

Australian Music Centre (AMC) First Nations Cultural Policy for Represented Artists

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Acknowledgement

The Australian Music Centre acknowledges the Traditional Owners and sovereign custodians of the lands on which we work and live. We recognise their continuing connection to Country and their respective nations across this continent and pay our respects to their Elders past and present. We also celebrate the unique and inspiring creativity and song-lines of the world's oldest living culture and give thanks for the immeasurable influence First Nations people continue to have over the music and art we all enjoy.

The Australian Music Centre would like to thank the following people for their time, expertise, and input in creating this Policy:

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Introduction

The *Cultural Policy for AMC Represented Artists* provides preliminary guidance to Australian Music Centre (AMC) Represented, Associate, and Pedagogical Artists (hereafter, “Represented Artists”) for lodging works with the AMC that include Aboriginal and Torres Strait Islander peoples’ cultural intellectual property, languages, and knowledges.

The broad purpose of the Cultural Policy is to provide protection to Aboriginal and Torres Strait Islander peoples’ cultural intellectual property rights, as many such rights exist outside the scope of Australian and international copyright and intellectual property laws.

“Artists, writers and performers should refrain from incorporating elements derived from Indigenous heritage into their works without the informed consent of the traditional owners.”¹

More specifically, for all works submitted to the AMC that include Aboriginal and Torres Strait Islander peoples’ cultural intellectual property, this document provides guidance to ensure that: the correct permission(s) have been sought and received by the Represented Artist(s); proper attribution(s) are included with the work; and respectful and inclusive language and terminology is utilised throughout the submitted work(s). The outcome of this guidance is to ensure that no misappropriation of Aboriginal and Torres Strait Islander peoples’ cultural intellectual property, languages and knowledges has occurred in the creation of works that are submitted to the AMC for inclusion in the AMC’s collection.

1. About the First Nations Cultural Policy for Represented Artists

The *First Nations Cultural Policy for Represented Artists* outlines the AMC’s requirements for receiving submissions from AMC Represented Artists that include Aboriginal and Torres Strait Islander peoples’ cultural intellectual property, languages, and knowledges.

This guide contains:

- the AMC’s requirements for accepting works that include Aboriginal and Torres Strait Islander peoples’ cultural intellectual property into the AMC collection
- preliminary guidance on appropriate usage of Aboriginal and Torres Strait Islander peoples’ cultural intellectual property
- preliminary guidance on respectful and inclusive terminology
- links to additional resources and organisations where Represented Artists can gather further information

¹ Daes, Erica-Irene (1995). *Protection of the heritage of Indigenous people : final report of the Special Rapporteur, Erica-Irene Daes, in conformity with Subcommission resolution 1993/44 and decision 1994/105 of the Commission on Human Rights*. United Nations Economic and Social Council document number E/CN.4/Sub.2/1995/26. Available at: <https://digitallibrary.un.org/record/188839?ln=en>

2. What is a cultural policy?

Cultural policy centres around ethical principles for guiding behaviour and demonstrating respect to one another. For artists and performers, cultural protocols are particularly important in situations where their creative works or performances utilise or reference Aboriginal and Torres Strait Islander peoples' cultural intellectual property or cultural heritage.

The AMC supports and refers to principles outlined in the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**² and **Indigenous Cultural Intellectual Property (ICIP)**³ rights, for guidance in creating these Cultural Protocols. Australia is a signatory to the UNDRIP and—while the declaration is non-binding—the UNDRIP requires the recognition of Indigenous peoples' right to self-determination and control over their knowledge, culture, language and lands.

UNDRIP Article 31(1) states:

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.⁴

Indigenous Cultural Intellectual Property (ICIP)

Indigenous Cultural Intellectual Property (ICIP) refers to the rights, enforced and non-enforced, for Indigenous peoples to control, preserve and protect their cultural heritage.

ICIP includes, but is not limited to, the following rights:

- Right to protect traditional knowledge and sacred cultural material
- Right to ensure that traditional laws and customary obligations are respected, particularly when profit is made from Indigenous Cultural Intellectual Property
- Right to be paid for use of Indigenous Cultural Intellectual Property
- Right to full and proper attribution or naming of the community connected with the Indigenous Cultural Intellectual Property
- Right to prevent insulting, offensive and misleading uses of Indigenous Cultural Intellectual Property particularly if it has been used in a way which is inconsistent with traditional laws or without the community's permission

² United Nations Department of Economic and Social Affairs (UNDESA). (2007). *United Nations Declaration on the Rights of Indigenous Peoples*. <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

³ Arts Law Centre of Australia (2011). *Indigenous Cultural & Intellectual Property (ICIP)*. [PDF] Available at: https://www.artslaw.com.au/wp-content/uploads/2019/04/AITB_information_sheet_-_Indigenous_cultural_and_intellectual_property_ICIP.pdf

⁴ United Nations Department of Economic and Social Affairs (UNDESA). (2007). *United Nations Declaration on the Rights of Indigenous Peoples*, 22.

