



QUEENSLAND  
TOURISM INDUSTRY  
COUNCIL

*The Voice of Tourism*

2022

# Best Practice Guide for Working with First Nations Tourism in Queensland







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## Acknowledgment of Country

The Queensland Tourism Industry Council acknowledges the Traditional Owners and Custodians of country throughout Australia and their connections to land, sea, and community. We pay our respects to the people, the cultures, and Elders past, present, and emerging.

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## Disclaimer

The information in this guide should not be regarded as legal advice and it is recommended that individual legal advice is sought for your business where appropriate. All information presented in this guide was accurate at the time of publication.

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## Abbreviations

<b>AIATSIS</b>	Australian Institute for Aboriginal and Torres Strait Islander Studies
<b>DES</b>	Queensland Department of Environment and Science
<b>DESBT</b>	Department of Employment, Small Business and Training
<b>DSDSATSIP</b>	Queensland Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
<b>DOGIT</b>	Deed of Grant in Trust
<b>DTIS</b>	Queensland Department of Tourism, Innovation and Sport
<b>IAC</b>	Indigenous Advisory Council
<b>IBA</b>	Indigenous Business Australia
<b>ICIP</b>	Indigenous Cultural and Intellectual Property
<b>ILSC</b>	Indigenous Land and Sea Corporation
<b>IP</b>	Intellectual Property
<b>IPA</b>	Indigenous Protected Area
<b>ITF</b>	Indigenous Tourism Fund
<b>NIAA</b>	National Indigenous Australians Agency
<b>NITAG</b>	National Indigenous Tourism Advisory Group
<b>NTRB</b>	Native Title Representative Body
<b>NTSP</b>	Native Title Service Provider
<b>OCAS</b>	Our Country Advisory Service
<b>PBC</b>	Prescribed Body Corporate
<b>QAGOMA</b>	Queensland Art Gallery and Gallery of Modern Art
<b>QIPP</b>	Queensland Indigenous Procurement Policy
<b>QFNTC</b>	Queensland First Nations Tourism Council
<b>QPAC</b>	Queensland Performing Arts Centre
<b>QICN</b>	QTIC Indigenous Champions Network
<b>QTC</b>	Queensland Theatre Company
<b>QTIC</b>	Queensland Tourism Industry Council
<b>RAP</b>	Reconciliation Action Plan
<b>RNTBC</b>	Registered Native Title Bodies Corporate
<b>RTO</b>	Regional Tourism Organisation
<b>TEQ</b>	Tourism and Events Queensland

## Important information: Use of Terminology

Indigenous peoples around the world have adopted the global term First Nations to clearly demonstrate they are the first inhabitants of their respective lands. Aboriginal and Torres Strait Islanders are the first inhabitants and Traditional Owners of the land in Australia, and in this Guide, the terms Indigenous, First Nations peoples, and Aboriginal and/or Torres Strait Islander peoples are used interchangeably, and all refer to the First Nations peoples of Australia.

For non-Indigenous tourism businesses, it is acceptable to use any of these terms, unless instructed to address a person, group or community by just one of the terms or another specific term, such as their language group.





# Part 1: Introduction to the Best Practice Guide for Working with First Nations Tourism in Queensland

## 1.1 Introduction

The *Best Practice Guide for Working with First Nations Tourism in Queensland* (the Guide) is the first of its kind in Queensland and it aligns the interests and aspirations of the First Nations tourism sector and Queensland's wider mainstream tourism industry. The Guide is the culmination of over 10 years of significant work undertaken by First Nations tourism champions, business operators and Traditional Owners, together with the Queensland Tourism Industry Council (QTIC), Tourism and Events Queensland (TEQ), key Government Departments and other organisations to build a strong First Nations tourism sector in Queensland.<sup>1</sup>

The guide complements several key industry initiatives, including the development of the *Queensland First Nations Tourism Plan 2020 – 2025* (the First Nations Tourism Plan), the establishment of the Queensland Tourism Indigenous Champions Network, and the introduction of the Queensland First Nations Tourism Council. These initiatives and the Guide are underpinned by *The Larrakia Declaration on the Development of Indigenous Tourism 2012* (the Larrakia Declaration)

Developed at the first Pacific Asia Indigenous Tourism Conference in Darwin in 2012, the Larrakia Declaration was designed to guide the development of First Nations tourism in Australia and internationally. The Larrakia Declaration is representative of a dynamic shift towards centering Indigenous voices in tourism design and management, and it encompasses 6 key principles: respect, protection, empowerment, consultation, business, and community.<sup>2</sup> These principles are embedded in the information and tools presented in the Guide, so that all stakeholders in Queensland's tourism industry can work effectively together to create a more inclusive and respectful industry that prioritises recognition and respect for First Nations peoples and communities. Queensland's First Nations peoples have cared for Country for millennia, including Queensland's world class beaches, forests and waterways, and it is only in recent years that First Nations voices and contributions within the wider tourism industry have begun to receive the recognition they deserve. This Guide aligns the aspirations of the First Nations tourism sector with the needs of the mainstream tourism industry, who have asked for the knowledge and tools to better understand respectful engagement with First Nations businesses and communities in the tourism industry.

