



Department of **Transport
and Major Infrastructure**

Main Roads Western Australia

Public Transport Authority

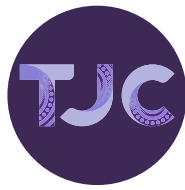
Transport and Major Infrastructure Portfolio

Aboriginal Art, Language and Story Protocol



Acknowledgements

Protocol authored by:



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This Protocol was informed by
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Aboriginal Engagement staff and key
stakeholders from across the
Transport and Major Infrastructure
Portfolio agencies.
Sessions were conducted by Laura
Melrose and Shevaun Wright.

Date of currency: November 2024

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A note about the artwork

The artwork within this Protocol was
designed by Melissa Spillman, founder
of Maarakool Art.

Melissa is a Noongar Aboriginal
artist born in Gubbi Gubbi Country
in Queensland and lives on Whadjuk
Country with family connections to
Goreng Country.

Learn more about Melissa
and Maarakool Art at
maarakoolart.com/about

This publication was produced in
August 2025.

Important legal notice

The laws and policies referred to in this
publication are current as at 1 November 2024.
Any reference to laws and policies are for
general use only and should not be relied upon
for legal advice for a specific matter.

For such matters, it is recommended to obtain
professional legal advice from a suitable,
qualified legal practitioner.

Throughout the Protocol, the term “Aboriginal”
is used to denote a person who identifies
as Aboriginal or Torres Strait Islander or
Indigenous descent and is accepted as such by
the community in which they live.

The Transport and Major Infrastructure Portfolio
acknowledges the preference for using the term
“Aboriginal” in Western Australia and uses the
term out of respect for this preference.

The terms “Indigenous Cultural Intellectual
Property” or “ICIP” and “Indigenous Data
Sovereignty” have broad and established
meanings and encompass Aboriginal and
Torres Strait Islander heritage, knowledge
and cultural expressions.

Therefore, this Protocol uses the term
“ICIP” when referring to Aboriginal heritage,
knowledge and cultural expressions.

Referencing the Transport and Major Infrastructure Portfolio

Within this Protocol the term “Transport and
Major Infrastructure Portfolio” or the “Portfolio”
refers to all agencies, programs, projects and
offices under the Director General of Transport
as shown within the
[Transport and Major Infrastructure Portfolio
organisation structure](#)

It is acknowledged the Portfolio agencies and
specialist offices implement and maintain
respective policies, strategies and related
guides according to their own governance
requirements that will be used in conjunction
with this Protocol.

An aerial photograph of a dry, scrubby landscape with various green and yellow bushes scattered across a reddish-brown, sandy ground. A large, semi-transparent orange circle is centered in the image, containing white text.

The Transport and
Major Infrastructure Portfolio
acknowledges the Traditional Custodians
throughout Western Australia and their
continuing connection to the land, waters
and community. We pay our respects to all
members of the Aboriginal communities
and their cultures; and to Elders
both past and present.





Foreword

I am pleased to present the Portfolio's first Aboriginal Art, Language and Story Protocol. Aboriginal peoples have been valued members of the Transport sector's workforce across Western Australia (WA) for many generations, helping to construct and maintain our infrastructure and contribute to the delivery of our services.

Strong relationships with Traditional Owners/Custodians and Aboriginal community representatives have enabled cultural input into programs, artworks, signage and storytelling features on the Portfolio's infrastructure projects that help to educate the wider public.

Developing meaningful relationships based on trust and respect requires an understanding that Aboriginal communities comprise many different and diverse nations, cultures and languages that are living and evolving.

This Protocol aims to build and strengthen relationships with Aboriginal peoples and communities that are based on respect for Indigenous knowledge and free, prior, informed consent (FPIC).

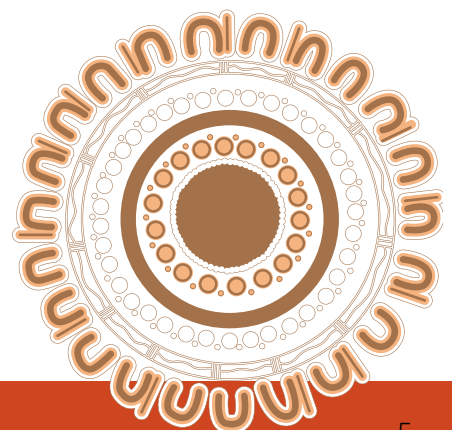
The Portfolio is committed to ongoing learning and celebrating the rich Aboriginal culture of WA. There are many places and stories across WA with historical and cultural significance for Aboriginal communities and peoples, and the Portfolio is committed to maintaining and protecting the history of these places and stories.

I strongly encourage staff to familiarise themselves with this Protocol and apply the key principles in their consultation activities, supporting the Portfolio's works.

Applying the True Tracks Principles® will encourage meaningful collaborations with Aboriginal peoples and their communities to be enjoyed by generations to come.

Peter Woronzow

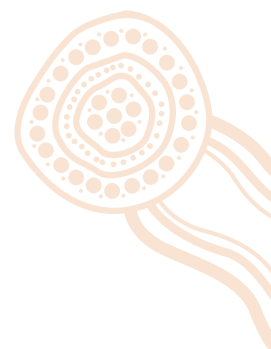
Director General
Department of Transport and
Major Infrastructure Portfolio





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United Nations Declaration on the rights of Indigenous peoples

The rights of Indigenous peoples are enshrined within international law instruments. The *United Nations Declaration on the Rights of Indigenous Peoples* (Declaration) sets out the rights that Indigenous 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.”

Statement of Commitment

The Portfolio is committed to working with Aboriginal peoples and in particular, consulting with communities impacted by its projects and involving them in its decision making processes.

Importantly, the Portfolio is committed to the protection of Indigenous Cultural Intellectual Property (ICIP) that will empower Aboriginal peoples to have free, prior, informed consent (FPIC) over their intellectual property and how it is stored and shared.

Four key pillars

The Statement of Commitment is underpinned by four key pillars:

Leadership: The Portfolio aims to lead in the field of ICIP protection and is guided by the knowledge and support of the Transport Portfolio Aboriginal Engagement Branch.

Community: The Portfolio will work to develop ongoing and reciprocal relationships with Aboriginal peoples and raise awareness in the general community through our efforts.

Honouring: The Portfolio is committed to honouring Aboriginal histories of place, truth telling and promoting Aboriginal perspectives in its projects and business activities, including restoring respect to the place names and local knowledges.

Economic empowerment: The Portfolios' practices will support the diversity of Aboriginal businesses, contractors and consultants including but not limited to artists, designers, writers, historians and cultural consultants through benefit sharing with Traditional Owners/Custodians and Aboriginal communities, for use of their ICIP.





Part 1: Concepts, Principles and Protocols for implementation

1.1 Introduction

The Transport and Major Infrastructure Portfolio (the Portfolio) respects the rich, valuable history of Aboriginal culture which is recognised as the oldest continuous civilisation on earth. Aboriginal history has traditionally been passed through generations of peoples via stories, dance and legends. While information or artwork provided by Aboriginal peoples is generally protected by copyright, there are limited legal rights around the broader reproduction and use of Indigenous cultural material.

Australia does not yet have a law that prevents alteration, distortion or misuse of cultural material including (but not limited to) traditional symbols, songs, dances, performances or rituals that may be part of the heritage of a particular Aboriginal language group.

The Australian Government has committed to introducing new laws to protect First Nations traditional knowledge and cultural expressions, through a First Nations-led process announced in the *National Cultural Policy, Revive: a place for every story, a story for every place*, on 30 January 2023.

The current lack of protection under Australian law means ICIP could be misused or misappropriated without serious consideration of its sensitivity, protection, re-use or reproduction – either inadvertently or deliberately. ICIP has often been used out of context, without consent or without benefits flowing back to Aboriginal people, their families and communities.

The Portfolio is adopting the Aboriginal Art, Language and Story Protocol (the “Protocol”) to respect and endorse the ICIP rights of Aboriginal peoples to own and control their cultural knowledge and information.

