
Indigenous Cultural and Intellectual Property (ICIP) Policy

Contents

Contents.....	3
1. Context and definitions	5
1.1 The difference and overlap between Intellectual Property and Indigenous Cultural and Intellectual Property	5
1.2 Definitions.....	6
2. Policy Statement	7
2.1 First Nations Artists and Indigenous Cultural and Intellectual Property.....	8
2.2 Obtaining ICIP consent from artists and community.....	8
3. Authority	9
4. ICIP policy principles (based on <i>True Tracks</i> ®)	9
4.1 <i>Respect</i>	10
4.2 <i>Self Determination</i>	10
4.3 <i>Consent & Consultation</i>	11
4.4 <i>Interpretation</i>	13
4.5 <i>Cultural Integrity</i>	14
4.6 <i>Secrecy and Privacy</i>	15
4.7 <i>Attribution</i>	15
4.8 <i>Benefit Sharing</i>	16
4.9 <i>Maintaining Indigenous Cultures</i>	17
4.10 <i>Recognition & Protection</i>	17
5. Indigenous Data Governance (ID-Gov)	18
6. AI and art	18
7. Transparency and accountability strategies	18
7.1 Complaints.....	18
7.2 Periodic review	18
7.3 Staff obligations.....	19
7.4 Record keeping.....	19
8. Responsibilities and compliance	19
8.1 Board of Trustees and Indigenous Advisory Group	19
8.2 Gallery executive and staff	19
9. Related documents, legislation, and useful links	20
9.1 Related Art Gallery policies	20
9.2 Guidelines, procedures, and associated documents	20
9.2.1 Gallery guidelines, procedures, and associated documents	20
9.2.2 National and international guidelines, procedures, and associated documents.....	20
9.3 Legislation.....	21
9.3.1 Commonwealth legislation.....	21

9.3.2	New South Wales legislation.....	21
10.	Last reviewed	22

ICIP Notice

This publication contains Indigenous Cultural and Intellectual Property (ICIP) of Australian Aboriginal and Torres Strait Islander peoples. All rights reserved. Dealing with any part of this knowledge for any purpose not authorised by the custodians may breach the *Copyright Act 1968* (Cth) and customary law.

Important legal notice

The laws and policies referred to in this publication are current as at October 2024. Any reference to laws and policies are for general use only. You should not rely on this document for legal advice for a specific matter. We recommend you obtain professional legal advice from a suitable, qualified legal practitioner.

1. Context and definitions

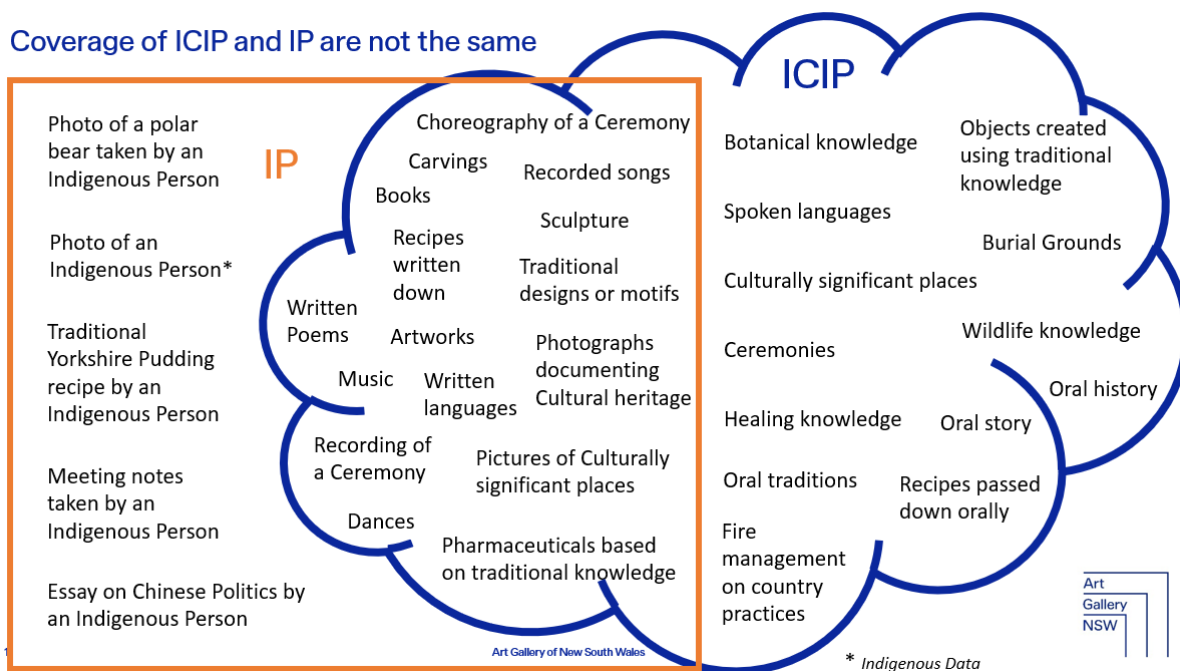
1.1 The difference and overlap between Intellectual Property and Indigenous Cultural and Intellectual Property

Intellectual property in a general sense refers to the creations of the human mind. The intellectual creations people are most familiar with are books, scripts, artwork, sculptures, photographs, films and logos, but intellectual property also covers things like new plant varieties, circuit layouts, product designs, trade secrets and methods of production.

Intellectual property rights refer to the range of legal rights that protect the creative effort that has gone into developing the intellectual property. These protections operate to foster innovation in society by reserving to the rightsholders the exclusive right to profit from their intellectual property endeavours for a specified period of time. These legal rights are constructs of the Western legal tradition. In Australia, our laws recognise copyright, trademarks, patents, design rights, plant breeder's rights, circuit layouts and confidential information.

