

# Aboriginal Affairs NSW

## Aboriginal Cultural and Intellectual Property Protocol



Aboriginal  
Affairs



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# 1. BACKGROUND

## 1.1 Introduction

Aboriginal Affairs NSW (AANSW) works alongside Aboriginal people and communities so that their voices are heard and their interests represented. We influence policy makers and practitioners to co-design policy solutions with Aboriginal communities to support the long-term social, cultural and economic aspirations of Aboriginal people in NSW.

Our vision is *Aboriginal people in NSW are determining their own futures.*

## 1.2 Purpose

Culture is key to the wellbeing of Aboriginal people. AANSW recognises that Aboriginal people must be supported to maintain, control, protect and develop their diverse cultures, drawing on their rich heritage, knowledge and cultural expressions.

The AANSW *Aboriginal Cultural and Intellectual Property Protocol (the Protocol)* is part of AANSW's commitment to upholding Aboriginal peoples' rights to their heritage, knowledge and cultural expressions. In the absence of protection for cultural and intellectual property rights under Australian laws, the Protocol sets a standard of practice so that Aboriginal people can be confident that AANSW and those we engage to work with us will treat Aboriginal heritage, knowledge and cultural expression with respect and in accordance with agreed protocols.

The Protocol also contributes to OCHRE (Opportunity, Choice, Healing, Responsibility and Empowerment) the NSW Government's plan for Aboriginal affairs, which aims to transform the relationship between Aboriginal people and the NSW Government. AANSW continuously works to better its relationship with Aboriginal communities.

This Protocol is designed to build awareness and respect for culture. It is a tool to support AANSW staff to develop the cultural competency and safety required for deeper and more meaningful relationships with Aboriginal people and communities. AANSW is not an authority to regulate or provide advice on Indigenous Cultural and Intellectual Property. Where issues arise that require complex legal and technical advice in regard to Indigenous Cultural and Intellectual Property, AANSW staff will refer to the appropriate experts for advice.

AANSW will implement the Protocol with a learning lens, reflecting and reviewing as we go so that Protocol does not remain a static document but develops as needed to achieve its purpose.

## 1.3 Use of language in this Protocol

In Australia, models for the protection of heritage, knowledge and cultural expressions currently use the language "Indigenous Cultural and Intellectual Property" following the *Our Culture: Our Future* Report.<sup>1</sup>

In consultations undertaken by AANSW for the Aboriginal Languages Bill, Aboriginal people in NSW highlighted a preference to be referred to as Aboriginal or First Nations peoples rather than Indigenous. AANSW acknowledges the history of the term Indigenous and

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<sup>1</sup> Terri Janke, *Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights* (Final Report, Australian Institute of Aboriginal and Torres Strait Islander Studies, 1998).



commits to using respectful language. As such, use of the term Indigenous is avoided in this Protocol.

However, the term “Indigenous Cultural and Intellectual Property” (**ICIP**) has a broad and established meaning and encompasses both Aboriginal and Torres Strait Islander heritage, knowledges and cultural expressions. AANSW acknowledges the Torres Strait Islander people living in New South Wales, and will implement the Protocol in respect of all First Nations cultures and people in Australia. Therefore, this Protocol uses the term “ICIP” when referring to Aboriginal heritage, knowledges and cultural expressions.

#### 1.4 What is ICIP?

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

Article 31 of the Declaration states that:

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

“The terms “cultural heritage”, “traditional knowledge” and “traditional cultural expression” are interrelated terms, embodying the complexities and intricacies of Aboriginal heritage, knowledge and cultural expressions.

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

- traditional knowledge (scientific, agricultural, technical and ecological knowledge, ritual knowledge),
- modern and emerging knowledges that have been developed by Aboriginal people based on history and culture,
- traditional cultural expression (stories, designs and symbols, literature and language),
- performances (ceremonies, dance and song),
- cultural objects (including, but not limited to arts, crafts, ceramics, jewellery, weapons, tools, visual arts, photographs, textiles, contemporary art practices),
- human remains and tissues,
- the secret and sacred material and information (including sacred/historically significant sites and burial grounds), and
- documentation of Aboriginal peoples’ heritage in all forms of media such as films, photographs, artistic works, books, reports and records taken by others, sound recordings and digital databases.

