



## **Queensland Department of Education**

# **Indigenous Cultural and Intellectual Property Protocol for the teaching of Aboriginal languages and Torres Strait Islander languages in Queensland State Schools**

## Acknowledgement of Country

The department of Education acknowledges the Traditional Owners of the land, seas and waterways of Queensland.

We honour and pay our respects to the Elders past, present and emerging. We recognise them as the Language owners, experts and keepers of culture and ceremony.

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This document was prepared by Terri Janke and Company Pty Ltd for the State of Queensland (Department of Education).

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## A. Introduction

Language is a foundation of identity for Aboriginal peoples and Torres Strait Islander peoples. The Queensland Government, through its Department of Education (the **department**), recognises the importance of Aboriginal languages and Torres Strait Islander languages in maintaining cultural identities and building the resilience of Queensland's Aboriginal communities and Torres Strait Islander communities.

The department encourages and supports schools across the state to collaborate with Aboriginal peoples and Torres Strait Islander peoples, to teach Aboriginal languages or Torres Strait Islander languages aligned to the Australian Curriculum in ways that are culturally acceptable and empowering for Language Owners. The department recognises the positive benefits that such Language Programs have for Aboriginal peoples and Torres Strait Islander peoples and the wider community.

A Language Program developed and taught in a school will involve the speaking and teaching of an Aboriginal language or a Torres Strait Islander language. The teaching and learning materials created as part of the Language Program will record Indigenous Cultural and Intellectual Property (**ICIP**); primarily languages, but also other ICIP such as stories, songs, artwork, or cultural knowledge.

Dispossession, settlement and cumulative acts of colonisation including government education policies and individual actions within schools have impacted Aboriginal peoples' and Torres Strait Islander peoples' use of their languages. It is important that Aboriginal peoples and Torres Strait Islander peoples are able to control and protect their languages to maintain the integrity of the written and spoken word, and to control the copyright in materials – such as books, films, sound recordings, websites, apps - that document their languages.

In bringing Aboriginal language, knowledge and culture and Torres Strait Islander language, knowledge and culture into the classroom, the department acknowledges the need to respect and uphold the cultural protocols or customary laws of the Aboriginal Language Owners and Torres Strait Islander Language Owners.

### Aim of the ICIP Protocol

The department's *Indigenous Cultural and Intellectual Property Protocol for the teaching of Aboriginal languages and Torres Strait Islander languages (ICIP Protocol)* is a guide that has been developed to acknowledge the cultural value in the language knowledge and cultural expression shared by Aboriginal peoples and Torres Strait Islander peoples as part of the Language Programs developed and delivered in Queensland state schools. The ICIP Protocol supports the rights of Aboriginal people and Torres Strait Islander people to control and protect their languages, knowledge and cultural expression.

The ICIP Protocol will support the department and schools to manage:

- effective and respectful engagement with Aboriginal Language Owners and Torres Strait Islander Language Owners;

- the use and sharing of ICIP in schools (i.e. cultural stories spoken orally, and use of written materials that teach language and cultural knowledge);
- the collection and recording of Aboriginal language, culture and knowledge and Torres Strait Islander language, culture and knowledge;
- the adaptation of existing and newly recorded Aboriginal language, culture and knowledge and Torres Strait Islander language, culture and knowledge into New Language Resources; and
- the storage of collected materials and New Language Resources;

in ways that are consistent with international best practice standards.

Queensland Government staff working with Indigenous communities or products and practices originating from Indigenous communities should be aware and respectful of traditional knowledge and its relation to the intellectual property (IP) system.<sup>1</sup> Traditional knowledge does not fit neatly into the current Australian IP system, where IP rights belong to a particular person or legal entity for a specified period of time, rather than to a group of people collectively for an indeterminate period of time.<sup>2</sup> The *Human Rights Acts 2019* (Qld) goes some way to acknowledging these rights; it declares that Aboriginal peoples and Torres Strait Islander peoples must not be denied the right to enjoy, maintain, control, protect, develop and use their cultural heritage – which includes languages, traditional knowledges and traditional cultural expressions<sup>3</sup>. This means that in all decision-making the department must consider whether its decisions or actions limit the cultural rights of Aboriginal peoples and Torres Strait Islander peoples including their right to enjoy, maintain, control, protect, develop and use their language, including traditional cultural expressions.<sup>4</sup>

The department has created the ICIP Protocol to guide its staff and schools in setting up and developing a Language Program. The ICIP Protocol is intended to meet best practice standards and to support the rights of Language Owners to enjoy, maintain, control, protect, develop and use their languages and associated knowledge and culture. However, school-based and other departmental staff must be aware of and ensure they comply with whole-of-government and departmental policies, procedures and guidelines in respect of copyright, IP, information management and recordkeeping.

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<sup>1</sup> [Queensland public sector intellectual property principles factsheet Final | May 2018 | v3.0.0](#)

<sup>2</sup> [Queensland public sector intellectual property principles factsheet Final | May 2018 | v3.0.0](#)

<sup>3</sup> <https://www.qhrc.qld.gov.au/your-rights/human-rights-law/cultural-rights-of-aboriginal-and-torres-strait-islander-peoples>

<sup>4</sup> <https://qed.qld.gov.au/programs-initiatives/department/human-rights>

## **Foundations for the successful development of Language Programs**

This ICIP Protocol is the basis for any use of ICIP in the teaching and learning environment as part of a school's Language Program – as summarised by the below diagram:

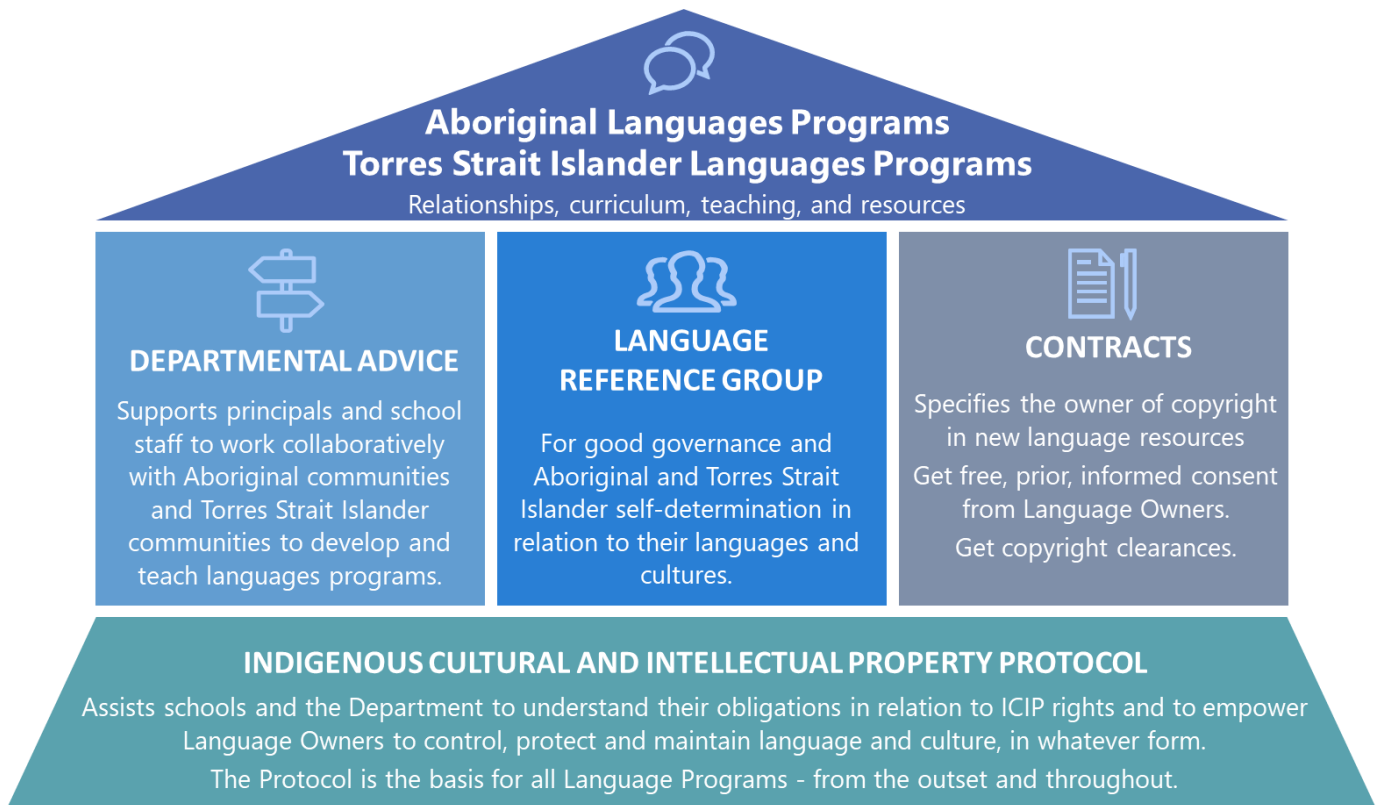


Figure 1: – Key foundations for the successful development of Language Programs

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An understanding of ICIP and strategy for protecting ICIP rights are key to ensuring that schools, with assistance from the department, comprehensively manage the key ICIP issues that will arise, from the outset and throughout the life of the Language Program – from engaging with Language Owners, to co-development, to creating resources, to teaching.

