

## Indigenous Cultural and Intellectual Property (ICIP) Framework

### Purpose

The purpose of this framework is to outline ACPA's commitment to providing a cultural safe practice that respects the rights that Indigenous people have and want to have to protect their traditional arts and culture.

### Scope

This framework applies to all members of ACPA including staff, students and any associated affiliates such as guests or alumni and should be read in addition to the Employee Code of Conduct, Staff Handbook, Student Handbook and Student Code of Conduct. The framework covers these parties anywhere, regardless of location, that staff, students or affiliates are representing ACPA. This includes in public or on social media accounts that are managed by ACPA and unrelated public or private accounts where there is an identifiable connection to ACPA.

### Definitions

ACPA acknowledges and respects Indigenous Cultural and Intellectual Property (ICIP) rights.

ICIP refers to the rights that Aboriginal and Torres Strait Islander peoples have in relation to all aspects of their cultural heritage, knowledge and expressions both tangible and intangible. ICIP includes traditional knowledge, traditional cultural expression and artefacts. It incorporates all aspects of knowledge (sciences, plant and animal knowledge, stories, designs and symbols, ritual knowledge), artefacts (arts, crafts, weapons, tools), performances (ceremonies, dance and song) and human remains and includes the secret and sacred.

ACPA supports the United Nations Declaration on the Rights of Indigenous People, including article 31 which states that:

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

ACPA acknowledges the industry standards and protocols set by the Australia Council Protocols for Working with Indigenous Artists. Those protocols have been widely adopted in the Australian arts to respect ICIP and to develop practices and processes for working with Aboriginal and Torres Strait Islander people and cultural heritage. ACPA incorporates acknowledgement of ICIP into all projects.

## Framework

### Respect and acknowledgment

ACPA respects the right of all Indigenous people to control, use and maintain their culture, as expressed in Article 31 of the UN Declaration of the Rights of Indigenous People. ICIP is a living culture which may be reinterpreted by each generation in new and different ways. The rights in that culture are perpetual and never die. Unlike western property rights, ICIP rights are not individual rights but are communal rights, and can belong to nations, clan groups, communities and families. ACPA recognises that the right to control ICIP includes both the tangible and intangible aspects of cultural heritage. We ensure that the appropriate customs or cultural protocols are followed within Aboriginal and Torres Strait Islander communities, acknowledging that these protocols may differ. These cultural protocols can include who can speak for cultural heritage, how wide a consultation may be, and whether ICIP is appropriate to be shared with ACPA. ACPA respects these processes and the communities that it works with to develop our performance outcomes and other cultural experiences.

### Self-determination

ACPA respects the right of Indigenous people to be involved in decision-making about the use of their cultural heritage. This right extends to initial discussions around the use of ICIP and to maintaining relationships over time as the use of ICIP, including the context in which it's presented, changes and adapts. ACPA does not seek to own the ICIP that we incorporate in our work. This rightfully remains owned by the Traditional Owners of that ICIP who may authorise ACPA and others to use that knowledge at their discretion.

### Prior informed consent and consultation

ACPA supports the right of Aboriginal and Torres Strait Islander people to be consulted about the use of their cultural heritage, and to freely give their prior and informed consent for that use. This includes providing adequate time in which to engage in consultations to enable meaningful dialogue, and to provide time for Aboriginal and Torres Strait Islander people and communities to consider the implications of a project. ACPA always seeks approval for use of ICIP. Staff, Students, Community members, affiliates and Visitors contributing to ACPA cultural works are asked to sign a Cultural Display Contract under which they provide cultural consent for ACPA to use any ICIP contained in their contributions. If this consent is given on behalf of the community, and the advisor warrants that they are authorised to make this claim.

### Interpretation

ACPA acknowledges the right of Aboriginal and Torres Strait Islander people to be the primary guardians and interpreters of their cultural heritage. ACPA is an Aboriginal and Torres Strait Islander performing arts organization that aims to be 100% First Nations led. ACPA strives for a workforce that is Aboriginal and/or Torres Strait Islander led, and a Student cohort that is First Nations led. ACPA engages its staff, students and community to work to develop and produce authentic Aboriginal and Torres Strait Islander stories, where appropriate. This involves sharing knowledge with ACPA and providing advice on our creative and professional content for the purposes of producing contemporary commercial performance outcomes and to develop artists for the contemporary performing arts industry.

