



Environment Protection Authority

# Indigenous Cultural and Intellectual Property Protocol

## Acknowledgement of Country

The NSW Environment Protection Authority acknowledges the Traditional Custodians of the land on which we live and work, honours the ancestors and the Elders both past and present and extends that respect to all Aboriginal people.

We recognise Aboriginal peoples' spiritual and cultural connection and inherent right to protect the land, waters, skies, and natural resources of NSW. This connection goes deep and has since the Dreaming.

We also acknowledge our Aboriginal and Torres Strait Islander employees who are an integral part of our diverse workforce and recognise the knowledge embedded forever in Aboriginal and Torres Strait Islander custodianship of Country and culture.

*Aboriginal artwork — Nyuragil Barray  
Yawutung Warri by Worimi artist  
Gerard Black.*

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# EPA's Statement of Commitment to Aboriginal Peoples

The NSW Environment Protection Authority acknowledges Aboriginal peoples as the enduring Custodians of the land, sea, waters and sky of New South Wales.

We recognise the entire NSW landscape, including the lands, waters, plant and animal species and seas, has spiritual and cultural significance to all Aboriginal peoples of NSW. By this understanding there is no separation of nature, wellbeing and culture. The health of the natural environment, and the health of people and culture, are intimately connected.

The EPA is committed to prioritising meaningful relationships with Aboriginal peoples to deepen our understanding of how best to Care for Country. Through our partnership with the EPA Aboriginal Peoples Knowledge Group, we fully acknowledge and embrace the invaluable knowledge they hold and provide to enhance our work as environmental stewards.

The Group comprises members from Rainforest, Desert, Saltwater and Freshwater people, coming together as a unified voice for Country.

We listen to the Group as it guides, advises, nurtures and challenges us to uphold the 12 principles outlined in the EPA's Statement of Commitment to Aboriginal Peoples:

- 1 Work in respectful partnership with Aboriginal peoples.
- 2 Actively learn from and listen to Aboriginal voices, cultures and knowledges.
- 3 Respect Aboriginal peoples' knowledges and science as an equal to western science.
- 4 Weave Aboriginal knowledges and science with conventional science into the EPA's decision making.
- 5 Act boldly and bravely to play our part to mend and heal Country together.
- 6 Ensure Aboriginal knowledges, science and Indigenous Cultural Intellectual Property (ICIP) is protected, and Aboriginal peoples have free, prior informed consent.
- 7 Address both the tangible and intangible cultural elements of environmental protection.
- 8 Deliver on results that have direct benefits for Aboriginal communities.
- 9 Embed consistent, meaningful and trustworthy engagement with Aboriginal communities.
- 10 Develop Aboriginal cultural competency across the agency.
- 11 Increase Aboriginal employment across the agency to exceed public sector Aboriginal employment targets, and identify specific occupational gaps.
- 12 Monitor the impact of this Commitment to Aboriginal peoples, Country, cultures and spirit.

This collaboration ensures our strategic initiatives are firmly grounded in principles of respect and sustainability.

## Message from the Executive Director



As a proud Barkindji man and Executive Director, I am honoured to introduce the EPA Indigenous Cultural and Intellectual Property (ICIP) Protocol; a document that reflects the EPA's commitment to respecting, protecting, and upholding the rights of Aboriginal peoples in all aspects of our work.

Aboriginal cultures are the oldest continuing cultures in the world; rich with knowledges, languages, cultures, and traditions that have been passed down for generations. Aboriginal cultural expressions are living, evolving, and deeply connected to our identity and Country.

For too many years, Aboriginal knowledges have been used without appropriate consent, recognition, or benefit to the communities from which they belong. This protocol provides a framework for collaboration. It reinforces the importance of free, prior, and informed consent; attribution, benefit-sharing, and the right of Aboriginal peoples to control how their knowledges are being used.

I see this protocol as a statement of the EPA's collective responsibility when working in partnership with Aboriginal peoples or incorporating cultural content into projects; to take the time to listen deeply, and approach this work with humility, gratitude, and respect. When we work this way, we honour the knowledge holders who have protected these traditions for tens of thousands of years and ensure their legacies will continue to thrive for our future generations.

