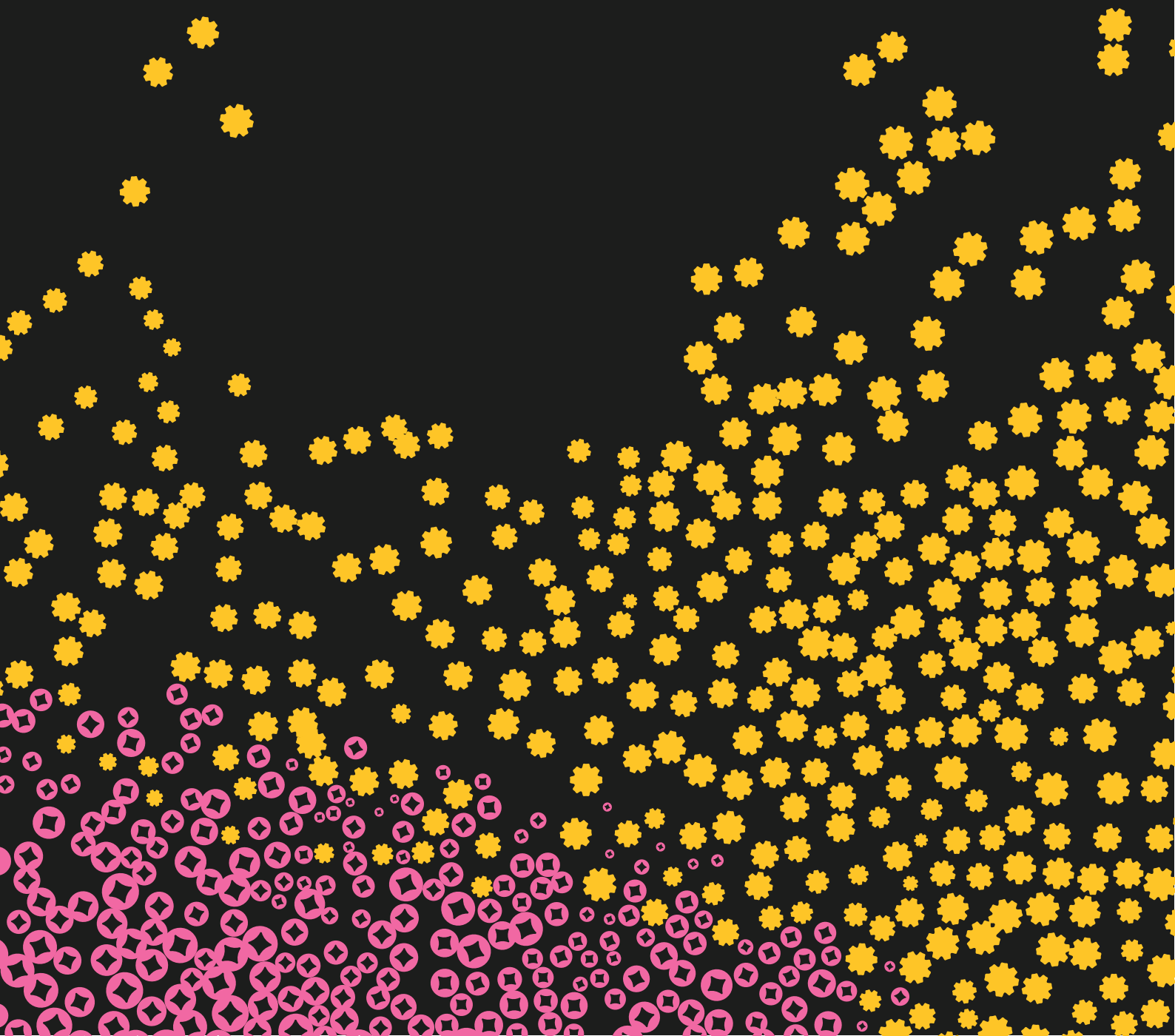
UTS UNIVERSITY OF TECHNOLOGY SYDNEY

Guidelines for the Protection of Indigenous Cultural and Intellectual Property



Acknowledgement of Country

UTS respectfully acknowledges that our main campus is located within the Country of the Gadigal. The Gadigal have cared for their community, land and waters for thousands of generations, based on their deep knowledge of and connection to Country.

UTS also has facilities on the lands of the Bidjigal, the Dharug and the Gamaygal. We pay our respects to their Ancestors, their Elders and acknowledge their ongoing status as the First Peoples of this land.

Table of contents

1 Introduction 3

2 Statement of intent 5

3 What is Indigenous Cultural and Intellectual Property? 6

4 Existing legal recognition and protection of ICIP in Australia 8

5 International standards for Indigenous peoples' ICIP rights 9

6 Rights-based approach for recognising, respecting and protecting ICIP 13

7 Implementing a rights-based approach for ICIP at UTS 20

Appendix 1: Glossary 33

Appendix 2: Summary of actions at UTS for a rights-based approach for ICIP 35

Appendix 3: Summary of ICIP touchpoints for UTS activities 38

Appendix 4: References 40

Appendix 5: Example media and consent release form 41

Approval information 43

Version history 43

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1 Introduction

1.1 Content warnings

The Guidelines for the Protection of Indigenous Cultural and Intellectual Property (the ICIP Guidelines) may refer to the names of Aboriginal and Torres Strait Islander people who have passed away. These guidelines use terminology that reflect common usage and may be considered offensive or inappropriate. This includes by referring to information about Aboriginal and Torres Strait Islander peoples and their cultural heritage and cultural knowledge as 'data' and referring to cultural knowledge and heritage as 'property'. We recognise use of these terms can be inconsistent with the spirit of Indigenous culture but the terms are required for respectful application of ICIP principles.

All care has been taken to be current at time of publication.

1.2 Terminology referring to Indigenous peoples and ICIP

For terminology referring to Indigenous peoples of Australia, and in recognition of Indigenous peoples' right to self-determination for identification, Collings outlines the following approach:[1]

Aboriginal and Torres Strait Islander peoples are Indigenous peoples of Australia comprising nations or language groups, and their communities are formed around shared interests, purposes and histories.[2] The terms 'Aboriginal people', 'Torres Strait Islander people' and 'Aboriginal and Torres Strait Islander peoples and their communities' are used as appropriate to the context.

The term 'Indigenous Australians' is widely used and encompasses both Aboriginal people and Torres Strait Islander people. The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) advises that for many Aboriginal and Torres Strait Islander people the term 'Indigenous' is considered 'too generic' as it fails to distinguish between the two distinct groups. Further information can be found at AIATSIS: Indigenous Australians: Aboriginal and Torres Strait Islander people.

Aboriginal and Torres Strait Islander peoples' right to choose how they identify themselves in-community is fundamental for self-determination, and many prefer to distinguish between Aboriginal people and Torres Strait Islander people and refer to specific nations, instead of or as well as more generic terms such as 'Indigenous Australians'. The advice of AIATSIS is that it is 'best to find out what individuals prefer to be called, rather than making assumptions'.[3]

The terms 'First Nations peoples' and 'First Peoples' are now more common.

The terms Traditional Knowledge, cultural heritage, Indigenous Knowledges and traditional cultural expression are interrelated and encompassed by the term Indigenous Cultural and Intellectual Property, which is widely used in Australia and globally.

Refer also Appendix 1: Glossary.

1.3 Scope and coverage of work

These guidelines were developed in consultation with UTS staff and are representative of a point in time. The practical measures and actions identified are based on the experiences of staff reflecting the activities engaged in at that time as listed in the table of ICIP touchpoints for UTS (refer Appendix 3).

1. Neva Collings, Indigenous Governance of Traditional Knowledge: The Legal Implementation of Access and Benefit-Sharing in Australia (Routledge, 2023), 15-16.
2. Janet Hunt and Diane E Smith, Indigenous Community Governance Project: Year two research findings (CAEPR Working Paper No. 36/2007), vii.
3. Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), Indigenous Australians: Aboriginal and Torres Strait Islander people

The guidelines were developed with research and benchmarking of relevant Australian and international laws and policies. They are based on key uses of ICIP within the university in teaching and learning, research, marketing and communications, infrastructure, and engagement. Interviews and focus groups were conducted with staff leading those activities to identify the ICIP touchpoints and practical implementation.

The guidelines are not intended to be exhaustive of the range of circumstances at UTS in which ICIP may be used. They are not intended to provide a solution to every circumstance and should be applied on a case-by-case basis. Like all university policies these guidelines will be revised as required.

The guidelines provide a framework to promote a rights-based approach and ethical engagement and protection of ICIP, prepared at a time of a rapidly changing external technological, political and legal landscape. The rapid emergence of artificial intelligence (AI) has serious implications for ICIP. At present, AI allows for access, sharing, interpreting and dissemination of material without proper permission from the people with cultural and legal authority, attribution or remuneration. Guardrails and other limits are currently being considered by the national and international community.

Universities have a special responsibility to provide leadership on the ethical use of AI and ICIP according to a human rights framework. UTS is continuing to develop policies and guidelines on the use of AI in different contexts. Refer to the Artificial Intelligence Operations Policy and the Use of AI in Research Guidelines.

Future Commonwealth legislation for ICIP is also under consideration and may provide new legal recognitions and protections of ICIP. The guidelines will be reviewed in light of any future legislative requirements.

1.4 Relevant UTS policies and procedures

The ICIP Guidelines are intended to inform the implementation of other relevant UTS policies and procedures (refer Appendix 4) for using, recognising and protecting ICIP in UTS activities and the activities of related parties.

2 Statement of intent

The ICIP Guidelines promote recognition and respect for Aboriginal and Torres Strait Islander peoples' right to self-determination. The guidelines are intended to provide practical guidance, actions and tools for the appropriate treatment of ICIP at UTS, including in its teaching and learning, research, data collection and management, marketing and communications, art collections, infrastructure, and internal and external engagement.

The development of these guidelines is a response to inadequate legal protections in most nation states, including Australia, and the exploitation of land, waterways, ancestral remains, paintings, designs, music and other precious places, people and cultural material. These guidelines are informed by international standard-setting, ongoing Indigenous discourse for recognising and protecting ICIP, and expertise and advice of UTS staff and students.

The guidelines outline actions to implement a rights-based approach to ICIP. UTS is committed to the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which affirms Indigenous peoples' inherent rights to protect and control their cultural heritage, traditional knowledge and cultural expressions and associated intellectual property rights for self-determination.

Failure to observe proper process can cause damage, offence and reputational harm for individuals and for the university. It is important for practical measures aimed at recognising and protecting ICIP to reflect the diverse and dynamic nature of Indigenous cultures and identities expressed as ICIP.

3 What is Indigenous Cultural and Intellectual Property?

Indigenous Cultural and Intellectual Property (ICIP) is the term given to multiple forms and expressions of Indigenous Knowledges held by people, and includes matter relating to Country, plants and animals, cosmology and astrology, places of significance, artworks and cultural expression including family histories (refer also Intellectual Property Policy).

ICIP refers to all aspects of Aboriginal and Torres Strait Islander peoples' cultural heritage, both tangible and intangible, which is a living heritage handed down across generations as cultural practices, traditional knowledge and knowledge systems and can be held individually and collectively by Aboriginal and Torres Strait Islander peoples as part of their cultures and identities.[4]

Recognition and protection of ICIP is grounded in the inherent right of Indigenous peoples to self-determination over their cultures, heritage and identity. When used in accordance with First Nations protocols, ICIP is transmitted in accordance with the laws and cultural protocols inherent in Indigenous Knowledge systems.

Australia's seminal ICIP report Our Culture: Our Future by Dr Terri Janke was commissioned by the Aboriginal and Torres Strait Islander Commission. It was drafted during the same period as the work led by United Nations Special Rapporteur Erica-Irene Daes, which included the development of the Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples and first presented in the 13th session of the Report of the Working Group on Indigenous Populations in 1995. Since this time ICIP principles and practices have continued to be developed and implemented within Australia and internationally. This is an ongoing process required by emerging uses of public and private institutions and guided by standard setting such as the World Intellectual Property Organization.

3.1 A rights-based approach

International human rights principles continue to provide guidance for the application of Indigenous self-determination. Indigenous peoples draw upon standards articulated by international instruments adopted by nation states under the framework of the United Nations for the advancement of their right to self-determination and participatory rights across a broad range of settings.

Universities operate within a legal framework informed by Australia's international human rights obligations and are subject to international human rights standards and principles through legislation and common law, and ethics requirements such as the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research (AIATSIS Code of Ethics), which promotes self-determination as a first principle.

The standards and principles articulated by international instruments have application for research, teaching and learning, Indigenous community engagement, and benefit-sharing. UTS needs to have regard to these standards and principles when developing curriculum and course content, engaging with Indigenous communities, undertaking research and research data management, on campus, and any projects facilitated by the university that engage with ICIP.

UTS staff and students are encouraged to refer to these instruments, and become familiar with them, particularly the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The AIATSIS Code of Ethics promotes a rights-based approach for ICIP. The Guide to Applying: The AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research (PDF) (the AIATSIS Guide) describes ICIP rights of Aboriginal and Torres Strait Islander peoples as:

a. own, control and maintain their ICIP

b. ensure that any means of protecting ICIP is based on the principle of self-determination

c. be recognised as the primary guardians and interpreters of their cultures

d. authorise or refuse the use of ICIP according to their own law

[4] Arts Law Centre Indigenous Cultural and Intellectual Property

e. maintain the secrecy of Indigenous Knowledge and other cultural practices

f. guard the cultural integrity of their ICIP

g. be given full and proper attribution for sharing their cultural heritage

h. control the recording of cultural customs, expressions and language that may be intrinsic to cultural identity, knowledge, skill and teaching of culture, and

i. publish their research results.

