP to be written down, recorded and used
- I/we understand how our ICIP will be recorded, e.g. written, film, audio
- All the right people have been spoken to about their ICIP and have given their permissions
- I/we understand that our permissions will be sought for any new use of the recorded ICIP that is not already agreed to
- I/we understand that any organisations working in partnership on a project where ICIP is recorded agree to the rules about looking after ICIP
- My/our permissions are clear about what should NOT be written down, recorded and used
- I/we have given permission about where the ICIP will be stored, conditions about storage and how the ICIP can be accessed and shared in the future
- I/we have spoken to a lawyer/ Land Council about a benefit sharing agreement about the proposed project/research
- I/we have told the project/research workers that we want shared copyright of any material including our ICIP
- I/we have told the project/research workers who they should attribute/name in any publication of ICIP
- I/we have organised for young people to be involved in the project/research so they can learn about their ICIP
- I/we know who to contact to change our instructions/permissions, and who to talk to if I/we are unhappy with the research
- I/we have requested relevant documents/products to be returned to participants



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