**Jason R. Gordon**  
Executive Director-Operations

# Introduction

The Environment Protection Authority (EPA) works on Country, cares for Country, and engages with Aboriginal peoples and communities across NSW. In the delivery of their work, EPA employees will inevitably interact with Indigenous Cultural and Intellectual Property (ICIP), in some instances, without realising it. It is through these interactions that EPA employees may be entrusted with Aboriginal knowledges and cultural expressions; we have an obligation to protect the ICIP of these cultural expressions through agreed protocols and agreements.

To help protect ICIP, the EPA Indigenous Cultural and Intellectual Property Protocol will provide EPA employees with guidance on embedding principles of self-determination into practice.

By adopting this protocol, the EPA strengthens its commitment to the Statement of Commitment to Aboriginal Peoples of NSW, ensuring best practices that respect and uphold Aboriginal knowledges, values, cultures, and rights.

This protocol was informed by the following existing frameworks:

- EPA Statement of Commitment to Aboriginal Peoples
- Closing the Gap Report
- Aboriginal Affairs Aboriginal Cultural and Intellectual Property Protocol
- CSIRO Indigenous Cultural and Intellectual Property Principles
- Office of the Arts - Protecting Indigenous Cultural and Intellectual Property
- United Nations Declaration on the Rights of Indigenous Peoples



## Terminology in this Protocol

Throughout this document, we have used the word Indigenous to refer to both Aboriginal and Torres Strait Islander peoples. The EPA recognises the history of the term 'Indigenous' and acknowledges that it encompasses both Aboriginal and Torres Strait Islander cultures and knowledges. As the term Indigenous Cultural Intellectual Property (ICIP) is recognised both in Australia and internationally, the word Indigenous has been used throughout the protocol when referencing Aboriginal cultures, knowledges, and cultural expressions.

Additionally, in this protocol the EPA uses the term Aboriginal to recognise the Traditional Custodians of NSW. We also acknowledge Torres Strait Islander peoples living in NSW and we commit to applying this protocol in a way that respects and upholds the rights of all Indigenous peoples of Australia.

# What is Indigenous Cultural and Intellectual Property (ICIP)?

Indigenous Cultural and Intellectual Property (ICIP) refers to the rights of Aboriginal peoples over their cultures and knowledges. It encompasses tangible materials and cultural expressions, such as artwork, iconography and the cultural practices embedded within them. ICIP is deeply connected to Country and is passed down through generations; it is collectively owned by individuals or the community and reflects the contributions of many generations. ICIP covers a broad range of cultural elements, including:

- **Traditional Knowledges** — stories, languages, and customs.
- **Cultural Expressions** — songs, dances, and ceremonies.
- **Art** — visual arts, symbols, and crafts.
- **Ecological Knowledges** — management of Country, bush medicine, traditional healing.
- **Sacred And Secret Knowledges** — spiritual practices and knowledges that could be restricted to certain groups. i.e., Men's or Women's Business
- **Historical And Cultural Materials** — artefacts, recordings, photographs, and archives.
- **Genetic Resources** — plants, animals, materials with cultural or medicinal significance.
- **Aboriginal Ancestral Remains**
- **Language** — this includes both oral and written words.
- **Places** — sacred and historically significant sites and burial grounds.

The EPA acknowledges Aboriginal cultures are collectively owned and reflect the communal nature of knowledges and custodianship of the lands, waters and skies across NSW.

While current Australian laws often fail to recognise this type of ownership, the EPA is taking an active role in safeguarding ICIP by clearly embedding that commitment within this protocol.



## Rights of Aboriginal Peoples to their ICIP

Aboriginal peoples have the right to protect their ICIP, as recognised by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Australia has agreed to this international declaration, which in Article 31 recognises that protecting cultures, knowledges and traditions is essential for the survival, dignity, and wellbeing of Indigenous peoples around the world.