The AIATSIS Guide describes Indigenous cultural heritage as laws, philosophical traditions and spiritual beliefs; knowledge and knowledge systems; cultural expressions and performances; cultural material; human remains, human tissue and genetic information derived and processed forms of this kind; knowledge about genetic resources; secret and sacred material and information; documentation of Indigenous peoples heritage in all forms; connections to land, waters, natural resources and ecologies; and cultural places sites and landscapes. The AIATSIS Code of Ethics outlines responsibilities for recognising and protecting ICIP and ICIP rights under the following headings:

a. Recognition and respect

b. Engagement and collaboration

c. Informed consent

d. Cultural capability and learning

e. Indigenous-led research

f. Indigenous perspectives and participation

g. Indigenous Knowledge and data

h. Benefit and reciprocity

i. Impact and risk

j. Indigenous Lands and waters

k. Ongoing Indigenous governance

l. Reporting and compliance.

True Tracks®, developed by Dr Terri Janke, refers to a framework that can guide the formulation and implementation of measures and mechanisms for using, sharing and protecting ICIP and engaging with Aboriginal and Torres Strait Islander people and their communities when ICIP is involved. The *True Tracks* principles developed by Dr Janke have been widely adopted across multiple sectors in Australia:

a. Respect

b. Self-determination

c. Consent and consultation

d. Interpretation

e. Cultural integrity

f. Secrecy and privacy

g. Attribution

h. Benefit-sharing

i. Maintaining Indigenous culture

j. Recognition and protection.

4 Existing legal recognition and protection of ICIP in Australia

In Australia, intellectual property laws are most commonly used for protection and control of knowledge, knowledge production and cultural expression such as research, designs, patents, publications, visual arts, dance, music and film. Australian intellectual property laws do not adequately protect Aboriginal and Torres Strait Islander peoples' rights to control the use of their ICIP.

For example, one of the most relied upon laws, the Copyright Act 1968 (Cth), has the following limits:

a. under Australian copyright law the period of copyright is the life of the author plus 70 years, whereas Aboriginal and Torres Strait Islander peoples' Knowledges and stories have existed for hundreds and thousands of years

b. copyright generally focuses on individuals' rights rather than collective rights of peoples that apply to traditional stories and which are generally collectively held for future generations

c. the focus of copyright law is on managing commercial advantage for creating a monopoly to use and exploit and does not necessarily ensure the cultural integrity of knowledge and works is maintained, particularly when such knowledges are sacred and perpetual

d. Australian copyright law covers ideas in a material form, whereas Aboriginal and Torres Strait Islander peoples' Knowledges and stories are a spoken or oral culture rather than written down in a material form as texts.

Under the Copyright Act there are provisions known as 'moral rights' that recognise and protect the rights of all creators, including Aboriginal and Torres Strait Islander people, by ensuring the right to attribution, the right to not be falsely attributed, and protection against the derogatory treatment of works. In a practical sense this needs to be considered prior to reproduction (including digitising and copying) of artworks and other cultural expressions, for example, when creating teaching resources, promotional material or publishing including on a website. Similarly, other intellectual property laws in Australia for designs and patents fail to provide adequate protection for other kinds of ICIP as detailed in Our Culture: Our Future.

Indigenous people have lobbied the Australian Government to revise Australia's Commonwealth, state and territory laws so they adequately recognise and protect ICIP. For example, former Senator Aden Ridgeway introduced a bill in 2000 for recognising moral rights of authors to be extended to moral rights of Indigenous groups (collective right), rather than only for individuals.[5]

Most recently the Australian Government is considering a Commonwealth law to potentially provide sui generis (unique) protection for ICIP and has established a First Nations expert working group to make recommendations including for legislative reform.[6]

These guidelines are intended to support careful, respectful engagement and use of ICIP based on a rights framework including consent, mutual benefit-sharing and other rights as much as possible.

[5] Exposure Draft Copyright Amendment (Indigenous Communal Moral Rights) Bill (2003); Chapter 11: Indigenous cultural and intellectual property rights
[6] Indigenous.gov.au Expert Working Group on Indigenous Cultural and Intellectual Property January 2025

5 International standards for Indigenous peoples' ICIP rights

The development and implementation of measures for recognising and protecting ICIP used by UTS is underpinned by international standard setting, which affirms Indigenous peoples right to self-determination and participatory rights for Indigenous people's agency over ICIP.

For Indigenous peoples the right to self-determination is realised in practice when individuals and their communities have agency in decision-making in matters that affect their lives. This requires positive measures and actions by actors including universities to support and facilitate Indigenous peoples' full and effective participation in decision-making to determine how their ICIP is used. This can be described as a rights-based approach for activities involving ICIP and for engaging with First Nations people and their communities.

5.1 Human rights frameworks

Aboriginal and Torres Strait Islander people rely on human rights frameworks for advocating and developing policies and procedures aimed at reinforcing and asserting their individual and collective right to self-determination, which is a core principle affirmed by international human rights instruments including the International Covenant on Civil and Political Rights (1966) (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The Australian Government has ratified the ICCPR, ICESCR and ICERD.[7]

The standards articulated by international human rights instruments as adopted are indivisible and should be interpreted together. The indivisibility of human rights is affirmed by the Vienna Declaration and Programme of Action on the basis that the full realisation of civil and political rights is not possible without the enjoyment of economic, social and cultural rights and must be treated on an equal footing.[8]

International Covenant on Civil and Political Rights

The ICCPR affirms Indigenous peoples' right to enjoy and develop their cultures in-community with other members of the group and requires 'positive legal measures to ensure the effective participation in decisions which affect them'.[9]

International Covenant on Economic, Social and Cultural Rights

The ICESCR affirms the right of everyone to 'take part' in cultural life, which has the same meaning as 'to participate', which is 'a living process, historical, dynamic and evolving, with a past, a present and a future' and 'to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions'.[10] This includes taking part in the 'definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights' in-community.[11]

[7] Australian Human Rights Commission: Chart of Australian Treaty Ratifications
[8] See: United Nations, Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993; Neva Collings, Indigenous Governance of Traditional Knowledge: The Legal Implementation of Access and Benefit-Sharing in Australia (Routledge, 2023), 54
[9] United Nations Human Rights Committee, ICCPR General Comment No 23: Article 27 (Rights of Minorities) CCPR/C/21/Rev.1/Add.5 (8 April 1994) ('ICCPR General Comment 23'), para 7
[10] United Nations Human Rights Committee, ICCPR General Comment No 23: Article 27 (Rights of Minorities) CCPR/C/21/Rev.1/Add.5 (8 April 1994) ('ICCPR General Comment 23'), para 7
[11] United Nations Committee on the Elimination of Racial Discrimination, General Recommendation 23: Rights of indigenous peoples (51st session, 1997), UN Doc A/52/18, annex V, reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI\GEN\1\Rev.6 at 212 (2003), para 15(c); See UNESCO Universal Declaration on Cultural Diversity, art. 5; See also Fribourg Declaration on Cultural Rights, art. 7

International Convention on the Elimination of All Forms of Racial Discrimination

ICERD promotes Indigenous peoples' active participation in decisions directly relating to their rights and interests and their informed consent and prior consultation with affected communities for any special measures for equal treatment in enjoyment of their cultures, languages, histories and way of life.[12]

United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007 and endorsed by the Australian Government in 2009,[13] reaffirms Indigenous peoples' right to self-determination and other human rights as enshrined in numerous legally binding human rights instruments 'contextualising them to the circumstances of Indigenous Peoples' and which aims to ensure 'Indigenous Peoples can fully enjoy the range of universal human rights to which they are equally entitled'.[14]

The UNDRIP provides prescriptive guidance for recognising and promoting Indigenous peoples' effective participation in decision-making for self-determination to maintain control, protect and develop their cultural heritage, traditional knowledge and cultural expressions, and associated intellectual property according to their customary procedures,[15] and to establish and control educational systems in a manner appropriate to their cultural methods of teaching and learning.[16]

To give effect to these rights public institutions are obliged to consult and cooperate in good faith with Indigenous people in order to obtain Free, Prior and Informed Consent (FPIC) before adopting measures that may affect them.[17] This can include activities that involve engaging with First Nations peoples and for using and sharing ICIP.[18] Article 31(1) of the UNDRIP is of particular relevance for recognising and protecting Indigenous peoples' ICIP rights:

> 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.[19]

UTS's Indigenous Policy outlines the university's commitment to UNDRIP, in particular, the right to self-determination (outlined in Article 3) and the 'right to maintain, control, protect and develop their intellectual property over such cultural heritage, knowledges and traditional cultural expression' as outlined in Article 31. The Intellectual Property Policy also refers to UNDRIP and requires the creation of ICIP and/or use of Indigenous Knowledges to be managed in line with its principles.

5.2 Convention on Biological Diversity and supplementary instruments

The Convention on Biological Diversity (CBD) and the supplementary Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (Nagoya Protocol) are relevant for the use of ICIP at universities in research for biodiscovery and conservation practices. The CBD articulates measures for promoting effective participation and community engagement and for benefit-sharing.

The Australian Government ratified the CBD in 1993, which has been incorporated into domestic law through the Environment Protection and Biodiversity Conservation Act 1999 (Cth). The Australian

[12] ICERD Article; United Nations Committee on the Elimination of Racial Discrimination, General Comment 32: The Meaning and Scope of Special Measures in the Convention on the Elimination of Racial Discrimination, Doc No CERD/GC/33 (24 September 2009), para 18; United Nations General Assembly, Report of the Committee on the Elimination of Racial Discrimination, 52nd session, Doc No. A/52/18 (1997) para 4(d); United Nations Office of the High Commissioner for Human Rights, General Recommendation on the Rights of Indigenous Peoples adopted by the Committee on the Elimination of Racial Discrimination General Comment 23, fifty-first session, 1997, para 4. A/52/18
[13] Minister for Families, Housing, Community Services and Indigenous Affairs, the Hon. Jenny Macklin MP Statement on the United Nations Declaration on the Rights of Indigenous Peoples (Press Release, 3 April 2009)
[14] United Nations General Assembly, A/HRC/60/29: Recognition of Indigenous Peoples - Report of the Special Rapporteur on the Rights of Indigenous Peoples, Albert K. Barume, Human Rights Council, 60th session, 8 Sept to 3 Oct 2025, para 10
[15] UNDRIP Article 18, 19, 32
[16] UNDRIP Article 14, 31
[17] UNDRIP Article 32
[18] UNDRIP Article 15
[19] UNDRIP Article 31

Government signed the Nagoya Protocol in 2012 which, although not in force for Australia at the present time, provides guidance for participatory processes and benefit-sharing with Indigenous Knowledge holders and communities for utilising 'traditional knowledge' associated with genetic resources.

Article 8(j) of the CBD is of particular relevance for ICIP as follows:

> respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.

The Nagoya Protocol acknowledges UNDRIP and articulates specific measures that give effect to Indigenous peoples' right to self-determination and participation. The protocol provides a framework for seeking and obtaining consent or approval of Indigenous Knowledge holders to utilise 'traditional knowledge' for biodiscovery and for negotiating 'fair and equitable' benefit-sharing with Indigenous communities on mutually agreed terms. In particular, for facilitating and supporting Indigenous community participation in decision-making through their own institutions and in recognition of community protocols and customary laws, and consideration of monetary and non-monetary benefit-sharing.

Voluntary guidelines for implementation of the CBD have been adopted by the parties of the CBD. These voluntary guidelines provide further practical guidance for recognising Indigenous peoples' ICIP rights and are relevant to activities at UTS involving ICIP (refer Convention on Biological Diversity: Principles, Guidelines and Other Tools Developed Under the Convention).

Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities

The Tkarihwaié:ri Code of Ethical Conduct is relevant to research involving the utilisation of traditional ecological knowledge and ICIP associated with biological resources and provides guidance for interacting and engaging with Indigenous communities.

Mo'oxtal Kuxtal Guidelines

The Mo'oxtal Kuxtal Guidelines are relevant to research involving the use of ICIP that were adopted out of a 'desire by users of traditional knowledge for certainty and legal clarity regarding the access and use of traditional knowledge' and provide guidance on:

> the development of mechanisms, legislation, administrative and policy measures or other appropriate initiatives to ensure that potential users of knowledge, innovations and practices… obtain the 'prior and informed consent', 'free, prior and informed consent' or 'approval and involvement'…of indigenous peoples and local communities.

Rutzolijirisaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge Relevant for the Conservation and Sustainable Use of Biological Diversity

The Guidelines for the Repatriation of Traditional Knowledge take into consideration the UNDRIP and are relevant for data and archival management and to facilitate the repatriation of ICIP to originating Indigenous communities through knowledge sharing platforms, and recontextualising ICIP to promote revitalisation of cultural knowledge for conservation and sustainable use.

5.3 World Intellectual Property Organization (WIPO)

The World Intellectual Property Organization's Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (WIPO Treaty) was adopted by the Australian Government in May 2024.