First Nations traditional knowledge and cultural expressions can also be referred to as “Indigenous Cultural Intellectual Property” or “ICIP”.

The ICIP is a broad term which refers to the rights Aboriginal and Torres Strait Islander peoples have to their cultural heritage.



1.2 Purpose

The purpose of this Aboriginal Art, Language and Story Protocol is to:

- ⚙️ Provide a foundation for planning, decision making and risk assessment when undertaking consultation activities relating to Aboriginal peoples and culture.
- ⚙️ Provide guidance on decisions, actions and projects that are undertaken by the Portfolio which involve Aboriginal peoples and/or their ICIP.
- ⚙️ Ensure that any works or engagement involving ICIP is respected and protected for all Aboriginal communities.

The commitments and guidelines in this Protocol are underpinned by the True Tracks® Principles as shown in [Part 2: The Protocol in practice](#).

This Protocol recognises the varied work developed by each agency, program or entity and acknowledges the Portfolio will encounter ICIP in a variety of forms across the development and implementation of their respective works or projects.

1.3 Using this Protocol

This Protocol has been designed to:

- ⚙️ Guide the Portfolio staff and contractors who are responsible for consultation with Aboriginal peoples in activities such as place making/ naming, interpretive signage, artworks/installations, or contributions to publications.
- ⚙️ Empower Aboriginal custodians and caretakers of cultural knowledge to provide FPIC on Indigenous knowledge that will be obtained, stored and produced using documented, respectful methods.

This Protocol should be used by staff when planning to consult with Aboriginal peoples to seek their traditional knowledge or to use Aboriginal cultural material.

It is recommended that staff consult with their relevant Heritage team wherever possible, as well as the Transport Portfolio Aboriginal

Engagement Branch (TPAE) before consultation with Aboriginal peoples begins for any projects or work that may impact Aboriginal communities.

Part 1 sets out the framework:

- ⚙️ An overview of the important concepts – the rights to Indigenous cultural heritage and the legal and policy protections; and
- ⚙️ The 10 Guiding Principles that protect Indigenous cultural heritage and traditional knowledge;

Part 2 comprises a breakdown of the Ten Guiding Principles with examples of their implementation.

Part 3 sets out record keeping, storage and maintenance of ICIP related information.

1.4 Strengthening Portfolio relationships with Aboriginal peoples

Developing strong relationships requires an understanding that within Aboriginal communities, there are many different and diverse nations, cultures and languages. These cultures are living and evolving and each generation adds a new layer of identity and experience.

Building genuine relationships in the community demonstrates respect, good intentions, and places the Portfolio in a strong position to collaborate and work with Aboriginal peoples on future projects, initiatives and activities.

Within the Portfolio, systems are in place for staff to contact the right people who can provide advice on the cultural issues of a particular community or group, consultation with Aboriginal peoples in authority, or engage a cultural consultant with relevant knowledge and experience.

Reading this protocol is an important and highly recommended first step in understanding Portfolio requirements.

1.5 What is ICIP

ICIP refers to the rights that Aboriginal peoples hold over their traditional knowledge, cultural heritage and intellectual creations whether they are tangible or intangible which includes:

Table 1: Cultural aspects and examples within ICIP

Cultural aspect	Examples
Cultural knowledge	Knowledge of Country, ecological knowledge, management techniques, scientific, agricultural, technical knowledge, ritual knowledge.
Traditional cultural expression	Traditional land management practices, stories of Country, art, designs, symbols and literature
Language	Including oral or written language words
Performances	Traditional ceremonies, dance and song
Sites	Places, sacred and historically significant sites and burial grounds
Information	Secret and sacred material and information including sacred/ historically significant sites and burial grounds
Documentation	Documentation of Aboriginal peoples' heritage in all forms of media such as films, photographs, artistic works, books, reports, research and records taken by others, sound recordings and digital databases
Cultural objects	Including but not limited to arts, crafts, ceramics, jewellery, weapons, tools, photographs, textiles, contemporary art practices (Not included within this Protocol - check with relevant Heritage team)
Ancestral remains	(Not included within this Protocol-check with relevant Heritage team)



The terms *cultural heritage*, *traditional knowledge* and *traditional cultural expression* are interrelated, embodying the complexities and intricacies of Indigenous peoples' heritage, knowledge and cultural expressions across the world.

ICIP encompasses both the tangible (sites, objects) and intangible aspects of Indigenous knowledge (oral stories, performances). Tangible aspects such as sites and objects are **not** covered within this Protocol, unless referring to the stories and knowledge around these sites and objects.

ICIP includes traditional cultural expression such as the songs, dances, stories and languages, ecological knowledge of biodiversity, medicinal knowledge, environmental management knowledge and cultural and spiritual knowledge and practices.

Indigenous knowledge is the intangible cultural heritage of Aboriginal peoples including a community's history, cultural and social identity and values.

1.6 Who owns ICIP in Western Australia?

ICIP is linked to people, land and identity and is communally owned by the Aboriginal peoples of Western Australia. Attached to ICIP are obligations to protect it so that it can be passed on to future generations.

While all Aboriginal peoples of Western Australia have a role to care for ICIP, certain persons of authority within each community may have specific rights to know and share knowledge, and to give or deny permission to use and share certain ICIP.

Aboriginal cultures are not fixed, they are constantly evolving. This means that the nature of ICIP may also evolve. The Aboriginal peoples of Western Australia are the rightful owners of their cultural intellectual property and heritage, and they communally share the ownership.