The following diagram illustrates a general breakdown of ICIP rights:

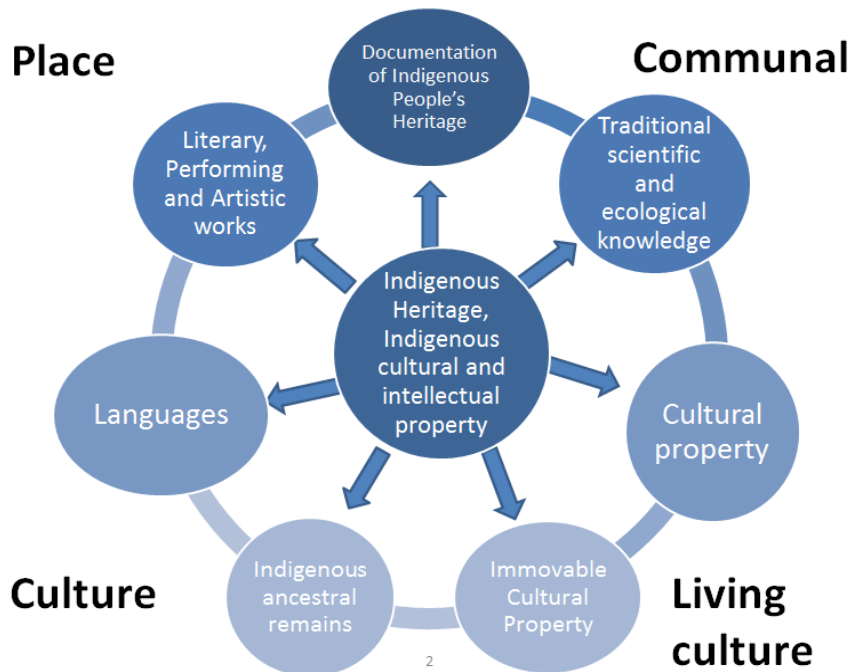


Figure 1: ICIP breakdown. © Terri Janke and Company, 2003

ICIP incorporates both tangible and intangible elements – the object and the knowledge, the artwork and the iconography and the cultural practice. This heritage is a living heritage, is handed down from generation to generation and pertains to a particular Aboriginal group or its lands or seas. Many generations may contribute to the development of cultural and intellectual property and it is constantly evolving. In this way, Aboriginal ICIP is communally owned.

In accordance with ICIP rights AANSW recognises that Aboriginal people have the right to:

- manage and control their ICIP;
- ensure that any means of protecting ICIP is based on the principle of self-determination;
- be recognised as the primary guardians and interpreters of their cultures;
- authorise or refuse to authorise the commercial use of ICIP according to Aboriginal customary laws;
- maintain the secrecy of Aboriginal knowledge and cultural practices;
- guard the cultural integrity of their ICIP;
- be given full and proper attribution for sharing their heritage, knowledge and cultural expressions;
- preserve, protect and manage Aboriginal cultural objects;
- respectfully care for, and manage, Aboriginal ancestral remains; and
- control the recording of cultural customs and expressions and the particular language which may be intrinsic to cultural identity, knowledge, skill and teaching of culture.<sup>2</sup>

<sup>2</sup> Terri Janke, *Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights* (Final Report, Australian Institute of Aboriginal and Torres Strait Islander Studies, 1998).



The above rights form the basis of this Protocol.

### **1.5 Why is this Protocol needed?**

AANSW notes that ICIP rights are not recognised under Australian intellectual property laws. In Australia there is no legal right for Aboriginal people to make decisions about how their ICIP is managed, represented or interpreted. There is also no legal right for Aboriginal people to keep a connection with their ICIP or to stop others from misusing their ICIP.

Australian intellectual property laws focus on individual ownership of knowledge and on the production of people's creations or ideas in a physical form, such as a recording, a written work or performance of work. They generally cannot accommodate group or community rights or support or protect the passing on of knowledge, such as through story.

Therefore, ethical standards, such as this Protocol, are required to give effect to the rights Aboriginal people need to maintain, control, protect and develop their ICIP. The Protocol cannot specifically address all the ICIP issues that AANSW staff may face when working with Aboriginal people and communities, but it provides a framework to guide behaviour and decision making.