### Cultural integrity

ACPA always works to protect and uphold the cultural integrity of ICIP. We acknowledge that maintenance of cultural integrity strengthens Aboriginal and Torres Strait Islander people and communities. Engaging with our staff, students and the community is also a source of ongoing

feedback. Our staff, students and some pre-approved community members are invited to attend developments, rehearsals and shows of our work, to see the finished work and celebrate the launch of the work. Feedback received enables ACPA to deliver a show which is both authentic and maintains cultural integrity, while meeting contemporary artistry enabling our graduates and alumni to determine their vision for a bright new generation of performing artists.

### **Secrecy and privacy**

ACPA respects the right of Aboriginal and Torres Strait Islander people and communities to keep their secret and sacred cultural heritage private in accordance with customary laws. ICIP may be secret for several cultural reasons or may have restrictions applied (such as gender restrictions). ACPA consults with its staff and other cultural advisors, and with key ICIP Owners to ensure that the ICIP in its productions do not incorporate or refer to any secret or sacred knowledge. This consultation may take some time, depending on the nature of any sensitivity. ACPA is respectful of cultural sensitivities and works in a way that considers those impacted by these sensitivities to avoid any conflict. Any knowledge sharing of a private/sacred nature is exchanged with the understanding that it is private and therefore not shared to the public (such as men's/women's business and burial ceremonies). As part of ACPA initiatives with ICIP Owners, certain community sacred knowledge may be shared with ACPA by community members. This knowledge is respected and not used by ACPA in its productions or in any other public way. ACPA acknowledges that use of images or the name of deceased people may be subject to cultural mourning practices in some Aboriginal and Torres Strait Islander communities. Where ACPA becomes aware that a person whose name or likeness is featured in ACPA productions or business has passed away, it will consult with the relevant family to ensure protocols are upheld. ACPA acknowledges that in some instances it will not be possible to remove all references to the deceased person, such as where programs for previous shows have already been published and distributed. In instances where ACPA uses the image or likeness of a deceased person our production and or business, it will consult with the family and community and consider options to respectfully follow protocols such as including display a warning notice or sign advising viewers, readers or attendees (where practical) that the work may feature the image of deceased person/s.

### **Attribution**

ACPA recognises that Aboriginal and Torres Strait Islander people and communities have the right to be attributed or credited for the use of their ICIP. ACPA consults to ensure that it attributes individuals and communities in accordance with their wishes (including correct wording and pronunciation) and may use a traditional custodian's notice where appropriate. A traditional custodian's notice advises a viewer or reader that the work contains ICIP and is being used with the consent of the traditional owners and that no further reuse is permitted. ACPA credits its Aboriginal and Torres Strait Islander cultural advisors and contributors in many ways, including acknowledgement in all forms of production and on the ACPA website, and where possible, during interviews, public forums and in media outlet forms.

### **Benefit Sharing**

ACPA acknowledges the right of Aboriginal and Torres Strait Islander people to benefit from the sharing of their culture. ACPA understands that relationships between Aboriginal and Torres Strait Islanders and non-Aboriginal and Torres Strait Islanders are important, and that we have a responsibility to facilitate cultural exchange through ACPA performances and activities. ACPA also works with Aboriginal and Torres Strait Islander storytellers and other cultural and artistic practitioners to create immersive cultural performances. ACPA facilitates the careers of emerging and leading artists and is committed to supporting and nurturing the ACPA community. As part of this, ACPA organises free community performances and performing arts workshops multiple times a year to share its artistic and educational vision to communities.

## **Maintaining Aboriginal and Torres Strait Islander Cultures**

ACPA acknowledges that it has a responsibility for maintaining Aboriginal and Torres Strait Islander cultures, and connections to Country for future generations. ACPA actively supports the transfer of skills in dance, art, song and story and encourages pride in Aboriginal and Torres Strait Islander identity. ACPA has a strong culture of fostering this artistic, educational and cultural exchange through our contemporary Performing Arts workshops and community engagement opportunities, in both urban, regional, remote and discrete Communities.