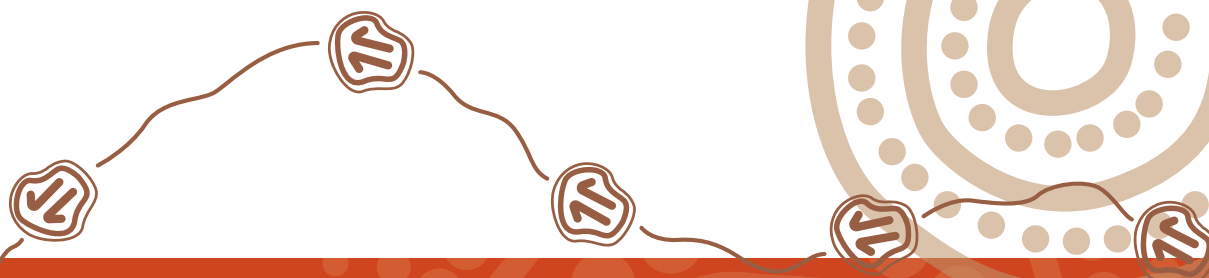
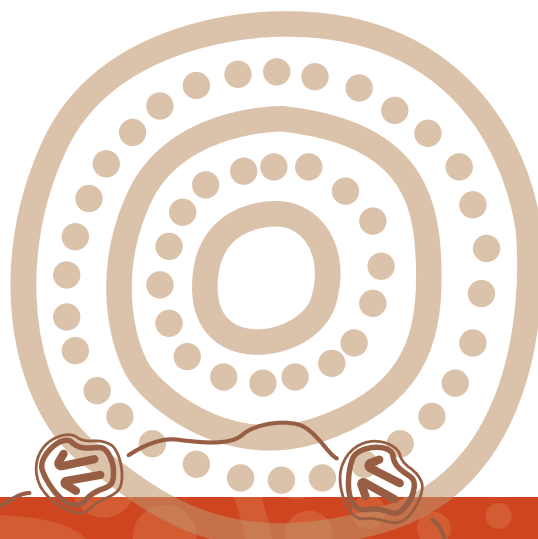
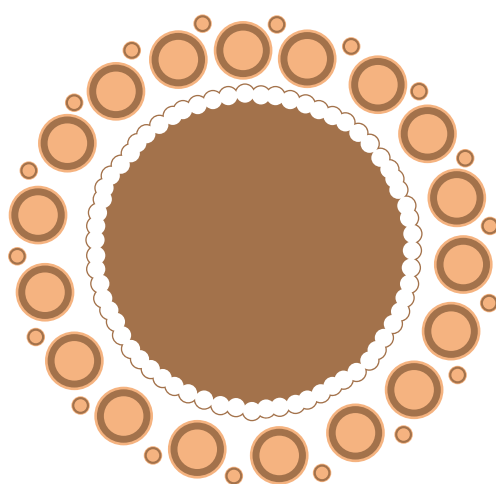
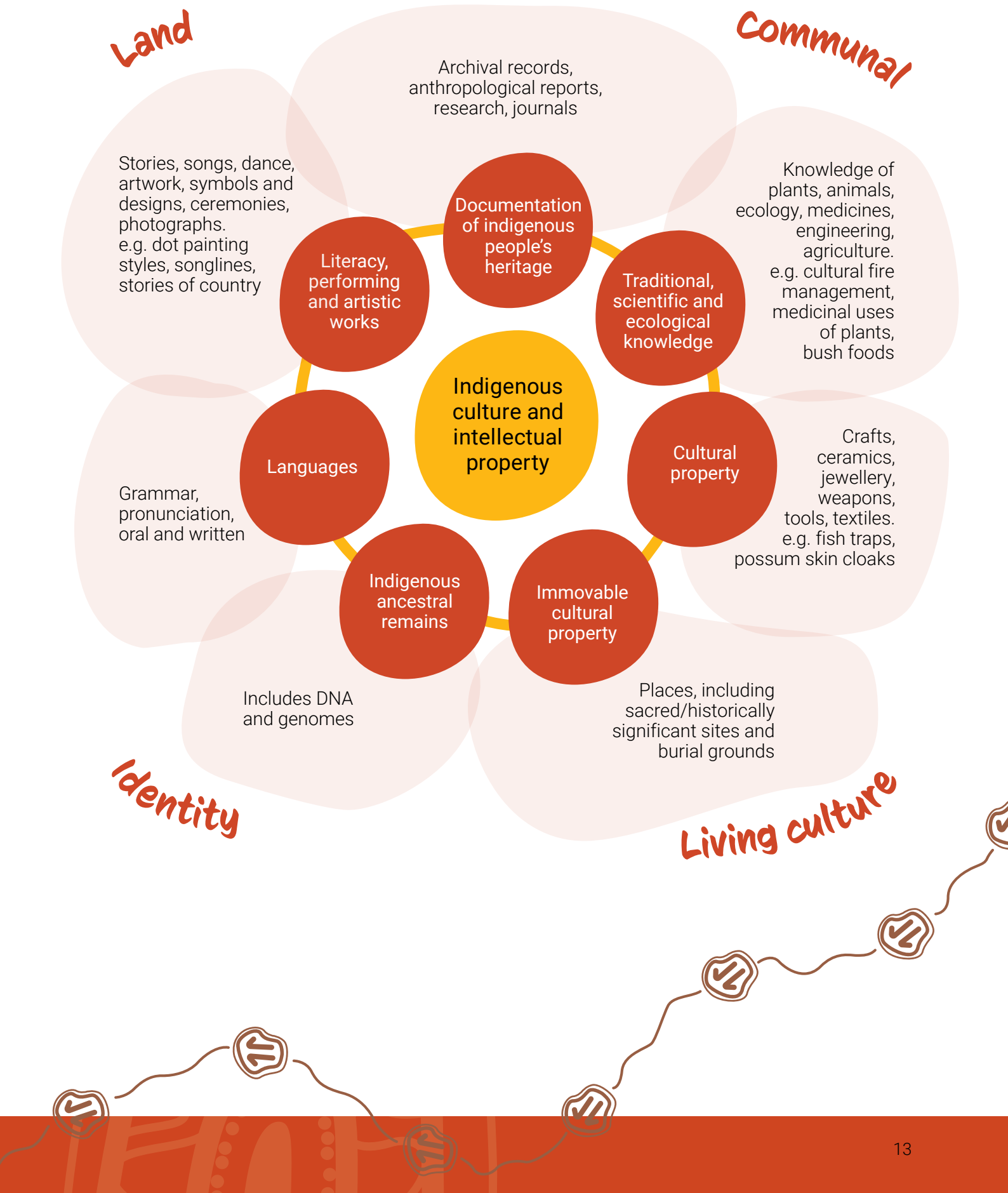


Image 1: The evolving process of ICIP



1.7 How do Intellectual Property rights connect with ICIP?

Intellectual property (IP) refers to the rights that the law gives to protect ideas and creative efforts borne from “intellect”. IP law focuses on individual ownership and does not reflect the ongoing custodianship and communal ownership that is fundamental within Aboriginal culture.

IP is governed by Commonwealth legislation including the [Copyright Act 1968](#), [Designs Act 2003](#), [Trade Marks Act 1995](#), [Patents Act 1990](#) and [Plant Breeders Rights Act 1994](#).

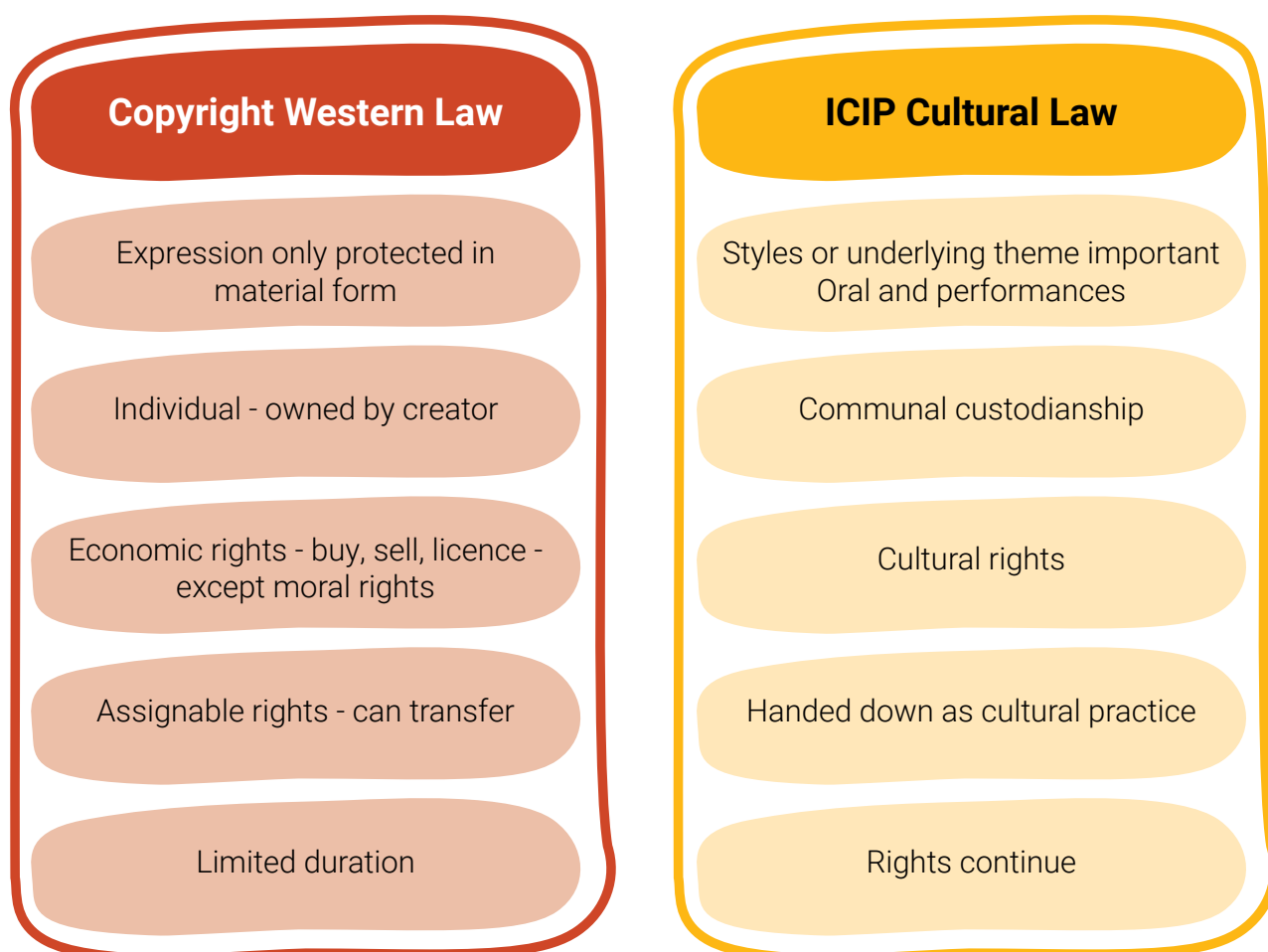
In comparison, ICIP refers to the rights that Aboriginal peoples have to their cultural heritage, knowledge and cultural expressions, which is an extension of IP rights protecting ideas and creative efforts.