Given that these rights have a legislated basis, they tend to be quite inflexible and do not recognise forms of intellectual endeavour which do not fit neatly into these defined 'buckets'. For example, copyright will not be recognised if the intellectual property is not in material form. This means that a story passed down through generations in an oral tradition will not have copyright protection unless it is written down or recorded.

A Western legal tradition is also not well suited to recognising communal ownership which is a key feature of many First Nations cultures around the world. Cultural knowledge is offered very limited protections under established IP laws which means that cultural knowledge can be prone to exploitation. For example, a particular tribal design on artwork or blankets which signifies a certain community group may also not be capable of IP protection where the motif appears in many different versions or cannot be attributed to a specific owner. This is where Indigenous Cultural Intellectual Property (ICIP) describes the situation better. Section 4 contains a more detailed description of ICIP used by Dr Terri Janke, but for now a simple description of ICIP is 'the expression of culture by First Peoples'.



The above diagram illustrates the differences and overlaps between ICIP and IP. Material which would probably attract IP protection is represented in the rigid rectangle and forms of cultural expression or ICIP are in the more amorphous cloud of ICIP. Only those expressions of culture in the intersecting space are likely to be eligible for IP protection. Material in the ICIP 'cloud' only, is unlikely to be protected under IP laws unless they were reduced to material form to satisfy legal requirements. Another thing to be mindful of is that not everything that a First Nations person produces will have ICIP in it. It is possible for a First Nations person to produce material with no reference to any ICIP such as those examples on the left in the diagram which are covered by IP laws but are not expressions of culture per se.

At present, Australian law does not formally recognise ICIP although initiatives to change this are underway. However, the Art Gallery is among many other cultural institutions, organisations, government agencies and companies who do already recognise and seek to protect the cultural knowledge of First Nations people. This policy is the Art Gallery's statement of its aspiration to embed respectful and fair treatment in its dealings with all First Peoples.

It is important to bear in mind as you read through this policy that the Art Gallery already recognises the IP rights of artists in relation to works they produce. Nothing in this ICIP policy interferes with those established principles of IP law. This policy describes how the Art Gallery will approach ICIP.

1.2 Definitions

In this policy:

Aboriginal or Torres Strait Islander person means a person who:

- a) is of Australian Aboriginal or Torres Strait Islander descent;
- b) identifies as an Australian Aboriginal or Torres Strait Islander person; and
- c) is accepted as an Australian Aboriginal or Torres Strait Islander person by their community.

Aboriginal or Torres Strait Islander artwork means artwork by an Aboriginal or Torres Strait Islander artist

Acknowledgement of Country is a formal recognition of the traditional land owners of the country or region where one is located either spoken or written. It is a way to pay respect to the First Peoples who have lived on and cared for the land for thousands of years and acknowledge their ongoing cultural connection to the land and waters of the area.

Art Gallery means the Art Gallery of New South Wales

First Nations is used interchangeably with 'First Peoples'. This term is used expansively and global in nature. In this policy we consider that First Nations persons are those who self-identify as indigenous and are accepted by their community as members of that indigenous group. The United Nations describes indigenous peoples as *"inheritors and practitioners of unique cultures and ways of relating to people and the environment. They have retained social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live. Despite global cultural differences, indigenous peoples from around the world share common problems related to the protection of their rights as distinct peoples"*¹. The term includes Aboriginal and Torres Strait Islanders

¹ <https://social.desa.un.org/issues/indigenous-peoples> (accessed 14 Jan 25)

but encompasses all persons who identify as Aboriginal or Torres Strait Islanders even if they have relocated. It includes native American Indian tribes and tribal peoples of Canada practicing their cultural practices and beliefs.

First Nations Department means the section of the Art Gallery with responsibility for overseeing the collection, exhibition and programs related to Aboriginal or Torres Strait Islander art and global First Nations art. The First Nations Department sits within Collections.

Aboriginal or Torres Strait Islander themes or content includes any representations of Aboriginal or Torres Strait Islander people, culture, imagery or issues.

Acquisition means the process of obtaining valid title to an artwork, in accordance with the Art Acquisitions Policy.

Act means the *Art Gallery of New South Wales Act 1980* (NSW).

Cultural Custodians means the First Nations people who identify as custodians of a particular land, sea, Country, or place. Cultural Custodians have continuing cultural associations with their country deriving from their traditions, observations, customs, beliefs and histories. Cultural Custodians have continuing responsibilities to care for their country, including the tangible and intangible manifestations of country.

Curator means the person responsible for the conceptual development and research of the collection and exhibitions, including identifying and sourcing loans for exhibition.

Director means the Director of the Art Gallery of New South Wales, and includes a person appointed as acting Director.

Indigenous Advisory Group means the identified group of Aboriginal and Torres Strait Islander artists, arts professionals and leaders who provide ongoing advice to the Art Gallery.

Trustee means a member of the Board of Trustees of the Art Gallery of New South Wales

Trustees means the Board of Trustees of the Art Gallery of New South Wales

Welcome to Country is a ceremony carried out by an Aboriginal or Torres Strait Islander person connected to the land to welcome people to their land. It acknowledges the traditional owners and Cultural Custodians, their connection to the land, and to obtain their permission to be on the land.

2. Policy Statement

This policy confirms the Art Gallery's commitment to respecting the rights of Australia's diverse Aboriginal and Torres Strait Islander communities, as Australia's First People. However, the Art Gallery's remit is broader and accordingly, we strive to respect First Nations' communities and their Indigenous Cultural and Intellectual Property (ICIP) globally as appropriate. While this policy has been drafted with Aboriginal and Torres Strait Islander communities in mind, it should be read as applicable to other First Nations communities wherever possible.