The WIPO Treaty should inform university ICIP policies for research, disclosure and benefit-sharing practices. It aims to prevent the misuse of traditional knowledge in research associated with genetic resources and requires disclosure of the use of ICIP when seeking patents. This may have implications for researchers who apply for patents and must disclose the source of knowledge used including from Indigenous peoples who provided it.[20]

[20] WIPO Treaty Article 3.

5.4 United Nations Educational, Scientific and Cultural Organization (UNESCO)

The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage is an international treaty adopted in 2003 that aligns with aims for ICIP protection. It provides a framework for protecting and safeguarding intangible aspects of cultural heritage through the development of policies, enactment of legislation and creation of national inventories and databases.

The treaty emphasises the role of Indigenous communities in the production, safeguarding, maintenance and re-creation of intangible cultural heritage and promotes active involvement and participation of Indigenous communities. Although Australia has not ratified the UNESCO Convention, a First Nations expert working group on ICIP has been established to work on the development of new legislation to enact its provisions.

6 Rights-based approach for recognising, respecting and protecting ICIP

6.1 Rationale for a rights-based approach for ICIP at UTS

The inadequate recognition and protection of ICIP creates both ethical and legal risks. Within the higher education sector, unauthorised and inappropriate use of ICIP creates legal and reputational risks for universities, Indigenous communities and the general community, and risks harm through the adverse impact on relationships with Indigenous individuals and communities. This harm may become a cultural safety issue for Indigenous staff and students where their own material, or the material of Indigenous communities, are treated in a disrespectful or unlawful manner, with broader legal and reputational risks.

A rights-based approach for managing ICIP involves positive measures by institutions developed together with Indigenous people as relevant for different contexts. UNDRIP prescribes positive actions for recognising Indigenous peoples' ICIP rights by consulting and cooperating with Indigenous peoples through their own representative institutions to obtain Free, Prior and Informed Consent (FPIC) for any activity affecting their resources.[21]

At UTS a wide range of activities involve engaging with First Nations peoples and their ICIP:

a. teaching and learning

b. research, including data and archival management

c. artworks, audio-visual recordings and other cultural expressions

d. marketing and communications

e. internal and external engagement, and

f. Indigenous community engagement.

Section 7 (Implementing a rights-based approach for ICIP at UTS) provides practical measures for UTS to support its staff and students with implementing a rights-based approach for ICIP.

6.2 Elements of a rights-based approach

UTS actively recognises Indigenous peoples' legal, cultural and moral rights to manage, protect and benefit from their own cultural and intellectual property across UTS activities. The elements of this rights-based approach for recognising and managing ICIP at UTS are:

1. Self-determination and agency

2. Respectful use and responsible attribution

3. Reciprocity and relationships

6.2.1 Self-determination and agency

Indigenous peoples' right to self-determination is affirmed by UNDRIP. Self-determination includes the right of Indigenous peoples to own and control their cultural heritage, traditional knowledges and cultural expressions and to own their cultural identities in accordance with their diverse customs and traditions as individuals and in-community.

[21] UNDRIP Article 32(2)

Self-determination is an individual and collective right enshrined in international law, which allows Indigenous peoples to freely determine their political status, governance structures and economic, social and cultural development.[22]

Agency refers to the realisation of practical lived experience or aspirations of self-determination through which Indigenous peoples make choices and exercise control over decisions and processes that affect their lives. This includes individual and communal decisions about how their tangible and intangible cultural heritage, traditional knowledge and cultural expressions are used, developed, maintained and protected.

A rights-based approach for ICIP aims to ensure appropriate measures and mechanisms are in place to prioritise and facilitate agency and participation in decision-making for self-determination.

6.2.1.1 Effective participation and governance

UNDRIP promotes agency by affirming Indigenous peoples' right to full and effective participation in decision-making through their own community-level decision-making procedures and for maintaining the integrity and secrecy of ICIP when necessary.

Positive measures can include having legal agreements, policies and procedures to ensure FPIC (see below) is obtained for using ICIP. These can include sharing power and decision-making, benefit-sharing arrangements, and determination of process, for example co-design, and contemplation of future uses or arrangements.

Aboriginal and Torres Strait Islander people are the right people to exercise authority as custodians of their ICIP. They should be recognised and engaged as the primary interpreters and custodians of Knowledges and cultural property in accordance with community protocols.

It is important to bear in mind the different decision-making processes of Indigenous peoples including the ongoing practices of customary laws and community protocols. These practices may vary from place to place and have their own timeframes determined at the community level. As highlighted by Janke and Sentina:

> There are authority systems within Indigenous communities for clearing rights to use of their Indigenous Knowledge. Under customary laws, the relevant people for clearing consent will depend on the knowledge or cultural expression, and the proposed use, and the relationships of the person who is seeking to use the material.[23]

Indigenous governance principles are also relevant and provide guidance for engaging with First Nations peoples, their communities and their organisations and for facilitating decisions by the right people for Country for the use of ICIP by mutual agreement and for establishing protocols for project governance.[24]

6.2.1.2 Free, Prior and Informed Consent (FPIC)

A rights-based approach recognises Indigenous peoples' responsibility to future generations and adopting measures that promote agency to participate in decision-making about the use of their cultural and intellectual property including self-determination. UNDRIP requires positive measures for cooperating with Indigenous peoples in good faith and obtaining FPIC when ICIP as cultural and spiritual property is affected.[25]

The right of FPIC for self-determination is the right to control how cultural heritage and intellectual property is shared and used by others, and for recognising the cultural authority of individuals within communities according to their own decision-making institutions.[26] As noted above, communities will have a variety of decision-making processes.

[22] UNDRIP Article 3; ICCPR Article 1; ICESCR Article 1
[23] Terri Janke and Maiko Sentina, *Indigenous Knowledge: Issues for Protection and Management*, IP Australia, Commonwealth of Australia, 2018
[24] Australian Indigenous Governance Institute Right People for Country Program; also Appendix 1: Table of Governance Principles in Neva Collings, *Indigenous Governance of Traditional Knowledge: The Legal Implementation of Access and Benefit-Sharing in Australia* (Routledge, 2023), 154
[25] UNDRIP Article 11
[26] UNDRIP Article 18

The elements of FPIC are:

a. consent must be freely given without any coercion or manipulation

b. consent must be given before any activity has commenced and is a continuing process throughout the activity, particularly where the intended use changes

c. consent must be informed with all relevant information that is understandable and provided in formats which are accessible, and

d. consent must be genuine and based on meaningful consultation and participation with the right people to make decisions that will be respected on behalf of their communities.

AIATSIS has developed guidance on engagement processes and FPIC (refer Engaging with Traditional Owners).

6.2.1.3 Right people to speak for Country

The right of Indigenous people to exercise authority over their Country, ICIP or People has been expressed in different ways including the right to speak *for* Country and the right to speak *as* Country.

The 'Right people to speak as Country'[37] is a complex framework for recognising cultural authority and custodianship of Aboriginal and Torres Strait Islander peoples and families and for Indigenous nation-building. The term refers to relationships of people over Country and depends on context, place and purpose.

AIATSIS provides guidance for engaging with Aboriginal and Torres Strait Islander people and how to find the right people to make decisions for Country and engaging with Indigenous Knowledges and Indigenous Knowledge systems. This is described by AIATSIS as a process 'governed by many layers of authority including cultural and family governance' and can also involve organisational governance of registered community organisations (refer Engaging with Traditional Owners).

It is important to recognise diversity among Aboriginal and Torres Strait Islander peoples of their beliefs, customs, social structures, cultural practices and histories. This can be expressed by making contact with the right people for Country or their authorised representatives through Aboriginal land councils, native title prescribed bodies corporate, community-controlled organisations, AIATSIS or direct contact with individuals and families. It is important to bear in mind the right people for Country are not always members of incorporated community organisations.

For Welcome to Country only the Traditional Owners can speak for and welcome visitors to their Country or give permission for others to do so on their behalf.[38]

The Australian Indigenous Governance Institute also provides guidance through the Right People for Country program and agreement making principles (refer Right People for Country program).

Refer also Guiding Principles for Welcome to Country and Acknowledgement of Country. If in doubt consult with the Office of the Pro-Vice Chancellor (Indigenous Leadership and Engagement).

6.2.1.4 Indigenous Data Sovereignty

Indigenous Data Sovereignty principles provide guidance to universities and other institutions on developing and implementing a rights-based approach for using and safeguarding Indigenous data in research data and archival management protocols, and research methodologies and research management planning when ICIP is recorded, used and analysed as data.

A rights-based approach for ICIP involves universities recognising Indigenous culture and knowledge systems, prioritising Indigenous leadership in data governance, and ensuring research and data practices promote collective benefit. For example, data ecosystems, such as the Aboriginal and Torres Strait Islander Data Archive (ATSIDA), are controlled by Indigenous peoples through community-led data collection for research that respects cultural protocols according to their own protocols, and for Indigenous

[37] Aboriginal Victoria Negotiating a boundary agreement and shared joint management story, Right People for Country Program; Australian Indigenous Governance Institute Right People for Country Program; For discourse on rights see also Victor Steffensen, 'Fire Country: How Indigenous Fire Management Could Help Save Australia' *International Journal of Wildland Fire* (2020); Hemming, S. J., et al. "Speaking as country: A Ngarrindjeri methodology of transformative engagement." *Ngiya: talk the law* (2016).
[38] AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research (2020); AIATSIS, Engaging with Traditional Owners.

data to be used to support self-determination according to Indigenous peoples' own priorities which benefit their communities.

Indigenous data 'refers to information or knowledge, in any format or medium, [whether digital or not including specimens and belongings about Indigenous peoples] which is about and may affect Indigenous peoples both collectively and individually'[39] and involves recording, using and interpreting ICIP.

Indigenous Data Sovereignty principles have been developed by Indigenous peoples as an important counterbalance to the FAIR Guiding Principles, which promote open access to data as 'findable, accessible, interoperable and reusable' for innovation and creativity (refer FAIR Principles). Whereas Indigenous Data Sovereignty principles such as the CARE Principles and the Maiam nayri Wingara Principles promote collective benefit, authority to control, responsibility and ethics.

6.2.2 Respectful use and responsible attribution

To ensure the recognition and protection of ICIP at UTS it is necessary to have appropriate safeguards including for attribution, recognition of the sanctity of secret and sacred knowledge and material, and appropriate compliance measures.

6.2.2.1 Respectful use and responsible attribution

Attribution is a core part of academic life and academic integrity that requires acknowledging and referencing the intellectual contributions of other people and being recognised for making contributions.

Attribution is captured in the law by a class of rights known as moral rights, which are personal rights that belong to the author (creator). In general, moral rights include the right to be attributed as the creator, right not to be falsely attributed, and the right to not have the work treated in a derogatory manner that impacts on the reputation of the creator.

Refer to the Copyright Act and information from other sources such as Arts Law Centre of Australia, Copyright Agency and Creative Workplaces for guidance on the application of these rights.[40]

Attribution is required for individual authors and creators of works, and for clans or First Nations whose underlying knowledge and cultural material has been used. The use of ICIP is most often group or communal property and should be recognised as appropriate for individuals, extended families within communities, and relevant language groups. The Indigenous Referencing Guidance for Indigenous Knowledges provides guidance for culturally appropriate and respectful citation and attribution.

Again, there are limitations to existing frameworks like Creative Commons (which promote open access), which are not being tailored appropriately for ICIP attribution.

Traditional knowledge labelling can provide bespoke solutions towards addressing the limitations of services like Creative Commons by using biocultural metadata labelling for data and archival material sharing traditional knowledge and biocultural knowledge. For example, Local Contexts labels can identify the need to consult and carry with documents in a similar way to Creative Commons licensing.

There is a tension between the ideas of public good and the right to know and the rights of Indigenous peoples as Knowledge holders and custodians of Knowledge, which may be restricted. There is also tension between attributions for tangible material shared as open access which is increasingly used by the rapid advancement of AI and the digital knowledge economy.

Copyright advice and complaints

The UTS Library provides copyright information, including on ICIP, at Copyright Advice.

Breaches of copyright can be reported or concern about the way material has been used can be reported via the UTS Library at Copyright Advice: Reporting a breach of copyright.

[39] Maiam nayri Wingara Indigenous Data Sovereignty Communique, 20 June 2018; Stephanie Russo Carroll et al, The CARE Principles for Indigenous Data Governance, (2020) 19 Data Science Journal.
[40] Arts Law Centre of Australia, Indigenous Cultural and Intellectual Property and Moral rights; Copyright Agency, Indigenous Copyright; Creative Workplaces, Respectful use and sharing of ICIP.

Case study: UTS Faculty of Law commissioned 'dhiirra-y' artwork by Kirsten Gray

The Faculty of Law commissioned a digital artwork dhiirra-y for display as a mural in the faculty's student space on level 14 of building 2. An agreement for production of the artwork was drafted, which included a licence agreement for future uses of the work. Faculty operating guidelines have been developed setting out how the artwork can be used, which include how to acknowledge the artist Kirsten Gray and respect her moral rights to attribution, and against derogatory treatment of her artwork.

An object label, acknowledging not just the individual artist, but also their specific Nation or language group, the work's title and medium, and a statement about the work is approved by the creator and displayed alongside the work. The recommended acknowledgement for the artist and title is: 'dhiirra-y', meaning 'to know' in the Yuwaalaraay language, by Kirsten Gray.