Aboriginal knowledge is often captured or embodied in cultural expressions such as art, song and dance.

Current Australian laws do not adequately cover the gap between Western commercial law and Aboriginal cultural practices relating to knowledge in IP law.

The Portfolio is applying this Aboriginal Art, Language and Story Protocol as a best practice ethical and standard approach to give effect to the rights the Aboriginal peoples of Western Australia need to maintain, control, protect and develop their ICIP.

1.8 Differences between IP and ICIP



1.9 How does the Portfolio engage with ICIP?

The Portfolio undertakes works, programs and activities across Western Australia which involve interaction with ICIP.

The Portfolio regularly consults with Aboriginal community representatives who share stories, knowledge and information for use in the form of art, design, interpretive works or place making as part of story telling or educational opportunities to share with the broader public.

For example:

- ⚙ Engaging the services of Aboriginal peoples as consultants, contractors, performers, guest speakers or to provide a Welcome to Country.
- ⚙ Commissioning artworks from Aboriginal artists which incorporate cultural knowledge.
- ⚙ Consulting with and recording Aboriginal peoples and communities sharing cultural knowledge in community forums, workshops, or other events.
- ⚙ Incorporating personal stories, perspectives, experiences, priorities, culture of Aboriginal peoples and communities into the Portfolio projects, case studies or reports.

- ⚙ Designing with Country and working with Aboriginal creatives and consultants to connect transport projects with the local area and community.

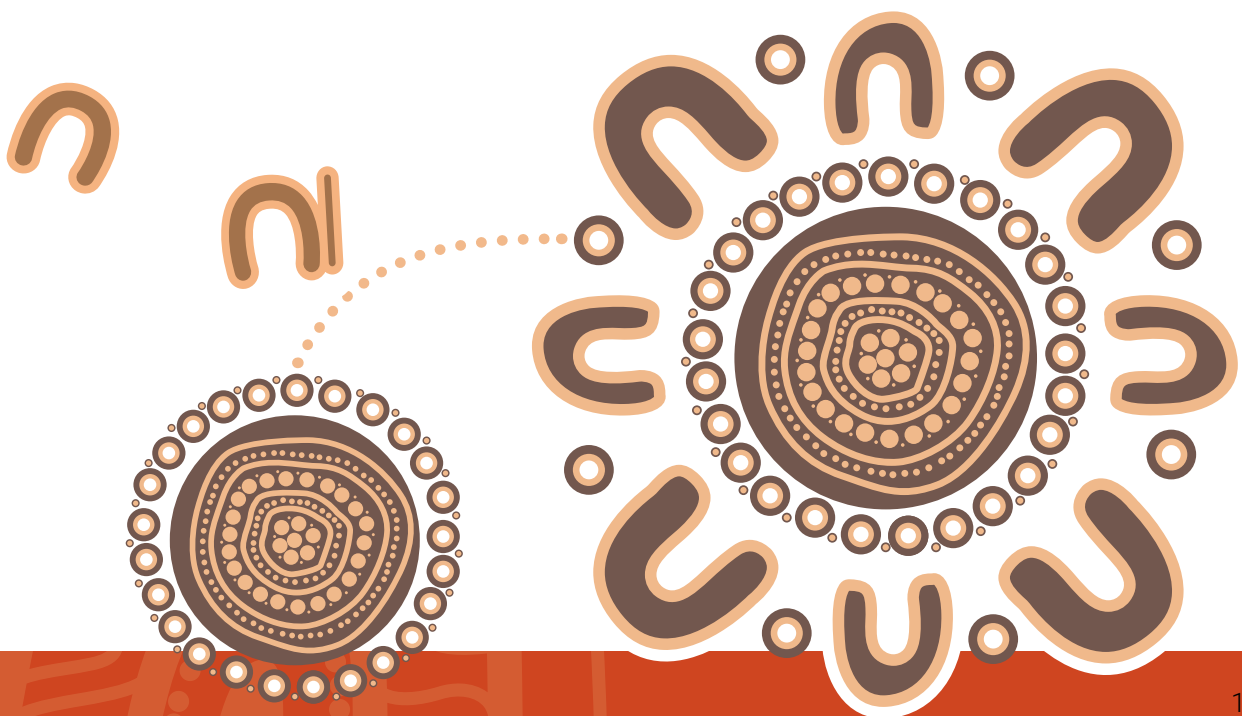
- ⚙ Engaging incorporated Aboriginal organisations and unincorporated Aboriginal groups, to deliver projects that incorporate their traditions, cultural knowledge and beliefs.

- ⚙ Collecting data, facts or information about Aboriginal peoples, knowledge, culture, or Country.

- ⚙ Using language in the Portfolio projects such as naming places, sites, rooms, or other locations.

It is important to recognise the diversity and complexity of the many different Aboriginal cultures in Western Australia. The ways of dealing with issues and cultural material may differ from community to community and across urban, rural and remote communities.

Responsible use of Aboriginal cultural knowledge and expression will ensure cultures are maintained and protected.





Part 2. The Protocol in practice

2.1 Guiding principles for this Protocol

This Protocol implements the True Tracks® Principles developed by Terri Janke and Company. The Principles provide a framework for respecting ICIP within the works, programs and initiatives of the Portfolio.

The ten Principles guide how the Portfolio can meaningfully engage with Aboriginal peoples and their ICIP:

Number	Principle	Description
Principle 1	Respect	Aboriginal peoples have the right to maintain, control, protect and develop their diverse cultures, drawing on their ICIP knowledge and expression.
Principle 2	Self-determination	Aboriginal peoples have the right to self-determination and to be empowered in decisions that affect their rights.
Principle 3	Communication, consultation and consent	Aboriginal peoples have the right to be consulted and give their free, informed, prior consent for the use of their cultural heritage.
Principle 4	Interpretation and authenticity	Aboriginal peoples have the right to be recognised and represented as the primary guardians and interpreters of their cultural heritage.
Principle 5	Cultural integrity and authenticity	Maintaining the integrity of cultural heritage is vital to the continued practice of culture.
Principle 6	Secrecy and confidentiality	Aboriginal peoples have the right to keep their cultural heritage secret and sacred. Confidentiality concerning aspects of Aboriginal peoples' personal and cultural affairs should also be respected.
Principle 7	Attribution	Aboriginal peoples have the right to be respectfully acknowledged and attributed as the Traditional Owners/ Custodians of their cultural heritage.
Principle 8	Benefit sharing	Aboriginal peoples and communities have the right to benefit from their contribution and for the sharing of their cultural heritage, particularly if commercially applied.
Principle 9	Continuing cultures	Aboriginal cultures are dynamic and evolving, and the protocols within each group and community will change. Consultation and free, prior, informed consent are ongoing processes.
Principle 10	Recognition and protection	Aboriginal peoples have the right to protection of their cultural heritage and intellectual property rights in that cultural heritage. Laws, policies and contracts should be developed and implemented to respect these rights.

The following section outlines where the principles may apply to interactions with Aboriginal peoples in relation to elements of design, art, interpretive works/signage, photography, drone, video, interviews, or other means of capturing Aboriginal knowledge.

2.2 Principle 1: Respect

Aboriginal peoples have the right to maintain, control, protect and develop their diverse cultures, drawing on their ICIP knowledge and expression.