The Art Gallery acknowledges that First Nations artists, creators, Cultural Custodians/elders and educators frequently create art and other materials that tell their own personal culture story, and incorporate ICIP. Recognition of copyright and any other IP rights are already standard in Art Gallery agreements. This ICIP policy covers the additional ways that the Art Gallery will recognise ICIP where applicable.

2.1 First Nations Artists and Indigenous Cultural and Intellectual Property

First Nations artists may include ICIP in their artworks in different ways. It could be through the subject matter of the work. For example, a First Nations artist may want to tell a communally owned story through their painting. Alternatively, an Aboriginal or Torres Strait Islander artist's technique or methodology may be informed by shared experience or cultural knowledge, for example weaving or use of traditional materials for paint or ink.

It is also possible that a First Nations artist may not include communally owned ICIP in their artworks at all. An example of this would be where a First Nations artist learnt European portraiture technique and used commercially available canvas and tempera paints to create a work inspired by Titian. As no communally owned cultural knowledge was part of the creation of the work, no ICIP is embodied in that work. Even so, it may be appropriate that the First Nations artist is provided with considerations appropriate to works containing ICIP. It may be that the artist themselves does not wish to be identified as a First Nations artist. In this, the Art Gallery will be guided by the artist's wishes.

It is the responsibility of the Art Gallery staff working with the First Nations artist/person, or their representative, to determine the nature of the ICIP (if any) included in the artwork, the presentation or other material. If there is any doubt about the type of ICIP, staff should consult the Art Gallery's First Nations Department, the Registrations team or Legal to discuss the matter. Once the type(s) of ICIP have been identified, this should be noted as part of obtaining ICIP consent (and recorded in the Art Gallery's systems). The Art Gallery, via its First Nations Department, can determine if specific ICIP permissions are necessary, whether they can be obtained through the artist/person, or whether wider consultation with community is required.

2.2 Obtaining ICIP consent from artists and community

Cultural Custodians continue to be the custodians and primary interpreters of their ICIP. When ICIP is incorporated into the artworks in the Art Gallery's collections, in audio-visual material displayed at the Art Gallery, in merchandise for sale in our shops or in our programming, that ICIP is still subject to those on-going custodial rights, and cultural protocols. Wherever possible, the Art Gallery will only reproduce, feature or exhibit ICIP with the appropriate permissions from the Cultural Custodians of that ICIP. That permission may be obtained through the First Nations artists, persons and educators that we work with, or we may seek advice more widely, for example, from the artist's family or community representatives.

The Art Gallery seeks to establish respectful, lasting relationships with artists, and their communities. Consistent with the Art Gallery's existing practice to acknowledge copyright ownership and other details for any artwork it displays or reproduces, the Art Gallery will ensure that we include in that acknowledgement any attribution to a particular cultural group as nominated by the artist or other Cultural Custodian of the ICIP.

The Art Gallery acknowledges that First Nations artworks require periodic cultural maintenance, meaning periodic re-establishment of connection between the First Peoples and their cultural objects, as well as maintenance of physical materials. Where the Art Gallery, via its conservators, consider that a work requires conservation, it will work closely with the artist or their community, to seek their input and treat the work in accordance with any cultural stipulations. It may be appropriate at that juncture for the artist and/or their community to re-engage with the work or material. The Art Gallery will be advised by its First Nations Department in this regard. At other times, the artist and/or community should liaise

with the Art Gallery's First Nations Department regarding requests for access to works or material for cultural maintenance.

3. Authority

This policy has been drafted in conjunction with the Art Gallery's First Nations Department, endorsed by the Indigenous Advisory Group, and approved by the director and the Board of Trustees pursuant to the Act.

4. ICIP policy principles (based on *True Tracks*®)

These 10 ICIP policy principles are based on the True Tracks® Principles developed by Dr Terri Janke. They are reproduced here with permission. The True Tracks Principles remain the IP and ICIP of Dr Terri Janke.

Indigenous Cultural and Intellectual Property (ICIP) means the rights of Aboriginal and Torres Strait Islander peoples, and other First Peoples, to their cultural heritage. Heritage comprises of all objects, sites and knowledge, the nature and 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 their territory.

The heritage of an Indigenous people is a living one, and includes objects, knowledge, literary and artistic works which may be created in the future based on that heritage.

Heritage includes, but is not limited to:

- a) literary, performing and artistic works (including paintings, performance artworks, video and audio installations, oral histories, stories, ceremonies, symbols, languages and designs);
- b) scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and the phenotypes of flora and fauna);
- c) all items of movable cultural property;
- d) Ancestral remains and tissues;
- e) immovable cultural property (including sacred and historically significant sites and burial grounds); and
- f) documentation and data of First Nations peoples' heritage in archives, film, photographs, videotape or audiotape and all forms of media.

ICIP can include diverse and interconnected cultural heritage, as illustrated in the Figure 1.



Figure 1: Indigenous Cultural and Intellectual Property (ICIP)

4.1 Respect

The Art Gallery respects the rights of First Nations people to own, protect, maintain, control, and benefit from their cultural knowledge and ICIP.

The Art Gallery acknowledges the diversity of First Nations peoples and cultures. We understand that First Nations communities have their own specific cultural protocols for their ICIP. Cultural protocols may vary significantly between communities.

First Nations artists have their own unique histories and cultural stories that inform their artistic practice, just as different First Nations performers may develop different expressions of the same cultural practice.

The Art Gallery will continually showcase this diversity of cultural practice and experience through our collections, exhibitions and programs.

