



Australia's National
Science Agency

Indigenous Cultural and Intellectual Property Principles



CSIRO acknowledges the Traditional Owners of the lands, seas, and waters, of the areas that we live and work on across Australia. We acknowledge all Aboriginal and Torres Strait Islander people and their continuing connection to their culture and pay our respects to Elders past and present.

CSIRO is committed to reconciliation and recognises that Aboriginal and Torres Strait Islander people have made and will continue to make extraordinary contributions to all aspects of Australian life including culture, economy, and science.

CSIRO uses the preferred language of Aboriginal and Torres Strait Islander people (individual/person) or Peoples (distinct societies). CSIRO also acknowledges the diversity of terms used to articulate identity including First Nations, First Australians or First Peoples or Indigenous Australians.



Artwork

The design features five rotating shapes that simulate movement and progression. These shapes combine imagery relating to boomerangs and eucalyptus leaves. These well-known icons have strong associations with Australian Aboriginal culture and practices.

The five boomerangs symbolise the scientific opportunities, employment, education outreach, Indigenous knowledge and improving outcomes for Aboriginal and Torres Strait Islander peoples.

This original artwork design was commissioned by CSIRO and created by Marcus Lee, a proud Aboriginal descendant of the Karajarri people.

Introduction

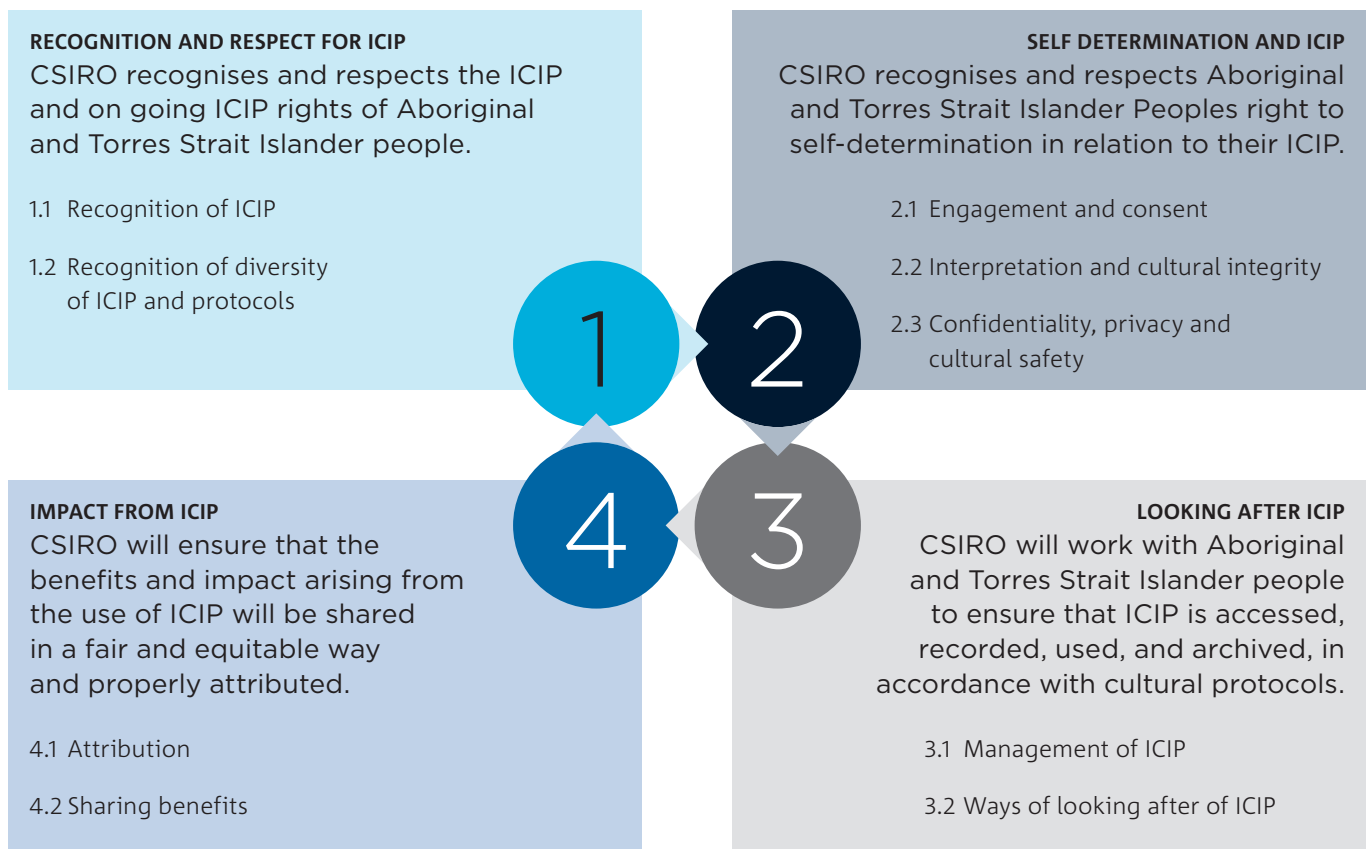
CSIRO is committed to recognising and respecting Aboriginal and Torres Strait Islander Peoples Indigenous Cultural and Intellectual Property ('ICIP') and their rights over ICIP. This ICIP is usually conveyed orally or through performance or action, or embedded in objects, sites, and artefacts. It may be communal, and developed and passed down over generations where it continues to evolve. ICIP comes in many forms and CSIRO uses, accesses, and manages a diverse range of ICIP in its Indigenous science and engagement activities and infrastructures.