The Portfolio:

- ⚙ Will respect and wherever possible, endeavour to uphold Article 31 of the Declaration;
- ⚙ Will implement this Protocol and other relevant policies that relate to Aboriginal knowledge and cultural expression;
- ⚙ Respects the rights of Aboriginal communities to have input to, or a deeper understanding of, how their ICIP will be used on projects and policies that affect them and their ICIP;
- ⚙ Respects the diversity of Aboriginal cultures in WA. This includes complying with the specific cultural practices that different language groups may have in relation to the treatment of their heritage, knowledge and cultural expression.

2.3 Principle 2: Self-determination

Aboriginal peoples have the right to self-determination in relation to their ICIP and to be empowered in decisions that affect their rights.

Self-determination is the fundamental right of Aboriginal peoples that is enshrined in international law, to make decisions that affect their lives including their culture, economy and social well-being.

Aboriginal peoples must be encouraged and empowered in decision-making processes about projects that involve or affect their ICIP.

The Portfolio:

- ⚙ Strives to empower Aboriginal peoples in decision making about their ICIP, including through local decision making and working with Traditional Owners/custodians and peoples in authority.
- ⚙ Provides a culturally safe working environment and supports its Aboriginal staff when they provide advice on appropriate engagement with Aboriginal peoples and communities and on following cultural protocols related to ICIP.
- ⚙ Seeks opportunities to facilitate Aboriginal cultural input in projects involving ICIP, including relevant Aboriginal peoples and communities at the outset of the project/initiative and throughout.



2.3.1 Examples of Principles 1 and 2 in practice

Recording or using Aboriginal knowledge of Country

Respect and self-determination must be put into practice when recording or using Aboriginal peoples sharing their cultural knowledge, perspectives or priorities for Country. This includes recording cultural knowledge in reports, case studies, films, or audio elements.

Respect for self-determination of Aboriginal peoples is demonstrated by:

- ⚙ Following all cultural practices for the community they are working with when recording or using ICIP.
- ⚙ Ensuring sufficient time is allowed for consultation about use of the ICIP and recordings and the sharing of any cultural practices by that community.
- ⚙ Creating a safe environment for Aboriginal peoples sharing their knowledge including observing any requirements for privacy or location-specific recordings.

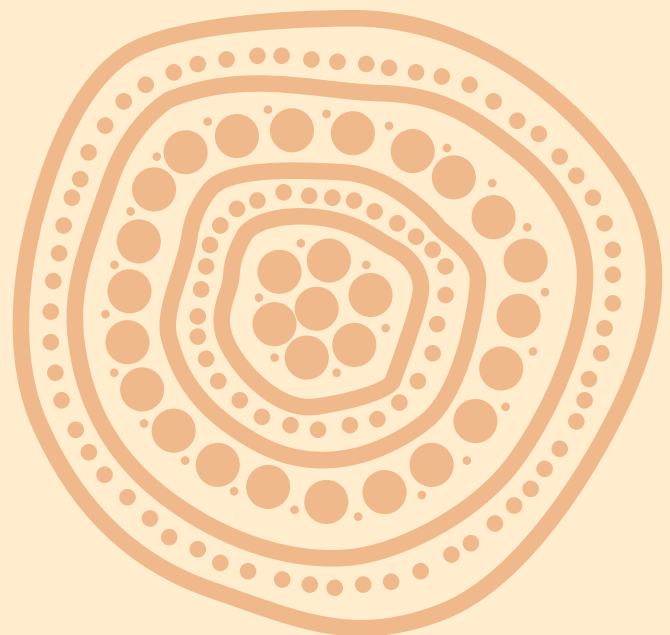
It is important to ensure FPIC processes are followed prior to using ICIP or recording Aboriginal people who are sharing ICIP. The details of consent should include:

- ⚙ Clear agreements around ownership of materials incorporating ICIP or the recording.
- ⚙ How the recording and ICIP can be used and by whom.
- ⚙ How it will be stored and managed.
- ⚙ Who can access the material.

The recording of materials containing ICIP should be negotiated to ensure they are managed in culturally appropriate ways, including:

- ⚙ Recognising Aboriginal peoples' ownership/ custodianship of the ICIP being passed on.
- ⚙ Ensuring that ICIP contained in Portfolio projects may be accessed and used by Aboriginal peoples, their family or community in the future.

Agreements or other written documents should be used to keep a clear record of agreed terms to ensure the conditions of access and use of ICIP are followed and maintained. Staff must maintain clear records about material or information stored or managed by the Portfolio incorporating ICIP to enable access in the future.



2.3.2 Filming, drone use and photography

Recording on Country and at events

When intending to film on Country, the Portfolio should first consult with the relevant agency Heritage team (or similar) to determine any locations where legislation or restrictions may apply. Consultation should occur to seek permission to enter land, seas, sites and places through appropriate organisations.

Where permission is given, a consent form must be completed prior to commencement of filming, recording or photographing on Country and/or if featuring Aboriginal peoples and communities. This secures legal permission to record and use or publish the images or film in Portfolio projects. This process and all proposed uses of the film, recording or photographs should be clearly explained to the participants.

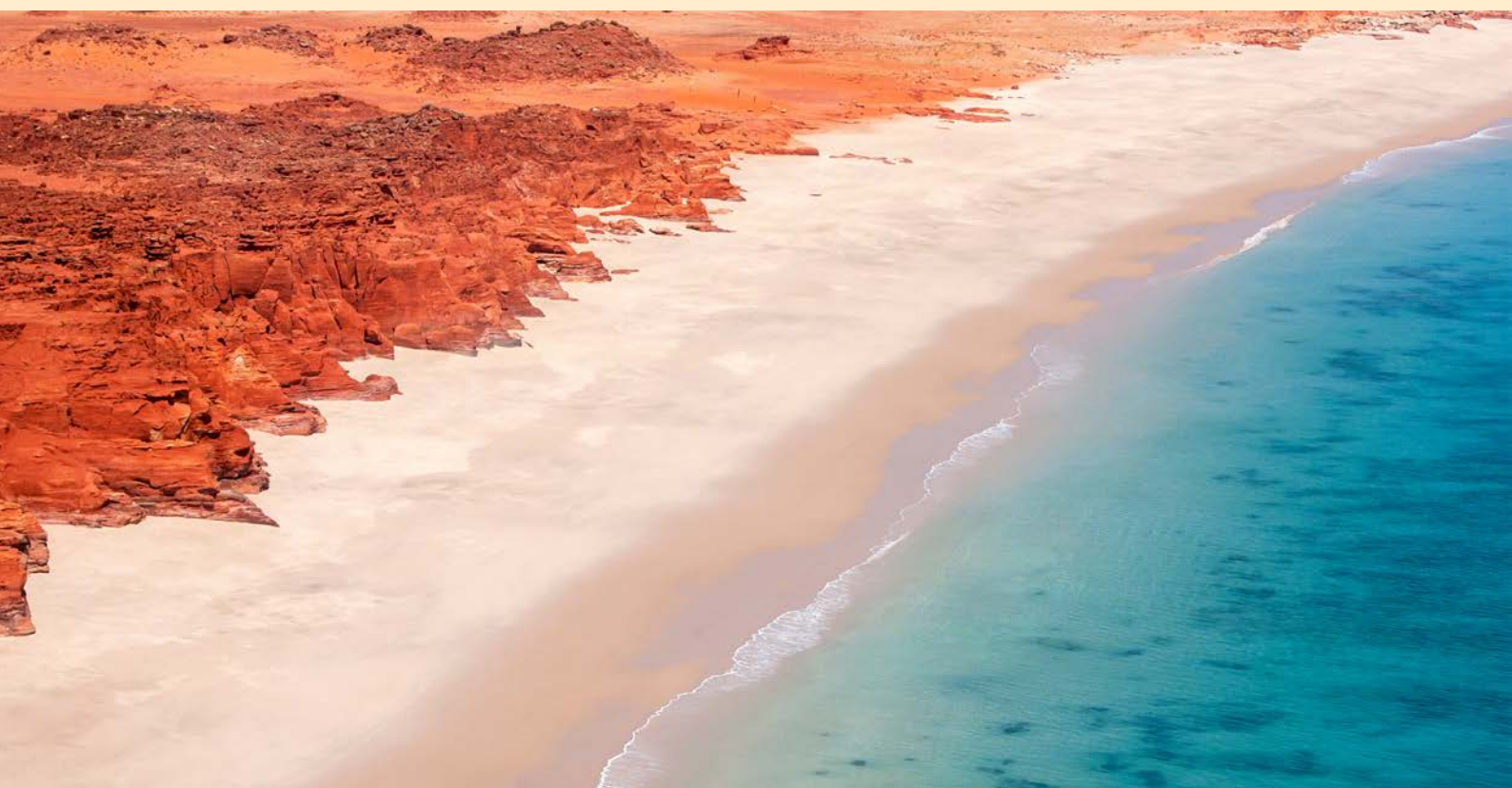
Special care should also be taken when filming and recording Aboriginal children under 16 years of age. Written consent will be required from a parent or guardian.