Schools should undertake a best practice approach to build trust and relationships with Language Owners that are based on mutual benefit. The Queensland Government supports the right of Aboriginal Language Owners and Torres Strait Islander Language Owners to permit or deny use of their ICIP by detailing the processes schools must follow for obtaining free, prior and informed consent for use of languages – from the initial stages and in an ongoing manner.

Good governance frameworks are also key to upholding ICIP rights. Bodies such as the Language Reference Group support self-determination by Aboriginal Language Owners and Torres Strait Islander Language Owners in relation to their languages and other ICIP. It allows them to have an ongoing say in how languages and culture are taught and shared as part of a Language Program.

Finally, the use of contracts is key to ensuring schools and Language Owners properly manage ICIP rights, particularly in relation to language materials that are created as part of a Language Program. These materials will incorporate ICIP – languages and associated cultural heritage such as stories, songs, artwork, or knowledge. At the same time, Australian copyright law will automatically apply to language materials as they are created.

Contracts can be used to ensure that Language Owners are the copyright owners of newly created material that incorporates ICIP and to document the permitted uses of the materials by non-owners. Section 10 of the ICIP Protocol provides suggested starting approaches for negotiating which party will own copyright in Recordings, Existing Resources and New Language Resources and which party may be given a user licence. Contracts are also a tool to ensure that all persons engaged as part of a Language Program comply with their obligations in relation to ICIP – whether it is obligations outlined in this ICIP Protocol, or specific rules set by Language Owners or the Language Reference Group.

Departmental templates are provided at <https://education.qld.gov.au/students/aboriginal-torres-strait-islander-education/indigenous-cultural-and-intellectual-property>.

## What is Indigenous Cultural and Intellectual Property?

**ICIP** refers to the rights that Indigenous people have in relation to all aspects of their cultural heritage, including:

- traditional knowledge (scientific, agricultural, technical and ecological knowledge, ritual knowledge);
- traditional cultural expression (stories, designs and symbols, literature and language),
- performances (ceremonies, dance and song);
- cultural objects (including, but not limited to arts, crafts, ceramics, jewellery, weapons, tools, visual arts, photographs, textiles, contemporary art practices);
- human remains and tissues;
- the secret and sacred material and information (including sacred/historically significant sites and burial grounds); and
- documentation of Indigenous peoples' heritage in all forms of media such as films, photographs, artistic works, books, reports and records taken by others, sound recordings and digital databases.

The following diagram illustrates a general breakdown of ICIP:



Figure 2: ICIP breakdown. © Terri Janke and Company, 2003

Although the above diagram separates ICIP into categories, ICIP is holistic and interrelated. For example, an artist may paint a work which tells a story that also contains information about where to find food. In this way, ICIP incorporates both the tangible (artwork) and intangible (story, knowledge, cultural practice). ICIP is inextricable from the land and seas of the Aboriginal communities and groups and Torres Strait Islander communities and groups to which the ICIP belongs. ICIP has been developed and contributed to by many generations of Aboriginal peoples and Torres Strait Islander peoples, and future generations will continue to nurture and develop their ICIP. Some knowledge is bestowed upon community or family members due to factors including but not limited to age, gender or family ties, and these people have specific obligations based on cultural protocols of the group. In this way, ICIP is communally owned, living and evolving.

### **Indigenous Cultural and Intellectual Property and gaps in Australian IP laws**

Indigenous Cultural and Intellectual Property (**ICIP**) is not currently recognised under any standalone laws in Australia. Some laws, such as Australian copyright laws, have been used to protect ICIP where it meets the requirements for copyright protection. However, copyright law does not provide an adequate ICIP protection. This is because the existing IP system in Australia focuses on giving individuals economic rights over their creations, for a limited time, in order to encourage more creation. This system is different to, and incompatible with, the holistic nature of communally owned Aboriginal culture and heritage and Torres Strait Islander culture and heritage.

Under the *Copyright Act 1968* (Cth), works must be in material form (written down or recorded in some way). The rights given to individual copyright owners are economic in nature, so that creators are encouraged to keep creating new work. Under this rationale, copyright is limited



in duration, generally being the life of the artist plus 70 years. After this, anyone can use and adapt the copyright work as they like.

Copyright laws are very different to the characteristics of holistic ICIP knowledge systems. ICIP is often passed on through generations orally or as cultural practice according to kinship structures. This means that often, ICIP will not be written down or recorded and will not meet the material form requirements for copyright protection. Another key difference is that ICIP is centred around the continuing practice of culture – the focus is not necessarily on financial gain or monetising knowledge; however Aboriginal peoples and Torres Strait Islander peoples have the right to benefit commercially from use of their ICIP if they so choose. The ongoing nature of ICIP, wherein knowledge is passed on intergenerationally, also means that the limited duration of copyright is insufficient.

### **International laws and standards**

ICIP rights are enshrined in international laws. Article 31 of the *United Nations Declaration on the Rights of Indigenous Peoples* (the **Declaration**) states that Indigenous peoples have the right to maintain control of their cultural heritage and traditional knowledge, as well as the intellectual property of that cultural heritage and traditional knowledge.<sup>5</sup> Other international instruments such as the *United Nations Convention on Biological Diversity* (including the Nagoya Protocol), encourage the fair and equitable use of ICIP (such as genetic resources and associated traditional knowledge). The UNESCO *Convention for the Safeguarding of Intangible Cultural Heritage* promotes protection of ICIP by governments and the international community.

Although Australia is a signatory to the Declaration, the Declaration is not an instrument that requires its signatories to enact domestic laws that give effect to its provisions. There are no standalone Australian laws that protect ICIP. However, international laws such as the Declaration provide a framework for Australia to learn from when developing policy to improve the protection of ICIP in Australia. In turn, the widespread uptake of policies and protocols that recognise and protect ICIP rights set standards of practice.

This ICIP Protocol is one such document - it identifies that there is significant value and worth in ICIP for Aboriginal peoples and Torres Strait Islander peoples and thus ICIP should be respected and protected.

### **What rights do Aboriginal peoples and Torres Strait Islander peoples want to their ICIP?**

Rights sought by Aboriginal peoples and Torres Strait Islander peoples relate to the control of ICIP – rights to authorise or refuse use, and to be recognised as the owners of ICIP so that people and organisations continue to return to Aboriginal peoples and Torres Strait Islander peoples for consent.

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<sup>5</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007) Art 31.

The following ten principles are the foundation of this ICIP Protocol in relation to the upholding of ICIP rights:

**Respect:** The department will respect the rights of Aboriginal peoples and Torres Strait Islander peoples to maintain, control, protect and develop their ICIP.

**Self-determination:** Aboriginal peoples and Torres Strait Islander peoples have a right to self-determination in relation to their ICIP and must be empowered and supported to make decisions about the use of their ICIP.

**Collaboration and consent:** Aboriginal peoples and Torres Strait Islander peoples must give their prior, fully informed consent for any use of their ICIP. Consent must come from individuals who share specific ICIP as well as at a family or community level. Consent should be recorded in writing as much as possible, using agreements, contracts, forms or other instruments.

**Interpretation:** Aboriginal peoples and Torres Strait Islander peoples are the primary guardians and interpreters of their ICIP and have the right to decide how their ICIP is presented. Their perspectives and understandings must be prioritised to ensure portrayals of Aboriginal languages and cultures and Torres Strait Islander languages and cultures are accurate and empowering.

**Cultural integrity:** Aboriginal peoples and Torres Strait Islander peoples have the right to guard the cultural integrity of their ICIP.

**Secrecy and Privacy:** Aboriginal peoples and Torres Strait Islander peoples have the right to keep secret their sacred and ritual knowledge in accordance with their customary law. The privacy of Aboriginal individuals and Torres Strait Islander individuals will also be respected.

**Attribution:** Aboriginal peoples and Torres Strait Islander peoples be given full attribution for sharing their ICIP. This includes individual Language and Culture Specialists.

**Benefit sharing:** Aboriginal peoples and Torres Strait Islander peoples have the right to share in any benefits, commercial or otherwise, that come from the use of their ICIP.

**Cultural maintenance:** Aboriginal cultures and Torres Strait Islander cultures are dynamic. The long-term management of New Language Resources should respect the continuing customary use, development, exchange and transmission of ICIP so that it is properly maintained and protected for the use and benefit of future generations of Aboriginal Language Owners and Torres Strait Islander Language Owners.

**Recognition and protection:** The department will use Australian laws, as well as contracts, protocols and policies to recognise and protect ICIP rights of Aboriginal peoples and Torres Strait Islander peoples in connection with developing and teaching Language Programs.

## ICIP and Language Programs

Schools and the department need to be aware of the key issues relating to ICIP and engagement with Aboriginal peoples and Torres Strait Islander peoples that can arise during the course of developing and teaching Language Programs.