In accordance with this commitment, these Indigenous Cultural and Intellectual Property Principles (the 'Principles') set out the framework for CSIRO staff, partners, and contractors to ensure respectful engagement with Aboriginal and Torres Strait Islander Peoples, and the respectful treatment and handling of ICIP.

These Principles reflect CSIRO's *Science & Delivery Policy*, where CSIRO is committed to developing, implementing, and maintaining practices that ensure we:

- respect and encourage Aboriginal and Torres Strait Islander Peoples rights to maintain, control, protect and develop their intellectual property over their cultural heritage, traditional knowledge, and traditional cultural expressions and be engaged in research that affects or is of particular significance to them
- adopt and effectively implement the *Australian Code for the Responsible Conduct of Research 2018*, and related guidance in our activities
- ensure these standards are adhered to when working with collaborators or commissioning research from others
- respect the intellectual property rights of others and use intellectual property rights strategically to achieve our purposes.

CSIRO has developed four core principles that will guide our research and engagements with Aboriginal and Torres Strait Islander individuals, communities and organisations:



Context

Context for applying the Principles in CSIRO

CSIRO is committed to engaging and working with Aboriginal and Torres Strait Islander people, communities and organisations in partnership and collaboration to create Indigenous-led science solutions that support sustainable futures for Aboriginal and Torres Strait Islander Peoples, cultures, and Country. Depending on the context, this engagement may be along a spectrum from consultation, co-design/co-production through to Indigenous led.