ICIP rights are important to the protection of Aboriginal cultures, values, artefacts, and knowledges.

However, Australian IP laws currently **do not formally recognise ICIP**.

ICIP rights can be protected through:

- **Free, Prior, and Informed Consent (FPIC)** — by getting permission before using Aboriginal knowledges or cultural expressions
- **Attribution** — recognising Aboriginal contributors
- **Benefit Sharing** — ensuring economic benefits are fairly shared with Aboriginal peoples or communities
- **Protocols and Agreements** — establishing guidelines for ICIP use
- **Aboriginal-led Governance** — empowering communities to manage and protect their own ICIP.

ICIP exists outside Western legal frameworks, similar to copyright and patents, and is collectively owned by Aboriginal communities. Aboriginal peoples have the right to control how their cultural knowledges are used, shared, and promoted. Without protection, ICIP is vulnerable to misuse and exploitation.

The EPA recognises:

- protecting ICIP must be guided by self-determination; communities must be allowed to set the terms on the use of their knowledges and make the final decision on the commercial use of their ICIP
- confidentiality of secret and sacred knowledges and cultural practices must be maintained to ensure they are not disclosed, shared, or misused
- the importance of preserving the authenticity and significance of ICIP to prevent its misrepresentation, distortion, or inappropriate use
- the provision of full and accurate acknowledgement to Aboriginal peoples for sharing their cultures, knowledges, and cultural expressions
- the importance of the responsible management, conservation, and repatriation of Aboriginal cultural artefacts; and the need to ensure the management, protection, and return of Aboriginal ancestral remains under cultural protocols
- the importance of languages in cultural identity
- ensuring the recording of cultural customs and expressions is done with consent and control.

## How can the EPA engage with ICIP?

The EPA can engage with ICIP in the following ways to ensure respectful, ethical, and culturally appropriate recognition and use of Aboriginal knowledges:

- **Consultation and Consent:** EPA staff can consider how and when to get consent for projects which may affect Aboriginal peoples and communities. The EPA will ensure proper attribution and accuracy of recording when Aboriginal peoples and communities are sharing cultural knowledges in community forums, workshops, or other events.
- **Use of Cultural Expressions:** engage the services of Aboriginal peoples and communities in films, recordings, or photographs to document Aboriginal community priorities for Country, cultures, or knowledges.
- **Intellectual Property Agreements:** contract Aboriginal organisations to deliver projects that incorporate Aboriginal traditions, cultures, knowledges, and beliefs. Agreements must outline the ownership, benefit sharing, and conditions of use to ensure Aboriginal peoples keep control of their ICIP.
- **Co-Design/Co-Create:** collaborate with Aboriginal peoples and communities to co-design or co-create projects incorporating Aboriginal knowledges and cultures.
- **Data Sovereignty:** protect knowledges when collecting data on Aboriginal peoples, knowledges, cultures, or Country in EPA projects, case studies, or reports.

The EPA will ensure the priorities of Aboriginal communities will be respected and integrated into decisions that have a direct impact on Aboriginal peoples, Country, cultures, knowledges, and culturally significant sites. EPA employees need to understand the following key points when collaborating with Aboriginal peoples. This is to better understand cultural protocols and allow for meaningful engagement in EPA regulatory decisions:

- **Cultural Authority:** Aboriginal peoples have the right to own, control and manage their cultures and knowledges.
- **Community Decision Making:** Aboriginal voices must lead the process, and Aboriginal communities must be at the heart of decision making about any work being done on Country.
- **Cultural Continuity:** The EPA must have open and honest conversations, in non-scientific language, with Aboriginal communities when there is the potential for regulatory decisions to impact cultural practices and future use of Country.

## Case Study – Ngarratja Warrkina (All Working Together) Project

This project highlights how the EPA has successfully applied ICIP principles when working in and with community. It shows the EPA's commitment to respecting and protecting Aboriginal knowledges, ensuring the Aboriginal voice is central to decision-making, and that Aboriginal cultural protocols were upheld throughout the project.