In line with the Art Gallery's Aboriginal and Torres Strait Islander Engagement Policy, the Art Gallery will actively listen to First Nations artists. The Art Gallery will endeavour to facilitate artistic practices and/or cultural practices of First Nations artists whenever reasonably practicable.

The Art Gallery will acknowledge the on-going connections of Cultural Custodians to country, and aligned with and subject to NSW government guidelines and directives, will acknowledge this connection in the following ways:

- The Art Gallery will ensure an appropriate Acknowledgement of Country or Welcome to Country is given at exhibition openings and public facing events and programs.
- The Art Gallery will encourage appropriate Acknowledgement of Country or Welcome to Country at internal events, including meetings as appropriate.
- When the Art Gallery arranges for Welcomes to Country, we will seek Cultural Custodians of the land on which the event is taking place. Where the land is contested, the Art Gallery will vary who they invite as representatives from the relevant peoples, and will ensure equitable representation of the relevant peoples.
- The Art Gallery will pay Cultural Custodians for their time and for sharing their cultural expertise and will be guided by the [NAVA Payment Standards](#).
- The Art Gallery will include Acknowledgement of Country signage at Gallery entrances, and on our website.

The Art Gallery will include ICIP considerations in all Art Gallery forms, strategies, policies, and contracts where applicable. It will plan for how to respectfully incorporate ICIP at the planning phase of exhibitions and programs. Where a program incorporates ICIP, we will consider co-design models with Aboriginal and Torres Strait Islander artists, curators, and educators where that suits the planned presentation.

4.2 Self Determination

The Art Gallery recognises the rights of First Nations artists and communities to make their own determinations about when and how their ICIP is incorporated into artworks, exhibitions, programs and promotional materials as part of their dialogue with Art Gallery curators.

The Art Gallery will endeavour to proactively engage with First Nations artists, consultants, curators, researchers and educators wherever possible. The Art Gallery will focus on ensuring that exhibitions and programs that incorporate significant ICIP are led by the First

Nations Department whenever possible. The curatorial function, irrespective of whether it is undertaken by First Nations staff or not, will be primarily responsible for embedding this principle of self-determination into Art Gallery programming.

The other ways that the Art Gallery will seek to embed self-determination in its operations includes, but is not limited to:

- valuing First Nations perspectives within its governance structures including the Indigenous Advisory Group and on the Board;
- periodically reviewing the decision-making processes within programs and exhibitions to ensure that wherever possible, we have First Nations representation in those key strategic and programming forums
- continuing to progressively embed ICIP considerations into our forms, strategies, policies, and contracts, as appropriate.
- wherever possible, factoring in consultation and review time for artists and community (where applicable) in our project timelines and project plans
- consistent with NSW government policy and directives, the Art Gallery will encourage increasing the number of First Nations staff across all areas of operation

The Art Gallery will work closely with Aboriginal and Torres Strait Islander artists to discuss succession planning and cultural mourning protocols so that Aboriginal and Torres Strait Islander artists can provide instructions on how data about themselves and their artwork should be managed and stored long-term.

4.3 Consent & Consultation

The Art Gallery is committed to obtaining the free prior informed consent of First Nations artists and Cultural Custodians prior to reproduction, exhibition or publication of ICIP.

Wherever possible, the Art Gallery will seek free, prior, and informed consent for the use of ICIP.

Seeking ICIP consent is not always straightforward

The Art Gallery recognises that we may need to seek consent from more than one person. The breadth of consent may depend on the nature and extent of the use of the ICIP. For example, potentially sensitive content with competing claims or views held by different cultural groups, may require more substantial consultation with a wider group of people. By comparison, an artist telling their own personal culture story, may be able to provide consent to the exhibition of the artwork or inclusion of the material in a public program, and confirm that they have the necessary permissions from their Cultural Custodians.

The Art Gallery may need to seek ICIP consent from:

- the artist (or their family if they have passed away);
- the Cultural Custodians of a traditional story, song or language, depicted in an artwork;
- Land Councils or Native Title Prescribed Body Corporates; and/or
- art centres and community organisations involved in decision-making for their community.

The Art Gallery is committed to consultation with appropriate representatives of First Nations communities.

The Art Gallery recognises that it may not always be possible to reach unanimous consent, or to be certain that all relevant cultural authorities have been contacted or even if the correct cultural authorities have been contacted. The Art Gallery will use reasonable efforts to seek the relevant Cultural Custodians and secure their support in accordance with this policy. If consent is explicitly withheld or denied, the Art Gallery will consider the concerns raised and will take a risk-based approach to, proceeding with the exhibition or project as planned; modifying the proposed use of ICIP in the exhibition or project to align with cultural concerns raised; or, ceasing the work.

If the Art Gallery does not know who the ICIP owners are, and is not in touch with the artist, we will follow reasonable due diligence processes to try to identify Cultural Custodians and consult to the extent possible, noting that further research about the provenance of the artwork may be required. If ICIP consent remains uncertain, we will take a risk-based approach to decide whether to proceed with the use of the ICIP based on risk of harm to the Art Gallery, and the actual Cultural Custodians. If the ICIP seems as though it could have sensitivities, we may decide that the risk of community and cultural harm is too high and modify our proposed use of the ICIP or withdraw the ICIP. If the risk seems low, we may proceed with the exhibition or program, but we will provide a statement that acknowledges incomplete community consultation, and inviting input from members of the public who may have information leading to the Cultural Custodians.

Full and informed consent means allowing ample time and providing as much information about the project as possible

Whenever possible, the Art Gallery will try to make sure people are given sufficient time to consider our proposal, ask questions or seek independent advice. The Art Gallery will abide by any internal community decision making processes.