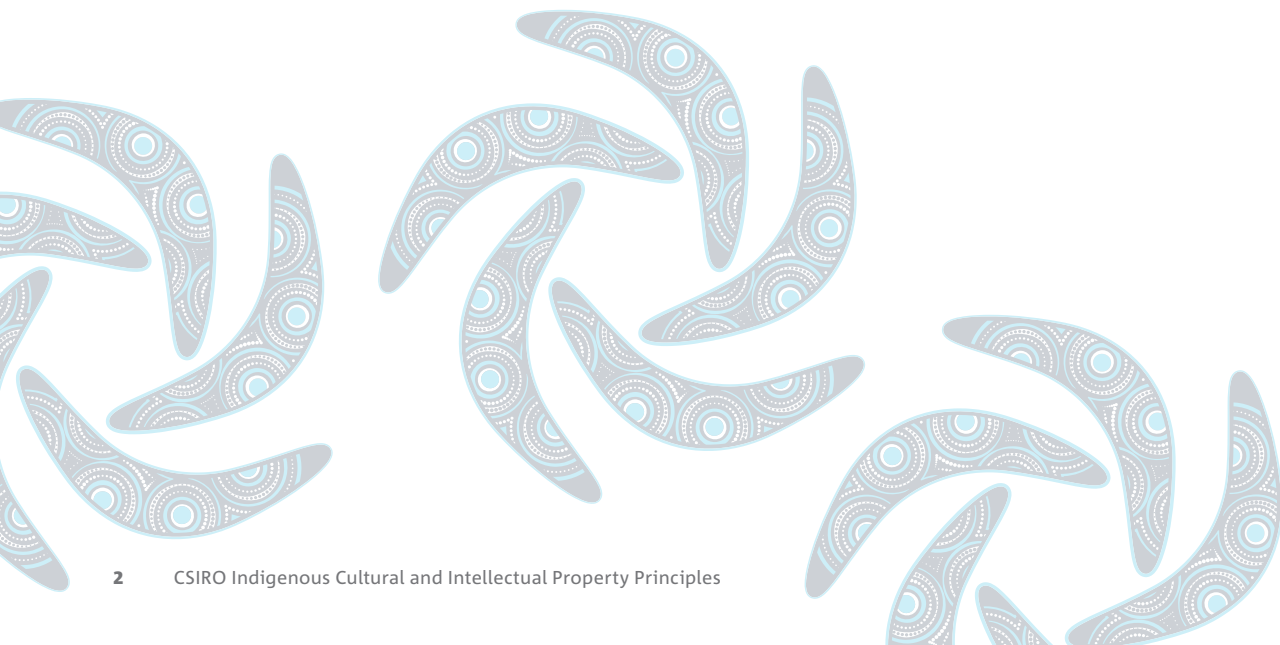
There are many ways that CSIRO engages with ICIP. In partnerships and collaborations, CSIRO is often provided with access to existing ICIP and is frequently involved in the creation of records, information, and outputs that document, contain or embody this existing ICIP.

Aboriginal and Torres Strait Islander people and communities are also often adapting or creating new ICIP through research engagements with CSIRO. Similarly, there may be situations where ICIP both existing and new becomes inseparably embedded in project results or outputs. These Principles are intended to provide an overarching framework (to be supported by further procedures and learning & development) as to how this ICIP can be appropriately used and managed. These Principles are intended to support Aboriginal and Torres Strait Islander control, decision making, governance, participation, and collaboration around their use of all forms of ICIP for their own purposes.

CSIRO recognises that its research, innovation, and impact objectives will be best achieved by working in fair, truthful and equitable relationships with Aboriginal and Torres Strait Islander people. The intent of these Principles is to walk together for a better future and co-develop an inclusive approach to research and engagement with Aboriginal and Torres Strait Islander people and their ICIP.

Adhering to these Principles and embedding them as part of governance frameworks for projects, programs, initiatives, and activities involving Aboriginal and Torres Strait Islander people, communities and organisations will enable CSIRO to carry out scientific research and engagement to best practice standards of service and delivery, and support CSIRO's journey of reconciliation as set out in the CSIRO Reconciliation Action Plan.

In developing the Principles, CSIRO acknowledges the significant knowledge, skills, and experience required to appropriately apply the Principles and associated ethical research obligations to best practice levels. Accordingly, it acknowledges that implementation will involve a learning and knowledge journey for many researchers and personnel involved in research and intellectual property governance as we establish and apply the Principles throughout CSIRO's systems, processes, and practices. This will include the adaptive management of questions and issues that arise in the application of the Principles and their evolution.



Overview of Indigenous Cultural and Intellectual Property

What is Indigenous Cultural and Intellectual Property?

Indigenous Cultural and Intellectual Property, or ICIP, as articulated in the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research (the 'AIATSIS Code'), is essentially the tangible and intangible aspects of Aboriginal and Torres Strait Islander Peoples cultural heritage.¹

It includes the whole body of cultural practices, resources and knowledge systems developed, nurtured, and refined by Aboriginal and Torres Strait Islander people and passed on by them as part of expressing their cultural identity.²

The definition of ICIP for purposes of these Principles is:

ICIP means the cultural heritage of Aboriginal and Torres Strait Islander people which comprises all objects, sites and knowledge, the nature and use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory. This cultural heritage is a living concept that can be adaptive and includes objects, knowledge, literary and artistic works which may also be created in the future based on that cultural heritage and includes:

- literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages and designs)
- scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and phenotypes of flora and fauna)
- all items of movable and immovable cultural property (including sacred and historically significant sites and burial grounds) and ancestral remains
- documentation of Indigenous Peoples heritage in archives, film, photographs, videotape, or audiotape and in all forms of media.