- Right to control the recording and documentation of cultural customs and expressions, and language which may be essential to cultural identity, knowledge, skill, and teaching about Indigenous culture⁵

Indigenous Cultural Intellectual Property includes diverse forms of cultural heritage, such as: **writing, music, performances** (including ceremonies), **visual art works, languages, tangible cultural property** (including sacred sites), **intangible cultural property** (including stories passed on orally) and **documentation of Indigenous peoples' heritage in all forms of media**.⁶

While some of the above rights are protected by Australian copyright laws, "Australian laws only protect individuals and do not recognise any communal rights."⁷ This creates challenges for Aboriginal and Torres Strait Islander communities seeking to protect their cultural heritage. As noted in an Australian Parliamentary report:

*"Indigenous peoples' intellectual property rights extend to include a wide range of subject matter, beyond what is recognised within existing intellectual property rights and other protection systems. They are closely linked to land, cultural heritage and environment, and also to cultural property. In addition, Indigenous communities possess some unique features of their knowledge, creative expressions and innovations, which emphasise communal rights, in which many creative works are of an indefinable antiquity, and in which cultural products, expressions and manifestations are tightly integrated into all other aspects of society. These features are at odds with conventional western notions of intellectual property."*⁸

As not all elements of Indigenous Cultural Intellectual Property are protected by Australian law, it is imperative to abide by cultural protocols for direction on how best to respect and observe ICIP rights and cultural heritage.

More information about the types of cultural intellectual property that are, and are not, protected under Australian law can be found on the Arts Laws Centre of Australia information sheet: [Indigenous Cultural and Intellectual Property \(ICIP\)](#).

⁵ Arts Law Centre of Australia (2011). *Indigenous Cultural & Intellectual Property (ICIP)*. [PDF]

⁶ Ibid.

⁷ Ibid.

⁸ Davis, Michael (1997). *Indigenous Peoples and Intellectual Property Rights* [online]. Available at: https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/SOH30/upload_binary/SOH30.pdf;fileType=application%2Fpdf#search=%22Indigenous%20Peoples%20and%20Intellectual%20Property%20Rights%22

3. The AMC's Submission Requirements and ICIP

The Australian Music Centre is committed to the diversity of artists and arts practices within Australia. To ensure that the works within the AMC's collection adhere to accepted standards of Indigenous Cultural Intellectual Property rights, and the principles of the United Nations Declaration on the Rights of Indigenous Peoples, the AMC requires Represented Artists to adopt appropriate practices for works lodged with the AMC that incorporate, collaborate with, or reference Aboriginal and Torres Strait Islander peoples' cultural intellectual property, languages, and knowledges.

In accordance with these commitments, the AMC requires all submitted works to comply with the following conditions. Each requirement is covered in more detail in the subsequent sections of this document.

- a. **Permission from the representative authority:** Aboriginal and Torres Strait Islander peoples' cultural intellectual property (including language, artwork, stories, songs, writings etc., and including translations and transcriptions of Aboriginal and Torres Strait Islander peoples' cultural intellectual property) can only be included in a submitted work if permission has been sought and granted by the Aboriginal or Torres Strait Islander community, Traditional Owners, Aboriginal Land (and Sea) Council, individual, or organisation in control of the respective cultural Indigenous Cultural Intellectual Property. **See section A (below) for additional information.**
- b. **Acknowledgement of sources:** A written acknowledgement of the Aboriginal or Torres Strait Islander community, Traditional Owners, Aboriginal Land (and Sea) Council, individual, or organisation in control of the respective cultural knowledge must be included in the score*, recording, program notes, and/or preliminary text, in accordance with the right to "full and proper attribution or naming of the community connected with the Indigenous Cultural Intellectual Property". **See section B (below) for additional information.**

*Works that are not score or sheet music based should be accompanied by a written notice outlining the acknowledgement and attribution of sources.