The below diagram maps out a general roadmap for developing a Language Program, followed by a summary of the key ICIP issues that should be considered at each stage.

The Protocol in Part B gives practical best practice tips to address the issues in line with the True Tracks® Guiding Principles.

Figure 3:

# Developing a Language Program



## RESEARCH AND REFLECT

### **Consider perspectives**

Before pursuing the development of a Language Program with Language Owners, schools must undertake preliminary work to ensure that management and staff have the cultural competency to work with Aboriginal peoples or Torres Strait Islander peoples, knowledge and governance systems. This includes knowing who the Traditional Owners are, and the Language of the land on which the school is built.

Part of this process involves individual staff members interrogating their own perspectives and biases. Additionally, school staff should consider whether they:

- can identify tangible and intangible forms of ICIP;
- understand the meaning of 'free, prior, informed consent';<sup>6</sup>
- recognise the legal and ethical obligations required of them – under Australian laws, international standards and this ICIP Protocol.

## SEEK INITIAL CONSENT

The basis for all teaching and sharing of Aboriginal languages and Torres Strait Islander languages is free, prior, informed consent. This means that Language Owners give their approval for use of ICIP where they are fully informed about all the relevant details relating to the proposed use.

The best way for a school to ensure they have the informed and ongoing consent from Language Owners is to co-develop the Language Program together. This requires a great deal of initial work to develop relationships, build trust, and agree on a suitable way for the school and the Language Owners to collaborate.

Schools should seek out Language Owners of the Country the school is on, and navigate initial engagement with Language Owners, Traditional Owners, Elders, and historical people in authority to begin a dialogue about teaching an Aboriginal language or a Torres Strait Islander language. It is key that schools do not rush these initial meetings and take the time to ensure they have engaged with all relevant people. At this stage, work carefully and respectfully to establish who the Language Owners, Traditional Owners, Elders, and historical people are in the community and their relationships/interactions with one another.

### **Statement of Intent**

Once the Language Owners and the school come to an agreement that they will co-develop a Language Program, it is important to record the Language Owners' initial consent in a document such as a Statement of Intent or a Memorandum of Understanding. This is an aspirational document which:

- may record the initial consent of the Language Owners to co-develop a program to teach the relevant Aboriginal language or a Torres Strait Islander language at the school; and
- sets out how the parties will work together to develop a Language Program and the protocols that will be followed by both parties.

A departmental template is provided at <https://education.qld.gov.au/students/aboriginal-torres-strait-islander-education/indigenous-cultural-and-intellectual-property>. As noted in Figure 3 above, after executing a non-binding Statement of Intent or Memorandum of Understanding, the school may enter into binding agreements and contracts in subsequent stages of development of the Language Program.

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<sup>6</sup> See **Part C – Resources**.

The Statement of Intent should acknowledge the inherent right and ownership of Language Owners to their language and other ICIP in accordance with Article 31 of the Declaration. It should also be a written record of the school's commitment to how it will work with the Language Owners to develop the Language Program in a way that upholds ICIP rights and empowers Language Owners to maintain, control, protect and develop their ICIP.

### **Establish Language Reference Group**

The purpose of a Language Reference Group is to enact good governance structures for the Language Program so that it can be effectively managed into the future. It is also a way for Language Owners to be self-determining by having continued oversight and control of the use of their ICIP in the Language Program. The Language Reference Group will make decisions about how language may be taught and who may teach it, and approve all co-designed language curriculum. The Language Reference Group will also have opportunities to review and approve the creation of any New Language Resources and advise on cultural protocols for teaching language.

A Terms of Reference document should be developed for the Language Reference Group which guides how the Language Reference Group operates – its functions, responsibilities, rules for decision making, and administrative requirements. A departmental template is provided at <https://education.qld.gov.au/students/aboriginal-torres-strait-islander-education/indigenous-cultural-and-intellectual-property>.

The school should allocate a budget to provide support for the Language Reference Group to meet regularly with the principal and teaching team, including facilities, and sitting fees for members. Similarly, Language Reference Groups may obtain external funding or grants from other sources.

### **CO-DESIGN LANGUAGE PROGRAM**

After setting up governance structures and agreeing on the rules for working together, the school and the Language Owners must co-develop a curriculum.

Co-design of the language curriculum ensures that Language Owners continue to be able to control the use and sharing of their languages and give ongoing consent for new uses of languages.

At this stage, consider and co-design opportunities to monitor and renew the language program; including dates for program review and questions for program evaluation, such as measuring the quality of relationships, the impact of the language program on student learning, or challenges in the implementation.

### **DEVELOP NEW LANGUAGE RESOURCES**

All Language Programs will likely require language-specific New Language Resources. These may include books, worksheets, handouts, PowerPoint presentations, games, flash cards, augmented or virtual reality, voice and video recordings. Schools can use templates to record copyright and ICIP consents – departmental templates are provided at <https://education.qld.gov.au/students/aboriginal-torres-strait-islander-education/indigenous-cultural-and-intellectual-property>. Further information is provided below for each of the different categories of resources.

### **Existing Resources: Using and Adapting Existing Resources for the Language Program**

The teaching team may decide that Aboriginal Language Instructors/Teachers or Torres Strait Islander Language Instructors/Teachers will use Existing Resources as part of the Language Program. The Existing Resources may be used as is, to teach students, or they may be adapted to create New Language Resources.

## **Permissions to Use and/or Adapt Existing Resources**

If the School wishes to copy or adapt the Existing Resources the School will be required to obtain multiple clearances to do so. These clearances will include:

- Permission from the copyright owner (or owners) of the Existing Resource;
- Permission from the owners and custodians of ICIP in the Existing Resource.

### *Who gives the copyright consent?*

The copyright owner may be an individual (e.g. a researcher or linguist), two or more people, or an entity (e.g. an Aboriginal Corporation).

### *Who gives the ICIP consent?*

Existing Resources may have been created for the purposes of teaching language, in which case general support from the Language Owners (via the Language Reference Group or other community engagement) may be acceptable.

Alternatively, specific people or families may be required to give consent to use the ICIP in the Existing Resource. In such cases, the teaching team may be required to seek consent from those people using a written form.

The Language Reference Group can advise on whether a consent form is required, and who should sign the written consent form. If no consent form is signed, and the Language Owners give verbal permission to use the ICIP in the Existing Resource, the teaching team should make a record of this consent in the form of a file note or meeting minutes.

There is also the possibility that the copyright owner may be an Aboriginal Language Owner or Torres Strait Islander Language Owner with the authority to give permission for use of the ICIP in the Existing Resource.

### *What other consents are required?*

Other Existing Resources may not be published material – it could, for example, be film and sound recordings of language speakers, or archival material. If the Existing Resources feature an individual language speaker who is sharing language knowledge and culture, it may be necessary to obtain consent from the individual (or their family if they have passed away). This individual clearance should be in addition to the community clearance provided in relation to the material.

## **Collecting ICIP from Language and Culture Specialists**

The School and the Language Owners or Language Reference Group will need to discuss who is responsible for creating new material. Aboriginal Language Instructors/Teachers or Torres Strait Islander Language Instructors/Teachers, in some cases working with other authorised teachers or external service providers (e.g. a linguist), may interview, record and work with Language and Culture Specialists.

In some cases, New Language Resources will be developed using the knowledge of living language speakers. The nature of language and cultural material that will be collected for the New Language Resources will be determined by the Language Reference Group (with consent of the Language Owners), the teaching team and the Language and Culture Specialists. The collected ICIP may be used for teaching or adapted into New Language Resources, which may include posters, brochures, books, websites or interactive learning applications.

In addition to receiving consent from each individual Language and Culture Specialist for use of the ICIP they share, the New Language Resources should be reviewed by the Language and Culture Specialist and the Language Reference Group or Language Owners, to ensure authentic and accurate representation of the language so that the integrity of the ICIP remains intact. A departmental template is provided at <https://education.qld.gov.au/students/aboriginal-torres-strait-islander-education/indigenous-cultural-and-intellectual-property>.

### **Use contracts to get permission and cultural consents**

Schools can use template contracts provided by the department to record copyright and ICIP consents and clearances. Using written agreements give all parties certainty that prior, informed consent is obtained. Written records have the added benefit of meeting ongoing obligations in relation to ICIP. In the future, people involved in the Language Program can review the written records to understand how they are allowed to use Existing Resources and New Language Resources, and whether they need to seek consent for new or different uses of the material.

If schools have any legal queries regarding the terms of the template contracts, those queries should be referred for advice to the department's Legal Services Branch.