A short credit and a longer label are provided as required.

The artwork can be used by members of the faculty alongside an Acknowledgement of Country for slide presentations and as a background for online presentations and meetings (for example as part of a panel), and related non-commercial merchandise, that directly relate to the faculty's Indigenous excellence strategic goals. The mural can also be included in photographs for Faculty of Law staff profile pictures.

The artwork cannot be used by members of the Faculty of Law for use in reports or presentations that are unrelated to the Indigenous excellence strategic goals or as a standard background for online presentations and meetings, or on any product that is to be sold for profit, as per the licensing agreement.

6.2.2.2 Cautions and cultural warnings

Historically, cultural knowledge and cultural objects were often taken without FPIC and without an understanding of how they might be used in different contexts to benefit others. Secret and sacred knowledge has been widely documented and published including through anthropological and archaeological surveys, interviews, artworks, research materials, photographs and genetic material.

Just because secret and sacred knowledge is in the public domain doesn't mean Aboriginal and Torres Strait Islander people have agreed to their knowledge being shared and used by others.

The sanctity of Aboriginal and Torres Strait Islander peoples' secret and sacred knowledge of sites, rituals and cultural practices should be honoured and respected.

Aboriginal and Torres Strait Islander peoples' individual and collective right to self-determination to maintain, control and protect their secret knowledges and sacred material is affirmed by UNDRIP and must be respected across UTS activities.

Acknowledging the impact of colonisation, many institutions have established protocols to restrict and place conditions on access, which must be followed. Notices on ICIP material are now common. A very conservative approach should be taken to anything that might have restricted use, for example, if material states it is secret or sacred (or its status could be inferred), it should never be used.

Respecting Indigenous Knowledges and knowledge systems means understanding that, unlike Western knowledge systems (including the academy), not everything is available to everyone, and there are strong customary laws, rules and protocols that govern access to particular material.

Activities that involve using and sharing ICIP should not alter, diminish, denigrate or misinterpret ICIP in ways that are offensive or harmful for Aboriginal and Torres Strait Islander people including by promoting stereotyping or by infringing legally recognised moral rights to treatment which is non-derogatory.

Sorry Rocks Phenomenon – Uluru-Kata Tjuta National Park[41]

The Sorry Rocks Phenomenon refers to the widespread practice of tourists taking rocks and sand from Uluru, which is a sacred site, and later returning them for fear of bad luck and out of guilt. For the Traditional Owners of Uluru-Kata Tjuta, the Anangu people, taking stones and sand from Uluru is disrespectful to their culture and Tjukurpa (customary laws) and is against the law. Since the 1970s people have started returning hundreds of items taken each year from Uluru together with letters of apology from all over the world. For Anangu people objects taken from Uluru belong at Uluru not in other places.

6.2.2.3 Compliance and due diligence

Intellectual property laws protect the rights of creators, for example, rights to design and inventions. These laws are framed to protect commercial interests and to give creators a monopoly on the use of their work.

Recognition and protection of ICIP can and should use available IP laws. Further protections are required due to the sui generis (unique) nature of ICIP. UNDRIP creates obligations on nation states to ensure public and private institutions respect ICIP rights. These should be incorporated into domestic laws in the future.

Best practice and due diligence will often require early consideration and preparatory work to ensure the mechanisms, agreements and any other matters are in place prior to teaching, research, promotion or engagement. It is recommended that this is built into project timelines.

Best practice

Best practice for using ICIP includes negotiating binding legal agreements with terms and conditions for how ICIP will be used and managed in consideration of Indigenous Data Sovereignty and requirements for FPIC. It is important that the use of ICIP is contextualised and used as intended by such agreements.

Staff and students may want to reproduce artworks for teaching, marketing and other uses. Under the Copyright Act educational institutions can copy, share, and perform limited amounts of materials without permission for educational purposes. Staff and students should not rely on this exception for use of ICIP without implementing all the considerations regarding permissions, respectful use, attribution and remuneration (refer Copyright Advice). Leading copyright cases establish the legal principle that reproduction of Indigenous artworks during the period of copyright without permission is unauthorised use and not lawful.[42]

Works that are protected by copyright and works that have underlying cultural knowledge cannot be reproduced without appropriate permissions. In cases where knowledge is collectively owned this may extend beyond the individual creator of the work, and may require family, clan or community consent.

A founding principle for research at UTS is to engage in Indigenous-led research. For research there are also ethical requirements for recording ICIP, including for disclosure in research data management plans and obtaining ethics approval for recording ICIP. Alongside this, UTS is developing an Indigenous Data Sovereignty and stewardship framework.

For teaching and learning, consideration needs to be given to the use of ICIP and engaging community members for advice. Prior permission must always be sought when considering the creation of any teaching or promotional materials based on the recording of ICIP. For example, a practical assumption is that an Indigenous guest lecturer is likely to incorporate different forms of ICIP in their presentation. The use of media consent forms is one way UTS manages this material. In preparation for guest lectures, consider an appropriate consent form that includes conditions for ICIP (refer Appendix 5 for an example media and consent form with conditions for ICIP).

Due diligence

Notwithstanding the inadequacy of domestic laws in Australia to provide appropriate safeguards for ICIP, there are industry standards from a due diligence standpoint when engaging external partners to promote accountability as an aspect of good governance and risk management (refer the Australian Business Guide to Implementing the UN Declaration on the Rights of Indigenous Peoples).

[41] Australian Government Director of National Parks and Uluru-Kata Tjuta National Park, Fact Sheet: The sorry rock phenomenon at Uluru-Kata Tjuta National Park.
[42] M, Payunka, Marika and Others v Indofurn Pty Ltd (1994) 30 IPR 209; Bulun Bulun & Anor v T Textiles Pty Ltd (1998) 86 FCR 244; 41 IPR 513; See Terri Janke, Minding Culture: Case Studies on Intellectual Property and Traditional Cultural Expressions, World Intellectual Property Organization, Study No. 1, 2003.

When undertaking international collaborations, it is important to be aware of the laws in different jurisdictions and Country-based protocols for Indigenous peoples.

Legal and policy frameworks for ICIP in Australia are subject to change. A First Nations expert working group on ICIP is advising the Australian Government on the development of standalone legislation to protect ICIP.

With the emergence of AI, laws and policies will also need to address the way this will impact on ICIP and ICIP rights.

6.2.3 Reciprocity and relationships

Principles of reciprocity and responsibility are at the heart of Indigenous culture. For Aboriginal and Torres Strait Islander peoples, reciprocity involves a mutual respect for both Indigenous and Western knowledge systems.

Working with Aboriginal and Torres Strait Islander people requires a willingness to engage in collaborative and reciprocal relationships. This includes the development of research projects, proposals and methodologies, commissioning artworks, sharing knowledge for teaching and learning, and negotiating benefit-sharing agreements and arrangements.

Indigenous peoples' rights to enjoy and develop their ICIP should be respected and Indigenous peoples should share in the benefits from any use as appropriate.

There are several aspects to reciprocity and relationships:

a. respect and recognition for relationships

b. reciprocity and respect for culture, and

c. recognition of the value of the relationship and work in commercial arrangements including remuneration as part of arrangements including commercial arrangements.

The right of Aboriginal and Torres Strait Islander peoples to benefit from their cultural knowledges and intellectual property is recognised and affirmed by international agreements (as outlined above) and, to a limited extent, by Australian laws.

Intellectual property regimes and Australia's access and benefit-sharing laws focus on reward for creativity and innovation as a transaction. The laws tend to commodify works and innovations so people are remunerated for their creations, including from the use of their cultural knowledge and cultural contributions. ICIP is often collectively owned which can give rise to a responsibility to properly engage in relationships for reciprocity in recognition of the wide range of kinship obligations for seeking permissions to use and to share ICIP.

When ICIP is shared by Aboriginal and Torres Strait Islander people, and used with consent, appropriate monetary and/or non-monetary benefit-sharing should be negotiated on mutually agreed terms and cultural safety maintained for all parties. Refer also to 7.1.2.1.

It is important to ensure that benefit-sharing arrangements are in place when ICIP is used in a commercial, business or procurement context. There are templates to assist with formalising agreements for the use of ICIP, including for taking photographs and filming people, artworks used for research publications and UTS infrastructure, and external contractors for procurement. Refer Implementing a rights-based approach for ICIP at UTS.

7 Implementing a rights-based approach for ICIP at UTS

UTS staff and students use and engage with ICIP in a range of activities (refer Appendix 3). It is imperative that any use of ICIP is done appropriately and consistently with Indigenous peoples' right to self-determination and Australian laws.

This section provides:

a. guidance for using and engaging with ICIP in a way that ensures Indigenous peoples' right to self-determination to maintain, control, protect and enjoy their cultural heritage and Knowledges, and related intellectual property, and

b. practical measures for observing a rights-based approach for ICIP at UTS.

7.1 Indigenous teaching and learning

UTS is committed to embedding Indigenous perspectives across its teaching and learning curricula by integrating UTS's Indigenous graduate attribute (IGA) to develop Indigenous professional capabilities across all onshore courses. Indigenous teaching and learning at UTS is supported through a range of key initiatives, with the IGA playing a central role in shaping the university's distinctive identity. As outlined in the UTS 2030 strategy, all graduates are required to develop the professional capabilities needed to work effectively for and with Indigenous Australians within their chosen disciplines.

The university's IGA curriculum framework provides clear guidance on the knowledge and skills required in Indigenous Australian contexts. Faculties and schools are required to embed Indigenous perspectives across their curricula. This integration is underpinned by a commitment to uphold the rights of Aboriginal and Torres Strait Islander peoples to control and protect their cultural knowledge and to promote their right to self-determination. The aim is to ensure ethical inclusion of Indigenous content, which applies to culturally safe teaching and learning practices.

The Indigenous Policy promotes the professional development of both Indigenous and non-Indigenous staff, supporting their capacity to incorporate Indigenous perspectives and the IGA into their teaching and learning. Complementing this, the Teaching and Learning Intellectual Property Procedure governs the ownership and management of intellectual property developed through educational activities, ensuring that Indigenous staff contributions to course and learning material are recognised and protected. These efforts are further strengthened by the UTS Reconciliation Statement, which promotes meaningful engagement with Aboriginal and Torres Strait Islander peoples and communities.

7.1.1 Curating course content for teaching and learning involving ICIP

Embedding Indigenous perspectives in curricula prioritises the protection of ICIP rights. In practice this includes selecting suitable resources to incorporate into content and teaching and learning experiences.

7.1.1.1 Course content for teaching and learning

It is essential to prioritise Indigenous voices and perspectives when developing course content. This approach supports the inclusion of Indigenous content in a way that is both meaningful and appropriate.

There are established practices designed to protect the rights of Indigenous peoples, particularly when resources are used that include cultural expressions and Indigenous Knowledge. Resources may include publicly available visual, audio and written materials, such as podcasts, YouTube videos, photographs, audio recordings, artworks, essays, articles, poetry and books, that are incorporated into teaching and learning.

Although such materials may be in the public domain, they are often governed by cultural protocols according to people and place that determine how Indigenous Knowledge should be shared, interpreted and used, particularly outside its original context.

Resources should be kept in original format and not altered (to avoid impeding the meaning or original intention) without consent from Aboriginal and Torres Strait Islander people with cultural authority and

consistent with the moral rights of creators (Copyright Act or licence agreement). All resources should have correct attribution and, where relevant, appropriate permissions documented.

When using published materials refer to the AIATSIS Guide to evaluating and selecting education resources as best practice. The Indigenous Teaching and Learning Team (email: IndigenousTL@uts.edu.au) can provide advice on the selection and appropriate use of resources.

7.1.1.2 Promote a strengths-based approach and narrative to teaching and learning in consideration of ICIP

When discussing ICIP with students, it's important to lead with strengths-based narratives that reflect the tenacity and ingenuity of Indigenous Australians. This means being mindful of how information is shared and presented, ensuring that discussions are respectful to both content and the creator and align with the Code of Conduct, the Equity, Inclusion and Respect Policy, the UTS Student Rules (in particular, section 16) and the Student Conduct Rules. Refer also Deficit Discourse and Strengths-based Approaches (PDF).

7.1.1.3 Respect privacy and obtain consent

Unpublished documents

For a rights-based approach that recognises Indigenous peoples' right to FPIC, it is essential that consent to use unpublished documents that identify individuals is obtained in advance, the duration of use is determined, and consent is renewed each time the material is used.

Individual consent, or consent of families and people with cultural authority for people who are deceased, must always be obtained when referring to and using documents that share personal information and identify people. This ensures that individuals retain control over how their information is shared and that their cultural and personal rights are upheld in all teaching and learning contexts. Where consent is withdrawn, or where individuals, families or people with cultural authority request it, materials should be returned, deleted or destroyed as directed, and any copies held in teaching materials removed.

Photographs and recordings

It is not appropriate or acceptable to take photographs or film recordings of Aboriginal and Torres Strait Islander people in public spaces for use in teaching and learning, including for assessments and publications, without their FPIC.

In teaching and learning settings, FPIC means that individuals clearly understand how their image, voice and any associated cultural knowledge will be used, stored and shared. This includes the context in which the material will appear, who the audience will be and how long the material will be retained, used and archived.