The guide to applying the AIATSIS Code ('AIATSIS Guide') provides additional and expanded examples of cultural heritage in an ICIP context.

What are Indigenous Cultural and Intellectual Property Rights?

Indigenous Cultural and Intellectual Property Rights ('ICIP Rights') refers to the rights that Aboriginal and Torres Strait Islander Peoples have, and want to have, to protect their cultural heritage. The ICIP rights of Aboriginal and Torres Strait Islander people, as articulated in the AIATSIS Guide,³ include the right to:

- own, control and maintain their ICIP
- ensure that any means of protecting ICIP is based on the principle of self-determination
- be recognised as the primary guardians and interpreters of their cultures
- authorise or refuse the use of ICIP according to their own law
- in the case of secret Indigenous knowledge and other cultural practices, maintain that secrecy
- guard the cultural integrity of their ICIP
- be given full and proper attribution for sharing their cultural heritage
- control the recording of cultural customs, expressions and language that may be intrinsic to cultural identity, knowledge, skill and teaching of culture, and
- publish their research results.

Distinction between ICIP and ICIP rights

The Principles make a distinction between ICIP and ICIP rights. The purpose of the ICIP definition in these Principles is to draw attention to the *scope and content* of cultural heritage included within that definition. In the case of ICIP rights, the definition draws attention to the *rights* that exist, or which are to be created, *in relation to* the ICIP.

This distinction is provided to explain and acknowledge the gap between legally recognised property rights (e.g., ownership in a legislated intellectual property context) and the rights, interests and associated mechanisms that are needed to adequately reflect (or give effect to) the ICIP rights self-determination objectives, based on the United Nations Declaration on the Rights of Indigenous Peoples ('UNDRIP') and relevant ethics guidelines, including the AIATSIS Code.

1 Australian Institute of Aboriginal and Torres Strait Islander Studies, A Guide to applying the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research, 1.3 – Understanding Indigenous Cultural Intellectual Property, pg. 6.

2 Janke, T., Our Culture, Our Future: Proposals for the recognition and protection of Indigenous cultural and intellectual property, final report to the Australian Institute of Aboriginal and Torres Strait Islander Studies, Michael Frankel and Company, Sydney, 1999, 2.; Janke 2019: True Track: Indigenous Cultural and Intellectual Property Principles for putting Self-Determination into practice <<http://hdl.handle.net/1885/156420>>.

3 Australian Institute of Aboriginal and Torres Strait Islander Studies, A Guide to applying the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research, 1.3 – Understanding Indigenous Cultural Intellectual Property, pg. 7.

Connection to the United Nations Declaration on the Rights of Indigenous Peoples

UNDRIP was adopted by the UN General Assembly on 13 September 2007 and endorsed by Australia in 2009.

UNDRIP establishes a broad framework of minimum standards for the survival, dignity, and well-being of Indigenous Peoples across the world as it relates to their fundamental freedoms and human rights. UNDRIP has an underpinning concept of self-determination which is also a conceptual basis for these Principles. Of relevance is Article 31 which expressly recognises that:

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

In conjunction with Indigenous Peoples, States shall take effective measures to recognise and protect the exercise of these rights.

Consistent with UNDRIP, these Principles give the concept of “protect” or “protection” of ICIP a broad and flexible meaning which could involve utilising a variety of relevant legal or contractual mechanisms, protocols and/or practices. This is distinguished from the much narrower legal meaning in relation to a decision to “protect” something under IP laws.

Interrelationship between the governance of ICIP, research and data

In establishing the Principles, CSIRO recognises the importance of highlighting the interrelationship between research governance, ICIP governance and data governance.

ICIP rights are often closely related to the rights and obligations associated with the appropriate *conduct* of research, from conception and planning, through to conduct of the research, dissemination of information and data, and beyond. Many ICIP rights that will need to be addressed in a research agreement for instance, will also be based on the process of planning and obtaining *consents and permissions* for the activity that gives rise to the data, various outputs or ICIP being accessed, created, or managed under a research agreement.