*What templates are available for use?*

The Department has the following templates available to get permission to use Existing Resources

- Copyright Consent to Use Existing Resource  
<https://education.qld.gov.au/students/aboriginal-torres-strait-islander-education/indigenous-cultural-and-intellectual-property>
- Cultural Consent to Use Existing Resource in Language Program  
<https://education.qld.gov.au/students/aboriginal-torres-strait-islander-education/indigenous-cultural-and-intellectual-property>

For the creation of New Language Resources, the following templates are available:

- Language and Culture Specialist: Permission to Record  
<https://education.qld.gov.au/students/aboriginal-torres-strait-islander-education/indigenous-cultural-and-intellectual-property>

*What other resources can help?*

The department's [Copyright and other intellectual property procedure](#) outlines the role of the Copyright team in providing guides, tools and advice to departmental employees in relation to creation and use of IP.

### **CO-TEACH WITH LANGUAGE OWNERS**

#### **Engage Aboriginal Language Instructors/Teachers and Torres Strait Islander Language Instructors/Teachers**

To support self-determination of Language Owners in relation to their ICIP, the teaching team should, as far as possible, be made up of Aboriginal Language Instructors/Teachers or Torres Strait Islander Language Instructors/Teachers. These people are familiar with the relevant cultural protocols and may teach together with Other Teachers from the school, as well as with other contributors such as Elders and Language Owners, linguists, academics, artists, writers and researchers. Aboriginal Language Instructors/Teachers or Torres Strait Islander Language Instructors/Teachers may be engaged in a number of ways. They may be but not limited to:



- engaged under an appropriate Award through departmental human resource processes;<sup>7</sup>
- contracted as an external supplier or consultant through departmental procurement procedures<sup>8</sup>. A departmental template: Language Program Services Agreement is provided at <https://education.qld.gov.au/students/aboriginal-torres-strait-islander-education/indigenous-cultural-and-intellectual-property>;
- an employee of an incorporated entity representing the Language Owners, where that entity has been contracted by the department to deliver teaching services to the school.

In many cases, it will be necessary to establish a teaching team that includes a range of people who have complementary skill sets but must only include people who have been approved by the Language Owners, particularly where the language specialist/s are not Language Owners (such as external academics or researchers) which may be the case in communities where there are not many living language speakers.

### **Establish rules for Other Teachers**

Other Teachers may be any person who is a teacher but is not a Language Owner of the language being taught at the school.

For example, an Aboriginal person or a Torres Strait Islander person who is a teacher at the school may have learnt to speak a different Aboriginal language or Torres Strait Islander language that is not the language of the cultural community to which that particular teacher belongs. The teacher would, like anyone else who is not a member of that community, need permission from the Language Owners to teach that language.

Where such teachers are given approval by Language Owners to co-teach the language, they must respect cultural protocols and understand the obligations on them in relation to ICIP. These obligations are detailed in Part B.

### **MONITOR LANGUAGE PROGRAM AND DEEPEN RELATIONSHIPS**

The ongoing success of the Language Program requires the department and the school to continually strengthen its relationships with Language Owners and ensure support for continued good governance and management.

Enact the planned, co-designed monitoring and evaluation activities agreed by the school and Language Owners on commencement of the Language Program, and undertake additional monitoring activities as required. Monitoring should be undertaken through a strengths-based framework with the purpose of enhancing the quality of the program under agreed goals.

Schools and Language Owners should consider new collaborations that will bring mutual benefit, and encourage Language Owners to make suggestions to the school about projects that are important to their communities. Part of maintaining relationships is always returning to the Language Owners to seek informed consent for any new or different uses of ICIP in the Language Program.

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<sup>7</sup> Department of Education, Awards, Agreements and Salaries, <https://intranet.qed.qld.gov.au/Services/HumanResources/payrollhr/awardspayscales>

<sup>8</sup> Department of Education, Purchasing and procurement, [https://intranet.qed.qld.gov.au/Services/Procurement\\_Purchasing](https://intranet.qed.qld.gov.au/Services/Procurement_Purchasing)

## B. Indigenous Cultural and Intellectual Property Protocol for the teaching of Aboriginal languages and Torres Strait Islander languages

### 1. Preliminary

1.1 The aim of the ICIP Protocol is:

- 1.1.1 to recognise that the Aboriginal Language Owners and Torres Strait Islander Language Owners are the owners and custodians of their languages and other ICIP;
- 1.1.2 to establish standards for the use, recording, reproduction, storage, access and archiving of languages and other ICIP in the development of Language Programs and the teaching of Aboriginal languages and Torres Strait Islander languages at schools in Queensland.

1.2 For a full list of definitions used in these ICIP Protocol, please see **Part D – Definitions**.

### 2. Acknowledgment and Respect of ICIP

- 2.1 Language Owners have the right to maintain, control, protect and develop their ICIP in accordance with Article 31 of the of the *United Nations Declaration on the Rights of Indigenous Peoples* (the **Declaration**). Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights which must not be denied including the right to enjoy, maintain, control, protect, develop and use their language: section 28(2) *Human Rights Act 2019* (Qld).
- 2.2 The department will acknowledge and respect ICIP rights by complying with this Protocol and supporting schools to enact best practice measures to uphold ICIP rights through other applicable policies, procedures, guidelines and standards, even where it is not required by Australian law.

### 3. Self-determination

- 3.1 Language Owners have the right to self-determination in relation to their ICIP.
- 3.2 Aboriginal peoples and Torres Strait Islander peoples must be involved from the outset of developing a Language Program, and throughout the life of the Language Program. This can be achieved through:
  - 3.2.1 **Initial Consultation:** Schools must consult with the Aboriginal Language Owners or Torres Strait Islander Language Owners to obtain initial consent to develop a Language Program.
  - 3.2.2 **Statement of Intent:** Schools can use it to record the initial consent of the Language Owners to co-develop a program to teach the relevant Aboriginal language or a Torres Strait Islander language at the school. The Statement of Intent should outline the protocols for engagement between the School and Language Owners and how the Language Owners will be consulted on decisions about the Language Program, whether through the Language Reference Group or by other mechanisms.

- 3.2.3 **Language Reference Group:** The Language Reference Group has the function of ensuring that Language Owners, working with the cultural authority of their community, have continuing oversight of all aspects of the implementation of the Language Program, from developing the curriculum, to teaching using existing resources, to the development of new resources and new projects.
  - 3.2.4 **Engaging Aboriginal Language Instructors/Teachers and Torres Strait Islander Language Instructors/Teachers:** By engaging Aboriginal people and Torres Strait Islander people as teachers, the schools and the department support ongoing control by Language Owners as to how the language is taught and shared.
  - 3.2.5 **Recording ICIP:** Language and Culture Specialists must give free, prior and informed consent to use the ICIP they share with Aboriginal Language Instructors/Teachers and Torres Strait Islander Language Instructors/Teachers as part of the Language Program.
  - 3.2.6 **Developing Resources:** New Language Resources must only be developed with the approval and oversight of Language Owners. New Language Resources may be created jointly by the School and the Language Owners, or created by Aboriginal Language Instructors/Teachers and Torres Strait Islander Language Instructors/Teachers themselves or in collaboration with other people working under the direction or control of Language Owners.
  - 3.2.7 **Approval of New Language Resources:** Language and Culture Specialists (who contribute their ICIP), the Language Reference Group and/or Language Owners more broadly will have the opportunity to review any New Language Resources to ensure they accurately portray the language and other ICIP contained within.
  - 3.2.8 **Teaching by Other Teachers:** Teachers who are not Language Owners acknowledge that they may teach Aboriginal language and Torres Strait Islander language where specifically permitted to by Language Owners and/or the Language Reference Group. However, they are not authorised to teach language or cultural knowledge generally, and will act in strict accordance with the directions of Language Owners, the Language Reference Group and the rules in this Protocol.
- 3.3 Different communities may have their own specific cultural protocols that govern the access and use of ICIP. Schools will adhere to community-specific protocols as notified by Language Owners and other Aboriginal people or Torres Strait Islander people in authority, such as Traditional Owners and Elders.

## 4. Co-design, collaboration and consent

- 4.1 The best way for schools to make sure they obtain voluntary, prior, informed consent of Language Owners to use ICIP is to co-design the Language Program and each element of it in collaboration with Language Owners. This will ensure that consent is ongoing and the Language Owners stay informed and up-to-date about how their ICIP is being used in the classroom.

### Consent from Language Owners to develop Language Program

- 4.2 Schools will need to build relationships with Language Owners before taking any steps to implement a Language Program. Schools should undertake broad community engagement to obtain initial permission to develop a Language Program. This permission, and the terms of continuing collaboration, will be recorded in the form of a Statement of Intent.

## **Co-development of Language Curriculum and resources**

- 4.3 Through its Language Reference Group or other mechanisms agreed to by the Language Owners in the Statement of Intent, schools must collaborate with Language Owners to reach decisions by consensus on the following matters:
- 4.3.1 Design of language curriculum and how the language may be taught;
  - 4.3.2 Appointment of members to the Language Program teaching team;
  - 4.3.3 The terms of engagement for employees or external contractors, including key protocols to be followed (see clause 15 of this protocol relating to managing potential conflicts of interest);
  - 4.3.4 Who will own copyright in New Language Resources;
  - 4.3.5 How New Language Resources may be used, including whether they may be published or shared beyond the school; and
  - 4.3.6 Where New Language Resources will be stored in compliance with the obligations under the [Public Records Act 2002](#), including whether they will be shared with an archive (e.g. the Australian Institute of Aboriginal and Torres Strait Islander Studies), and who may access and use the New Language Resources into the future;
  - 4.3.7 How long the ICIP permissions will last and when the use of the ICIP in the Language Program will be reviewed and updated;
  - 4.3.8 How disputes relating to ICIP will be resolved.