A media consent and release form (available from Office of General Counsel: Standard contracts and templates (SharePoint)) must be signed by participants before the recording, use or publication of any audio and/or visual recordings of Indigenous people sharing ICIP. This may also require conditions of use for ICIP. Contact the Office of General Counsel for help with drafting any necessary conditions for ICIP. Refer also Appendix 5 for an example media and consent form with conditions for ICIP.

This process is an ethical obligation that recognises the sovereignty of Aboriginal and Torres Strait Islander peoples over their cultural expressions, Knowledge and identities. Consent needs to be freely given, based on a full understanding of the implications, and obtained before any recording or photography takes place. It is also important to understand that consent can be withdrawn at any time.

Audio-visual material

Where possible, the permission of the original Knowledge holder must be obtained for the use of audio-visual material which shares the cultural knowledge of Aboriginal and Torres Strait Islander peoples. This will ensure appropriate attribution for their original contribution.

For audio-visual material that is not in the public domain with the authority of Aboriginal and Torres Strait Islander people and the copyright owner, permission to use the material must be obtained for each time the resource is used. If this high standard cannot be met the material should not be used. New teaching staff using existing teaching materials should check the status of the material.

7.1.1.4 Prioritise Indigenous voices and perspectives

Representation of Indigenous perspectives in teaching and learning is guided by the privileging of Indigenous voices and scholarship.

Publicly available resources including websites may provide information about Aboriginal and Torres Strait Islander culture and heritage, including interpretations of Aboriginal spirituality and languages. These resources are not always created by or with Aboriginal and Torres Strait Islander peoples. It is important to evaluate who has produced the information and whether it has included Aboriginal and/or Torres Strait Islander peoples in the development (refer AIATSIS Guide to evaluating and selecting education resources).

7.1.1.5 Respect the sanctity of sacred sites and secret and sacred knowledge

Indigenous sacred sites and the confidentiality of spiritual knowledge require protection. Even when such information is publicly accessible, staff cannot use this content for teaching and learning purposes.

The inclusion of Indigenous sacred knowledges in teaching and learning contexts can only be led by Traditional Owners or Custodians who hold the cultural authority to share this knowledge. Where it is necessary to refer to this kind of material it should only be in general terms and by way of examples such as in Foster v Mountford and Rigby Ltd (1976) 14 ALR 71.

The United Nations Special Rapporteur in the field of cultural rights underscores that certain sacred ICIP must never be commercially exploited.[43] Access and use must align with the customary laws and practices of the relevant Indigenous communities. It is equally important to prevent the misrepresentation or inappropriate display of cultural expressions that could harm or diminish their meaning and significance.

7.1.1.6 Content warnings and disclaimers

Sensitive content warnings and disclaimers are crucial when presenting Indigenous content to support the cultural safety of Indigenous staff and students. Disclaimers play a pivotal role in:

a. Acknowledging trauma: To recognise the historical and ongoing trauma experienced by Indigenous communities.

b. Empowering individuals: To enable Indigenous staff and students to choose not to participate or prepare emotionally and mentally for the content.

c. Creating inclusivity: To recognise diverse experiences in the classroom, generating an inclusive learning environment.

d. Promoting cultural safety: To ensure the unique cultural contexts of Indigenous staff and students are acknowledged and recognised.

e. Supporting mental health: To help manage exposure to potentially distressing material, mitigating the risk of trauma triggers.

These disclaimers are vital for promoting cultural safety and supporting the wellbeing of Indigenous staff and students in educational settings. Disclaimers are required on subject Canvas sites that include Indigenous perspectives and any teaching materials such as PowerPoint presentations.

Contact the Indigenous Teaching and Learning Team (email IndigenousTL@uts.edu.au) for further advice.

7.1.2 Collaborating with Aboriginal and Torres Strait Islander guest speakers, lecturers and people with cultural authority in curriculum development and delivery

The UTS Student Experience Framework emphasises practice-oriented education and cultural engagement to guide the design, development and delivery of Indigenous perspectives in curricula. As part of this approach, engaging directly with Aboriginal and Torres Strait Islander people to share ICIP enriches this learning experience.

[43] Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed: Copyright policy and the right to science and culture, Human Rights Council 28th session, 24 December (2014), para 57.

To support culturally informed teaching and learning, Aboriginal and Torres Strait Islander guest speakers may be invited to deliver lectures and presentations across a range of courses, subjects and microcredentials. The coordination, onboarding and sourcing of Indigenous guest lectures is managed by individual faculties and are typically the responsibility of the subject coordinator in alignment with the relevant Indigenous course content.

7.1.2.1 Promote reciprocity when inviting Aboriginal and Torres Strait Islander people as guests to share their cultural knowledge and intellectual property for teaching and learning

In alignment with the principles of FPIC, it is essential that transparent arrangements are made when engaging Aboriginal and Torres Strait Islander peoples as guest speakers or contributors to teaching and learning at UTS, particularly when they are sharing their ICIP.

This process requires ethical collaborative partnerships and formal agreements, grounded in the principles of FPIC, including appropriate recognition and remuneration.

Prior to engagement, clear discussions should take place regarding the terms of participation, including appropriate remuneration or an offering of equivalent value (for example, an honorarium or gift of fair value). This ensures that contributors are acknowledged for their time and knowledge. In addition, reimbursement for associated costs, such as transport and parking (whether on or off campus), should be offered as part of the engagement process.

While some individuals may choose to offer their contribution as part of their existing employment, it should never be assumed. Cultural knowledge should never be expected to be shared without appropriate consent, recognition and remuneration.

7.1.2.2 Take responsibility for obtaining consent in the use of contributions by guest speakers and guest lecturers with cultural authority

When Aboriginal and Torres Strait Islander guest speakers are invited to share their cultural knowledge, it is essential that their ICIP is protected. This includes obtaining FPIC for any recordings of their presentations and ensuring that any future use of such materials aligns with their terms.

If guest lectures are recorded by UTS, a media consent and release form must be signed by the speaker for future use by UTS. Without appropriate protections, recorded materials uploaded to platforms such as Canvas may become the property of the university. The standard consent form (available from Office of General Counsel: Standard contracts and templates (SharePoint)) assigns copyright to UTS but can include specific conditions and exclusions. Conditions can be included for ICIP by negotiation. Contact the Office of General Counsel for help with drafting any necessary conditions for ICIP. Refer also Appendix 5 for an example media and consent form with conditions for ICIP.

For legal clarity, it is important that teaching staff adhere to any agreed conditions, such as the duration of consent and restrictions on third-party use. As a best practice, when recorded presentations are reused in future teaching, new staff should make every effort to contact the original speaker to confirm continued consent for use.

Advice on recording for teaching and learning can be obtained from the Indigenous Teaching and Learning Team (email: IndigenousTL@uts.edu.au) and the Teaching and Learning Intellectual Property Procedure. Refer also the AIATSIS Code of Ethics.

7.1.2.3 Honouring Indigenous guest speaker and guest lecturer preferences for audio recordings and photography

Academics have a critical responsibility to prepare students for engagement with Aboriginal and Torres Strait Islander guest speakers and On Country learning experiences. This includes providing cultural context, outlining appropriate protocols and setting clear expectations around behaviour, including the importance of seeking consent for recording or photography. Even if consent if given, refrain from posting on social media or other forms of dissemination without express permission.

It is essential for academic staff to proactively inform students about the importance of ICIP to ensure students understand their ethical responsibilities associated with using and representing Indigenous content in academic work.

Students have a responsibility to themselves, to other students, to UTS and to the wider community to ensure the university's behavioural standards are met in all interactions including online environments (refer Student Rights and Responsibilities Policy). As such, students must not compromise the learning environment by recording classes without the prior consent of the person sharing their ICIP.

7.1.3 Ethical boundaries in representing Indigenous experiences

It is not appropriate to reenact, interpret or simulate the cultural knowledge and cultural expression of Aboriginal and Torres Strait Islander peoples. Such actions distort, diminish and misrepresent the cultural traditions of Indigenous Australians. The responsibility for sharing and preserving these cultural knowledges lies with the Indigenous peoples and communities themselves, ensuring that their knowledge is conveyed with accuracy and the necessary cultural authority. Only Indigenous Australians can speak to and represent their lived experience.

Teaching and learning activities should not include student role play or require students to speak to Indigenous experience by interpreting cultural knowledge and cultural expressions. In some instances, simulations are used for teaching and learning referring to ICIP in general terms without interpreting or reenacting or simulating relevant ICIP as a subject matter, for example, simulations of court hearings focused on protecting cultural heritage.

7.1.4 Resources and professional development for curating course content

The Indigenous Graduate Attribute (IGA) SharePoint site, managed by the Indigenous Teaching and Learning Team, serves as a central hub for academic staff seeking to embed Indigenous perspectives into curricula. It provides access to teaching directives, curated resources and professional development opportunities specifically designed to support the inclusion of Indigenous perspectives in course design, development and delivery.

The UTS Library's Indigenous Perspectives and Practices guide offers a comprehensive suite of resources for both staff and students. These resources are designed to support the development of culturally informed teaching, learning and assessment practices.

These resources support staff in the meaningful integration of Indigenous perspectives across all areas of study. They also promote the effective use of the AIATSIS Guide to evaluating and selecting education resources, a nationally recognised framework to help ensure that teaching and learning resources are authentic and aligned with best practice standards in Indigenous education. The guide supports educators in critically assessing the cultural integrity, accuracy and appropriateness of educational materials that represent Aboriginal and Torres Strait Islander histories, cultures and perspectives.

7.2 Research

Indigenous research is a priority area and core activity for UTS. Research is defined by the Australian Code for the Responsible Conduct of Research (the Australian Code) as 'the creation of new knowledge and/or the use of existing knowledge in a new and creative way so as to generate new concepts, methodologies, inventions and understandings.'

Research at UTS must comply with the principles of the Australian Code, the Research Policy (and its procedures) and other integrity-related policies.

In its research, UTS is committed to the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research. The AIATSIS Code of Ethics is the preeminent protocol in Australia for designing and conducting Indigenous research. It promotes research that has a positive impact for Aboriginal and Torres Strait Islander peoples and recognises Aboriginal and Torres Strait Islander peoples' right to be fully engaged with any processes, projects and activities that may impact on them.

Engaging with Aboriginal and Torres Strait Islander people for research must be founded on respect for human rights principles and Indigenous peoples' right to self-determination. This includes:

a. obtaining FPIC as appropriate

b. fostering mutual understanding of aims and methods of research

c. co-design

d. sharing results of work

e. ensuring Indigenous participants maintain control over their knowledge

f. attributing intellectual contributions in research findings, and

g. considering AI.

The Intellectual Property Policy expresses UTS's commitment to a rights-based approach by acknowledging and respecting Indigenous Knowledges and Indigenous Knowledge holders and recognising all relevant rights of Indigenous peoples in relation to their ICIP.

The following practical guidance aims to assist UTS staff and students with developing, conducting and facilitating research at UTS, which promotes recognition and respect for ICIP rights of Aboriginal and Torres Strait Islander peoples to self-determination individually and in community.

7.2.1 Ethics approval processes for Indigenous research involving ICIP and engaging with Aboriginal and Torres Strait Islander people

Researchers must obtain ethics approval through the UTS Human Research Ethics Committee for research that proposes to directly engage with Aboriginal and Torres Strait Islander people and their ICIP in compliance with the National Statement on Ethical Conduct in Human Research and the AIATSIS Code of Ethics.

Before making an ethics application, researchers should seek advice from the Indigenous Research Advisory Panel (IRAP). IRAP provides specific advice to researchers proposing to conduct research with First Nations peoples and their communities involving their ICIP.

The AIATSIS Code of Ethics recommends human research ethics committees seek expert advice on Indigenous research projects if the committee lacks sufficient knowledge to provide an informed assessment. The IRAP is an auxiliary panel to the UTS Human Research Ethics Committee. It reviews allocated ethics applications through the lens of the AIATSIS Code of Ethics in consideration of how its principles are embedded within the project design and how projects are developed in collaboration and consultation with relevant Indigenous communities.

Research involving Aboriginal and Torres Strait Islander peoples, communities, health data or health-related research in New South Wales may require review and approval by the Aboriginal Health & Medical Research Council (AH&MRC) Human Research Ethics Committee. Researchers should seek advice early in the project planning process to determine whether AH&MRC ethics approval is required. Evidence of AH&MRC approval should be maintained as part of the project's ethics documentation.

Ethics applications should articulate data management procedures and identify agreements and MOUs made with Aboriginal and Torres Strait Islander people and communities for recording and managing ICIP, including data access and repatriation. Indigenous research can involve collecting and recording ICIP shared by participants whether by design or ancillary to the research method and purpose. For example, participants may share their cultural knowledge during interviews about their family histories, political activism and other cultural knowledge.

It is important to consider circularity for Indigenous Data Sovereignty and recognise and respect the cultural authority and rights and responsibilities of individuals and communities when managing their ICIP during research. This information should also be recorded by researchers in research data management plans (detailed below).

Ethics approvals are required to be registered with Integrity IQ.

7.2.2 Research data collection and data management procedures involving ICIP

Research that captures ICIP occurs in all faculties across UTS as well as in the Jumbunna Institute for Indigenous Education and Research (Jumbunna Institute). The Research Data Management Procedure requires researchers to take ethical and cultural considerations into account when collecting and managing research data and provides practical guidance on matters to consider when collecting ICIP materials.

