

# Indigenous Cultural and Intellectual Property



This information sheet may be useful for Aboriginal and Torres Strait Islander peoples and organisations who are interested in research, thinking about being involved in research or have recently become involved in research.

## What is Indigenous Cultural and Intellectual Property?

Indigenous Cultural and Intellectual Property (ICIP) refers to the rights that Aboriginal and Torres Strait Islander peoples have and use to protect traditional and sacred arts and culture<sup>1</sup>. ICIP includes, but is not limited to:

Traditional  
knowledge

Cultural  
objects

Documentation  
of heritage in all  
forms of media\*

Traditional  
cultural  
expression

Secret and  
sacred  
material

Languages

Manifestations  
of Indigenous  
sciences,  
technologies,  
and cultures

Human and  
genetic  
resources

Sports and  
traditional  
games

Medicines

\* Media includes films, photographs, artistic works, books, reports, records taken by others, sound recordings and digital databases.

## What are Indigenous Cultural and Intellectual Property rights?

Indigenous Cultural and Intellectual Property rights refer to our rights as Aboriginal and Torres Strait Islander peoples, communities, and Nations, to<sup>2</sup>:

- own, control and maintain our ICIP
- use the principle of self-determination to protect our ICIP
- be recognised as the primary guardians and interpreters of our cultures
- authorise, or refuse, the use of ICIP according to our own laws
- maintain the secrecy of our knowledge and other cultural practices
- guard the cultural integrity of our ICIP
- be given full and proper attribution for sharing our cultural heritage
- control the recording of cultural customs, expressions and language that may be intrinsic to our cultural identities, knowledges, skills and teaching of culture.

## Why is it important to know about ICIP in research?

Aboriginal and Torres Strait Islander peoples have the rights to assert ownership of Indigenous Cultural and Intellectual Property. When we participate in health research, we share our knowledge, practices, innovations, cultural expressions and/or access to land. Therefore, all Aboriginal and Torres Strait Islander health research involves the use of Indigenous Cultural and Intellectual Property in some way.

Research does not occur in the absence of culture<sup>5</sup>. Ceremony, dance, song, stories, music, art, caring for Country, respect for Elders, family and community connections, and language are all elements of Aboriginal and Torres Strait Islander peoples' cultural expression<sup>5</sup>. Culture is central to understanding and shapes the relationship between self to Country, kin, community, and spirituality – all of which are key factors to Aboriginal and Torres Strait Islander peoples' health and wellbeing<sup>5</sup>.

Before engaging in research, it is important that Aboriginal and Torres Strait Islander peoples and communities are aware of the rights we have to our ICIP, as well as any conditions in the research grant and other agreements that may affect these rights. All researchers, both Aboriginal and Torres Strait Islander and non-Indigenous, must behave and practice ethically when working with Aboriginal and Torres Strait Islander people and communities.

Aboriginal and Torres Strait Islander peoples and communities have the right to govern, retain control over, and manage the collection and usage of our data for our purposes in ways that align with our priorities and practices. This includes data collected or generated by large-scale surveys, data-linkage initiatives, and research and evaluation activities<sup>4</sup>.

Guidelines for ethical research include the need for researchers to respect and protect the rights of Aboriginal and Torres Strait Islander peoples and communities.

**A cultural determinants approach includes the protection and promotion of ICIP. This is consistent with an Indigenous rights-based approach to health research.**



This means

**...a cultural determinants approach should be used in research to maintain ICIP that empowers Aboriginal and Torres Strait Islander protection, ownership, and control throughout the research process<sup>5</sup>.**

## How can I protect my ICIP rights when participating in or leading research?

ICIP rights are not well reflected in Australian copyright law. For this reason, ICIP in Australia is usually regulated through agreements and protocols<sup>2</sup>. These agreements and protocols should:

- outline how the research and research team will engage with Aboriginal and Torres Strait Islander peoples and communities to ensure that our heritage, knowledge, and cultural expressions are upheld
- describe the benefits and risks of the research
- list the publications that the research team would like to write, what information will be used and how this benefits the community
- explain how the research team will negotiate the agreement with relevant Aboriginal and Torres Strait Islander community representatives<sup>6</sup>.





The research proposal should disclose the researchers' intended use of the ICIP<sup>6</sup>. As an example, see the Kimberley Land Council's Intellectual Property and Traditional Knowledge Policy for a discussion paper on a ICIP policy they developed<sup>6</sup>. Agreements and protocols should be clearly understood and include a way for Aboriginal and Torres Strait Islander people and communities to take action if researchers do not meet our expectations.

Agreements and protocols also need to be acknowledged and documented within a research team so Aboriginal and Torres Strait Islander researchers feel supported to share our knowledge in a way that we are comfortable with, which values our knowledges and perspectives as Aboriginal and/or Torres Strait Islander people, and which recognises and respects our cultural IP.

All agreements and protocols should be developed with Aboriginal and Torres Strait Islander peoples and communities in a way that<sup>3</sup>:

“

We always include a cultural knowledge clause inside [our] agreements...where [community] members to that project and agreement will have a set of words that describe what [the community] understand to be their cultural knowledge. Having been named... they usually come with a set of guides, clauses in the agreement that determine how that cultural knowledge can be used, who can use it, under what circumstances in the research project, what knowledge is cultural knowledge and separating that out from intellectual property [created by the research team].

Professor Daryle Rigney, Ngarrindjeri

Respects our culture

Enables our free, prior, and informed prior consent.

Ensures we receive benefits and proper attribution from sharing our ICP if we decide to do so.

### Want to learn more:

Visit the resources below and watch this video:

[What are ICIP Protocols? | Law Way - YouTube](#)

### REFERENCES

1. Arts Law Centre of Australia 2011, *Indigenous Cultural and Intellectual Property*, Information sheet.
2. Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) 2020, *A Guide to applying The AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research*, AIATSIS, Canberra.
3. Kearney, J. & Janke, T. 2018, *Rights to Culture: Indigenous Cultural and Intellectual Property (ICIP), Copyright and Protocols*, Terri Janke and Company.
4. Kelaher, M., Luke, J., Ferdinand, A., Chamravi, D., Ewen, S., & Paradies, Y. 2018, *An Evaluation Framework to Improve Aboriginal and Torres Strait Islander Health Users Guide*, The Lowitja Institute, Melbourne.

5. Lowitja Institute 2020, *Culture is Key: Towards cultural determinants-driven health policy – Final Report*, Lowitja Institute, Melbourne. DOI: 10.48455/k9vd-zp46.
6. Foster, P., & Janke, T. 2015, *Keeping Cultural Knowledge with Indigenous Research Protocols: A case study on the Kimberley Land Council's intellectual property and traditional knowledge policy*, Indigenous Law Bulletin, vol. 8(18): 17–20.

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