## **Consent from Language Owners to use ICIP when adapting Existing Resources**

- 4.4 Schools will seek ICIP Clearances from relevant Language Owners to adapt Existing Resources (e.g. films, books, photographs, archival records) as part of creating New Language Resources. This is in addition to copyright clearances schools will obtain from Copyright Owners.
- 4.5 If the Existing Resources do not identify an individual (e.g. a speaker recorded on film), the school will obtain general permission from the Language Owners directly or through the Language Reference Group.
- 4.6 If the Existing Resources identify an individual, the school will use a clearance form from the individual (or the person's family if they have since passed away), to use and adapt the Existing Resources.
- 4.7 As part of the written clearance, the relevant individual speaker, their family, or the Language Owners, will:
- 4.7.1 confirm that the identified materials belong to the relevant Language group;
  - 4.7.2 confirm that it is suitable for the Existing Resources to be used as part of teaching language in the Language Program; and
  - 4.7.3 give permission for the ICIP in the identified Existing Resources to be reproduced and adapted for the purposes of:
    - a) creating New Language Resources;
    - b) storing the New Language Resources in an archive or database; and
    - c) using for teaching in the Language Program; and

- d) any additional purposes as agreed (e.g. publishing the New Language Resources, subject to final approval).

### **Consent to record Language and Culture Specialists**

- 4.8 Schools, through members of their teaching team or external contractors, may work with Language and Culture Specialists to record their language knowledge and related ICIP. This will involve the creation of new materials, such as written notes, film or sound recordings (the **Recordings**).
- 4.9 Schools will obtain voluntary, prior and informed consent from each Language and Culture Specialist to use the Recordings as part of the Language Program and for the creation of New Language Resources.
- 4.10 Before making Recordings, the school (through representatives of its teaching team such as an Aboriginal Language Instructor/Teacher, Torres Strait Islander Language Instructor/Teacher, or external contractors) will speak with the Language and Culture Specialist to discuss the Language Program and the proposed New Language Resources to be created, including:
  - 4.10.1 discussing with the Language and Culture Specialist who will own the copyright in the Recordings and the New Language Resources;
  - 4.10.2 explaining clearly how the school wishes to use the Recordings, including that:
    - a) Aboriginal Language Instructors/Teachers or Torres Strait Islander Language Instructors/Teachers, either alone or in collaboration with other persons, will use the Recordings to teach or will adapt the Recordings into New Language Resources;
    - b) the New Language Resources will be made available to students at the school;
  - 4.10.3 specifying what benefits will be shared with the Language and Culture Specialist for their involvement;
  - 4.10.4 asking how the Language and Culture Specialist would like to be attributed for their involvement in the Language Program;
  - 4.10.5 explaining that the school must come back to the Language and Culture Specialist to use the Recordings for purposes not explicitly agreed to;
  - 4.10.6 explaining that the Language and Culture Specialist has the right to review and comment on the New Language Resources to ensure the ICIP they share is accurately represented;
  - 4.10.7 asking the Language and Culture Specialist to identify a person to contact in the event of their passing. This ensures that cultural mourning protocols can be respected.
- 4.11 Based on the outcomes of the consultation, the school will then enter into a written consent form with each Language and Culture Specialist, where:
  - 4.11.1 The Language and Culture Specialist agrees to share their language knowledge and culture for the purposes of teaching in the Language Program and for creating New Language Resources;

- 4.11.2 The Language and Culture Specialist gives consent to be filmed or otherwise recorded;
- 4.11.3 Copyright in the Recordings is vested in the Language and Culture Specialist, or another person or organisation, as agreed.

### **Consent to film or photograph locations and people**

- 4.12 When filming and taking photographs on the lands of Aboriginal peoples and Torres Strait Islander peoples, schools consult and seek permission to enter land, sites and places, through appropriate Traditional Owner or community organisations.
- 4.13 When filming and photographing people, consent must be obtained in writing to film and photograph any performers or participants in the film in accordance with applicable privacy laws and departmental procedures. Schools must comply with the department's [Obtaining and managing student and individual consent procedure](#).

### **Ongoing consultation**

- 4.14 Schools will continue to consult with Language Owners through the Language Reference Group during all stages of the Language Program about:
  - 4.14.1 Any changes that affect the original aims;
  - 4.14.2 Any areas of cultural sensitivity that arise;
  - 4.14.3 Risks to the safekeeping of the recordings and the archive;
  - 4.14.4 Misuse and appropriate use of the New Language Resources, and the ICIP contained within; and
  - 4.14.5 Commercialisation of the New Language Resources and the development of Commercial Products.

## **5. Interpretation and Authenticity**

- 5.1 Schools will empower Aboriginal peoples and Torres Strait Islander peoples to present and share their own cultures in the Language Program.
- 5.2 Where New Language Resources are developed by Other Teachers or contractors, they will seek advice from the Language Owners, Language Reference Group and Language and Culture Specialists about how to reflect the perspectives of the Aboriginal peoples and Torres Strait Islander peoples in an accurate and authentic manner.
- 5.3 Schools will re-consult with the Language and Culture Specialists and the Language Reference Group (or other governance structure) on the draft New Language Resources as follows:
  - 5.3.1 A reasonable time of one month must be given to Language and Culture Specialists and Language Reference Group to provide feedback to the school.
  - 5.3.2 The school may seek feedback from other relevant people or entities.
  - 5.3.3 The school and the Language Instructors/Teachers (or other person responsible for developing the New Language Resources) agree to consider all reasonable changes. Where deemed necessary, they will make changes.

The final approval of the New Language Resources rests with the Language Reference Group or another person in authority.

- 5.4 If there is a dispute in relation to the Language Program, the agreed dispute resolution procedures established by the school with applicable stakeholders will be followed. Existing departmental complaint management and review processes will also apply where relevant. See clause 17.

## 6. Cultural Integrity

- 6.1 Schools will respect the cultural integrity of the ICIP in the Recordings and the New Language Resources, by maintaining the cultural context and spirit of the ICIP.
- 6.2 The Language Owners must be given the opportunity (for example, via the Language Reference Group) to identify any conditions on the use of language or other ICIP shared as part of the Language Program. For example, if information can only be taught by a Language and Culture Specialist; used for teaching boys or girls; used for teaching students of a certain age; or used to teach students from schools located on specific land.
- 6.2.1 The school will seek advice from the Language Reference Group on whether there are cultural restrictions on the use of language or other ICIP during feedback and review of the New Language Resources.
- 6.2.2 The teaching team will consult the Language and Culture Specialist about cultural conditions of language or other ICIP shared at the time of making the Recordings.
- 6.3 Schools may only use the ICIP in the Recordings and New Language Resources for purposes agreed to by the individual Language and Culture Specialist and the Language Owners. If the school wishes to adapt the ICIP in the New Language Resources, or use it in a new context, it must seek free, prior and informed consent to do so.

## 7. Confidentiality and Privacy

- 7.1 Schools must respect the rights of Aboriginal people and Torres Strait Islander people to keep the following materials confidential (referred to as '**Confidential Material**')
- 7.1.1 Information about an individual that they have identified as being private for cultural reasons or because it is sensitive;
- 7.1.2 Information identified as unsuitable for publication beyond the Language Owners; and
- 7.1.3 Restricted Material.
- 7.2 The department and its employees must be aware of and comply with privacy obligations in respect of 'personal information' as defined by the *Information Privacy Act 2009* (Qld), which includes obligations under section 426 of the *Education (General Provisions) Act 2016* (Qld). Generally speaking, an individual's personal information must not be shared without their consent.
- 7.3 However, Language Owners should be informed that the [Right to Information Act 2009](#) (Qld) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies. The Act requires that

documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.

### **Restricted Material**

- 7.4 Unless unavoidable, Restricted Material should not be disclosed or provided to schools at all.
- 7.5 Unless required or authorised by law, schools will not record, share, use or publish any Restricted Material.
- 7.6 Schools will seek advice from Language Owners about whether material, such as Existing Resources, contains Restricted Material.

### **Confidential Material**

- 7.7 At any time before the first publication of the New Language Resources, Language and Culture Specialists or the Language Reference Group may identify material as Confidential Material.
- 7.8 Where a Language and Culture Specialist, the Language Reference Group or Language Owners identify material in the New Language Resources as Confidential Material, the school will act in accordance with the express wishes of the Language and Culture Specialist or the Language Owners.