- c. **Cultural sensitivity notice:** Where necessary, a cultural sensitivity notice should be included score, recording, program notes, and/or preliminary text, if the work includes references to, images, voices, or names of deceased Aboriginal and Torres Strait Islander individuals. **See section C (below) for additional information.**
- d. **Appropriate use of terminology:** All text throughout the work, whether it is in the title, subtitle, program notes, performance instructions, or performed text (i.e., narration, lyrics) must adhere to accepted terminology practices where possible. **See section D (below) for additional information.**
- e. **Rights allocation:** Where necessary, allocation of rights for ICIP used within a work will be assigned in the form of royalties to appropriate persons or community.

A. Permission from the representative authority

Permission must be sought, granted, and displayed for works that incorporate, collaborate with, or reference Aboriginal and Torres Strait Islander peoples' cultural intellectual property, languages, and knowledges.

The AMC does not have the role or authority to grant permission(s) for the use of Indigenous Cultural Intellectual Property, or to assist Represented Artists in negotiating and securing the correct permission(s) for their work(s). Obtaining the correct permissions is the responsibility of the Represented Artist. Additionally, the permission(s) granted must be reflective of the final work produced. That is, the final work must not incorporate elements of cultural intellectual property that were not discussed or approved when permission was granted.

The Australia Council for the Arts has published a comprehensive document outlining [*Protocols for using First Nations Cultural and Intellectual Property in the Arts*](#)⁹, which provides clear guidance and a solid starting point for securing permissions for the use of Indigenous Cultural Intellectual Property. The subsequent pathway towards securing permissions can be varied and is dependent on the community or individual connected with the Indigenous Cultural Intellectual Property.

In relation to securing permission(s), the Australia Council protocols note that:

*"There is no singular body or authority in Australia that can make decisions about ICIP [Indigenous Cultural Intellectual Property]. So, speaking to the right people is very important. Indigenous communities, whether regional, urban or remote, have an infrastructure of organisations and individuals who can advise on a range of issues – including guidance about locating Indigenous people with authority to speak for specific Indigenous cultural material."*¹⁰

Given the plurality of pathways for negotiating the use of Indigenous Cultural Intellectual Property, the methods and processes of communication and consultation can be highly involved and should be catered to the "needs of the particular community or communities being consulted."¹¹ Represented Artists should consider the time and degree of commitment that may be required to reach agreements for the use of ICIP. As noted in the Australia Council protocols:

*"Consultation can be very straightforward, but frequently it is more complex. It is not enough to find just one person who will agree to the project or a particular interpretation of a work. It will generally be necessary to discuss the project widely with language group or family members, and to get advice from several people to establish the custodian of ICIP."*¹²

⁹ Australia Council for the Arts (2019). *Protocols For Using First Nations Cultural And Intellectual Property In The Arts*. [online] Available at: <https://australiacouncil.gov.au/investment-and-development/protocols-and-resources/protocols-for-using-first-nations-cultural-and-intellectual-property-in-the-arts/>

¹⁰ Ibid, 32.

¹¹ Ibid, 33.

¹² Ibid, 34.

AMC Represented Artists are strongly encouraged to review the [Australia Council's Protocols for using First Nations Cultural and Intellectual Property in the Arts](#) for directions on best practices for connecting with, and working with Aboriginal and Torres Strait Islander peoples. The latter section of the Australia Council includes important and instructive case studies.

Texts, titles, and translations

The inclusion of Aboriginal and Torres Strait Islander languages in writing—as the title, subtitle, narration, lyrics, libretto, prose, or descriptive text in the score, program note(s), performance instruction(s), or the preliminary score pages—must be accompanied by a written statement that includes the permission(s) granted along with any required acknowledgements and attributions. Translations of any Aboriginal and Torres Strait Islander language(s) into English (or other non-Aboriginal and Torres Strait Islander language), and vice versa, also require permission from either the publisher of the text, or from the community or individual connected with the Indigenous Cultural Intellectual Property. Attribution must be given to any translator(s), where relevant. **See Section B (below) regarding acknowledgement of sources and attributions.**

Formal consent and documentation

In accordance with the principles of “free, prior and informed consent”¹³ (FPIC) it is important to obtain formal consent, preferably in writing, that can be easily produced if required. The AMC will require formal documentation of permission. Formats of formal consent can include:

- **written agreements** – cultural clearances, licence agreements, memoranda of understanding (MOUs)
- **other written documents** – consent provided through a letter of support, provided via email correspondence
- **other media** – such as an audio or video recording of oral consent¹⁴

Represented Artists will be prompted to provide the relevant information and documentation, when it is applicable, when lodging new works with the AMC through the [Contribute](#) portal.

Consent is not something that should become a burden to any Indigenous peoples. Even if consent is agreed, if documentation is not forthcoming from the relevant Indigenous peoples, the AMC advises not to persist.