When the Art Gallery is consulting with a First Nations artist or community member, we will provide all the relevant information about the size and scope of the project, the intended audience, and any risks. If plans change during the course of the exhibition or program, and new or additional uses of the ICIP are proposed, we will keep that person up to date, and seek further consent for those new purposes.

The Art Gallery will seek enough consent that includes all the current proposed uses of the ICIP, and reasonable future uses such as promotion related to the exhibition, or archival use after an exhibition, but we will not ask First Nations artists and providers of cultural material to provide consent for all possible uses, in perpetuity.

The Art Gallery recognises that we may need to go back to the artist, or their community to ask for more consent, if the original consent is close to expiring, if there is a new proposed use of the ICIP, or if the records of the previous consent do not provide enough information to be certain that consent is continuing.

Documenting ICIP consent

The Art Gallery has a number of prepared templates which set out the required information which must be provided to artists and Cultural Custodians so that free and informed consent can be obtained and also what information is required from artist and Cultural Custodians to allow the Art Gallery to keep good records of ICIP consents.

Recording of ICIP consents are as important as recording of copyright and other intellectual property rights and is an important part of keeping government records to meet our

obligations under the State Records Act 1998 (NSW). Without appropriate records about ICIP it would not be possible for the Art Gallery to abide by any cultural restrictions regarding the ICIP or find out which cultural group we would need to seek further consent from for additional or future use of the ICIP.

In the event the artist or Cultural Custodian does not wish to sign any documentation regarding their ICIP consent, contemporaneous file notes from Art Gallery staff are acceptable to record the pertinent aspects of the consultation and the details of the ICIP consent given orally. Templates are available for this purpose.

Acquiring First Nations art

From the date of this policy, when the Art Gallery commissions artwork, we will always ask the artist to confirm whether there is ICIP included in the work, and if so, we will ask them for ICIP consent and if considered necessary, either require them to provide proof of ICIP consent or assist us with obtaining wider ICIP consents, possibly making introductions and providing contacts with Cultural Custodians.

When we purchase an artwork, or an artwork is donated, directly from an artist or their agent, ICIP disclosure must be included for the artwork, including any on-going cultural protocols. Where the acquisition is not from the artist or their agent (e.g. it is a re-sale) and such cultural information is not part of the sale, the Art Gallery will undertake our own due diligence process to ascertain whether cultural consent can be obtained from the Cultural Custodians in the absence of the artist providing it.

Incoming loans

When work is on loan to us from another gallery, any ICIP embodied in the work should be disclosed to us, preferably as part of the loan agreement. If not, and the Art Gallery will make our own inquiries with the lending institution about the scope of the licence provided and any ICIP consent they have received and the extent to which that consent allows for the contemplated uses of the Art Gallery and any reasonable future uses of reproductions of the artwork (for example, archival use is a requirement for the Art Gallery under the State Records Act 1998 (NSW)). If the ICIP consent received by the lending institution does not reasonably cover the Art Gallery's proposed uses of the ICIP, the Art Gallery will make its own enquiries directly with artist or Cultural Custodian to seek its own separate ICIP consent.

Records of ICIP consent

As a form of rights, the Art Gallery will store ICIP consents in its Vernon collection database, using a rights module. In the event that Vernon is updated, the functionality to record ICIP consents will form a required functionality in any replacement system. As part of the training of our staff on use of copyright material, the Art Gallery will include training on accessing and understanding ICIP consents.

4.4 Interpretation

The Art Gallery understands that it is appropriate for First Nations people to lead the interpretation of their cultural heritage and ICIP.

The Art Gallery wants to play a supporting role to First Nations artists and educators, as they lead truth-telling and healing through their artworks and programs. We can play this supporting role by amplifying First Nations voices in our exhibitions and programs. This

includes providing a platform for First Nations artists, curators, performers, speakers, educators and producers.

Where ICIP features in the material, First Nations perspectives should, wherever possible, be included in exhibition catalogues, exhibition labels, and promotional materials (print and online). It is also important that First Nations perspectives are included in the way First Nations artwork is displayed and incorporated into exhibitions and collection hangs.

Public programming is an important opportunity for two-way learning when audiences have the opportunity to gain a better understanding of First Nations cultural material in our exhibitions. These programs will be co-designed with First Nations cultural consultants and educators so that interpretation to audiences is accurate and authentic.

The Art Gallery recognises the right of First Nations people to inform the Art Gallery of their wishes to incorporate or use languages other than English in our exhibitions and programs. The policy of the Art Gallery is to start from the position that a First Nations artist, presenter or cultural advisor is empowered to use their own language. There are circumstances where it may be appropriate for the First Nations artist, presenter or cultural advisor to seek guidance from Cultural Custodians of the language group in relation to spelling or confirming the intended usage of the First Nations language is appropriate.

The Art Gallery accepts that languages evolve and change with time and use and that First Nations artists, presenters and cultural advisors can have differing views on spelling, even within the same language group. Accordingly, the Art Gallery will provide attribution and acknowledgement as specified by the First Nations artists, presenters and cultural advisors, defaulting to common spelling only when no preference has been communicated. Captioning will conform to the house-style of the Art Gallery whether in English or any other language.

Some of our legacy materials may require re-consideration in the ways they have been interpreted in the past. We may also receive requests for changes to interpretation. We will respond to these requests promptly, and consider these requests carefully.

4.5 Cultural Integrity

The Art Gallery understands that the cultural integrity of ICIP should be maintained throughout exhibitions and programs. This is necessary for ICIP and cultural knowledge to be passed to the next generation and for continued cultural practice.