To elaborate further, in many cases, ICIP rights will be to some extent inseparable from the project (or program, initiative or activity) planning and governance processes giving rise to the material form, codification, data, or other repository generated from or through a project. In particular, many of the stated purposes underlying the consents and permissions obtained to enable a project to progress will impose ongoing obligations in relation to the ICIP (including during and after the project).

CSIRO recognises the importance of considering research governance, ICIP governance and data governance in an integrated and holistic manner. These Principles provide a framework to unify these core aspects of governance to become a manifestation of ethical practice in relation to Indigenous research.

Relevant Aboriginal and Torres Strait Islander people

When the Principles refer to “relevant” Aboriginal and Torres Strait Islander owners, representatives, custodians, knowledge holders or source communities of ICIP we are referring to those that that assert a right or interest in the ICIP or have a cultural connection to the ICIP or a connection to people who have a cultural connection to the ICIP or have the cultural authority to decide or determine. This involves a process of determining who is “relevant”, noting that the relevant person, group or body may change over time and involve more than one person or group, and that there may be multiple or different viewpoints validly held.

The Principles

CSIRO has developed four core principles that will guide our research and engagements with Aboriginal and Torres Strait Islander individuals, communities and organisations:

RECOGNITION AND RESPECT FOR ICIP

CSIRO recognises and respects the ICIP and on going ICIP rights of Aboriginal and Torres Strait Islander people.

- 1.1 Recognition of ICIP
- 1.2 Recognition of diversity of ICIP and protocols

SELF DETERMINATION AND ICIP

CSIRO recognises and respects Aboriginal and Torres Strait Islander Peoples right to self-determination in relation to their ICIP.

- 2.1 Engagement and consent
- 2.2 Interpretation and cultural integrity
- 2.3 Confidentiality, privacy and cultural safety

IMPACT FROM ICIP

CSIRO will ensure that the benefits and impact arising from the use of ICIP will be shared in a fair and equitable way and properly attributed.

- 4.1 Attribution
- 4.2 Sharing benefits

LOOKING AFTER ICIP

CSIRO will work with Aboriginal and Torres Strait Islander people to ensure that ICIP is accessed, recorded, used, and archived, in accordance with cultural protocols.

- 3.1 Management of ICIP
- 3.2 Ways of looking after of ICIP



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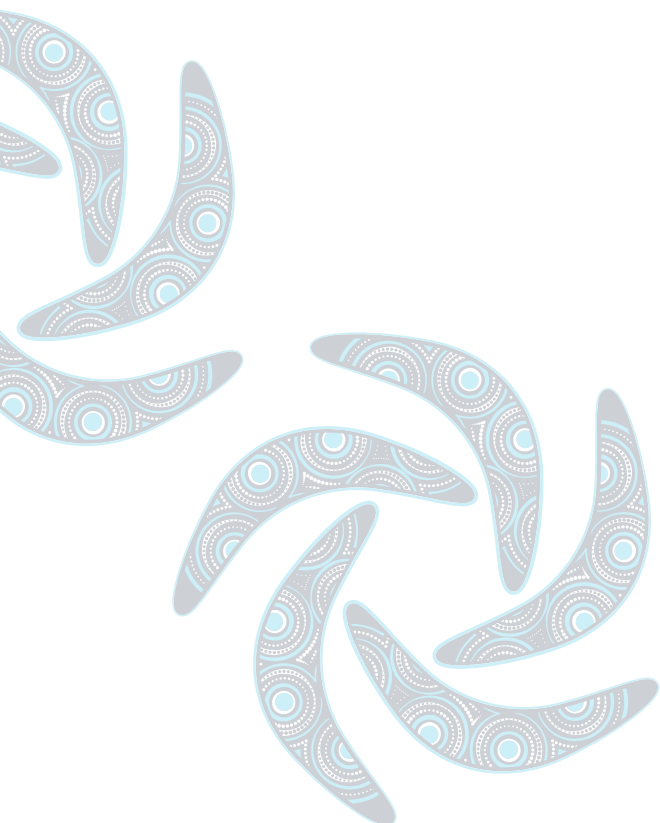
CSIRO recognises and respects the ICIP and on-going ICIP rights of Aboriginal and Torres Strait Islander people.