## **Recognition and Protection**

ACPA supports the Australia Council's Protocols for producing Indigenous Australian performing arts, as well as the United Nations Declaration on the Rights of Indigenous People and believes that Aboriginal and Torres Strait Islander people and communities must be recognised as the guardians of their culture. ACPA recognises the rights of Aboriginal and Torres Strait Islander people to their cultural heritage. ACPA promotes these rights through the implementation of this ICIP Framework which explicitly states the principles under which ACPA operates to recognise ICIP rights. ACPA ensures that its Cultural Display contract and agreements reinforce the principles in this framework and make it clear that ACPA does not own the ICIP which has been shared with us by our Aboriginal and Torres Strait Islander communities. This knowledge belongs to Aboriginal and Torres Strait Islander clans and communities, and ACPA recognises that it has been permitted to use that ICIP with the consent of the community.

## **Procedure**

ACPA is committed to building respectful, positive and meaningful relationships with Aboriginal and/or Torres Strait Islander staff, students, community members, visitors and affiliates to maintaining the cultural integrity of protect their traditional arts, culture and ICIP. Our ICIP procedure includes a Cultural Display/ICIP Contract that ensures:

- ACPA does not own ICIP provided by Traditional Owners or ICIP Owners.
- ACPA follows documents protocols and customs when engaging with both tangible and intangible cultural elements or themes from provided by Traditional Owners or ICIP Owners.
- ACPA endeavours to maintain relationships with Traditional Owners or ICIP Owners who may authorise ACPA to use their ICIP.
- ACPA agrees that Traditional Owners or ICIP Owners have the right to be consulted to freely give Prior and Informed Consent through a ICIP Contract.
- ACPA does not share restricted, sacred or secret knowledge provided by Traditional Owners or ICIP Owners.
- ACPA will always credit the Traditional Owners or ICIP Owners as well as any Cultural Advisors involved throughout all projects, training or developments with ACPA.
- ACPA will always endeavour to give back to community through free community performance and performing arts opportunities to communities.

## **Delegation**

### **Students & Alumni are responsible for:**

- Warranting ICIP content performed by ACPA through completing an ICIP Contract with ACPA staff member.
- Use ACPA's ICIP Contract to document their cultural obligations and requirements and the process ACPA follows to maintain the integrity of the work.
- Be responsible for their own ICIP content.
- Have the correct cultural authority to share this information.

- Taking steps to ensure consistent application of this policy.
- Raise concerns with any member of ACPA staff in relation to ICIP.
- Escalating concerns in the appropriate format with the CEO if they feel they are not being heard after exhausting the above process.

**ACPA Staff & Affiliates are responsible for:**

- Recording all conversations with Traditional Owners and ICIP Owners.
- Documenting Traditional Owners and ICIP Owners cultural knowledge protocols and procedures in the ICIP Contract.
- Ensure that the conditions, requirements and customs outlined in the ICIP Contract are followed and implemented.
- Providing ACPA policies and procedures to Traditional Owners and ICIP Owners.
- Taking steps to ensure consistent application of this policy.
- Raise concerns with the CEO in relation to Cultural Safety and ICIP.

**CEO**

- Oversee implementation of this policy
- Ongoing review of this policy
- Oversee investigation process of reportable incidences and outcomes
- Report breaches in relation to ICIP to the Board and Arts Queensland.

**Breach of policy process**

If a breach of the ICIP Framework or ACPA's ICIP Contract is believed to have occurred the following process will be undertaken:

- Incident Report is to be submitted to ACPA CEO by the person noticing the breach.
- An investigation and interview process may be conducted.
- This may result in an Incident Report being reported to the ACPA Board to review.
- Outcomes of the investigation will inform the next steps to be undertaken and by whom.
- Disciplinary action may include a formal warning or further action recommended through the investigation outcomes.

Anonymous reports will be listened to; however, it may be difficult to implement changes in remediation in these instances.

Defamatory or False Accusations will also be dealt with under the Breach of Policy process.

**Record Keeping**

- 7 years keep forms, upload to SharePoint
- Review timeframe – annual

**References**

**Legislation:**

Anti-Discrimination Act 1991 (QLD),

Australian Human Rights Commission Act 1986 (Cth), and the

Copyright Act 1968