When the Art Gallery is designing exhibitions and public programs, is involved in research and publishing, or is undertaking digital projects, we will:

- ensure First Nations perspectives are represented in the decision making for those projects to guide the continued cultural integrity of the ICIP incorporated;
- seek advice from relevant cultural authorities on best practice interpretation of ICIP, especially content that is potentially sensitive; and
- ensure that the incorporation of ICIP and cultural knowledge is with the consent of First Nations artists or Cultural Custodians as required.

The Art Gallery will use terminology that is accurate and empowering for First Nations communities. We understand that preferred terminologies can change over time, and people will have different perspectives on their own preferred terminology (for example, some people prefer to use *First Nations* rather than *Aboriginal and Torres Strait Islander*, or vice versa). We will proactively inform ourselves of current discussions around terminology, and

we will be responsive to feedback. This may mean that we have to update our language from time to time. In these matters we will be informed by our First Nations Department.

The Art Gallery will include relevant ICIP information in our records including recording the names of the Cultural Custodians of the ICIP, as well as any specific knowledge holders or cultural experts who have been consulted on that artwork or presentation. As far as possible, we will keep records of the cultural significance of any traditional knowledge included in the artwork, or any culturally informed techniques or skills that were used to create the artwork. If the First Nations artist we are working with, (or their community if we are also working with community) indicates any preferred terminology or spellings, we will keep a record of these to ensure the correct language is also used in future. If we have been notified of any access or use restrictions we will include a record of these use restrictions in our records systems, and on any notices applied to the artworks when in storage.

4.6 Secrecy and Privacy

The Art Gallery will take all reasonable measures to avoid disclosure of any ICIP that is secret or sacred. The Art Gallery will also respect the privacy of First Nations artists, and strive to maintain the confidentiality of their personal and cultural affairs.

From the date of this policy, the Art Gallery will not seek to acquire secret or sacred cultural materials. However, we understand that cultural protocols can evolve over time, or circumstances can change that will impact restrictions (e.g. the death of an artist may require the restriction of their name, image, or voice). When we seek consent from First Nations artists and communities, we will always ask whether the ICIP is appropriate for wide publication.

The Art Gallery realises that some of our legacy materials may include cultural knowledge and ICIP that is not suitable for wider publication or exhibition. This is part of the reason we strive to ensure documented consent is obtained prior to each new use of the artwork or ICIP, noting that a re-hang of a work might not necessarily be a new use but use of an artwork in a derivative animation would be a new use requiring a further consent.

Cultural protocols for knowledge may change over time so refreshing the consent may be necessary. If we become aware that an artwork contains secret or sacred knowledge, we will remove it from display, update our records and store it in a secure place with cultural warning notices. If the Art Gallery receives a notification or request to remove a First Nations artwork from display because it incorporates secret or sacred knowledge, we will investigate promptly and take appropriate action based on our findings. It may be appropriate for us to remove the artwork from display immediately, until further information comes to light. The Art Gallery will seek instructions from the Cultural Custodians of the secret or sacred knowledge about culturally sensitive handling of that artwork. The Art Gallery will apply appropriate cultural warning notices to our records and storage of the artwork.

If the Art Gallery is in possession of secret or sacred data, for instance, in our catalogue system, we will ensure the security of that data and ensure access is restricted to appropriate staff.

4.7 Attribution

The Art Gallery will continue to provide attribution to First Nations artists and contributors, consistent with its practices for all artists and contributors. We will acknowledge Cultural Custodians of ICIP whenever it is incorporated in artworks,

exhibitions or programs. We will also attribute the knowledge and cultural experts who assist in the identification of ICIP and cultural protocols.

The Art Gallery will consult with First Nations artists (or their representatives) about how to attribute them whenever their artwork is displayed at the Art Gallery or online. The Art Gallery will use the wording and spelling chosen by the artist, or their representative. This includes any guidance provided by family members, if the artist has passed away.

Attributions will be consistent with the Art Gallery's house-style for captioning and in equal prominence to other caption information, and will include attribution of any Cultural Custodians, as agreed in any ICIP consent.

If the Art Gallery is developing a public program, or educational materials, we will attribute the knowledge and cultural experts who shared their time and expertise to make the program or material possible. Again, we will use the preferred wording and spelling of the expert, and will respect their right to opt-out of public attribution if they so wish, per the terms of any ICIP consent.

The Art Gallery will use reasonable measures, to at least the same standard as other sensitive material held by it, to ensure the security of any private information recorded during these attribution discussions.

If the Art Gallery is uncertain of the correct attribution for an artwork (especially an artwork that has been within the collection for a long time), the Art Gallery will do reasonable due diligence research and will then proceed with caution, under the guidance of our First Nations Department, supported by the IAG. We may provide a partial attribution based on current knowledge, and organise staff engagement with community and/or invite anyone with further information to contact the Art Gallery. This may mean that the public may contact the Art Gallery with further information about the artwork, and may enable us to record further ICIP information, and update the attribution.

4.8 Benefit Sharing

The Art Gallery is committed to fair and reasonable payment for copyright licences and ICIP consent, and for the time and expertise of knowledge and culture experts. In this way, the Art Gallery demonstrates its commitment to sharing benefits (which can include non-financial benefits) back to community whenever ICIP is incorporated in exhibitions and programming.

The Art Gallery will ensure that provision is made within budgets and project management of our exhibitions and programs for compensating artists and cultural custodians (where appropriate) for their ICIP.