1.1 Recognition of ICIP

- Aboriginal and Torres Strait Islander people are the custodians of their ICIP.
- Aboriginal and Torres Strait Islander Peoples rights and interests in relation to their ICIP can be individual or collective.
- Aboriginal and Torres Strait Islander people have the right to maintain, control, protect, develop, and benefit from their ICIP in accordance with Article 31 of UN Declaration on the Rights of Indigenous Peoples.
- CSIRO recognises and will respect these rights alongside other rights such as contractual and statutory intellectual property rights and cultural heritage rights.

1.2 Recognition of diversity of ICIP and protocols

- CSIRO recognises the heterogeneity and diversity of Aboriginal and Torres Strait Islander people within Australia, as well as their diversity of experiences, worldviews, and forms of ICIP – both tangible (e.g., sites, objects) and intangible (e.g., Indigenous knowledge, traditional dance, and languages). This diversity exists not only between different communities, groups, and individuals but also within those communities and groups.
- Aboriginal and Torres Strait Islander people have developed their own protocols, practices and/or codes of ethics governing access, use and dissemination of ICIP, and CSIRO will take all reasonable steps to embed these protocols, practices and/or codes as part of research and engagement governance as identified and/or notified through collaborative dialogue with the relevant Aboriginal and Torres Strait Islander people, authorised representatives or bodies.
- The relevant Aboriginal and/or Torres Strait Islander people or authorised representatives or bodies are determined through consultation with community members associated or involved with the ICIP.
- CSIRO also acknowledges the ICIP rights of Indigenous Peoples throughout the world.



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CSIRO recognises and respects Aboriginal and Torres Strait Islander Peoples right to self-determination in relation to their ICIP.

2.1 Engagement and consent

- Aboriginal and Torres Strait Islander people have the right to freely pursue their economic, social, and cultural development and decision making, and CSIRO will proactively promote culturally appropriate approaches through engagement in projects, activities and decisions that involves or impacts ICIP.
- Aboriginal and Torres Strait Islander people have the right to be engaged in research that affects or is of particular significance to them and to have the outcomes of research reported to them.
- CSIRO acknowledges that the free, prior and informed consent (FPIC) of Aboriginal and Torres Strait Islander people is required for the use of their ICIP and CSIRO further recognises there are legal, cultural, and ethical aspects to consent for use of ICIP.

2.2 Interpretation and cultural integrity

- Aboriginal and Torres Strait Islander people have the right to be recognised as the primary custodians and interpreters of their cultures, so that the provenance and integrity of their cultural heritage and its practice is maintained.
- CSIRO will ensure its use, interpretation, and representation of ICIP is consistent with the Australian Code for Responsible Conduct of Research, and will be:
 - respectful, accurate, authentic in acknowledging provenance
 - properly attributed according to Indigenous protocols specific to the engagement
 - based on the principles of free, prior and informed consent
 - sensitive to context
 - not interfere with customary use
 - not involve the derogatory treatment of ICIP.

2.3 Confidentiality, privacy and cultural safety

- CSIRO acknowledges that ICIP may have sensitivity, confidentiality and privacy requirements or protocols, especially where ICIP is considered secret or sacred and/or not for general viewing, and that CSIRO will take all reasonable steps as part of its research and engagements with Aboriginal and Torres Strait Islander people to identify and respect such requirements and protocols.
- CSIRO will respect the individual's right to privacy or confidentiality in relation to their personal lived experience.
- CSIRO will support cultural safety practice being embedded in project governance when working with Aboriginal and Torres Strait Islander people and their ICIP.