## **8. Representations of Deceased People**

- 8.1 In many Aboriginal communities and Torres Strait Islander communities the use of an image or the name of a deceased person can offend cultural mourning practices. Customary law regarding mourning practices will differ between communities.
- 8.2 Unless the school and Language Owners have an agreed process recorded in a document or agreement, when an Aboriginal person or Torres Strait Islander person whose name, image, voice or likeness is used in the Language Program passes away, the following process will apply:
  - 8.2.1 The school can only respect the wishes of the family of deceased people if they receive notice of a passing. Schools rely on community notice of a passing which might affect the New Language Resources.
  - 8.2.2 If a person passes away during the process of creating the New Language Resources, and before final publication, the school will consult with the person's family for instructions. This may include removing the person's name, image, voice and likeness from the New Language Resources.
  - 8.2.3 If a person passes away after the New Language Resources are created or published, the school may not be able to remove the person's name, image, voice and likeness. Where possible, a deceased person warning will be placed on the New Language Resources to advise its audience that the material contains images, voice or the name of a deceased person. However, on some products created that this will not be possible (e.g. posters).
- 8.3 If a person passes away and the department wish to use their image, voice or name in the New Language Resources, the deceased person's family will be consulted (if



known) or alternatively, permission will be sought from Aboriginal Language Owners and Torres Strait Islander Language Owners, or other key persons of authority such as Traditional Owners or Elders, relating to the use of that person's image, name, voice or likeness.

## 9. Attribution

- 9.1 Language Owners have the right of communal attribution as the source community of the language in the Language Program and New Language Resources.
- 9.2 Language and Culture Specialists have the right to be attributed and acknowledged for their contributions to the New Language Resources.
- 9.3 The department will attribute the Language and Culture Specialists and the Language Owners in accordance with agreed protocols established in the Statement of Intent or later by the Language Reference Group, in accordance with the wishes of the Language Owners.
- 9.4 In the exceptional circumstances, where a Language and Culture Specialist does not want to be named or identified in published materials, the school may exercise their discretion to remove the Language and Culture Specialist's name or image from the New Language Resources.
- 9.5 The following Traditional Custodian's Notice (or a similar one expressing the same sentiment) will be included on published resources and materials, such as books, websites, augmented and virtual reality and films:

### **Traditional Custodian's notice**

This resource includes [**Language Owners**'] cultural knowledge and cultural expression. This cultural knowledge and cultural expression is included with the prior informed consent of the traditional custodians for the purposes of teaching [**named**] language as part of the [school name] Language Program.

The knowledge and cultural expression contained in this resource must not be used without the prior informed consent of the [**Language Owners**], attribution to the owners and the sharing of benefits.

Using or reproducing any part of these materials may be a serious breach of customary law and may also infringe the *Copyright Act 1968*.

For more information please contact [insert details for the school or the department].

## 10. Copyright

### **Copyright in Recordings of Language and Culture Specialists**

- 10.1 Making a Recording as part of a collection of language and culture knowledge from a Language and Culture Specialist will generate copyright in the written notes, films and sound recordings. The following copyright ownership rules will apply:
  - 10.1.1 Written notes: handwritten verbatim notes will be protected as literary works;
  - 10.1.2 Recorded interviews: transcribed words are protected as literary work;

- 10.1.3 Recorded interviews: film and sound recordings will be protected as subject matter other than works.
- 10.2 The Language and Culture Specialist will hold copyright in the Recordings for the benefit of the Language Owners, unless the school, Language Owners (via the Language Reference Group) and the Language and Culture Specialist agree otherwise.
- 10.3 Language and Culture Specialists, or the relevant Copyright Owners of the Recordings, will grant the school a licence to use, reproduce, adapt, and publish the Recordings to the extent they are contained within the New Language Resources. However, further uses of the Recordings must be agreed to by Language Owners and the Language and Culture Specialists, and the people who are the Copyright Owners.

### **Copyright and Existing Resources**

- 10.4 Copyright laws apply to Existing Resources.
- 10.5 Where the school proposes to use Existing Resources for the purposes of creating the New Language Resources for the Language Program, the school will, where required:
- 10.5.1 obtain the necessary clearance from the Copyright Owners to enable the school to use, reproduce, adapt and publish the Existing Resources; and
  - 10.5.2 obtain a Moral Rights Consent from the author/s of Existing Resources.

### **Copyright in New Language Resources**

- 10.6 Copyright will be created in the New Language Resources including any DVDS, applications/software, books and reports. The following copyright ownership rules will apply:
- 10.6.1 The Language Owners and the school must negotiate in good faith to come to an agreement about who will hold copyright in the New Language Resources. New Language Resources may be created by a variety of different persons and entities, and decisions about copyright ownership may differ on a case-by-case basis. However, as a starting position for negotiations the Language Owners are to be recognised as the Copyright Owners of New Language Resources.<sup>9</sup>
  - 10.6.2 Regardless of who is the Copyright Owner of New Language Resources, the Language Owners will be given a broad licence to use the copyright for the purposes identified in clause 13.
  - 10.6.3 If the school is not the Copyright Owner, the school must ensure it is given a licence by the Copyright Owner to use the New Language Resources for the purposes of teaching in the Language Program, and storing the new language materials (e.g. with an archive or other online database).

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<sup>9</sup> Please note the default position in section 2.7.1 of the *Qld Public Sector Intellectual Property Principles* is that agencies should explore whether ownership by the agency of intellectual property developed by a contractor/consultant on behalf of the Queensland Govt is the best option for maximising benefits to Queensland. However, it is permissible to agree to a consultant retaining ownership of intellectual rights created by the consultant in the course of the contract, if other public interests are considered to be of greater benefit to the public than the retention of ownership of intellectual property by the agency or the State:  
[https://www.forgov.qld.gov.au/data/assets/pdf\\_file/0024/182706/qps-ip-principlesfinal-v.2.pdf](https://www.forgov.qld.gov.au/data/assets/pdf_file/0024/182706/qps-ip-principlesfinal-v.2.pdf)

## 11. Benefit sharing

- 11.1 The department recognises that Aboriginal peoples and Torres Strait Islander peoples have the right to share in the benefits from the use of their ICIP, including the right to benefit from commercialisation.
- 11.2 Language and Culture Specialists have the right to negotiate the terms for the use of ICIP in the New Language Resources, and any other future uses made by the department which they consent to.
- 11.3 The Language and Culture Specialists should receive the following benefits for their contribution to the Language Program:
  - 11.3.1 Payment of fees (or other compensation) as negotiated on a case by case basis;
  - 11.3.2 A copy of the Recordings; and
  - 11.3.3 One (1) copy of any published New Language Resources to which they contribute.
- 11.4 Schools should create paid opportunities for Language Owners to share their ICIP as part of the activities of its Language Program (e.g. class incursions or excursions, NAIDOC week celebrations). Aboriginal people and Torres Strait Islander people who are involved in such activities must be paid appropriate industry rates.

## 12. Ongoing obligations and future use

- 12.1 The department recognises that there is an ongoing obligation to consult and collaborate with Aboriginal Language Owners and Torres Strait Islander Language Owners regarding the use, access to, publication, dissemination, promotion and commercialisation of material recorded and collected for the Language Program.
- 12.2 If the school wishes to use any ICIP including for a purpose that was not originally consented to by the Language Owners or the Language and Culture Specialists, this will require further consultation. Permission for the new proposed use must be consented to in writing, using the relevant consent form.
- 12.3 The department acknowledge the importance of encouraging Aboriginal children and Torres Strait Islander children to innovate and express their knowledge and culture. Opportunities for Aboriginal students and Torres Strait Islander students to use and develop projects from the New Language Resources and Recordings will be encouraged.

## 13. Use of the New Language Resources

### Publication of New Language Resources and use in Teaching

- 13.1 The approved New Language Resources may be used as follows:
  - 13.1.1 To teach students at the nominated school(s) as part of the Language Program;
  - 13.1.2 To be made available to other schools, teachers and the general public, as approved by the Language Owners through the Language Reference Group; and

13.1.3 Published, including online, as agreed by the Language Owners, the Language Reference Group and the copyright owners.

### **Aboriginal cultural maintenance and Torres Strait Islander cultural maintenance use**

13.2 Individual Language and Culture Specialists may use the New Language Resources for their non-commercial cultural maintenance use and may seek consent of the school and Copyright Owners for any proposed commercial uses. Collective agreement from the Copyright Owners, the school and the Language Owners is required to:

13.2.1 Adapt any of the New Language Resources; or

13.2.2 Make copies of the New Language Resources available for community members to access.

13.3 Use of the New Language Resources is subject to any restrictions of use or agreed benefit-sharing deemed appropriate by the Copyright Owners, the school and the Language Owners.

## **14. The role of Other Teachers and the use of ICIP**

14.1 The Language Program may involve Other Teachers (whether non-Indigenous, or Indigenous but identify as having cultural connections to another Aboriginal language or Torres Strait Islander language – not the language being taught in the school) who will work with Aboriginal Language Instructors/Teachers, Torres Strait Islander Language Instructors/Teachers, Language and Culture Specialists or other Language Owners and Traditional Owners.