The Aboriginal Initiatives team collaborated with the Flood Operations team and community to determine community priorities, perspectives and cultural knowledges on the Ngarratja Warrkina Project.

Local Aboriginal knowledges were essential for planning works and programs to heal the Baaka River. EPA staff considered how the cultural knowledges of plants, animals, land, and waterways would be protected, respected, and kept confidential. This resulted in an agreement being signed between the EPA and Barkandji PBC outlining the ICIP protocols for the project. Local Aboriginal knowledges were integral to planning, collecting samples, and gathering data on Country. Staff were required to:

- consider ways to maintain Aboriginal cultural control over samples and information collected
- share results of sample collection with Traditional Owners
- collaborate with community on data analysis
- report project outcomes back to the Traditional Owners and Community.

Before starting work on Country, EPA staff asked for permission to collect data and take samples of plants and animals. They explained the proposed work to Traditional Owners who provided feedback and consent. Following cultural protocols, staff were instructed not to collect anything without permission and to avoid areas they were not allowed to enter. Management of ICIP data required appropriate long-term storage and access methods that aligned with Aboriginal community values to preserve data authenticity and integrity. Local Aboriginal communities were allowed to:

- access, review and provide feedback on collected data
- collaborate on data analysis and interpretation
- participate in ongoing consultation regarding the use of Aboriginal knowledges.

By following these principles, EPA staff ensured the culturally appropriate management of ICIP, strengthened partnerships with the local Aboriginal community and upheld ethical standards when working on Country.



Photo: Menindee, EPA.

## Free Prior and Informed Consent

**Target 15 under Closing the Gap:** Aboriginal and Torres Strait Islander peoples maintain a distinctive cultural, spiritual, physical, and economic relationship with their land and waters.

The principle of Free, Prior and Informed Consent (FPIC) is a cornerstone of the UNDRIP. This is to ensure Indigenous communities are meaningfully consulted and have provided consent before any decisions are made that affects their Country, knowledges, cultural expressions or cultures. This principle is crucial for protecting Aboriginal people's rights and in decision-making processes.

- **Free:** consent is given voluntarily, without coercion or intimidation.
- **Prior:** the EPA will ask for consent well in advance of any project, activity, or decisions.
- **Informed:** Aboriginal peoples are given all necessary information about the project; this will include its nature, scope, duration, and potential risks or impacts.
- **Consent:** Aboriginal peoples have the right to approve or reject involvement in a project based on their own decision-making processes.

The EPA will seek **free, prior, and informed** consent from the appropriate Aboriginal peoples and communities where their ICIP is being accessed, used, recorded, and stored at the EPA. This shows the clear overlap between the EPA delivering on **Target 15**, upholding the Statement of Commitment to Aboriginal Peoples and protecting ICIP rights.

## Recording or using Aboriginal Knowledges of Country

Respect for self-determination must be upheld when recording or using ICIP to document Aboriginal peoples' cultural knowledges, perspectives, and priorities for Country in EPA projects. This includes recording cultural knowledges in reports, case studies, films, audio recordings and other media. The recording and management of copyright materials containing ICIP should be negotiated before the project starts, to ensure they are owned and managed in culturally appropriate ways, including:

- recognising Aboriginal peoples' ownership and custodianship of ICIP
- enabling Aboriginal peoples and communities to access and use their ICIP for cultural and other purposes

- using agreements or other written documents to establish clear terms and ensure conditions of access, storage, and use of ICIP are followed
- accurately recording, maintaining, managing and storing the records of materials and information incorporating ICIP, ensuring that Aboriginal peoples can access their ICIP in the future
- ensuring free, prior and informed consent processes are clearly explained and followed when ICIP is accessed at workshops, consultations, or community events with Aboriginal peoples
- maintaining a detailed record of Aboriginal peoples involved to support ongoing relationships, establishing a record for getting future consents, and ensuring Aboriginal peoples are properly attributed.