¹³ Ibid, 36 – 38.

¹⁴ Ibid, 38.

B. Acknowledgement of sources

In addition to receiving permission, it is important to acknowledge all sources of ICIP and provide an appropriate attribution on the score, program notes, and/or preliminary text. The attribution can be combined with a statement demonstrating that permission has been granted for the use of the Indigenous Cultural Intellectual Property. The Australia Council for the Arts has published a comprehensive document outlining [Protocols for using First Nations Cultural and Intellectual Property in the Arts](#)¹⁵, which provides templates.

Represented Artists should discuss the wording of attributions with the community or individual connected with the Indigenous Cultural Intellectual Property.

C. Cultural sensitivity notice

A cultural sensitivity notice advises Aboriginal and Torres Strait Islander people that the work includes images, voices and/or names of deceased individuals or groups, or other sensitive content. The notice affords Aboriginal and Torres Strait Islander people the opportunity to decide whether to engage with the work or not. If applicable to the work, a cultural sensitivity notice should be included in the score, recording, program notes, and/or preliminary text. An example notice is as follows:

Aboriginal and Torres Strait Islander people are advised that this work contains
[images] [voices] [names] of deceased persons.

D. Appropriate use of terminology

The use of appropriate terminology is an important part of demonstrating respect. The [Good practice guide: Demonstrating inclusive and respectful language](#)¹⁶, by Reconciliation Australia, provides a concise overview of inclusive and respectful terminology, and also outlines why some terms are considered outdated and/or problematic.

It is important to note that the diversity of Aboriginal and Torres Strait Islander cultures and identities often requires case-by-case approaches to understanding respectful language. While the *Good practice guide* provides general direction for some preferred terminology, perspectives and attitudes can – and do – vary between respective Aboriginal and Torres Strait Islander communities and individuals. **It is important to seek guidance directly from the individuals, communities or organisations connected with the Indigenous Cultural Intellectual Property for direction regarding their terminology and language preferences.**

Given the diversity of perspectives, it is not possible for the AMC to mandate one specific set of terms to be used in works submitted to the AMC's collection. However, where a Represented Artist has freedom to determine terminology usage – that will not contradict the guidance of the Aboriginal or Torres Strait Islander holder of Indigenous Cultural Intellectual

¹⁵ Australia Council for the Arts (2019). *Protocols For Using First Nations Cultural and Intellectual Property In The Arts*. [online] Available at: <https://australiacouncil.gov.au/investment-and-development/protocols-and-resources/protocols-for-using-first-nations-cultural-and-intellectual-property-in-the-arts/>

¹⁶ Reconciliation Australia (n.d.). *RAP Good Practice Guide: Demonstrating inclusive and respectful language*. [online] Available at: <https://www.reconciliation.org.au/wp-content/uploads/2018/05/language-guide.pdf>

Property – the [Good practice guide: Demonstrating inclusive and respectful language](#) can be used as a reliable template for preferred and acceptable terminology.

E. Rights allocation

In addition to receiving permission and acknowledging all sources of ICIP, it is important to provide appropriate attribution of rights in the form of royalties. The royalty allocation split between the composer and the contributing ICIP holder(s) can be negotiated in accordance to the AMC's Artist license agreement.

4. Non-compliance

Works submitted to the AMC that do not meet the conditions of these cultural protocols will not be accepted into the AMC's collection. For works that fail to meet the requirements, the AMC will inform the Represented Artist(s) of the reason for the decision and invite the Represented Artist to resubmit the work when all the requirements can be met.

5. Further Reading

Below you will find links to the documents already mentioned in these protocols, along with some additional links for further reading.

Protocols and ICIP

- [Protocols For Using First Nations Cultural And Intellectual Property In The Arts](#)
Australia Council for the Arts
- [Indigenous Cultural and Intellectual Property \(ICIP\)](#)
Arts Law Centre of Australia

Terminology

- [Good practice guide: Demonstrating inclusive and respectful language](#)
Reconciliation Australia
- [Indigenous Australians: Aboriginal and Torres Strait Islander people](#)
Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)

6. Further Information

Questions about the AMC's Cultural Protocols can be directed to Meeghan Oliver:
info@australianmusiccentre.com.au

7. Version Control

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This policy comes into effect as of 1 June 2023

To be reviewed every two years. Next review due in June 2025

Variations

AMC may amend this Policy from time to time, and the amended Policy will be published on our website at www.australianmusiccentre.com.au. Any changes will be effective as of the date they are posted on this page.