Benefit sharing may be monetary and/or non-monetary, and may include:

- ensuring that artworks are purchased through equitable and ethical channels including directly from the artist or their agent;
- employment and training opportunities for First Nations artists, educators, and gallery sector professionals;
- commissioning First Nations Curators, guest speakers, researchers and cultural experts; and
- ensuring merchandise marketed as produced by First Nations communities or artists sold in the Art Gallery store has been produced ethically, is appropriately attributed, with fair payment to the artists and under licence.

The Art Gallery acknowledges that in any ongoing commercial use of cultural knowledge or ICIP there must be consideration of monetary benefits including agreement about the payment of royalties.

The Art Gallery will continue to ensure that, at a minimum, we meet NAVA's Code of Practice for Visual Arts, Craft and Design, [Payment Standards](#). Where there are no published standards, the Art Gallery will undertake reasonable benchmarking to ascertain a workable scale of fees for the various engagements of First Nations people. This process will be led by the First Nations Department.

4.9 Maintaining Indigenous Cultures

The Art Gallery recognises that First Nations cultures are living, and constantly evolving. With each new generation, new ICIP is generated and passed to the next generation. Cultural protocols may also change. The Art Gallery will work with First Nations artists and Cultural Custodians to ensure our exhibitions and programs support the continuing strength of cultures.

The Art Gallery will consider our exhibitions and programming schedule, to ensure that they show the diversity of First Nations cultures. We will also endeavour to represent a diversity of First Nations artists.

The Art Gallery values its existing relationships with First Nations artists, educators and Cultural Custodians and will seek to maintain those relationships while working towards establishing new long term relationships with other First Nations artists, educators and Cultural Custodians. All of these relationships are an opportunity for two-way knowledge sharing. These close relationships will support the Art Gallery when planning for how to store, preserve, archive, and exhibit First Nations artworks for future generations.

Maintaining this continuous connection will keep culture connected to community. These continuing connections will also mean that the Art Gallery is notified if there has been any change or development on the cultural protocols that we should be aware of. It will also mean that if we need to re-connect to ask for more consent, then the lines of communication are already well established.

4.10 Recognition & Protection

The Art Gallery will use existing laws, in combination with policies, guidance notes and contracts to provide protection of ICIP rights. The Art Gallery will periodically review our policies, strategies, and agreements to ensure that ICIP has been considered appropriately, and that the Art Gallery has followed best practice.

The Art Gallery does not start from the premise that ICIP is in the public domain, but rather that ICIP, as an expression of culture, continues to grow and evolve and therefore ICIP continues to belong to that culture. The Art Gallery will review our policies, and strategies, in accordance with this ICIP policy. We will also ensure that our contracts give appropriate consideration to ICIP consents, as well as continuing cultural protocols, and attribution. We will further confirm that our agreements include culturally appropriate dispute resolution clauses, including an agreement to continue to communicate respectfully, and to attempt to resolve the dispute in a culturally appropriate manner. This may include consideration of alternative dispute resolution options such as mediation.

When we are contracting with third parties, particularly for outward loans, we will ensure that the contracts clearly represent any licence limitations, or continuing cultural protocols that the borrower must be aware of in order to stay within the scope of the ICIP consent agreed with the First Nations artist, or Cultural Custodian.

5. Indigenous Data Governance (ID-Gov)

Indigenous Data is information or knowledge, which is about, or may affect First Nations people or their ICIP, both collectively and individually, in any format or medium.²

The Art Gallery acknowledges that it holds ICIP data, and Indigenous Data more generally.

We further acknowledge that we continue to collect and record Indigenous Data when we implement the ICIP policy principles. For example, when First Nations artists share their stories and biographical information with us.

The Art Gallery will respect individual and community rights when incorporating ICIP and Indigenous Data into digital formats. This includes through incorporation into audio tours, into our catalogues, online exhibitions, and digital artworks. The Art Gallery will manage Indigenous Data in accordance with the ICIP policy principles and periodically review developments in this area, updating this policy if required.

6. AI and art

The Art Gallery notes the increasing use of AI in gallery spaces to enhance accessibility and engagement with collections. This includes via personalising visitor experiences, learning more about audiences, and to support online exhibitions. First Nations artists may also use AI in their artistic projects. The Art Gallery commits to applying principles of respect to First Peoples as new uses of AI emerge.

Staff are referred to the Art Gallery's AI policy (in development).

7. Transparency and accountability strategies

The Art Gallery encourages feedback on this ICIP policy and its implementation. We are committed to considering and responding to all feedback respectfully and in a timely manner.

7.1 Complaints

Staff who have complaints regarding non-compliance with this policy are directed to the Art Gallery's Grievance and Dispute Resolution Policy and Procedure which provides for grievances regarding interpretation and application of the Art Gallery's policies.

Investigations and communication of outcomes to the complainant will be handled in accordance with the Grievance and Dispute Resolution Policy and Procedure. At the discretion of any appointed investigator, consultation with the First Nations Department and/or the Indigenous Advisory Group may be appropriate.

7.2 Periodic review

The Director will ensure that compliance with these procedures is assessed every 3 years as part of the Art Gallery's periodic review of its policies and procedures.

² Maïam nayri Wingara, 'Definitions' [Definitions — Maïam Nayri Wingara](#) (accessed 28 March 2024).

7.3 Staff obligations

This policy applies to all staff members, contractors, employees of contractors, consultants, interns and volunteers at the Art Gallery (collectively referred to in this policy only as 'staff') and all staff should strive to embed respectful dealings with First Nations people into their daily workflows. This policy provides a framework to guide and support staff in their dealings with First Nations artists, performers and cultural experts. The Art Gallery accepts that it may not be possible in every circumstance to meet all the criteria set out here. If that is the case, direct questions to the First Nations Department who can advise or provide further guidance. Understanding of this policy and its implementation, in line with the Art Gallery's Aboriginal and Torres Strait Islander Engagement Policy, is a shared responsibility of all staff.