The creation of intellectual property for research can involve recording ICIP even when Aboriginal and Torres Strait Islander people are not directly engaged as research participants.

7.2.2.1 Record ICIP data collected through research

It is vital for researchers to record research activities that involve collecting, recording and using ICIP material used as research data in line with the Research Data Management Procedure.

The Research Data Management Procedure requires all research projects to create and maintain a research data management plan (RDMP) in Stash. Stash has functionality to record if research involves ICIP, and for anyone with copyright or IP rights over the data to be identified, and also allows any relevant licences or agreements governing data to be identified and attached.

This does not mean any UTS staff member can view or access the ICIP materials and data being collected. It allows certain staff with governance roles to see records (for example, the RDMP) indicating that ICIP materials were collected, or used, as part of the research. Access to the ICIP materials themselves is limited to those who have been granted access (for example, research project staff members) in line with any community and participant agreements.

The importance of recording ICIP information is to ensure effective governance of materials collected during research and for UTS to be able to monitor and audit which projects are collecting ICIP. This data management function enables UTS to follow up with researchers to ensure they are handling data in accordance with community agreements or protocols, and for UTS to have a record of where ICIP is being stored and to meet retention (archiving), disposal or repatriation requirements.

Mukurtu is a partner of Jumbunna research with a dedicated digital repository and archive system for Indigenous Knowledge, including for secret and sacred knowledge. Mukurtu is a platform that can be utilised by Indigenous organisations, researchers and communities.

7.2.2.2 Ensure safeguards are in place for future use of research data

When ICIP data from research is recorded and archived it is important to ensure safeguards are in place for who can access the data in the future in accordance with any agreements and community protocols with relevant Aboriginal and Torres Strait Islander people and communities. The development of RDMPs provides a pathway for safeguards and monitoring.

As outlined in the Research Data Management Procedure, when ICIP materials are collected as data for a research project, researchers must ensure the materials collected are handled in line with any agreements and community protocols with participants or communities for both the life of the project and after the project's completion.

This may mean the data is returned to the community, or that UTS will store and archive the data on behalf of the community or participants. Any such arrangements must be recorded in any agreements with participants and the community.

Where research data is stored by UTS, researchers must arrange ongoing access for as long as the data remains on suitable UTS infrastructure that has been agreed to by the community stakeholders and rights holders. UTS should provide facilities and support to facilitate a cultural approach for data storage so that data can be archived and repatriated appropriately, even if the original researcher who collected the materials has left UTS.

Although not mandatory, the Aboriginal and Torres Strait Islander Data Archive (ATSIDA) offers archival services to UTS researchers and others in Australia. ATSIDA protocols provide conditions for access to storage and reuse of cultural data including who owns and has rights to determine access, identifying members of the relevant community or communities, and rules about withdrawing data and repatriation. The use of ATSIDA needs to be embedded into ethics procedures and research methods.

7.2.3 Attribution and referencing

ICIP data is recorded when First Nations people share their stories and their histories for research projects. ICIP data can also be recorded ancillary to the primary purpose of research. It is essential to acknowledge custodianship of ICIP and provide appropriate attribution as mutually agreed. First Nations stories and histories should not be repeated without consent and not without appropriate attribution and authorship. This is an ongoing obligation.

The Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, has affirmed Indigenous peoples 'care deeply about the right to attribution and credit' (page 12). Aboriginal and Torres Strait Islander people have the right to be acknowledged and attributed for their contributions as a moral right. ICIP is often group or communal property and should be recognised and treated accordingly in any publication, recording and other use.

Measures for attribution should be negotiated in good faith prior to starting activities and should recognise individuals, extended families within communities, and relevant language groups given the collective nature of ICIP.[44] Graduate research students are required to acknowledge the contributions of Elders who are supervisors of their theses as appropriate and as mutually agreed.

[44] Secretariat of the Convention on Biological Diversity, Tkarihwaié:Ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities, Doc No CBD/COP/X/42 (29 October 2010)

The UTS Library provides a standard copyright protocol for fair dealing and can provide guidance on copyright and moral rights. Refer Copyright Advice.

Refer to the APA 7th Referencing Style Guide and the CAVAL Indigenous Referencing Guidance for Indigenous Knowledges for attribution of Indigenous Knowledge holders and authors. Researchers can also request publishers to observe and adopt Indigenous referencing as appropriate.

7.2.4 Benefit-sharing from research using ICIP

Fair and equitable benefit-sharing with Indigenous peoples from the use of their ICIP requires institutions to take a different approach and be willing to do things they don't normally do for an ethical and rights-based approach. For reciprocity this can include monetary and non-monetary benefit-sharing on mutually agreed terms. The annex of the Nagoya Protocol includes examples of monetary and non-monetary benefit-sharing.

The nature of ICIP, being derived from Indigenous Knowledges and collectively owned requires a different approach. Western IP laws confer monopoly on the creator to use and exploit their IP and to benefit from the use of their IP. Existing ethical processes and standards provide a degree of respectful treatment, however a rights-based approach to ICIP requires an additional layer of consideration. This is an emerging area in the academy and major research institutions.

In the context of ICIP, benefit-sharing must be self-determined by Indigenous people whose cultural knowledges and material is used, and determined, on mutually agreed terms. Indigenous peoples need to be able to exercise a similar kind of authority and agency in relation to their Knowledge and Country as any other commercial partner on mutually agreed terms. This is brand new for many institutions. The university sector is grappling with how to implement benefit-sharing in practice as the recognition of these rights is in the early stages and requires practical guidance for contract negotiations. Research and development-based industries are still working out how to do this as well as the impact of AI.

UTS expresses a commitment to acknowledge and respect Indigenous Knowledges and Indigenous Knowledge holders in its Indigenous Policy, and the principles of UNDRIP, which necessarily involves reciprocity when ICIP is used for research.

Benefit-sharing arrangements should be negotiated with Indigenous people and their communities with their FPIC and on mutually agreed terms in recognition of Indigenous peoples' right to self-determination and to enjoy, maintain and develop their cultural heritage and associated intellectual property. For example, when Indigenous Knowledge is utilised in science and engineering for research and development, benefit-sharing can be monetary and non-monetary and should be mutually agreed and not imposed. Benefit-sharing can involve agreements for financial benefits or activities identified by Indigenous people in their communities. For example, by providing transportation, fuel and provisions that may be reasonably required (refer the annex of the Nagoya Protocol for further examples). These kinds of arrangements should not be confused with usual project costs and should be understood to be an addition to remunerating people for their distinct contribution.

At UTS ownership of IP and benefit-sharing from the use of IP is governed by the Intellectual Property Policy, the Commercial Activities Policy, the Research Policy and the Research Intellectual Property and Research Translation Procedure.

The Research Intellectual Property and Research Translation Procedure promotes research translation for commercialisation of IP owned by UTS and broad public dissemination of research as open source, excluding ICIP. The procedure requires research contracts to set out who owns IP, including access to background IP and the method by which new IP is identified, and for research ownership to be assessed on a case-by-case basis. This means there is scope for agreements to preserve ownership and control of ICIP. UTS is also incorporating impact as part of its research translation activities.

For research and development at UTS that results in a grant of patent, which is a monopoly for new inventions and innovations, UTS owns patents in accordance with the Intellectual Property Policy.

For research funded by external parties, research funders can claim IP rights and ownership of IP and the terms of joint ventures and partnership arrangements can be negotiated by legal agreement, including for preserving ownership and control of ICIP, in line with the Research Intellectual Property and Research Translation Procedure. If IP rights are not claimed, for example if patents are not granted, research outputs are made available as open access via OPUS, which can include ICIP. For a rights-based approach care should be taken, in this instance, to ensure Indigenous Knowledges are safeguarded against inappropriate open access.

The CARE Principles for Indigenous Data Governance promoting Indigenous Data Sovereignty should be considered for research methods when undertaking research involving the use of ICIP and for promoting partnerships and recognising Indigenous rights over ICIP materials and associated data including for benefit-sharing and establishing mutually agreed terms.

7.2.5 Impact reporting for research with philanthropic funding

Research projects with philanthropic funding may engage with Indigenous peoples and document their ICIP. An impact report must be provided to donors.

Researchers should be mindful they cannot always control the distribution of impact reports. Impact reports should identify information which is culturally sensitive and not for wider distribution. Researchers should ensure reports do not disclose the content and detail of ICIP without informed consent.

7.2.6 Publishing agreements

When research is published that uses and shares ICIP with ethics approval, it is important to consider including ICIP clauses and Local Contexts labelling in contracts with publishers, particularly in the context of generative AI. Liaise with lead chief investigators and the UTS Library for guidance.

7.2.7 Respecting the sanctity of secret and sacred knowledge

7.2.7.1 Using secret and sacred knowledge in the public domain

As a first principle, secret and sacred knowledge and material should not be used in educational, research or promotional materials. Secret and sacred knowledge and material has become available in the public domain as a result of past research practices. This has generally occurred without the informed consent of the traditional or relevant Knowledge holders or people with cultural authority. It is strongly recommended that researchers not use secret and sacred material in the public domain unless the right people with cultural authority over that material have given permission. Longstanding research partnerships can assist with developing the right setting and research methods for high-level and high-stakes work of this nature, which can only be undertaken with the right people.

Where inclusion of this material cannot be avoided always seek express permissions from people and communities with cultural authority. This can include by establishing an Indigenous-led advisory group to guide the use of such materials. Materials documenting and referring to secret and sacred knowledge may only be used for research in accordance with Indigenous research methods and subject to ethics approval with conditions addressing the use of ICIP.

7.2.7.2 Archival management and research

There are protocols in place for accessing archival material, which include the ATSIDA protocols. The ATSIDA protocols apply to secret and sacred materials held by ATSIDA. For archival management and research, Local Contexts labelling can assist researchers with applying appropriate labels for traditional knowledge and biocultural works and with respecting protocols for access and use.

7.2.7.3 Repatriation

The unauthorised taking of secret and sacred knowledge and cultural objects is recognised by many institutions who have now developed processes for repatriation of associated materials. There is work undertaken by curators, anthropologists and archaeologists as part of a movement to decolonise institutions by repatriating cultural knowledge and objects, and for establishing keeping places to care for them as agreed with the relevant Indigenous communities.

7.2.8 Using ICIP for research through AI platforms

For research involving ICIP and GenAI tools, refer to the Use of AI in Research Guidelines. Alongside this UTS is developing further guidance around AI and the Jumbunna Institute is developing AI in Indigenous research practice guidelines.

7.2.9 Strengthening capabilities of UTS researchers

There is a need for improved literacy for researchers and non-research staff for how to identify and work respectfully with ICIP.

Researchers, and staff who support research, are encouraged to participate in training and professional development to build capacity for appropriate management of ICIP, including how to identify ICIP, ethical considerations and research data management.

UTS offers a microcredential, Supervising Indigenous Higher Degree Research, aimed at supervisors unfamiliar with Indigenous research methodologies. It explores how to prepare and support graduate research students (Indigenous and non-Indigenous students) undertaking Indigenous research.

Graduate research students are encouraged to contact the UTS Library (via Contact us) for information on training in research data management and liaise with their supervisors for relevant courses and microcredentials on offer by UTS on Indigenous research methodologies and ethics approval application processes for research that involves direct engagement with Aboriginal and Torres Strait Islander people as research participants.

7.3 Artworks at UTS

UTS manages the acquisition, display and interpretation of art through specialised collection and exhibition frameworks overseen by the UTS Gallery & Art Collection. Artworks are acquired through purchase and commission, accepted as donations via the Australian Government's Cultural Gifts Program (where eligible), as a direct (unencumbered) donation, as a deed of donation from an artist, their estate, representative or a donor, or loaned for the purposes of display or exhibition.

As of 2026, approximately 20% of artworks in the UTS Art Collection are by Aboriginal and Torres Strait Islander artists. Collection artworks are used across UTS for a range of purposes, including curated campus displays and exhibitions, research publications, teaching and learning resources, and marketing and communications activities.

The UTS Art Collection is governed by the Art Collection Policy. The collection is also subject to best practice in accordance with the Indigenous Arts Code, Protocols for using First Nations cultural and intellectual property in the arts, National Standards for Australian Museums and Galleries, and UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970.

7.3.1 Commissioning artworks

At UTS artworks are acquired, loaned and exhibited for a range of purposes including:

a. to improve public space and visual amenity as part of a capital works project

b. to promote cultural safety, as part of a collection development project

c. as part of external engagement and/or teaching and learning activities

d. as part of a collection development project

e. for branding of faculties and departments

f. for communications campaigns, and/

g. for UTS Gallery and programs.

The UTS Curator and Manager has oversight of the development of the Collection and should be contacted before initiating an artwork commission, purchase or loan on behalf of the university.

Artists must be remunerated and paid for their artworks by using licence agreements identifying conditions for how artworks will be used. Licence agreements should be used even when artists agree their works can be used freely and openly. Third-party agreements should also be used when artworks are used and reproduced by third parties.

UTS is guided by the Protocols for using First Nations cultural and intellectual property in the arts and the Indigenous Art Code in relation to the 'right way' to commission and the 'right way' to use artworks. Refer also the Art Collection Policy.