### **1.6 Scope**

In AANSW's work with Aboriginal communities across NSW, some examples of situations where issues concerning Aboriginal cultural and intellectual property arise are:

- During a community forum organised by AANSW an Aboriginal person tells a story which reveals cultural knowledge or information. AANSW staff are taking notes from the forum to include in a public report.
- AANSW contracts an Aboriginal artist to create an artwork for an AANSW publication. The artwork incorporates cultural knowledge that the artist has the permission of the relevant Aboriginal group to use.
- An unincorporated Aboriginal group funded by AANSW to deliver a community project develops written materials that draws on their traditions, beliefs and cultures.
- AANSW contracts a film maker to produce a film which documents an Aboriginal languages activity being delivered in a community.
- As part of an evaluation of a program coordinated by AANSW, an Aboriginal community leader shares cultural knowledge which is recorded by the researcher to be included in the evaluation report.
- Personal stories of Aboriginal people may be collected that combine to present a narrative of a collective experience for a community. For example, Stolen Generation survivors who have deeply personal stories and a strong sense of ownership over both their own individual experience and the collective narrative, and specifically in the context of healing for themselves, their descendants, families, and communities.

## 2. TRUE TRACKS® PRINCIPLES

The ten True Tracks Principles were created by Terri Janke and Company Lawyers based on their many years of experience in advising people and organisations on ICIP. Terri Janke and Company Lawyers created the principles to provide an outline for working with Aboriginal people to protect ICIP and recognise ICIP rights, based on Aboriginal people's rights to self-determination, their heritage and culture.

The following ten principles guide how AANSW meaningfully engages with Aboriginal people and their ICIP:

1. Respect
2. Self-determination
3. Communication, consultation and consent
4. Interpretation and authenticity
5. Cultural integrity
6. Attribution
7. Benefit sharing
8. Maintaining Aboriginal culture
9. Recognition and protection

Under each of these principles there are a number of protocols for AANSW staff who are working with Aboriginal people and communities to follow in regard to Aboriginal intellectual and cultural property.

### 2.1 Respect

*Aboriginal peoples have the right maintain, control, protect and develop their diverse cultures, drawing on their Aboriginal Cultural and Intellectual Property knowledge and expression*

- AANSW will respect and uphold the values of Article 31 of the *United Nations Declaration on the Rights of Indigenous Peoples*.
- AANSW staff will comply with this Protocol and other relevant policies that relate to Aboriginal knowledge and cultural expression.
- AANSW respects the rights of Aboriginal communities to make decisions about projects and policies that affect Aboriginal people and their ICIP.
- AANSW respects the diversity of Aboriginal cultures in NSW and Australia. This includes complying with the specific cultural protocols that different Aboriginal groups may have in relation to the treatment of their heritage, knowledge and cultural expression.

### 2.2 Self-determination

*Aboriginal people have the right to self-determination in relation to their ICIP. Aboriginal people should be encouraged and empowered in decision-making processes about projects that involve or affect their ICIP.*

- AANSW will recognise, respect and value Aboriginal people in decision making about their ICIP, including through Local Decision Making and working with Aboriginal Elders and people in authority.



- Aboriginal staff who work at AANSW uphold self-determination and ensure the voices of Aboriginal people and communities are heard by government. AANSW provides a culturally safe working environment and supports its Aboriginal staff when they provide advice on appropriate engagement with Aboriginal people and communities and on following proper protocols related to ICIP.
- It is always important to discuss how Aboriginal control in projects involving ICIP can be successfully achieved. This could be through enabling Aboriginal people to be project leaders or by involving all relevant Aboriginal people and communities at the outset of the project and throughout.

### **2.3 Communication, co-design and consent**

*Free prior informed consent for use of ICIP should be sought from Aboriginal peoples. This involves collaboration and co-design, negotiation and informing owners and custodians about the implications of consent. Consultation should aim to seek a mutual and ongoing understanding.*

- AANSW must obtain free, prior and informed consent from Aboriginal people and communities for the use of their ICIP. For more guidance, see Part 6 – Resources.
- Aboriginal people have expressed that consultation can result in a transactional and tokenistic approach to engagement with Aboriginal communities. Instead, AANSW is committed to co-design with Aboriginal communities. AANSW works to establish genuine and reciprocal relationships with Aboriginal communities in order to facilitate collaborative design and development of AANSW projects, strategies and other activities.
- AANSW will give Aboriginal people enough information about a project and any proposed use of ICIP in order for Aboriginal people to make informed decisions about whether to participate. This includes clearly explaining the implications of giving consent.
- Aboriginal people should not feel pressured or coerced into making a decision, and will be given enough time to properly consider the implications of any decisions regarding ICIP.
- If there are changes to the project that take it outside of the initial consent given by Aboriginal people, groups or organisation, AANSW will re-consult and seek consent.