program delivery, copyright is generated in the written notes, films, photographs and sound records. Aboriginal peoples who are recorded in writing or audio-visual recordings retain control of culture through being assigned copyright ownership in materials containing their contributions.

Additionally, moral rights may apply including the right of attribution. Consult with Aboriginal peoples and communities about whether and how they would like to be credited in the photograph or film. This may be done via a contract or agreement, stating that these rights are retained by the relevant Aboriginal peoples and communities, but where permission or a sub-licence is given for the Portfolio to use the material in specific ways.

More information can be found on attribution at [2.8 Principle 7: Attribution](#).

When interviewing, filming and recording Aboriginal peoples for Portfolio projects or



2.4 Principle 3: Communication, consultation and consent

Aboriginal peoples have the right to be consulted and give their free, informed, prior consent (FPIC) for the use of their cultural heritage.

This may involve collaboration or co-design, negotiation and informing owners and custodians about the implications of consent.

Consultation should aim to seek a mutual and ongoing understanding.

The Portfolio:

- ⚙ Will obtain FPIC from Aboriginal peoples and communities for the use of their ICIP.
- ⚙ Is committed to improving opportunities to collaborate or co-design with Aboriginal communities where possible.
- ⚙ Works to establish genuine and reciprocal relationships with Aboriginal communities, to facilitate collaborative design and development of Portfolio projects, programs and initiatives in the context of this Protocol.

- ⚙ Will provide Aboriginal peoples with enough information about a project and any proposed use of ICIP in order for Aboriginal peoples to make informed decisions about whether to participate. This includes risks, opportunities and benefits, clearly explaining all implications of giving consent.
- ⚙ Will provide Aboriginal peoples sufficient 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 peoples, groups or organisations, the Portfolio will re-consult and seek consent.
- ⚙ Consents will be recorded in writing and stored as per the State Government record keeping practices.

2.4.1 Examples of Principle 3 in practice:

Communication, consultation and consent

When accessing ICIP through meetings, workshops, consultation or community events with Aboriginal peoples, FPIC processes must be explained and followed before commencement.

All consents must be recorded and stored for future use according to the Retention and Disposal Schedule within the [State Records Act 2000](#).

Detailed records of participants must be maintained to support ongoing relationships and avenues to obtain future consents and ensure participants are properly attributed for their contributions. This includes contact details of participants, next of kin and language groups.

However, where cultural knowledge is shared, FPIC processes outlined in this Protocol should be followed prior to using this knowledge. It is important not to re-use ICIP shared by Aboriginal peoples with employees or consultants in new contexts without FPIC.

2.5 Principle 4: Interpretation and Authenticity

Aboriginal peoples have the right to be recognised and represented as the primary guardians and interpreters of their cultural heritage.

The Portfolio empowers Aboriginal peoples 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.

Importantly, Aboriginal peoples should tell Aboriginal stories.

Traditional Owners/Custodians, knowledge holders, cultural advisors and other members of the community can provide the Portfolio with advice on the interpretation of culture and its authentic use knowing that it will be treated in accordance with this Protocol.

2.5.1 Examples of Principle 4 in practice

Language and Place Making

Languages are the living cultural heritage of Aboriginal peoples, belonging to communities and families, passed down between generations. Culture is also embedded within language, sharing with it knowledge relating to Country's sites, lands and waterways. Language is the ICIP of local Aboriginal communities. Their sovereignty over, and priorities for, language is respected.

The Portfolio is committed to the continued and increasing recognition of Aboriginal culture by assigning names to landmarks, places and sites within Western Australia where appropriate.

Where this is to be considered, the Portfolio will:

- ⚙ Consult with the relevant Aboriginal peoples/groups about the most appropriate name/words for a landmark, place or site.
- ⚙ Consider the purpose of, or the activities undertaken in or near the landmark, place or site, when proposing appropriate names.
- ⚙ Consider names or words from languages and people connected to the area/location of the landmark, place or site.

⚙ Collate, where possible local historical and cultural information relating to the meaning and origin of the name/words chosen; consider using an Aboriginal name when referring to a landmark, place or site for the first time. In some circumstances dual naming or using a non-Aboriginal name may be considered appropriate. Where alternative spellings of a specific Aboriginal name exist, only one official spelling should be used following consultation with the relevant community.

- ⚙ Consider including information about any Aboriginal names chosen so that people have the opportunity to gain a deeper understanding of the culture and history associated with it.
- ⚙ Ensure proposals demonstrate a description of the Aboriginal name in the form of written or oral tradition (if culturally appropriate) and include the significance and meaning of the proposed name, preferred spelling and pronunciation.

2.6 Principle 5: Cultural Integrity

Maintaining the integrity of cultural heritage is vital to the continued practice of culture.

In accordance with this Protocol, the integrity of culture, stories and themes depicted must be maintained.

- ⚙ The Portfolio will seek advice from Aboriginal peoples about whether there are restrictions or other cultural requirements that apply to this Protocol when used in projects.

- ⚙ The Portfolio will use this Protocol in an appropriate context and in ways that are not harmful to Aboriginal peoples and communities.
- ⚙ Material that contains ICIP will not be materially altered or adapted without the FPIC of Aboriginal peoples.

2.6.1 Examples of Principle 5 in practice:

Going on Country

Collaborating with Traditional Owners/Custodians in work on Country is one way to maintain reciprocal, respectful relationships with Aboriginal peoples.

Examples may include:

- ⚙ Employing Aboriginal rangers as guides on Country.
- ⚙ Cultural advisors or project partners where appropriate.
- ⚙ Collaborating in analysis and interpretation (depending on circumstances).
- ⚙ Sharing project outcomes with Traditional Owners/Custodians.

Consent should also be obtained to publish the results of any findings.

Online publications

Online publications should include a Traditional Owners/Custodians Notice to advise that the material online contains ICIP and cannot be reproduced or otherwise used without permission of the appropriate Aboriginal person or community.



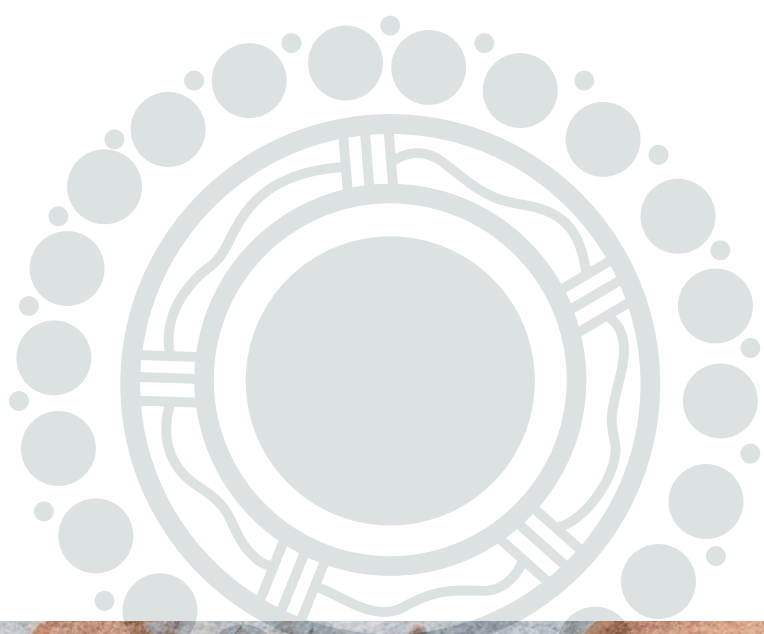
2.7 Principle 6: Secret, Sacred and Privacy

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 peoples' personal and cultural affairs must be respected.