7.3.2 Using and publishing artworks and cultural expressions

UTS staff and students should not use images of Aboriginal and Torres Strait Islander peoples' artworks and cultural expressions (including those published by the UTS Gallery & Art Collection and on display throughout UTS campuses) for purposes not identified in the original agreement or licence. For example, images, stories or texts cannot be used in PowerPoint presentations, Canvas materials, office spaces, posters and websites, or for branding and logos unless part of the original agreement or licence.

The UTS Gallery & Art Collection team manage the moral rights and ICIP rights associated with artworks in the UTS Art Collection or on loan to UTS for the purpose of exhibition or display. The process for using images of artworks held by the Collection must be facilitated through the UTS Gallery & Art Collection and the Marketing and Communications Unit by making a request to use (refer also 7.4.1).

7.3.3 Attribution and provenance for artworks

Under the moral rights provisions of the Copyright Act, the right of attribution is recognised for individual creators. Relevant Indigenous individuals, language groups or communities should be attributed for use of their ICIP.

For First Nations creators, their Nation or language group must be included on labels accompanying their work or in project catalogues or publications. Traditional Country must be identified where traditional place names are not recognised or identified. All traditional place names and Country names must be approved by creators, Traditional Owners or First Nations advisors before production. Aboriginal and Torres Strait Islander place names may change as new and existing knowledge evolves over time. Different protocols may be in place for living and deceased Aboriginal artists.

Seek guidance from the UTS Art Collection team when developing teaching and learning resources and/or generating artwork attributions related to the UTS Art Collection.

7.3.4 Indigenous cultural authority and curatorial expertise

Curatorial and technical knowledge related to Indigenous artworks in UTS Gallery exhibitions and in the UTS Art Collection, including historical, artistic, material, provenance, exhibition, conservation and collection management expertise, may provide contextual support but cannot replace or determine the interpretation of ICIP.

All projects or materials containing ICIP sourced from different contexts must obtain FPIC and permissions from the copyright owners of the relevant content or material. All curatorial interpretation is subject to consultation with, attribution to, and appropriate permissions from creators, Indigenous custodians, communities, and relevant Traditional Knowledge holders. These processes ensure cultural authority is upheld and prevent the distortion, alteration or misuse of ICIP in alignment with recognised Galleries, Libraries, Archives and Museums industry protocols, including Protocols for using First Nations Cultural and Intellectual Property in the Arts.

7.4 Marketing, presentations and communications

7.4.1 Using Indigenous artworks, images and recordings for marketing and communications

Indigenous artworks, images and recordings are used by UTS for marketing and communications purposes in recognition of UTS impact, reputation and history as a leader in Indigenous education and research. This includes for marketing and branding, website content and media.

The Marketing and Communication Unit (MCU) has responsibility and oversight for ensuring that creative processes at UTS for marketing and communication purposes which seek to capture and use Indigenous artworks, images and recordings follow correct procedure. These activities can involve ICIP, for example photographs, film and audio recordings, and pictures of Aboriginal and Torres Strait Islander people during presentations sharing their cultural knowledges and perspectives.

UTS staff must seek advice from MCU during the preliminary stages of developing ideas for marketing and communications that involve the use of Indigenous artworks, images and recordings. There is a risk of reputational harm for UTS by not following the correct process and using Indigenous artworks, images and audio-visual recordings of Aboriginal and Torres Strait Islander people through public-facing marketing and communications. Seeking guidance from MCU also applies when seeking to use or adapt UTS Indigenous visual material and branding collateral.

For creative processes proposing to use Indigenous artworks, MCU will liaise with the UTS Art Collection team and follow UTS Art Collection protocols. This includes for ensuring the application of appropriate licence.

For capturing images and audio-visual recordings by UTS that are published and shared a media consent and release form (available from Office of General Counsel: Standard contracts and templates (SharePoint)) must be signed by participants who are being recorded subject to conditions for ICIP. Contact the Office of General Counsel for help with drafting any necessary conditions for ICIP. Refer also Appendix 5 for an example media and consent form with conditions for ICIP.

Refer also Copyright advice.

7.4.2 Using images of Aboriginal and Torres Strait Islander artworks and photographs of Country for visual presentations

In the first instance, refer to copyright laws and guidance at Copyright advice. Aboriginal and Torres Strait Islander artworks can only be used when permission has been granted by the artist, with attribution for the artist, and appropriate remuneration as mutually agreed.

Artworks reproduced in other publications will have obtained appropriate permission from Aboriginal and Torres Strait Islander artists with a licence agreement for that particular application only and cannot be used in any other context.

7.5 Internal and external engagement

The Universities Australia (UA) Indigenous Strategy 2022-25 recognises the value Indigenous peoples and Indigenous Knowledges bring to universities. The strategy promotes true partnerships between universities and Aboriginal and Torres Strait Islander communities both within and outside universities as essential to delivering the best outcomes. This includes by recognising and valuing the role of Elders.

7.5.1 Welcome to Country and Acknowledgement of Country

A Welcome to Country is a formal welcome onto Aboriginal Land given by Traditional Owners of Country or representatives given permission by the Traditional Owners to do so. An Acknowledgement of Country may be given by anyone who is not a Traditional Owner of the Lands on which the event is being held. It is a respectful public acknowledgement of the Traditional Custodians of the Lands.

In providing cultural services such as Welcome to Country, artistic performances and ceremonies, Aboriginal people are using their intellectual property and cultural Knowledge. Appropriate remuneration should be discussed and arranged prior to the event. As a courtesy, also consult on issues of photography or recording as Aboriginal and Torres Strait Islander people may not want their work recorded.

Refer to the Guiding Principles for Welcome to Country and Acknowledgement of Country for relevant protocols for people and Country.

7.5.2 Internal engagement with UTS Indigenous staff and students

7.5.2.1 Recruitment and human resource management

Indigenous staff and students may be required to provide confirmation of their Aboriginal and/or Torres Strait Islander status to access Indigenous-identified positions and programs. Information and documentation collected throughout this process will be managed in line with the Records Management Policy and the Privacy Policy.

Refer to Your privacy at UTS for information on the collection, use and access to personal information.

7.5.2.2 Sharing ICIP during employment

In line with the Intellectual Property Policy and terms of employment, UTS owns all intellectual property created or generated by staff in the course of, or in connection with, their employment, with the exception of ICIP. ICIP shared during employment must be managed in line with these guidelines. It is strongly recommended that staff discuss any concerns with their supervisor at the time of employment or as matters arise.

7.5.2.3 Cultural safety and cultural load

It is important to be mindful of imposing expectations of Indigenous staff and students to share their ICIP for activities ancillary to their primary roles at UTS. This can include by asking people to provide Acknowledgements of Country for meetings, to meet with students whom they are not directly responsible for teaching, and to attend meetings to share perspectives above and beyond their regular duties.

If the same people are repeatedly asked to carry out duties beyond their primary role as Indigenous staff and students on and off campus, this can place a significant cultural load on them. Further, it is important to consider they may not be the appropriate person with cultural authority. For cultural safety Aboriginal and Torres Strait Islander staff and students need to feel comfortable saying no to requests to share their cultural knowledge and intellectual property not within the scope of their employment or studies.

The UTS Staff Agreement (refer Enterprise agreements) acknowledges that Aboriginal and Torres Strait Islander staff may bear an additional, and sometimes unrecognised, cultural load. UTS aims to minimise this load where possible and recognise the cultural load in the staff member's workload and workplan.

7.5.3 External partnerships and procurement using ICIP

UTS engages with Aboriginal and Torres Strait Islander businesses and suppliers that may involve sharing and using ICIP. For example, commissioning artworks for promotional merchandise, developing graphic designs for logos and creating audio-visual media, including for the UTS website.

The Universities Australia Indigenous Procurement Guidelines recommend universities be aware of the risks and implement provisions to protect ICIP. This includes the provision of training to promote awareness across procurement and legal teams facilitating such engagements, and inclusion of contractual provisions that address the risks and issues with ICIP as appropriate.

Procurement contracts with external suppliers that involve using ICIP must acknowledge ICIP rights and require consent from relevant ICIP rights holders to use ICIP and for use by third parties.

7.5.4 First Nations Elders as supervisors for graduate research and as tutors

When Elders are engaged as graduate research supervisors, knowledge may be exchanged in the process of students creating their own intellectual property. It is important to provide appropriate attribution for the contribution of Elders' cultural knowledge as mutually agreed prior to commencement of the work.

Jumbunna tutors may share knowledge in providing support for students preparing assessments, which becomes the intellectual property of the students. Tutors need to be mindful of cultural knowledge they communicate with students and talk to students about respecting how such knowledge is used and shared with others. Mutual respect for any exchange of knowledge is an important aspect of this relationship.

7.5.5 Philanthropy and advancement

UTS receives external funding from the philanthropic sector for a wide range of purposes aligned with UTS values and priorities and may involve using and sharing ICIP. The UTS Advancement Office oversees philanthropic funding for UTS and there is a due diligence and risk assessment process for deciding on fundraising priorities across faculties, institutes and initiatives. Each faculty has a research plan and key performance indicators (KPIs) for research, including research funded by philanthropic donations.

The standard gift agreement template is used for gifts, which does not identify procedures for ICIP. Gift agreements, particularly for larger donations, may include terms and conditions for how ICIP is shared with donors through impact reports and how relevant ICIP may be used. It is important for impact reporting that shares ICIP with donors to align with best practice and self-determination. This can be brought to the attention of donors through direct correspondence and liaison facilitated by the Advancement Office.

Appendix 1: Glossary

Refer Indigenous Policy and Intellectual Property Policy for further definitions.

Aboriginal and Torres Strait Islander artworks

Refers to a wide range of artistic expressions including paintings, carvings, sculptures, textiles and other media created by Aboriginal and Torres Strait Islander people and their communities as an expression of their identity, culture, spirituality and relationships, which tell stories of ceremony and creation and connects people to ancestors and kin.[45]

Agency

Agency refers to the realisation of practical lived experience or aspirations of self-determination through which Indigenous peoples make choices and exercise control over decisions and processes that affect their lives. This includes individual and communal decisions about how their tangible and intangible cultural heritage, Traditional Knowledge and cultural expressions are used, developed, maintained and protected.

Attribution

Refers to acknowledging creators of works, ideas and contributions and, in the context of ICIP, for ensuring creators have credit or attribution for their creations. Proper attribution is important for respecting moral rights of creators and helps maintain the integrity and provenance of works. This can include attribution for Indigenous Knowledge holders and communities in recognition of kinship obligations and collective custodianship and rights of ownership. Attribution can also have a particular legal meaning under the Copyright Act.

Benefit-sharing

Refers to the process of reciprocity involving monetary and non-monetary exchange, which can include sharing credit, authorship and attribution for research and research outputs, profit sharing from commercialisation, and the provision of services as mutually agreed with Indigenous people and their communities. Benefit-sharing can also have a particular legal meaning in international agreements and domestic legislation.

Copyright

Is defined in the Copyright Act 1968 (Cth) and the Open Access Policy.

Country

Country is a term used by Aboriginal and Torres Strait Islander peoples to describe lands and waters they are connected to. Country means both the physicality of place and the underlying law, custom, language, spiritual belief, cultural practice, material sustenance, family and identity.[46]

Free, Prior and Informed Consent (FPIC)

Is defined in the Indigenous Policy.

Generative artificial intelligence (GenAI)

Is defined in Schedule 1, Student Rules. Also refer to the Use of AI in Research Guidelines.

Indigenous Data

Refers to information or knowledge, in any format or medium, which is about and may affect Indigenous peoples both collectively and individually.[47]

[45] AIATSIS Art and authenticity
[46] AIATSIS Code of Ethics, 'List of Definitions'; AIATSIS, Welcome to Country: What is Country?
[47] Indigenous Data Sovereignty Communique, Indigenous Data Sovereignty Summit, 20th June 2018, Canberra, ACT

Indigenous Data Sovereignty

Is defined in the Research Data Management Procedure.

Indigenous Cultural and Intellectual Property

Is defined in these guidelines and the Intellectual Property Policy.

Indigenous Knowledge

Is defined in the Intellectual Property Policy.

Intellectual property

Is defined in the Intellectual Property Policy.

Moral right

Is defined in the Copyright Act 1968 (Cth) and the Intellectual Property Policy.

Secret and sacred knowledge

Refers to protected information and cultural expressions that are restricted to authorised community members and tied to deep spiritual or ancestral connection to Country.

Self-determination

Is defined in the Indigenous Policy.

Sui generis

When applied to Indigenous peoples' cultural expressions, and for the purpose of these guidelines, refers to legislation or legal systems created to address and protect the unique requirements and characteristics of Indigenous peoples' cultural expressions, traditional knowledge and intellectual property not provided by Western intellectual property systems.