### **2.4 Interpretation and authenticity**

*Aboriginal people should be involved in the interpretation of their culture as the primary interpreters of their ICIP.*

- AANSW empowers Aboriginal people to interpret and present their culture in ways that are relevant, authentic and culturally appropriate without concern that their ICIP rights will be infringed upon. Aboriginal people should tell Aboriginal stories.
- Aboriginal custodians, knowledge holders, cultural advisors and other members of the community can give AANSW advice on the interpretation of culture, and its authentic use knowing that it will be treated in accordance with these Protocols.





## 2.5 Cultural integrity

*The maintenance of integrity of ICIP is of utmost importance to Aboriginal people. In accordance with ICIP, the integrity of culture, stories and themes depicted must be maintained.*

- AANSW will seek advice from Aboriginal people about whether there are restrictions or other cultural requirements that apply to ICIP that is used in projects.
- AANSW will ensure that ICIP is used in an appropriate context and in ways that are not harmful to Aboriginal people and communities.
- Material that contains ICIP will not be altered or adapted by AANSW without the free, prior informed consent of Aboriginal people as this may impact on the integrity of the ICIP.

## 2.6 Secret, sacred and privacy

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

- AANSW respects Aboriginal peoples' right to keep secret their sacred and ritual knowledge made in accordance with customary laws.
- Some parts of Aboriginal knowledge and customs are not appropriate to be shared publicly or may be subject to customary laws or restrictions. Disclosing sacred or secret materials against cultural protocol can be harmful for Aboriginal communities.
- AANSW will identify whether there are sensitive, sacred or religious issues by speaking to Elders or Aboriginal people in authority.
- AANSW will respect the privacy of Aboriginal individuals. Personal or sensitive information cannot be shared without permission. Where private or confidential information is recorded by AANSW, it will be stored safely and in compliance with records management legislative requirements.

## 2.7 Attribution

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

- AANSW will attribute Aboriginal custodians, knowledge holders or source communities of ICIP as the owners of their ICIP. This could include individual, community and/or family acknowledgments.
- Aboriginal people or communities must be consulted about how they wish to be attributed, including the correct spelling and reference.
- Where Aboriginal people who participate in a project or share their ICIP with AANSW choose not to be publicly attributed or acknowledged, AANSW will respect this.
- Researchers engaged by AANSW should attribute Aboriginal source communities and custodians who share ICIP in research projects. This should be in a prominent place in all publications of the research.



## 2.8 Benefit sharing

*Aboriginal people have the right to share in the benefits from use of their ICIP.*

- AANSW will ensure that Aboriginal people benefit from the use of their ICIP. This is especially important if the ICIP is to be used for commercial purposes.
- Aboriginal people, groups or communities will be consulted as to what benefits (monetary or non-monetary) they would prefer to receive to ensure the benefits are relevant and useful for the owners of the ICIP.
- Benefit sharing will be discussed upfront and agreed upon as part of the consultation and consent process. Where consent to use ICIP is obtained in writing, the document will clearly identify the benefits that the ICIP custodians will receive.
- For new or additional uses of ICIP, AANSW will share additional benefits with the owners, custodians or source community.

## 2.9 Maintaining Aboriginal culture

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

- AANSW only use ICIP consistently with the specific consent given by Aboriginal people through consultation. Each new or different use (including adaptation) of ICIP requires re-consultation and consent for the specific use.
- AANSW will consider how a proposed use of ICIP might affect future use by Aboriginal people who are entitled to inherit the ICIP.
- AANSW will keep clear records about ICIP material or information stored or managed by the agency, to enable Aboriginal people access to the ICIP in the future.
- Aboriginal cultures are evolving and protocols and decision-making structures within a community will change over time. AANSW aims to maintain strong, long-term relationships with Aboriginal communities to assist facilitate future consultations about ICIP.

## 2.10 Recognition and protection

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

- AANSW follows existing laws, this Protocol and other relevant policies to uphold ICIP rights.
- AANSW will implement practical measure to recognise and protect ICIP. This includes the use of traditional custodian notices, written licence or agreements, cultural consent forms and ICIP clauses in agreements.
- Aboriginal people will be given the opportunity to provide feedback on AANSW's treatment of ICIP or engagement with Aboriginal communities. People can make complaints, give feedback and seek resolution of issues by contacting their local AANSW office.