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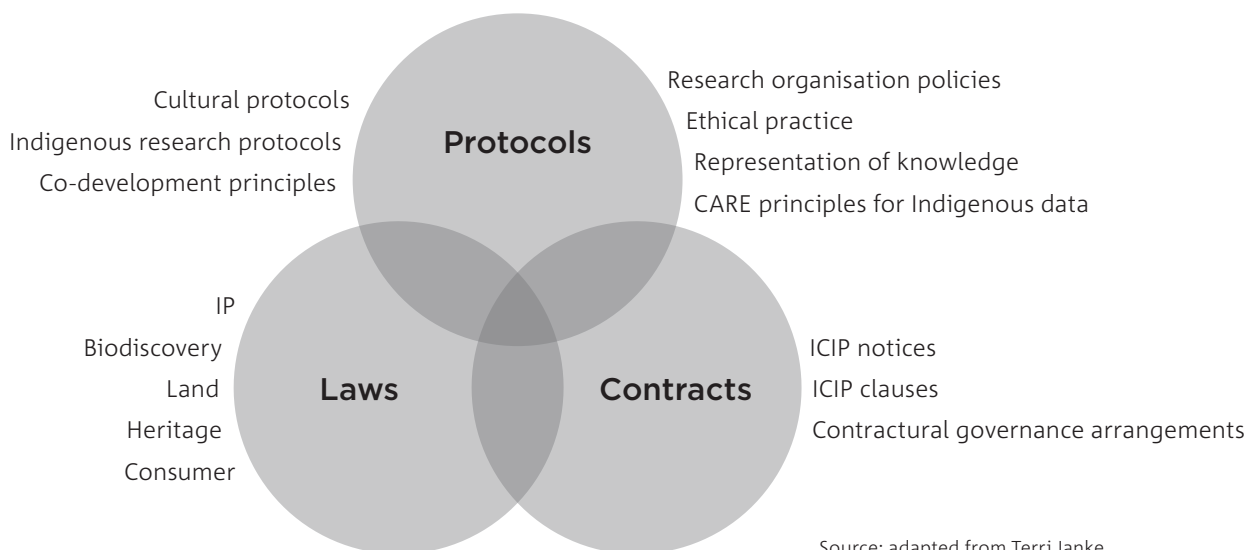
CSIRO will work with Aboriginal and Torres Strait Islander people to ensure that ICIP is accessed, recorded, used, and archived, in accordance with cultural protocols.

3.1 Management of ICIP

- Subject to record keeping obligations pursuant to the *Archives Act 1983 (Cth)* and *Public Governance, Performance and Accountability Act 1983 (Cth)*, and in accordance with CSIRO’s Management of Research Data Policy and Record Keeping Principles, CSIRO will manage the storage, record keeping, archiving, publication, and data management of ICIP related records, in line with the ICIP holders’ wishes and consent.
- CSIRO acknowledges that ICIP and ICIP rights are ongoing, evolving and do not expire.
- Projects should include appropriate ICIP and related intellectual property (‘IP’) management in their design, contracting, execution, and delivery.
- Digital representations and sharing of ICIP requires extra care to prevent the potential for misuse or harm or unintended distribution, including ensuring continued provenance and attribution, as well as accounting for different interpretations or understandings in a digital context.

3.2 Ways of looking after of ICIP

- CSIRO acknowledges there are various mechanisms that may be used to look after ICIP and to actively promote the use of such mechanisms in our engagements with Aboriginal and Torres Strait Islander partners and collaborators.
- CSIRO acknowledges such mechanisms (subject to change from time to time) can include:
 - Laws – using IP laws such as copyright, patents, and moral rights, as well as heritage, land and biodiscovery laws at both the Commonwealth and State/Territory level.
 - Contracts – formalising protocols for consent, ICIP protection and management in a contract or form, and agreeing ICIP arrangements such as legal title, governance, and rights/licences.
 - Protocols – using non-legal practices, tools and procedures to protect ICIP, including ethical practice, co-design or responsible innovation.



Source: adapted from Terri Janke.