- ⚙ The Portfolio 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.
- ⚙ Portfolio representatives will engage with Elders or Aboriginal peoples in authority to identify whether there are any sensitive, sacred or religious issues.

The Portfolio will respect the privacy of Aboriginal individuals. Personal or sensitive information cannot be shared without permission. Where private or confidential information is recorded by the Portfolio, it will be stored safely and in compliance with the [*State Records Act 2000*](#).



2.8 Principle 7: Attribution

Aboriginal peoples have the right to be acknowledged as the owners and custodians of their ICIP.

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

2.8.1 Examples of Principle 7 put into practice

Attribution

Attribution may include an accompanying story, where the ICIP includes a story or meaning to be explained to viewers. This could occur with visual arts or ceremonies, with a link to further information in digital format on a website.

Where signage, art designs or interpretive works are created or interviews are undertaken, appropriate attribution should be provided to the creators, designers, photographers or videographers wherever possible.

Depending on the circumstance and the medium chosen, attribution would be displayed on a webpage, social media post, within a powerpoint slide, on audiovisual content, within a written report or other means, depending on the nature of the works.



2.9 Principle 8: Benefit Sharing

Aboriginal peoples and communities have the right to benefit from their contribution and for the sharing of their cultural heritage, particularly if commercially applied.

- ⚙ The Portfolio will ensure that Aboriginal peoples benefit from the use of their ICIP. This is especially important if the ICIP is to be used for commercial purposes.
- ⚙ Aboriginal peoples, 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, agreed upon as part of the consultation and consent process and recorded.
- ⚙ For new or additional uses of the ICIP, the Portfolio will share additional benefits with the owners, custodians or source community.
- ⚙ The Portfolio acknowledges the value of cultural knowledges and ICIP in the work that it does on Country.
- ⚙ Aboriginal communities' priorities are respected and considered in all Portfolio projects involving decisions about Country and Aboriginal peoples.
- ⚙ The Portfolio will develop and maintain ongoing relationships of mutual benefit with Aboriginal communities.

2.9.1 Examples of Principle 8 put into practice:

Benefit Sharing

Benefit sharing is an important factor to consider when building relationships with Aboriginal peoples and communities. Aboriginal peoples and communities should share in the benefits from the use of their ICIP in Portfolio projects.

This includes the right to benefit from commercialisation. Aboriginal peoples and communities should also be appropriately remunerated for their time and expertise shared.

Benefits can take the form of monetary benefits, including fees, royalties and payments, or non-monetary benefits, such as:

- ⚙ Collaborating with and being led by the Aboriginal communities' priorities to ensure project outcomes are beneficial to the community.
- ⚙ Providing copies of project outcomes and materials incorporating ICIP.
- ⚙ Ensuring copyright ownership rests with the Aboriginal person or community.
- ⚙ Providing employment, internships and training opportunities.
- ⚙ Providing opportunities to host events in the community.

Benefits should be negotiated and agreed to during the planning stages of any project and prior to commencement. By engaging in consultation and negotiations early, projects can be led by the identified priorities of the Aboriginal person or community. Agreed upon benefits should be clearly recorded in writing as a part of the consent process.

2.10 Principle 9: Maintaining Aboriginal Culture

Aboriginal cultures are dynamic and evolving and the protocols within each group and community will change. Consultation and FPIC are ongoing processes.

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

The Portfolio acknowledges the need to use ICIP consistently with the specific consent given by Aboriginal peoples through consultation. New or different uses (including adaptation) of ICIP may require re-consultation and consent for the specific use.

The Portfolio will consider how a proposed use of ICIP might affect future use by Aboriginal peoples who are entitled to inherit the ICIP.

The Portfolio agencies respectively will keep clear records about Protocol material or information stored, to enable Aboriginal people access to their ICIP in the future.

Aboriginal cultures are evolving and cultural protocols and decision-making structures within a community will change over time. The Portfolio aims to maintain strong, long-term relationships with Aboriginal communities to assist and facilitate future consultations about this Protocol.

2.10.1 Examples of Principle 9 being put into practice

Maintaining Aboriginal Culture

Aboriginal peoples have the right to ongoing maintenance and control of material incorporating ICIP created, used and stored at the Portfolio. Aboriginal peoples and Aboriginal communities should be given access to, and rights to use, Portfolio materials which incorporate their ICIP.

This is a form of benefit sharing and respects communal ownership of culture, and the roles and responsibilities Aboriginal people have to look after culture and pass it on. It is essential for the health and wellbeing of culture and to ensure Aboriginal people's priorities for culture are being met.

When creating or accessing materials incorporating ICIP, the Portfolio will consider how these materials can be stored and managed in culturally appropriate ways. This includes ensuring user access in accordance with the wishes of the relevant Aboriginal communities and observing any restrictions attached to that knowledge or ICIP.

It is important to maintain good record keeping and consult with Aboriginal peoples and communities early as to:

- ⚙ How the material can be used and who it can be accessed by (including cultural restrictions regarding the use of the material);
- ⚙ Whether the material contains culturally sensitive, confidential, or personal information;
- ⚙ Where the material should be stored (for instance, in the Portfolio's archives, and/or by a community the representative body); and
- ⚙ How the material will be preserved (including whether in hard copy or digital archives).

The Portfolio complies with the [State Government Retention and Disposal Schedule](#) within the [State Records Act 2000](#).

2.11 Principle 10: Recognition and protection

Aboriginal peoples have the right to protection of their cultural heritage and intellectual property rights in that cultural heritage. Laws, policies and contracts should be developed and implemented to respect these rights.

- ⚙ The Portfolio follows existing laws and other relevant policies to uphold this Protocol.
- ⚙ The Portfolio will implement practical measures to recognise and protect this Protocol, including the use of Traditional Owner/Custodian notices, agreements, cultural consent forms and/or ICIP clauses in agreements.
- ⚙ Aboriginal peoples will be given the opportunity to provide feedback on the Portfolio's treatment of their ICIP or engagement with Aboriginal communities. People can provide feedback, make complaints and/or seek resolution of issues by contacting the TPAE branch. This can be done by emailing: aboriginalengagement@mainroads.wa.gov.au or phoning 138 138.





Part 3: Record keeping and long-term management of ICIP

3.1 Record keeping

When creating or accessing materials incorporating ICIP, consider how these materials can be stored and managed in culturally appropriate ways. [Principle 9](#) sets out the details for managing this.

3.2 Using data and data sovereignty

Through the Portfolio's work, staff and contractors may collect data during the engagement process with Aboriginal peoples about their communities, lands and resources. This could be in many forms and may include vast amounts of ICIP.

Data must be collected respectfully and appropriately whilst ensuring correct place names and spellings are used in the categorisation of data.

The collection of data will be governed by agreed-upon terms for Indigenous Data Sovereignty and Data Governance. This refers to the right of Aboriginal peoples to control and give their FPIC to the collection, application, and ownership of their data and information relating to them, including their ICIP.

This means Aboriginal peoples should be aware of, or involved in, overseeing the recording, use and storage of data accessed or produced by the Portfolio.

Detailed consents should also be obtained regarding the long-term storage and management of data, including:

- ⚙ Where and how the data will be stored;
- ⚙ Who will have access to it (including the Aboriginal communities access and control rights);
- ⚙ Whether the audience/access conditions change over time;
- ⚙ Cultural protocols to be followed as determined by the Aboriginal peoples to which the data relates to; and
- ⚙ How the data will be used and whether it can be used in new ways yet to be consulted on.