## 3. DEALING WITH ICIP AT ABORIGINAL AFFAIRS NSW

### 3.1 ICIP and Intellectual Property laws

#### *Dealing with ICIP in copyright works created in the course of AA Projects*

AANSW acknowledges that, as far as is possible, Aboriginal people or organisations should be the legal owners of the copyright in works, films or recordings that capture ICIP. This is because being the copyright owners is a way to empower Aboriginal people to control how their ICIP is used and shared. It also supports cultural maintenance of the ICIP.

AANSW will discuss copyright ownership with the relevant Aboriginal people and organisations during the planning stage of projects and programs. This includes determining who the appropriate copyright owner should be, and identifying which agreements will need to be made.

If an Aboriginal person or an authorised representative organisation on behalf of the community owns the copyright, AANSW can obtain a license to use the materials. If AANSW is to own the copyright of works, recordings or films, it must be clear to the participants in the project. This can be written into the cultural clearance forms which give AANSW clearance from knowledge holders to use the ICIP captured in the materials.

#### *Recording and Sharing ICIP*

AANSW will enter into written agreements with Aboriginal people who are the subject of any film, recording or written report (or who have their ICIP recorded in some other way). The agreement will include terms that:

- Identify who will own copyright in the resulting material.
- Ensure that recordings are made with the subject's consent (known as a performers' release).
- Clearly identifies how AANSW wishes to use the recordings, and ensure that consent for any use of ICIP or other information embodied in material is given by the Aboriginal participant.
- Give the Aboriginal person being recorded the opportunity to identify whether there are any restrictions on how the recording or the ICIP contained in the recording can be used.
- Requires AANSW to obtain further consent if they wish to adapt the recording or use it for purposes not explicitly agreed to.
- Outline the correct attribution of the subject and other Aboriginal custodians or source community.
- Specify the benefits that will be shared with the subject and the source community for the use of the ICIP by AANSW.
- Give the subject the opportunity to identify a person to contact in the event of their passing. This ensures that cultural mourning protocols can be respected.
- Identify, with the assistance of source communities, whether issues regarding sacred or secret knowledge will arise.

Entering into such agreements formalises the consultation and consent process and encourages AANSW to keep thorough records about ICIP that is collected (i.e. who is speaking, what the knowledge/language is, the relevant source community, who to contact regarding use of the ICIP).



### **3.2 ICIP, Funding Agreements and Services Agreements**

AANSW regularly engages contractors who provide goods and services on its behalf and as a result work with Aboriginal people, communities and their ICIP. This Protocol will be used to advise contractors about the agency's expectations in relation to ICIP and engagement with Aboriginal peoples.

This Protocol can be attached to AANSW Services Agreements to ensure awareness and compliance, particularly where contractors are heavily involved in research or the collection of ICIP (including the documentation of Aboriginal peoples' heritage and family or genealogical information).

AANSW grant funding and services agreements contain terms which ensure that resulting intellectual property that is created under projects or programs funded by AANSW remains with the relevant Aboriginal people and communities. AANSW claims no ownership to IP or ICIP of its grant recipients.

### **3.3 Keeping records**

AANSW recognises that it holds collections of material or data which contains ICIP belonging to Aboriginal people. It is important to keep thorough records about the ICIP material held by AANSW so that Aboriginal peoples can access, revitalise and advance their cultures.

ICIP rights are perpetual; they do not cease upon the death of an individual person or the expiry of copyright. This means that AANSW has an ongoing responsibility to consult with Aboriginal people and communities about the use of their ICIP. This is why it is necessary to keep thorough records of consultation with relevant Aboriginal people and communities in relation to using ICIP for a project. This will allow all AANSW staff to ensure that they operate in accordance with the consents obtained, not just the staff who were responsible for obtaining the consent or clearance. Records of ICIP consents and support in relation to ICIP material are kept securely and filed to easily identify and connect these records with the relevant ICIP material and project.

There may be situations where Aboriginal people, or the descendants or family representatives of Aboriginal people who have given consent for use of their ICIP wish to withdraw this consent. AANSW welcomes being contacted for this purpose and will consider all requests on a case by case basis in accordance with feedback and complaints policies at AANSW.

### **3.4 Deceased person's images and references**

In some Aboriginal communities it is not permitted to reproduce the names and photographs of deceased Aboriginal people during mourning practices. There may also be sensitivities around using the name or showing images of Aboriginal people who have been deceased for a long time.