7.4 Record keeping

- a) Appropriate records of consultations and decision making will be maintained in accordance with established Record Keeping Policy and Procedures, in particular in the areas of exhibitions, loans and acquisitions. Public programs will keep appropriate records regarding consultations and engagements to meet the requirements of this policy.
- b) Record keeping policies and procedures must comply with the Art Gallery's obligations under the *State Records Act 1998* (NSW) and should, wherever possible incorporate these policy principles.
- c) Files must include evidence of the consultation and decision-making processes and outcomes including:
 - i. Representatives consulted
 - ii. methods of consultation, including strategies to facilitate genuine and meaningful exchange
 - iii. any ICIP consents or agreements
 - iv. the representative's decisions or wishes on the matter
 - v. the outcome or decision made by the Art Gallery on the matter
 - vi. any additional outcomes for the Community arising from the consultation and engagement and, if possible, evidence that these have been acted upon.

8. Responsibilities and compliance

The Director, with the oversight of the Board of Trustees and the advice of the Indigenous Advisory Group, is responsible for the implementation of this policy.

8.1 Board of Trustees and Indigenous Advisory Group

The Board of Trustees is responsible for ensuring this policy is implemented by the Director across all relevant areas of the Art Gallery's operations. The Director has nominated the First Nations Department as the area with direct oversight for implementing, educating and training the organisation about the policy and any protocols.

The Indigenous Advisory Group is available to provide advice to the Director and First Nations Department regarding interpretation of the policy and the ongoing implementation of any associated ICIP protocols, procedures, or guidelines developed by the Art Gallery. The IAG has reviewed this policy and made recommendations, through the Chair of the IAG, to the Director and the Board of Trustees in this regard.

8.2 Gallery executive and staff

The Director and Deputy Director & Director of Collections are responsible, through the wider Art Gallery executive, for ensuring that the processes relating to engaging with First Nations peoples and their ICIP conform to Art Gallery policies and comply with them. In this, the Head of the First Nations Department and the General Counsel will provide support.

All Art Gallery staff have a responsibility to understand and implement this policy when engaging with First Nations people and their ICIP and to adhere to any associated ICIP protocols, procedures or guidelines as well as any specific cultural protocols notified to them by First Nations people.

9. Related documents, legislation, and useful links

9.1 Related Art Gallery policies

Art Acquisitions Policy Code of Ethics and Conduct

AI Policy (in development)

Collections Management Policy

Conflict of Interest Policy

Copyright and Image Reproduction Policy

Deaccession and Disposal Policy

Exhibitions Development Policy

Fraud Control Policy

Grievance and Dispute Resolution Policy and procedure

Gifts and Benefits Policy

Incoming Loans Policy

Outgoing Loans Policy

Provenance and Due Diligence Research Policy

Record Keeping Policy

9.2 Guidelines, procedures, and associated documents

9.2.1 *Gallery guidelines, procedures, and associated documents*

Aboriginal and Torres Strait Islander Engagement Policy

Acquisitions and Loans Committee Charter

Art Acquisition Procedures

Code of Ethics and Conduct

Provenance and Due Diligence Research Procedures

9.2.2 *National and international guidelines, procedures, and associated documents*

AIATSIS, [*Guidelines for Ethical Research in Australian Indigenous Studies*](#), 2012 (PDF)

Australian Government, Attorney General's Department, Ministry for the Arts, [Australian Best Practice Guide to Collecting Cultural Material](#) 2015 (PDF)

International Council of Museums [ICOM Code of Ethics](#) 2017(PDF)

Creative Australia (formerly Australia Council for the Arts), [Protocols for using First Nations Cultural and Intellectual Property in the Arts](#), 2019 (PDF)

Museums Australia, [Code of Ethics](#) 1999 (PDF)

Food and Agriculture Organisation of the United Nations, [Free Prior and Informed Consent Guide](#), 2016 (PDF)

Maïam nayri Wingara, [Defining Indigenous Data Sovereignty and Indigenous Data Governance](#)

Museums Australia, [Continuous cultures, ongoing responsibilities: principles and guidelines for Australian museums working with Aboriginal and Torres Strait Islander cultural heritage](#)2005 (PDF)

Raven, Tui, [Guidelines for First Nations Collection Description](#), National and State Libraries Australasia 2023 (PDF)

UNESCO, [Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property](#) 1970

United Nations, [United Nations Declaration on the Rights of Indigenous Peoples](#), 2007

United Nations Permanent Forum on Indigenous Issues, [Factsheet: Who are indigenous peoples?](#),

National Association for the Visual Arts, [NAVA Code of Practice for Visual Arts, Craft and Design](#), 2024 (PDF)

9.3 Legislation

9.3.1 Commonwealth legislation

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

Copyright Act 1968

Privacy Act 1988

Protection of Cultural Objects on Loan Act 2013

Protection of Cultural Objects on Loan Regulation 2014

Protection of Movable Cultural Heritage Act 1986

Protection of Movable Cultural Heritage Regulation 1987

9.3.2 New South Wales legislation

Aboriginal Languages Act 2017

Art Gallery of New South Wales Act 1980

Government Information Public Access Act 2009

Privacy and Personal Information Protection Act 1998

State Records Act 1998

10. Last reviewed

Version	Effective date	Significant changes
V1	28 March 2024	First draft
V2	3 Sep 2024	Legal review, First Nations Department review
V3	11 Sep 2024	IAG review, Board of Trustees (noting)
V4	5 Nov 2024	Final, exec approval
V5	10 Jan 2025	Director review and amendments
V6	14 Jan 2025	Final Director review and amendments