Indigenous Data Sovereignty should be acknowledged to respect the rights of Aboriginal peoples to own and control data and information that is collected about and for them.¹

Where recordings containing ICIP are to be digitised or made available online, ensure the implications of the use are clearly explained and discussed to ensure consent is informed.

Aboriginal peoples and communities should be provided with opportunities to access, use, review and give feedback on data collected and used by the Portfolio to ensure the authenticity and integrity of data outputs.

¹ *Maia* *nayri* Wingara.
maiamnayriwingara.org

3.3 Using ICIP contained in existing records and archival material

Before using ICIP contained in existing records and archival material, their authenticity should be checked. Weight should be given to the spoken words of Aboriginal peoples who share their cultural knowledge with the Portfolio.

Appropriate consents should be obtained before using ICIP contained in existing records and archival material.

This is important even where non-Aboriginal people hold copyright ownership of the material, including material which has been obtained from third parties. Before using the material, locate and consult with the appropriate Aboriginal people or community whose culture is incorporated in the material for clearance.

Consent in relation to use of material incorporating ICIP is dynamic and subject to change. Consent for certain uses does not necessarily extend to additional uses of material incorporating ICIP.

The appropriate Aboriginal person or community representatives should be consulted to make sure that FPIC is given for new or additional uses which are outside the scope of the original consent or if there is no record of consent for existing records or archival material.

3.4 Obtaining and recording consent

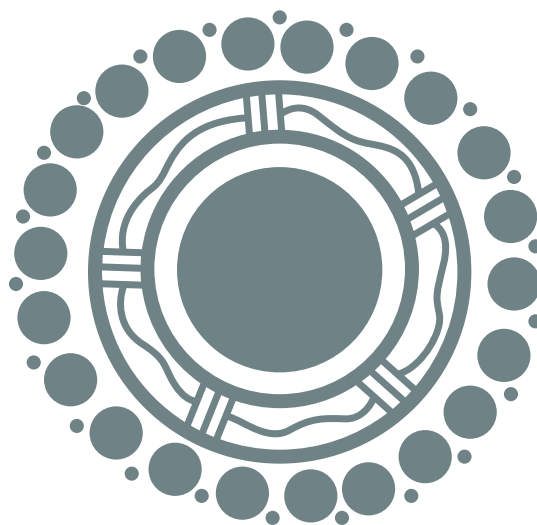
ICIP is held by Aboriginal communities. It is the community's role to give consent for use of ICIP.

Sometimes there will be a Prescribed Body Corporate (PBC), an entity created to hold native title rights on trust for the community, or a representative land council that can give this permission. Other times, a community may not be legally defined or an incorporated entity for the purposes of contracting.

When seeking permission for use of ICIP, the Portfolio will ask the community who can speak for it. There may be a small group of Elders or an unincorporated association who are the appropriate people to give consent. In such cases, consent should still be recorded.

Portfolio staff should always ask, *"is there anyone else we should speak to?"* It may be necessary to seek consent from more than one person for use of ICIP.

See also [3.6. Feedback and complaints mechanism](#), for guidance on managing disagreements within a community about cultural authority.



3.5 Respecting cultural mourning protocols

Special care must also be taken when referencing or using images of deceased Aboriginal peoples. Before using existing records and archival material containing ICIP, it is important to ensure cultural protocols are observed regarding representations of deceased people. As far as is feasible, representatives of the family of a deceased Aboriginal person should be consulted to determine whether it is appropriate to use that person's name and image.

Appropriate warnings should also be used on new and existing materials (reports, presentations, films, audio material, photographs etc) which may feature images of people who have passed away. Such notices advise Aboriginal readers or viewers of the content of such materials.

To advise readers or viewers that material may contain offensive language or themes.

3.6 Feedback and complaints mechanism

When creating material incorporating ICIP or making it available to others (including online), it is important to provide avenues for feedback, complaints and disputes to be handled. This is key to risk management and ensuring that content is displayed, used or interpreted appropriately by the Portfolio.

For example, avenues for feedback, complaints and disputes should be provided when:

- ⚙ Using Aboriginal language(s) in the naming of places and buildings within the Portfolio or its projects and initiatives;
- ⚙ Using cultural knowledge of Country, agriculture, plant life or traditional land and water management practices in any published material in the context of this Protocol (ie interpretive signage or artworks depicting these aspects);

- ⚙ Filming and photographing Aboriginal peoples, including when performing dance or ceremony, sharing cultural knowledge or speaking about priorities for the community.

3.7 Review and feedback of the Protocol

The Transport Portfolio Aboriginal Engagement (TPAE) branch will own, maintain and coordinate reviews of this Protocol to ensure it remains relevant and represents best practice. This Protocol will be reviewed bi-annually.

The Portfolio is committed to supporting staff in learning and understanding how to implement the key concepts and principles of this Protocol and how it can be applied in consultation with Aboriginal peoples.

Advice can be sought from TPAAE regarding any aspects of this Protocol. Case studies will be made available, enabling further discussions to occur that will support staff to strive for best practice.

The Portfolio welcomes feedback in relation to this Protocol and will respond to any enquiries, complaints or feedback in a timely and respectful manner.

Feedback can be directed to TPAAE via email: aboriginalengagement@mainroads.wa.gov.au





Appendix 1: Definitions

In the context of this Protocol, the following definitions apply:

Term	Definition
Aboriginal person	A person of Aboriginal, Torres Strait Islander, or Indigenous descent. (Also see “Important legal notice” page 2).
Aboriginal peoples	Referring to “Aboriginal peoples” (plural) respectfully and inclusively represents the many diverse Aboriginal cultures across Australia rather than grouping them generically as one culture. Stating “peoples” recognises there is more than one Aboriginal language groups in existence.
Cultural heritage	All aspects of knowledge, traditions, values, performances, stories, languages, social and cultural practices and cultural and environmental resources of an Aboriginal community.
Free prior informed consent (FPIC)	A process that ensures Aboriginal peoples have the ability to provide their prior consent for others to obtain and use their Indigenous Knowledge. Also a principle that is protected by human rights standards.
Placemaking	Design or artistic elements that incorporate Indigenous knowledge, cultural practices, and/or deep connections to the area, that strengthen the local Aboriginal community’s identity and reflects their unique cultural stories and heritage.
Indigenous Cultural Intellectual Property (ICIP)	Indigenous people’s rights to their cultural heritage based on the fundamental right to self-determination.
Indigenous Data	Information or knowledge which is about, and may affect, Indigenous peoples both collectively and individually.
Indigenous Data Governance	The mechanisms that support decision making by Aboriginal peoples on how their data is collected, interpreted, accessed, stored and used.
Indigenous Data Sovereignty	The right of Aboriginal peoples to own, control access and possess data that originates from them, or which relates to their community members, knowledge systems, customs, resources or Countries. (Visit maiamnayriwingara.org and scroll down to access the Maiam nayri Wingara Indigenous Data Sovereignty Principles in the Communique).
Indigenous knowledge	Indigenous knowledge is the intangible cultural heritage of Aboriginal peoples including a community’s history, cultural and social identity and values.

Term	Definition
Aboriginal language in the context of placemaking	Language is central to identity. Throughout Western Australia there are place names, significant sites and landmarks that connect Traditional Owners/Custodians to a sense of place and provide a sense of belonging. The 'language of the land' connects Traditional Owners to their cultural heritage.
Country	"Country" is how Aboriginal peoples describe the lands, waterways and seas they are connected to.
Traditional Custodian	Descendants of the original inhabitants of an area; the Aboriginal peoples who have a connection to and responsibility for caring for the land.
Traditional Owner	A person who is a Native Title holder / rightful owner in a prescribed area, who has a cultural or spiritual connection to the land.
Self determination	The fundamental right of Aboriginal peoples that is enshrined in international law, to make decisions that affect their lives including their culture, economy and social well-being.
Traditional cultural expression	The ways that an Aboriginal community expresses its cultural identity, beliefs and values. May include music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, narratives or story telling.





Contact

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