AANSW will take special care when dealing with references to, and images of deceased Aboriginal people.

### **Next of Kin**

As far as is possible, AANSW will consult representatives of the family of a deceased Aboriginal person to determine whether it is appropriate to use that person's name and image.

To facilitate this process, AANSW will use next of kin clauses in its clearance forms or agreements. A next of kin clause allows the Aboriginal person entering the agreement to nominate a family member that AANSW can consult with in the event of the person's death.

### **Cultural Sensitivity Notices**

AANSW will provide appropriate warnings on materials (e.g. publications, films, photographs) which feature images of people who have passed away. Such notices advise Aboriginal readers or viewers of the content of such materials.

Cultural sensitivity notices can also be used to advise readers or viewers that material may contain offensive language or themes.

See below for sample clauses and notices.

#### **Next-of-Kin clause for clearance forms or agreements**

Aboriginal Affairs NSW respects Aboriginal peoples and communities' cultural mourning protocols and agree that in the event of death or incapacitation of the Participant/Contributor/Knowledge Holder during the Term, Aboriginal Affairs NSW will discuss the ongoing use of the Participant/Contributor/Knowledge Holder's name, any approved likeness and any approved biography in connection with Project/Program/Work with the Participant/Contributor/Knowledge Holder's next of kin as follows:

Name: [insert details]  
 Relation: [insert details]  
 Address: [insert details]  
 Contact number: [insert details]

#### **Cultural sensitivity warning notice**

WARNING: The [document/material] contains names of deceased Aboriginal and Torres Strait Islander persons. It also contains some language that might be considered offensive.

#### **Traditional custodian's notice**

"The images in this work embody traditional vital knowledge of the [NAME] community. It was created with the consent of the custodians of the community. Dealing with any part of the images for any purpose that has not been authorised by the custodians may be a serious breach of customary law of the [NAME] community, and may also breach the Copyright Act 1968 (Cth). For enquires about permitted reproduction of these images contact [NAME] community.

## 4. ISSUES FOR SPECIFIC TEAMS

### 4.1 First Languages Team

AANSW works with Aboriginal people and communities to reawaken, grow, nurture, promote and raise awareness of Aboriginal languages in communities across NSW consistent with the objectives of the Aboriginal Languages Act 2017 (NSW). In the Act it is explicitly acknowledged that Aboriginal people are the custodians of Aboriginal languages and have the rights to control their growth and nurturing.

AANSW and the NSW Government recognise and respect that:

- Aboriginal languages are the heritage of Aboriginal people and are linked to culture and identity.
- Aboriginal peoples are the knowledge holders and custodians of Aboriginal languages.
- Aboriginal peoples have the right to control and maintain their languages in the following ways:
  - In the development of community language plans.
  - To determine how languages are to be taught, revitalised and grown.
  - The use of language by governments or other organisations (e.g. naming of public spaces).
  - Spelling systems, grammar rules and creation of new words.
  - Whether and how external specialists such as linguists are engaged.
  - To ensure that the origin or source of the words are known and do not become generic.

#### ***Ownership of intellectual property in language resources***

Aboriginal people must own the intellectual property in materials created to assist with the teaching of language and culture. Such materials may include:

- Written song/music or stories in Aboriginal language
- Language dictionaries
- Language teaching resources
- Language posters, games or
- Language website
- Language software
- Language video resources
- Film or sound recordings taken of Aboriginal speaker
- Programs, pedagogies and workshops designed for the implementation of language and cultural programs in schools.

Language materials may include cultural knowledge or information about plants, animals, cultural beliefs, histories and personal stories of important ancestors. Therefore, it is imperative that Aboriginal communities own, control and maintain such resources as a way to protect and maintain the ICIP contained within.

The First Languages Team or its contractors will consult with relevant Aboriginal language speakers, Elders, and Aboriginal communities to determine which entity is the most appropriate to own copyright and intellectual property in resources created in a project. This could be, for example:



- an individual Aboriginal language speaker who develops their own material; or
- an Aboriginal corporation or Aboriginal organisation that has authority to represent a language group or local community and can hold the materials on behalf of the language custodian group.

Non-Aboriginal linguists and researchers may also be involved in language projects conducted by the First Languages Team. AANSW encourage linguists not to be the owners of the copyright in resulting materials, but instead to assign the copyright in their contributions to the Aboriginal language custodians involved in the project.