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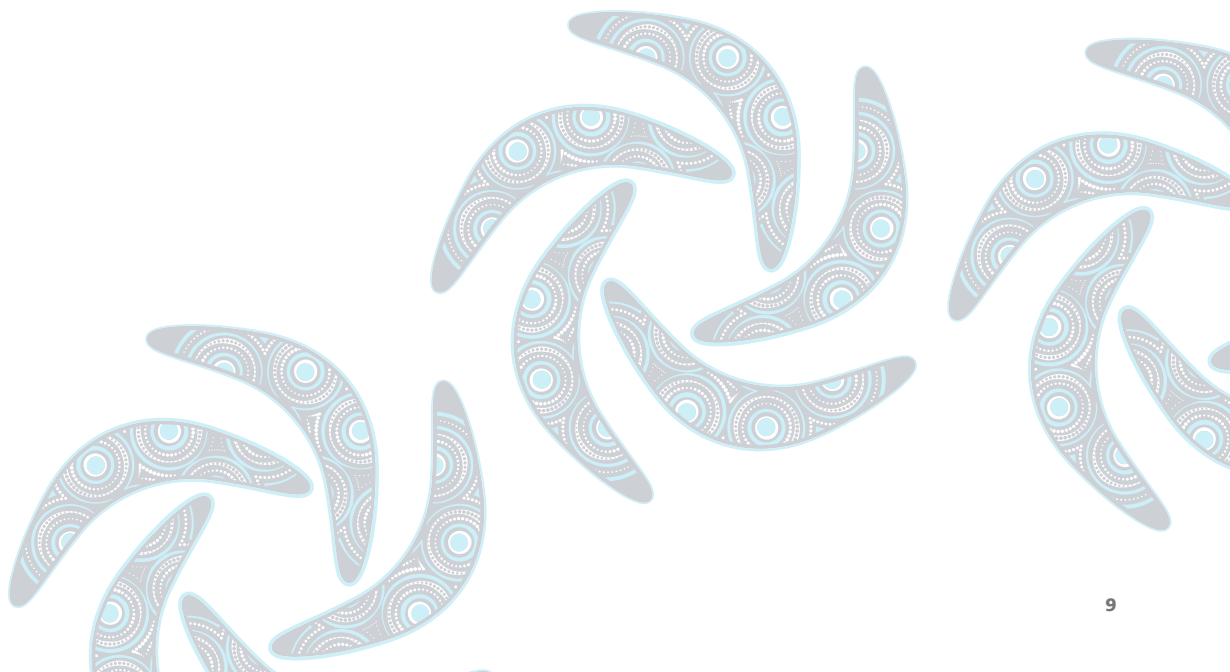
CSIRO will ensure that the benefits and impact arising from the use of ICIP will be shared in a fair and equitable way and properly attributed.

4.1 Attribution

- Aboriginal and Torres Strait Islander people have the right to be properly acknowledged and attributed as the custodians of their ICIP and for the use or sharing of their ICIP.
- CSIRO should acknowledge and attribute the relevant Aboriginal and Torres Strait Islander custodians or source communities of ICIP. This will include:
 - consulting on the appropriate *form* of attribution or acknowledgment (e.g. notice, credit, authorship)
 - ensuring the appropriate *prominence* of acknowledgement or attribution
 - *embedding*, recording, or linking the attribution or provenance with the relevant ICIP or ICIP record.

4.2 Sharing benefits

- CSIRO acknowledges that Aboriginal and Torres Strait Islander people have the right to receive mutually agreed benefits arising from CSIRO's use of their ICIP in research and commercialisation activities.
- Benefits arising from CSIRO's use and commercialisation of ICIP will be shared in a fair and equitable way with the relevant Aboriginal and Torres Strait Islander custodian or source community. This will include:
 - engaging with Aboriginal and Torres Strait Islander people to mutually agree on monetary and/or non-monetary benefits or returns
 - entering into appropriate agreements.



Accountability

CSIRO Indigenous Advisory Group

The CSIRO Indigenous Science and Engagement Program will regularly report to the CSIRO Indigenous Advisory Group (IAG) on performance against these Principles, and the IAG will review the application of the Principles on a bi-annual basis.

Review and evaluation

CSIRO will seek feedback and advice from Indigenous research partners and other researchers engaged by and within CSIRO to continually refine and improve the Principles so that they reflect expected and emerging standards for the management and protection of ICIP.

For feedback and questions, please contact officeofindigenouengagement@csiro.au.

Dispute or complaints

If an Indigenous knowledge custodian or relevant authorised/representative organisation gives written notice of a dispute or complaint in connection with a breach of these Principles by CSIRO staff or research/activities, CSIRO will investigate the allegations by providing a written report back to the complainant with a view to resolving the dispute or complaint, including culturally appropriate mediation where available.

For further information, please see: [how to make a complaint about CSIRO](#).

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Adapted from and reviewed by Terri Janke and Company.

As Australia's national science agency, CSIRO is solving the greatest challenges through innovative science and technology.

CSIRO. Creating a better future for everyone.

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