14.2 Language Owners and the Language and Culture Specialists share their ICIP with schools for the purpose of teaching students about their language and culture and embedding Aboriginal language or Torres Strait Islander language into the school curriculum.

14.3 Other Teachers (whether Indigenous or non-Indigenous) must follow the protocols for teaching the Aboriginal language or Torres Strait Islander language, as set by the Language Owners, or in the absence of specific protocols, by following this ICIP Protocol.

14.4 Other Teachers may not use the ICIP knowledge for their own purposes without the prior written permission of the Language Owners and the Language and Culture Specialist. This means they cannot:

14.4.1 teach the ICIP knowledge in other schools without consent;

14.4.2 adapt the ICIP knowledge, make resources, write books and/or films.

14.5 Other Teachers must acknowledge that the intangible knowledge of the Language and Culture Specialist and the community by doing the following:

14.5.1 Acknowledging the Language Owners;

14.5.2 Acknowledging the Language and Culture Specialist;

14.5.3 Respecting the integrity of the language information shared by the Language and Culture Specialist;

14.5.4 If the Language and Culture Specialist passes away, respecting mourning protocols and clear with community that the ICIP may continue to be used;

14.5.5 Where they are not co-teaching with Aboriginal Language Instructors/Teachers or Torres Strait Islander Language Instructors/Teachers, looking for opportunities to work with Language and Culture Specialists or other Elders or Language Owners to incorporate their voices and perspectives into the teaching of Aboriginal languages or Torres Strait Islander languages.

14.5.6 Checking regularly with the Aboriginal Language Instructors/Teachers or Torres Strait Islander Language Instructors/Teachers, the Language Reference Group or the Language Owners more broadly to confirm that they are accurately teaching the language and keeping the cultural integrity of any ICIP.

## 15. Managing conflicts of interest: employees

15.1 Schools may seek to engage Aboriginal Language Instructors/Teachers or Torres Strait Islander Language Instructors/Teachers as employees.

15.2 Aboriginal Language Instructors/Teachers or Torres Strait Islander Language Instructors/Teachers are Language Owners of the language that will be taught at the school. In their capacity as a Language Owner, they may hold a private interest in matters concerning their employment.

15.2.1 For example, they may be engaged and paid as a member of the Language Reference Group, or they may hold copyright in New Language Resources.

15.3 In accordance with section 89 of the *Criminal Code Act 1899* (the Act), employees wishing to acquire or hold a direct or indirect private interest in a contract or agreement with the department must obtain prior written approval from the Director-General or delegate. Failure to do so could constitute a breach of section 89 and of the Code of Conduct for the Queensland Public Sector.

15.4 Accordingly, Aboriginal Language Instructors/Teachers or Torres Strait Islander Language Instructors/Teachers who wish to contract back to the department should contact the Department's Safety and Integrity team to obtain an *Application for section 89 approval* form; submit the completed form and required supporting materials as set out on the form, and ensure they do not commence the contract or agreement until appropriate approval is received, as section 89 does not allow for retrospective approval.

15.5 When schools employ Aboriginal Language Instructors/Teachers or Torres Strait Islander Language Instructors/Teachers, the employee must notify the department of the potential conflict of interest resulting from holding a private interest in contracts relating to the Language Reference Group, ICIP and Copyright. Schools should support staff to complete the Notification of other employment form and discuss any potential issues and mitigating strategies with the department's Safety and Integrity team.

## 16. Access, archiving and cultural heritage

16.1 New Language Resources are developed to support the teaching of Aboriginal languages and Torres Strait Islander languages in schools. However, Language Programs may create a significant archive of recordings and a range of materials that embody important cultural heritage, particularly language. Appropriate archiving will require digitisation and compilation of materials and recordings and managing access to these.

- 16.2 The department will support schools to appropriately store, archive and manage access to New Language Resources. This may include lodging materials in national or state institutions, such as the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and/or the development of a purpose-built archive, so that current and future generations of Aboriginal people and Torres Strait Islander people are able to access recordings and materials created or used in creating the New Language Resources, where copyright permits. Where possible and agreed the department may store materials. Language Owners and the school can authorise or refuse to authorise the department to store the recordings, materials and New Language Resources in the archives on their behalf.
- 16.3 Schools are also responsible for archiving all records associated with the Language Program, such as contracts, licences and ICIP consent forms. A record is any form of information that is created or received that provides evidence of the decisions and actions of the department. Schools must comply with the existing record keeping obligations of the department and should ensure the Language Owners are aware of those agency obligations. See the department's Information asset and recordkeeping procedure.

## **17. Complaints and Disputes**

- 17.1 Schools should agree upon dispute resolution procedures to manage and respond to disputes, complaints or other feedback about their Language Program and use of ICIP. Agreed dispute resolution procedures should be documented in any contracts or agreements with stakeholders involved in the Language Program such as the Language Owners, Language and Culture Specialists, and other contractors.
- 17.2 Any agreed dispute resolution procedures per clause 17.1 above are separate and additional to existing departmental processes, such as:
- 17.2.1 the customer complaints management framework;<sup>10</sup> and
  - 17.2.2 internal review.<sup>11</sup>

## **18. Implementation and review of the ICIP Protocol**

- 18.1 The department agrees to comply with the ICIP Protocol.
- 18.2 The department will oversee the implementation of the ICIP Protocol in schools.
- 18.3 The department strongly recommends all staff and teachers involved in the Language Program agree to follow the ICIP Protocol.

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<sup>10</sup> <https://ppr.qed.qld.gov.au/attachment/customer-complaints-management-procedure.pdf>

<sup>11</sup> <https://ppr.qed.qld.gov.au/attachment/customer-complaints-management-internal-review-procedure.pdf>

## C. Resources

### Relevant standards

The department acknowledge the following standard setting work which promotes the rights of Aboriginal peoples and Torres Strait Islander peoples to their ICIP including:

- Aboriginal customary laws and Torres Strait Islander customary laws to practice and protect their cultural heritage;
- The United Nations *Declaration on the Rights of Indigenous Peoples*<sup>12</sup>; [www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)
- [the Human Rights Act 2019 \(Qld\)](#);
- Queensland Government, *Many Voices – Queensland Aboriginal and Torres Strait Islander Languages Policy*, 2020.<sup>13</sup>
- *Our Culture, Our Future, Report on Australian Indigenous Cultural and Intellectual Property Rights* (1999)<sup>14</sup>;
- the Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS) *AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research*, 2020.<sup>15</sup>

### Protocols and reports

- Aboriginal and Torres Strait Islander Library, Information and Resource Network Inc, *Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services* 1995 (revised 2010), <<http://atsilirn.aiatsis.gov.au/protocols.php> >
- Australia Council, [Protocols for Using First Nations Cultural and Intellectual Property in the Arts](#)
- Australian Human Rights Commission, *Community Guide to the UN Declaration on the Rights of Indigenous Peoples*, [https://declaration.humanrights.gov.au/sites/default/files/document/publication/declaration\\_community\\_guide.pdf](https://declaration.humanrights.gov.au/sites/default/files/document/publication/declaration_community_guide.pdf)
- Australian Institute of Aboriginal and Torres Strait Islander Studies, [AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research](#), 2020
- Australian Institute of Aboriginal and Torres Strait Islanders Studies, [Ethical Publishing Guidelines](#), 2015
- Department of Communications and the Arts [First Languages, Law & Governance Guide](#), 2019.
- International Year of Indigenous Languages 2019 (IYIL) <[en.iyil2019.org/](http://en.iyil2019.org/)>
- Screen Australia, [Pathways and Protocols: A filmmaker's guide to working with Indigenous people, culture and concepts](#), 2009

### Protection of ICIP rights

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- Terri Janke and Maiko Sentina, *Indigenous Knowledge: Issues for Protection and Management*, IP Australia, Commonwealth of Australia 2018, [https://www.ipaustralia.gov.au/sites/g/files/net856/f/ipaust\\_ikdiscussionpaper\\_28march2018.pdf](https://www.ipaustralia.gov.au/sites/g/files/net856/f/ipaust_ikdiscussionpaper_28march2018.pdf)

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<sup>12</sup> *Declaration on the Rights of Indigenous Peoples*, GA Res 61, UN GAOR, 61<sup>st</sup> sess, 107<sup>th</sup> plenary meeting, UN Doc A/295 (2 October 2007).

<sup>13</sup> <https://www.datsip.qld.gov.au/resources/datsima/publications/policy/language/many-voices-languages-policy.pdf>

<sup>14</sup> Terri Janke, *Our Culture, Our Future, Report on Australian Indigenous Cultural and Intellectual Property Rights*, Michael Frankel and Company, written for AIATSIS and ATSIC, Sydney, 1999 <http://frankellawyers.com.au/media/report/culture.pdf>.