The First Languages Team uses terms in agreements to assign intellectual property to the appropriate Aboriginal custodians. AANSW does not claim any ownership to the intellectual property or the ICIP contained within language resources.

### ***Aboriginal Language teachers***

Aboriginal people are the custodians and speakers of their language and therefore the most appropriate people to decide who can share and teach their languages. This ensures that:

- interpretation and pronunciation of Aboriginal languages is authentic and accurate; and
- living speakers are given the opportunity to benefit from the language by being paid for language teaching services.

### ***Attribution***

Aboriginal language groups must be properly attributed as the owners and custodians of the language. AANSW will ensure that such attribution is in a prominent place on any language materials it promotes or publishes in addition to attribution of the copyright owner or creator of the materials.

## **4.2 Healing and Reparations Directorate**

The Healing and Reparations Directorate at AANSW works with Aboriginal communities to promote healing at the individual, family and community level and to advance the dialogue in NSW about intergenerational trauma and healing.

### ***Stolen Generations***

All personal accounts, stories or information provided by Stolen Generations survivors under the Stolen Generations Reparations Scheme are classified as sensitive. This information will not be reproduced. Where stories about Stolen Generations survivors are written for the commemorative record, AANSW must seek clearance from the person or their family (if the person is deceased).

Where a personalised apology to a Stolen Generation survivor is recorded during an Apology Session, AANSW ensures that proper consents are obtained from all parties participating in the session. Consistent with this Protocol, the *Aboriginal Affairs NSW SGRS Apologies Sessions Interim Recording and Information Sharing Policy* provides guidelines and procedures for the audio recording of Apology sessions.

### ***Family Records Service***





AANSW supports the rights of Aboriginal people to re-establish links to their ICIP. The Family Records Service is operated by AANSW for the purpose of helping Aboriginal people in NSW find out information about themselves, their families or their ancestors.

Many of the records are closed to public access due to the personal and sensitive nature of information contained in the records. Aboriginal people can apply to access the records by making an application.

Where applications for access to the records are made by public or private researchers (for example, academic researchers, historians, and documentary or film makers), or legal representatives, access is only provided where appropriate permissions are in place for releasing personal information. Where such access is provided, any ICIP should be identified and conditions to protect and respect this ICIP applied consistent with these Protocols.



## 5. IMPLEMENTATION AND REVIEW

All AANSW staff are responsible for implementing the Protocol within their areas of work. The Director of each AANSW Directorate is responsible for overseeing the implementation of this Protocol in their Directorate.

The Communications team is responsible for maintaining and supporting implementation of this Protocol across AANSW.

AANSW has committed resources to supporting staff to understand ICIP rights and how they can apply the Protocol through the provision of training and accompanying resources.

AANSW will apply the Protocol with a learning lens and build its own confidence in using the Protocol in both its commercial and non-commercial arrangements before sharing it more broadly with other agencies.

Just as Aboriginal culture is living and continues to evolve, the Protocol will need to evolve as AANSW continues its work with Aboriginal communities and organisations. The Manager, Communications will coordinate a regular review of the Protocol and its implementation in consultation with AANSW staff.

AANSW welcomes feedback in relation to the operation of the Protocol. AANSW will respond to any enquiries, complaints or other feedback in a timely and respectful way. Feedback may be directed to [enquiries@aboriginalaffairs.nsw.gov.au](mailto:enquiries@aboriginalaffairs.nsw.gov.au).

## 6. CONCLUSION

Aboriginal people living in NSW are proud of their identity and strong cultures. This Protocol acknowledges the intrinsic value of Aboriginal heritage, knowledge and cultural expressions and recognises the need to support Aboriginal peoples to maintain and pass down culture in the ways that they choose.

The Protocol supports AANSW's vision of *Aboriginal people in NSW are determining their own futures* and reinforces AANSW's commitment to developing genuine and respectful partnerships with Aboriginal people and communities.

### **Related Policies**

- [NSW Government OCHRE Plan](#)
- [Department of Premier and Cabinet: Code of Conduct](#)
- Australian Institute of Aboriginal and Torres Strait Islanders Studies, *Guidelines for Ethical Research in Australian Indigenous Studies*, 2000 (revised 2011)  
<<http://aiatsis.gov.au/sites/default/files/docs/research-and-guides/ethics/gerais.pdf>>
- Aboriginal Affairs NSW Stolen Generations Reparations Scheme Apologies Sessions Interim Recording and Information Sharing Policy (available on request from Healing and Reparations Directorate)