## Benefit sharing and Attribution

Aboriginal peoples and communities have the right to receive mutually agreed benefits arising from the use of their ICIP. They are also entitled to be appropriately compensated for their time and expertise from the use of their ICIP in EPA projects. Benefits can take the form of monetary benefits, including fees, royalties and payments, or non-monetary benefits and should be clearly recorded as part of the consent process.

Benefits should be negotiated and agreed to during the planning stages of any project and before the project starts. The EPA will ensure any benefit arising from the use of ICIP coming from a project where Aboriginal peoples knowledges has been used, will be shared and properly attributed. This will include:

- agreeing on the appropriate form of attribution or acknowledgment (e.g. authorship)
- providing the appropriate acknowledgement or attribution
- including the attribution with the relevant ICIP record.

## Data Management and Data Sovereignty

### Closing the Gap Priority Reform 4:

Aboriginal and Torres Strait Islander people have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.

The focus on Priority Reform 4 is to ensure Aboriginal people have shared access to government-held data. Aboriginal communities have identified the need to generate their own Aboriginal-led data ecosystem that allows them to work directly with government. The historical misuse of Aboriginal data was often deficit-based and a barrier to improving outcomes for Aboriginal communities. Access to community held data will empower Aboriginal peoples to set their own community priorities and targets and monitor their progress on meeting key milestones.

Through the EPA's work on Country, employees may collect data about the environment, plant life, endangered species, cultural sites, waterways, and other cultural data. Employees may engage with Aboriginal peoples to share their cultural knowledges on land and water management; this may also include traditional practices such as cultural fire burning or agricultural knowledges. Throughout this work, Data Sovereignty should be acknowledged to respect the rights of Aboriginal peoples to own and control data and information that is collected from, about and for them. Data about Aboriginal communities, peoples, lands, and resources must be collected respectfully and appropriately. This includes ensuring correct place names and spellings are used. The Aboriginal Initiatives team will store ICIP data in a secured Content Manager container that is accessible only by authorised persons. Employees should also get detailed consents regarding the long-term storage and management of data including:

- where and how the data will be stored
- who will have access to it, and methods to gain access
- whether the audience or access conditions could change over time
- cultural protocols will be followed as determined by the Aboriginal owners of the data
- how the data will be used and the potential to use it new ways yet to be consulted on
- any cultural, confidential, or personal sensitivities
- how the data will be preserved (hard copy or digital archives).

EPA employees should consider ways of maintaining Aboriginal cultural connections and control over samples and information collected during regulatory projects. This may involve sharing the results of samples collected, collaborating on analysis and interpreting and reporting project outcomes back to Aboriginal peoples.

## Cultural Mourning Protocols

EPA employees will take particular care when referencing or using images of deceased Aboriginal persons in reports, presentations or recordings. Wherever possible, representatives of the deceased person's family will be consulted to determine whether it is appropriate to use their name or image.

A Cultural Sensitivity Notice should be included in all new and existing reports, presentations, films, audio recordings and photographs that could feature images or references to deceased persons. The use of this notice helps inform readers that the material could contain content that some individuals or communities may find distressing, such as images of deceased persons or culturally sensitive language.

### Cultural Sensitivity Notice

*WARNING: The following [document/material] contains the name, image, likeness, recording or other information of deceased persons of Aboriginal or Torres Strait Islander descent. It also contains language that may be considered offensive to some audiences.*

## Dealings with Aboriginal Artists

When contracting Aboriginal artists, EPA employees must determine whether multiple contracts are needed (in cases where ICIP is communally owned) and ensure contracts are written using non-scientific language. It is best practice for the artist to retain copyright ownership of any artworks they create; this includes both commissioned and purchased works. This relates not only to physical art, but also art in electronic forms, for use on websites and emails. ICIP ownership should always remain with the Aboriginal artist or rightsholder.

The use of any artwork commissioned or licensed by the EPA should be as narrow and specific as possible; it should include a specified purpose and limited duration to ensure the artist can continue to use their work. It is important to ensure that appropriate information has been recorded and stored to accompany the artwork, including:

- artist attribution
- display and maintenance of the work
- names of any subjects, collaborators
- the accompanying story to the work, where appropriate
- any cultural protocols or sensitivities around the artwork, including uses that are not permitted by the artist.