<sup>15</sup> <https://aiatsis.gov.au/sites/default/files/2020-10/aiatsis-code-ethics.pdf>

- Terri Janke, *Our Culture, Our Future*, Michael Frankel and Company, Sydney, 1999 - <http://www.terrijanke.com.au/our-culture-our-future>
- United Nations Human Rights Office of the High Commissioner 2013, *Free, Prior and Informed Consent of Indigenous Peoples*, <http://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>.
- World Intellectual Property Organisation, Draft Provisions for the Protection of Traditional Cultural Expressions/Folklore (TCEs) and for the protection of Traditional Knowledge (TK) against misappropriation and misuse - [http://www.wipo.int/tk/en/consultations/draft\\_provisions/draft\\_provisions.html](http://www.wipo.int/tk/en/consultations/draft_provisions/draft_provisions.html)  
[http://www.wipo.int/tk/en/igc/draft\\_provisions.html](http://www.wipo.int/tk/en/igc/draft_provisions.html)
- World Intellectual Property Organisation, Traditional Knowledge, Genetic Resources and Traditional Cultural Expressions/Folklore – <http://www.wipo.int/tk/en/>

## Relevant Government and departmental policies, procedures and guides

- [Cultural Capability Framework](#)
- [Path to Treaty Commitment](#)
- [The Human Rights Act 2019](#)
- [Commitment Statement](#)
- [Advancing Education: an action plan for education in Queensland](#)
- [Global schools through languages supporting plan](#)
- [State Schools Improvement Strategy: Every student succeeding](#)
- [Department of Education International Strategic Plan](#)
- [P-12 Curriculum assessment and reporting framework](#)
- [Conflict of Interest policy](#) and [procedure](#)
- [Notification of Other Employment procedure](#)



## D. Definitions

<p><b>Aboriginal Language Instructor(s)/Teacher(s)</b></p>	<p>An Aboriginal Language Instructor is an Aboriginal person who:</p> <ul style="list-style-type: none"> <li>a) identifies as having cultural connections to the Aboriginal language being taught in the school; but</li> <li>b) is not a qualified teacher; and</li> <li>c) is engaged by the school to teach language to its students.</li> </ul> <p>An Aboriginal Language Teacher is an Aboriginal person who:</p> <ul style="list-style-type: none"> <li>a) identifies as having cultural connections to the Aboriginal language being taught in the school;</li> <li>b) holds registration as a qualified teacher; and</li> <li>c) is engaged by the school to teach language to its students.</li> </ul>
<p><b>Archiving</b></p>	<p>The process of collecting or collating cultural and historical material for long-term storage. This involves keeping an inventory of all materials stored and ensuring they are safe from physical damage and decay. Archiving may involve digitisation or other methods of storing the materials in computerised form.</p>
<p><b>Attribution</b></p>	<p>Refer to Section 9 of Part B - Protocol.</p>
<p><b>Confidential Material</b></p>	<p>Information identified as personally private; unsuitable for publication beyond an Aboriginal community or a Torres Strait Islander community; and Restricted Material.</p>
<p><b>Copyright</b></p>	<p>Rights given to copyright owners under the <i>Copyright Act 1968 (Cth)</i> to control the reproduction and use of works, sound recordings, films and published editions.</p>
<p><b>Copyright Owner</b></p>	<p>The person who owns copyright for the work. Often this is the person who made the work. But sometimes the person or organisation that paid for the work to be made owns the copyright. (For example, the department of Education owns copyright for works created by the departmental/school employees pursuant to their duties of employment). Sometimes there is more than one copyright holder, for example an author and an illustrator might share copyright.</p>

	<p>A Copyright Owner has the exclusive legal right to publish, reproduce, perform, adapt, broadcast or communicate copyright materials.</p> <p>Other people can use or reproduce material protected by copyright if they have permission from the Copyright Owner or in accordance with statutory licences or other exceptions under the Copyright Act.</p>
<b>Cultural Expression</b>	Cultural Expression includes stories, songs, dances, visual arts, craft and designs belonging and recognised as coming from a particular Aboriginal community or Torres Strait Islander community or group and passed on through the generations.
<b>Cultural Integrity</b>	Refer to Section 6 of Part B - Protocol.
<b>department</b>	The Queensland Department of Education.
<b>Elder</b>	An Elder is an identified and respected member of an Aboriginal community or a Torres Strait Islander community. Elders generally hold key community knowledge and are expected to provide advice and support to community members. Age alone does not necessarily distinguish an Elder. Many Aboriginal people and Torres Strait Islander people acknowledge Elders as 'aunty' or 'uncle' as a sign of respect, even if they are not related.
<b>Existing Resources</b>	Any material which had already been created or published before the relevant Language Program began and which Aboriginal Language Instructors/Teachers, Torres Strait Islander Language Instructors/Teachers, the school or the department would like to use or reproduce as part of the New Language Resources.
<b>ICIP</b>	Indigenous Cultural and Intellectual Property means the rights of Indigenous people to their language, cultural knowledge, sacred sites, objects and ancestral remains, literary, performing and artistic works and documentation of Indigenous heritage. ICIP is regarded as collectively belonging to a particular community or group and associated with their lands and seas. Many generations contribute to the development of ICIP.
<b>ICIP Consent Forms</b>	A written agreement that gives consent to use materials from relevant Language and Culture Specialists, or communally owned materials from an Aboriginal group or a

	Torres Strait Islander group. The Consent forms will be signed by people involved in creating the resources. These are legally binding documents.
<b>ICIP Protocol</b>	This document, the <i>Indigenous Cultural and Intellectual Property Protocol for the teaching of Aboriginal languages and Torres Strait Islander languages</i> .
<b>Language and Culture Specialist</b>	A person identified by Aboriginal persons or Torres Strait Islander persons in authority (e.g. Elders, the Language Reference Group) as having expertise in an Aboriginal language and/or culture or a Torres Strait Islander language and/or culture. This person will be consulted with for the purposes of creating the New Language Resources, and may share their language with an Aboriginal Language Instructor/Teacher or a Torres Strait Islander Language Instructor/Teacher.
<b>Language Owners</b>	Aboriginal people or Torres Strait Islander people who identify as having cultural connections to a particular Aboriginal language or Torres Strait Islander language.
<b>Language Program</b>	The program, set up by a school in collaboration with the relevant Language Owners, to teach a specific Aboriginal language or Torres Strait Islander language.
<b>Language Reference Group</b>	The body tasked with managing the Language Program in collaboration with the school, and expressing the wishes of the Language Owners. The Language Reference Group makes key decisions about who can teach language and how it is taught, and makes sure that the language program is delivered in an authentic and culturally appropriate way.
<b>Licence</b>	Permission to use work which is protected by copyright, where that use would otherwise be an infringement of the copyright owner's exclusive right to use the work.
<b>New Language Resources</b>	Educational and teaching materials (including books, films, posters, applications, software, databases, websites, games, DVDs, virtual or augmented reality spaces, teacher notes and CDs) which will be produced as an end product of the Language Program to be used to teach students at the school, and for other purposes as agreed by the Language Owners and the school.
<b>Other Teachers</b>	This encompasses teachers (whether Indigenous or non-Indigenous) who are not Language Owners and who

	<p>participate in the Language Program, work with Aboriginal Language Instructors/Teachers or Torres Strait Islander Language Instructors/Teachers to create New Language Resources, and/or who teach Language using the New Language Resources.</p> <p>These 'Other Teachers' are not recognised as connected to the Language Owners or part of the Language Owners' community and therefore require the Language Owner's permission in order to teach the Language and be involved in the Language Program.</p>
<b>Recordings</b>	Sound and film recordings made under the direction of the department, of the Language and Culture Specialist, and written transcriptions.
<b>Restricted Material</b>	Restricted material refers to objects, materials and knowledge that are not suitable for public disclosure according to Aboriginal customary law and Torres Strait Islander customary law. This includes sacred objects, materials and knowledge and secret material which can only be made available to the initiated; or information that can only be seen by men or women or particular people within the cultural group. Sacred material relates to spiritual, religious and/or ancestral beliefs and practices.
<b>Self-determination</b>	Refer to Section 3 of Part B - Protocol.
<b>Traditional Custodian's Notice</b>	A notice attached to published materials advising that the publication incorporates communally owned Cultural Knowledge and Cultural Expression.
<b>Traditional Owner(s):</b>	The Aboriginal people or Torres Strait Islander people who identify as custodians of a particular land, sea, Country or place. They have a cultural association with their Country deriving from the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants of the area or Torres Strait Islander inhabitants of the area.
<b>Torres Strait Islander Language Instructor(s)/ Teacher(s)</b>	<p>A Torres Strait Islander Language Instructor is a Torres Strait Islander person who:</p> <ul style="list-style-type: none"> <li>a) identifies as having cultural connections to the Torres Strait Islander language being taught in the school; but</li> <li>b) is not a qualified teacher; and</li> </ul>

	<p>c) is engaged by the school to teach language to its students.</p> <p>A Torres Strait Islander Language Teacher is a Torres Strait Islander person who:</p> <p>d) identifies as having cultural connections to the Torres Strait Islander language being taught in the school;</p> <p>e) holds registration as a qualified teacher; and</p> <p>f) is engaged by the school to teach language to its students.</p>
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