Appendix 2: Summary of actions at UTS for a rights-based approach for ICIP

Elements of a rights-based approach	**Actions for self-determination and agency**
Effective participation and governance	• Indigenous leadership and engagement for oversight of standard-setting and policy development. • Indigenous participation and engagement in UTS ethics approval decision-making processes for research projects proposing to record, use and interpret ICIP. • Indigenous Education and Research Strategy position of support for Indigenous-led research. • Indigenous oversight of teaching and learning delivery using ICIP.
Free, Prior and Informed Consent (FPIC)	• Seek consent and permissions. • Obtain FPIC through a media consent and release form with conditions for use for using audio-visual recordings for UTS marketing and communications. • Obtain FPIC for recording images and voices of First Nations people sharing ICIP.
Right people to speak as Country	• Respect and engage with the right people for interpreting ICIP in teaching and learning, research and community partnerships and engagement. • Prioritise Aboriginal and Torres Strait Islander voices for teaching and learning when ICIP is interpreted.
Indigenous Data Sovereignty	• Establish safeguards for ICIP data management, collection, access and use, and for archival management. • Ensure ICIP data is used for a mutually beneficial purpose with consent and in partnership with Indigenous peoples. • Take a risk-managed approach to reliance on artificial intelligence that may extract ICIP from the public domain without appropriate consent, attribution or consideration of cultural protocols for disclosure and use. • Observe CARE Principles for research engaging with ICIP and using AI and GenAI tools. • Consider using biocultural and traditional knowledge labelling for ICIP archival data management for promoting Indigenous Data Sovereignty.
Elements of a rights-based approach	**Duties and responsibilities**
Attribution	• Ensure proper attribution for all ICIP. • Attribute ICIP in research agreements. • Attribute Indigenous artworks used by UTS for marketing, branding, publications and infrastructure. • Refer to the APA 7th Referencing Style Guide and CAVAL Indigenous Referencing Guidance for Indigenous Knowledges for attribution of Indigenous Knowledge holders and authors. • Acknowledge contributions of Elders as supervisors for graduate research theses as appropriate and as mutually agreed.

	• Attribute individuals and communities who share their ICIP and for using artworks and other cultural expressions. • Use provenanced artworks with copyright permissions not stock images. • Review moral rights of attribution and mitigate against derogatory treatment as defined by the Copyright Act 1968 (Cth).
Cautions and cultural warnings	• Do not use secret and sacred knowledge for research • Do not use secret and sacred material for teaching and learning. Secret and sacred material can only be referred to at a general level when subject matter warrants. • Aim to ensure interpretation of ICIP does not distort value and meaning and safeguard against derogatory use in recognition of moral rights. • Use warnings and acknowledgements for content sharing ICIP as appropriate.
Compliance and due diligence	• Identify the relevant Aboriginal and/or Torres Strait Islander people and communities. • Obtain FPIC. • Disclose use of ICIP and how ICIP data will be managed in research data management plans (refer Research Data Management Procedure). • Ensure UTS staff and students undertake ongoing relevant training and professional development to build awareness and competency relating to the use of ICIP. • Acknowledge cultural load in workload and workplan agreements as required under UTS enterprise agreements. • Obtain consent from people with cultural authority to give permission for use of personal information for teaching and learning. • Obtain media consent and release forms for taking and using photographs and audio-visual recordings for use by UTS. • Respect privacy of personal information and safeguard against unauthorised access and use. • UTS leadership to engage with staff to support alignment of work with UTS's Indigenous Policy and Intellectual Property Policy (and other relevant UTS policies, procedures and guidelines) for promoting the rights of Indigenous peoples with regard to ICIP. • Use an agreement with consideration of ICIP and a licence agreement to define how ICIP can be used and the duration when commissioning artworks. • Do not use any images of Indigenous artworks without explicit permission.
Elements of a rights-based approach for ICIP	**Actions promoting reciprocity and relationships**
Reciprocity and relationships • Co-design and partnerships • Benefit-sharing • Kinship relationships and obligations	• Discuss reciprocity and benefit-sharing • Deliver Welcome to Country and Acknowledgement of Country as appropriate for UTS meetings (refer Guiding Principles for Welcome to Country and Acknowledgement of Country). • Commission and acquire artworks with suitable duration and ensure fair payment for licence agreements for any future use and reproductions, i.e. university branding and artwork displayed at UTS. • Ensure benefit-sharing on mutually agreed terms with Indigenous Knowledge holders for commercialisation of research using ICIP. • Provide remuneration for contributions of guest speakers and lecturers for UTS activities.

	• Ensure research agreements and commercial contracts include clauses on the use of ICIP with consent, and provisions for attribution and benefit-sharing on mutually agreed terms. • Share authorship of research outputs as appropriate and reference ICIP of authors contributions according to Indigenous referencing guidelines. • Recognise diversity of Aboriginal and Torres Strait Islander peoples, Nations and communities. • Prioritise Indigenous voices when interpreting ICIP for teaching and learning by engaging guest lecturers, speakers and people with cultural authority. • Prioritise Indigenous voices for research in accordance with the AIATSIS Code of Ethics. • Adopt co-design research methodologies for projects directly engaging with and effecting Indigenous people and their communities. • Observe local Indigenous community protocols and practices relevant for Indigenous communities.

Appendix 3: Summary of ICIP touchpoints for UTS activities

The development of these guidelines was informed by interviews with UTS staff and students.

ICIP touchpoints were identified in the following areas.

UTS activities	ICIP touchpoints at UTS
Research	• Intellectual Property Policy • Australian Universities Accord focus on centring the voices, experiences and expertise of First Nations researchers and bringing their cultural knowledge to universities. • Employment agreements and external engagement agreements with suppliers and contractors • Patent registration and recognition of ICIP • Interactions with philanthropic donors funding research • Ethics approval processes of UTS Human Research Ethics Committee for considering and approving research involving Indigenous participants, which may involve ICIP • UTS Indigenous Research Advisory Panel with terms of reference for ICIP • Referencing Indigenous materials • Undergraduate and postgraduate student research • Academic staff research
Infrastructure	• Artworks displayed at UTS • First Nations designs used in teaching spaces and buildings • UTS website images
UTS Gallery and Art collection	• Artworks acquired through commission or direct acquisition • Loaned artworks • Digital communications and publishing artworks • Managing National First Nations College (NFNC) collection • Use of Aboriginal and Torres Strait Islander artworks at UTS
Marketing and communications	• Use of images for marketing and communications, which may involve ICIP • Branding and visual identity, which may involve ICIP • Jumbunna Institute commissioned artworks (UTS Art collection and publications) • Media consent and release forms for the use of images, videos and audio recordings for UTS • Contracts and agreements for commissioning and using artworks and media recording ICIP
Data collections and data management	• Data archives: Aboriginal and Torres Strait Islander Data Archive (ATSIDA) and UTS Library • Research methods for collecting ICIP data • Research data management and open access through OPUS • UTS Library education and advisory services and resources • Indigenous referencing • Publishing agreements • Local Contexts labelling • UTS data management policies and procedures
Internal and external engagement: UTS staff, graduate research students and Elders as supervisors	• External engagement of guest lecturers, contractors and community members • Elders as supervisors for graduate research • Employment of Aboriginal and Torres Strait Islander staff • Aboriginal and Torres Strait Islander staff outside UTS sharing cultural knowledge while representing the university • Socialisation strategies for development of UTS policies and procedures and for implementing policies • Welcomes to Country

	• Images and artworks used as backgrounds for staff and student presentations
Advancement: fundraising, gifts and philanthropy	• UTS projects funded by donation • UTS fundraising and due diligence including risk assessment of donations • Agreements with donors and limiting their use of ICIP • Terms and conditions of standard gift agreement • Publication of impact reports to donors • Marketing and communications of projects funded by donors involving and sharing ICIP • Branding for National First Nations College (NFNC) using First Nations designs
Indigenous leadership and engagement	• ICIP used for enhancing UTS reputation and goodwill • Use of images and recordings of Aboriginal and Torres Strait Islander people • ICIP used for UTS branding • AI tools and platforms extracting using ICIP shared by UTS.
Indigenous teaching and learning	• IGA curriculum framework • All onshore coursework programs have an Indigenous course intended learning outcome • Canvas: materials owned by UTS • Guest lectures: consent and reciprocity for sharing ICIP for teaching and learning • Informed consent of relevant people and communities for using their ICIP captured by audio-visual materials for curating course content: using film, audio and photographs. • Content for teaching and learning in health, engineering, science and law.
Graduate research and enterprise learning	• Intellectual Property Essentials online module for staff and graduate research students to include content on ICIP • Research Foundations subject (42670) offered to graduate research students to include content on ICIP • Intellectual property microcredentials to include content on ICIP • Enterprise learning provides customised learning for organisations with an interest in Indigenous leadership for cultural respect.

Appendix 4: References

UTS policies, procedures and resources

Art Collection Policy

Artificial Intelligence Operations Policy

Human Research Ethics Committee

Indigenous Education and Research Strategy

Indigenous Policy

Indigenous Research Advisory Panel

Intellectual Property Policy

Open Access Policy

Research Policy

Research Data Management Procedure

Use of AI in Research Guidelines

External protocols and principles

AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research

Aboriginal and Torres Strait Islander Data Archive (ATSIDA) protocols

CARE Principles for Indigenous Data Governance

Cultural Gifts Program

FAIR Guiding Principles for scientific data management and stewardship

Indigenous Art Code

Indigenous Referencing Guidance for Indigenous Knowledges

International Council of Museums Code of Ethics

Maiam nayri Wingara Indigenous Data Sovereignty Principles

Mo'otal Kuxtal Guidelines

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilisation to the Convention on Biological Diversity

National Statement on Ethical Conduct in Human Research

Protocols for using First Nations Cultural and Intellectual Property in the Arts

Rutzolijirisaxik Voluntary Guidelines for the Repatriation of Traditional Knowledge

Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities

Appendix 5: Example media and consent release form

A media consent and release form is available from Office of General Counsel: Standard contracts and templates (SharePoint).

This is an example of a form that includes conditions of use for ICIP. Do not use this form, rather, use it as a guide to what may be included. Contact the Office of General Counsel for help with drafting any necessary conditions for ICIP.

Media Consent and Release

Date:

Name of Producer:

(name of person taking the photographs or making the video or film)

Producer's phone number: Producer's email:

Name of participant:

Participant's address:

Participant's phone number: Participant's email:

Name of Program/Project:

(the Project)

1. I, the Participant, execute this deed for the benefit of the University of Technology Sydney ABN 77 257 686 961 (UTS). I agree to being interviewed/photographed/filmed/recorded by the Producer for UTS in connection with the Project on the following conditions:
   a) I retain all copyright and assert all moral rights and ICIP in any photographs, films, videos, or audio-visual recordings or related materials made by or on behalf of UTS in connection with my participation in the Project (**the Recordings**).
   b) UTS acknowledges that the intellectual and cultural property rights of Aboriginal and Torres Strait Islander peoples should be respected and preserved and therefore UTS in recognition of Indigenous Cultural and Intellectual Property rights makes no claim of ownership of such rights created in connection with the Recordings.
   c) Except for the purposes set out in paragraph 2 below, use of my copyright and ICIP can only be done with my consent, which will not be unreasonably withheld.
   d) Except for the purposes set out in paragraph 2, any proposed use of the Recordings require my consent, which will not be unreasonably withheld.
   e) I retain my moral right of integrity and will be consulted by UTS for any material change to the Recordings such as editing, voice-overs, now and in the future.

2. Subject to the conditions above, UTS and its authorised employees and contractors (**UTS Authorised Person**) are entitled to:

   - use, disclose, reproduce, adapt, modify, publish, distribute, exhibit and communicate to the public the Recordings and in printed publications, on UTS's websites, on social media platforms or other media services, for promotional, educational and marketing purposes connected with the Project,
   - make any edits, changes, adaptations, arrangements, substitutions, deletions and additions to or from the Recordings in connection with the Project, and will identify me and acknowledge my participation in the Recordings; and
   - use my name, photograph, voice, biographical material and any personal photographs, videos or other materials supplied by me, in or in connection with the Recordings.

3. I consent to UTS collecting my personal information to facilitate the purposes outlined in this deed and acknowledge the accompanying privacy notice below.

4. I warrant, acknowledge and agree that:

   - UTS will consult with me and take into account my comments regarding the use of my image, voice, and expressions captured by the Recordings in edited material for publication and distribution;
   - there are no restrictions that prevent me from participating in the Recordings or agreeing to these terms, and no other person's consent is required;
   - UTS is not required to use all or any part of the Recordings in any of its publications, on its website or otherwise;
   - I am participating in the Recordings and consenting to these terms and the making or use of the Recordings for xx hours and will be recompensed for this time either as payment or a gift of same value for $xx per hour;
   - this does not give me any right to require further payment or to receive or share in any proceeds from the use of the Recordings;
   - I am participating in the Recordings and consenting to these terms on a voluntary basis and the making or use of the Recordings does not give me any right to require payment or to receive or share in any proceeds from the use of the Recordings.

5. I hereby release and indemnify UTS and the UTS Authorised Persons, from and against any and all losses, liabilities, claims, demands and proceedings arising out of or in connection with any breach by me of this deed or the exercise of the rights granted under it.

☐ I am 18 years of age or older, and I have read, understood and agree with the terms of this deed. OR

☐ The Participant is under 18 years of age. In my capacity as the legal guardian of the Participant, I agree

Signature of witness and signature of participant or guardian.

Privacy notice: Personal information collected from you to facilitate and support the purposes outlined in this deed will only be used or disclosed for the purposes of this deed or where required or permitted by law. You can request access to, or a correction of information you have provided (for example, your contact details), by contacting the above named producer. Further information on privacy can be found at Privacy at UTS

Approval information

Guidelines contact	Pro Vice-Chancellor (Indigenous Leadership and Engagement)
Approval authority	Pro Vice-Chancellor (Indigenous Leadership and Engagement)
Review date	2027
File number	UR26/535
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