When acquiring, commissioning or licensing artworks, consider the location where the artwork will be used. If the location is a key priority of the project, a local Aboriginal artist must be used. Where the project is not location specific, a wider range of artists could be considered. Before commissioning, acquiring, or licensing an artwork from an Aboriginal artist, consider why the EPA is doing the project, and its intended outcomes. This will inform the artist on the purpose and context of how the artwork will be used.

## Marketing and Communications

EPA employees must get consent to create materials that incorporate ICIP for reproduction and use, ensuring that the use of these materials strictly follows the terms of any licence agreement. The EPA must carefully consider how the material will be used, including:

- whether the work is legally protected by copyright. If so, is there a licence for use in place with the Aboriginal peoples sharing ICIP, or the copyright owner?
- whether the work contains ICIP, and if so, has the EPA asked for cultural consent for the use of ICIP?
- what story is being told, or knowledges being shared, and is it appropriate for sharing?
- whether it will have the potential to affect a community and whether the project is appropriate, something EPA employees must consult with community about at the beginning of a project.
- broad consultation processes must be carried out to ensure the perspectives of the whole community have been captured when the project has a wide impact
- what is the cultural context and significance? Has it been edited or altered to change the context? Is it appropriate for the location?
- is the Aboriginal person sharing ICIP, the relevant community, or the owner of the ICIP, and have they been properly attributed?
- what benefits have been provided to the Aboriginal person, community, or copyright owner in exchange for the use of ICIP?

A Traditional Custodians Notice is used to advise peoples that the material online contains ICIP and cannot be reproduced or otherwise used without permission of the appropriate Aboriginal person or community.

# Information for Aboriginal peoples sharing their ICIP with the EPA

Sharing cultural and intellectual property is a decision not made lightly, and we know it can sometimes sit heavy on Aboriginal peoples and communities. The EPA is committed to respecting, honouring and safeguarding your ICIP at all stages throughout the project. We understand that many Aboriginal peoples who share their ICIP with government agencies can, at times, find the process overwhelming or culturally unsafe. Please remember:

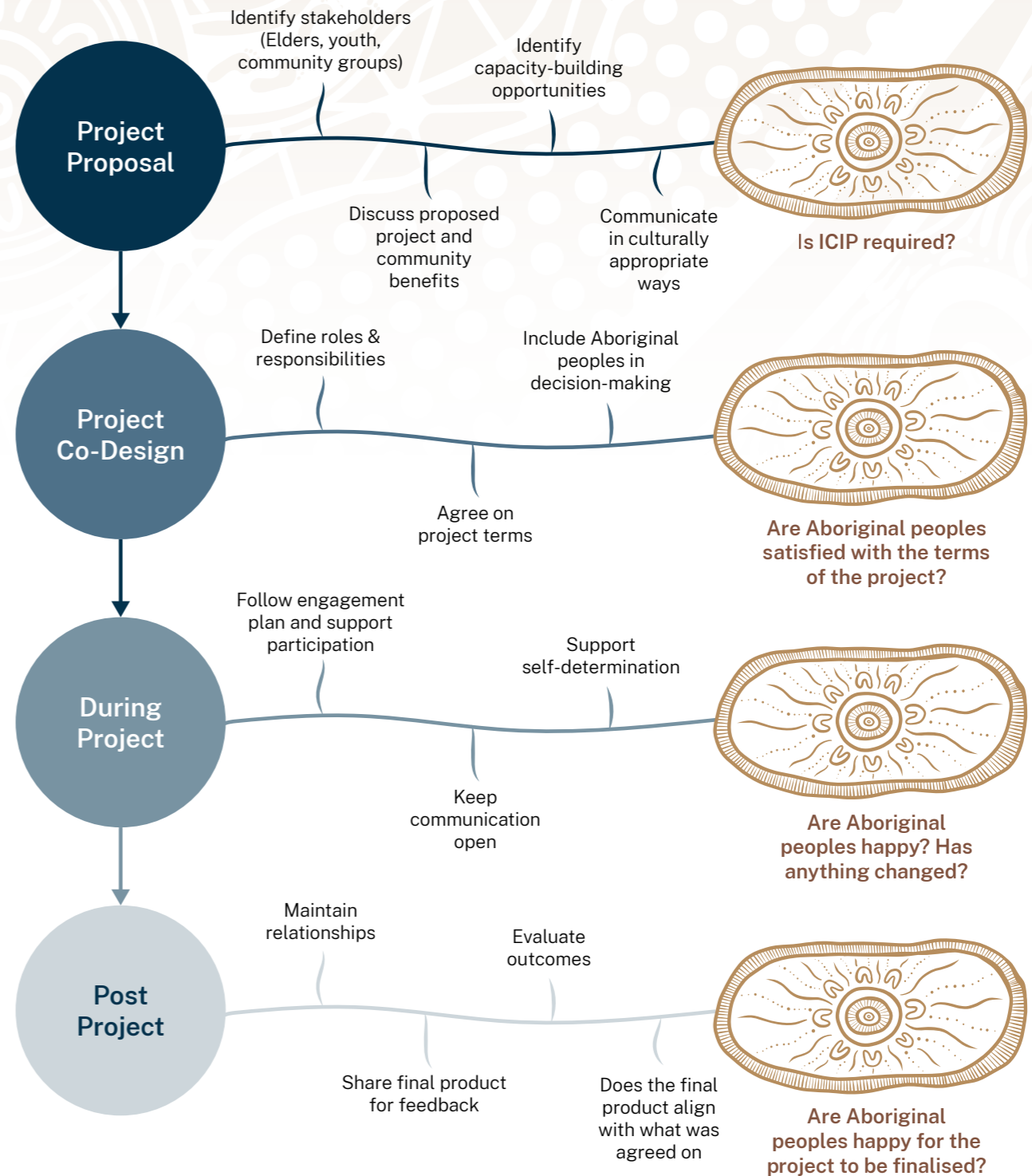
- you can rescind consent at any time during the project
- you can withhold certain knowledges or set special conditions on how it can be used
- you can request a culturally safe place to discuss the sharing of your ICIP
- you can request to speak with an Aboriginal person to support your understanding of the use of your ICIP.

We want you to feel supported, recognised and heard, if you have any questions or concerns, please reach out to the Aboriginal Initiatives team [aboriginal.initiatives@epa.nsw.gov.au](mailto:aboriginal.initiatives@epa.nsw.gov.au)



Photo: Coolamon, EPA.

# ICIP Flow Chart



Note: Best practice engagement means seeking consent at every stage. FPIC means that if any stage the answer is NO the project does not proceed.

# Implementation and Review of ICIP Protocol

These protocols apply to all work carried out by the EPA that is impacted by ICIP; they will be overseen and reviewed regularly by the Aboriginal Initiatives team to ensure they remain relevant and continues to reflect best practices.

The EPA is committed to providing resources and support to help employees understand ICIP rights and implement these protocols effectively. Employees can receive training, and where appropriate, partners and contractors, to ensure they understand their ICIP obligations. As implementation progresses, case studies will be developed to allow further discussions and support continuous improvement.

By addressing the considerations outlined in these protocols, the EPA will ensure ethical and culturally appropriate use of ICIP while respecting Aboriginal ownership and control.

The EPA welcomes feedback on the operation of these protocols and will aim to respond to any enquiries, complaints, or suggestions in a timely and respectful manner. Feedback can be directed to:  
**Aboriginal.Initiatives@epa.nsw.gov.au**



Photo:  
Macquarie Marshes,  
John Spencer/DCCEEW



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Front cover: Coolamon.  
Artist: Gerard Black.

Published by NSW Environment Protection Authority

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ISBN 978 1 923328 23 5  
EPA 2025P4601  
July 2025