### The Larrakia Declaration Principles

The first Pacific Asia Indigenous Tourism Conference was held in Darwin on the traditional lands of the Larrakia people on the 28th – 30th March 2012. 191 delegates from 16 countries represented Indigenous communities, government agencies, the tourism industry and supporting bodies, and resolved to adopt principles to guide the development of Indigenous tourism.

1. Respect for customary law and lore, land and water, traditional knowledge, traditional cultural expressions, cultural heritage will underpin all tourism decisions
2. Indigenous culture and the land and waters on which it is based will be protected and promoted through well managed tourism practices and appropriate interpretation
3. Indigenous peoples will determine the extent and nature and organisational arrangements for their participation in tourism and that governments and multilateral agencies will support the empowerment of Indigenous people
4. That governments have a duty to consult and accommodate Indigenous peoples before undertaking decisions on public policy and programs designed to foster the development of Indigenous tourism
5. The tourism industry will respect Indigenous intellectual property rights, cultures and traditional practices, the need for sustainable and equitable business partnerships and the proper care of the environment and communities that support them
6. That equitable partnerships between the tourism industry and Indigenous people will include the sharing of cultural awareness and skills development which support the well-being of communities and enable enhancement of individual livelihoods<sup>3</sup>

## 1.2 First Nations Tourism in Queensland

### 1.2.1 First Nations Peoples and Tourism

First Nations peoples in Australia are part of the oldest continuous living cultures on earth. This rich and diverse cultural heritage is particularly evident in Queensland – the only state that is the home of both the Aboriginal and Torres Strait Islander cultures. The Queensland Government notes that, as of 2016, Queensland had an estimated resident population of more than 5 million people, of which 221,276 identify as First Nations (roughly 4.6%). This sector of the Queensland population is the second largest in Australia, after New South Wales (265,842).<sup>4</sup>

First Nations peoples live right across the state, but the majority live in major cities such as Brisbane, Cairns, and Townsville. The Brisbane region has the highest concentration of First Nations residents (without distinguishing between Aboriginal and Torres Strait Islander peoples).<sup>5</sup>

The First Nations tourism sector is an ecosystem that is comprised of many layers. First Nations people and communities now own and manage major tourism assets such as National Parks, run hospitality and accommodation services, and are regulators of tourism activities on their lands and waters. Tourism products and services are delivered not only by commercial for-profit small, medium, and large First Nation-owned businesses operators, but by local Aboriginal Shire Councils, Registered Native Title Body Corporates (RNTBC's), and not-for-profit community organisations such as Indigenous Arts Centres, performing arts companies, and First Nations festivals and events. Many First Nation individual sole traders also deliver diverse tourism and hospitality services ranging from arts products, retail

and fashion, IT services, business support, chef and café catering services, conference services, financial and accounting advice, manufacturing of tourism products, and supply of native food products. There is a growth in the number of First Nations strategic bodies, who are forming regional representative voices. There is also a growth in the number of joint ventures and partnerships between First Nations and non-First Nations businesses.

As the empowerment and self-determination of First Nations people continues on the Path to Treaty and there is progression to a Voice to parliaments, we are seeing a disruption in the “business as usual” approach to tourism. First Nations people are transforming the way tourism operates on their lands and waters. They are putting caring for country and protection of cultural heritage as the primary foundation of tourism operations. They are looking at tourism not only for its economic benefit, but as a mechanism for truth-telling, education, and reconciliation. First Nations are disrupting the tourism sector to ensure that First Nations people, having been historically dispossessed of their lands, are able to now enjoy them, work on them, and then on their terms, share their cultures, the oldest living cultures on earth, with the rest of the world.

This approach aligns with travel-for-good principles and the First Nations goals and actions in *Queensland and Towards 2032: Reshaping Queensland's visitor economy to welcome the world* (Towards 2032). We should not underestimate what this is – the once-in-a-lifetime opportunity for the tourism sector to collaborate with First Nations people to create a legacy of tourism destinations that are global icons. It is hoped this Guide will assist in understanding First Nation's perspectives on tourism and their aspirations. First Nations people want the sector and communities to come on that journey with our First Nations.

### **Towards 2032: Reshaping Queensland's visitor economy to welcome the world**

*Towards 2032: Reshaping Queensland's visitor economy to welcome the world* (Towards 2032) is a plan to deliver uniquely Queensland experiences in step with the needs of visitors, communities, and the environment. It was commissioned by the Queensland Government and delivered by the Queensland Tourism Industry Reference Panel in June 2022.

Towards 2032 shines a spotlight on First Nations tourism and invites the tourism sector to ‘Hero Authentic Culture’ by bringing Queensland's rich and authentic culture to the fore. This includes accelerating the development of authentic Indigenous products and experiences and incorporating them into and/or co-locating them with world-class food and beverage history and culture. By harnessing opportunities to collaborate in the telling of Queensland's cultural stories, taking them, for example, beyond the walls of the National Museum of Australia in Canberra or the Australian Stockman's Hall of Fame in Longreach, possibly via the network of visitor information centres.<sup>6</sup>

### **First Nations Goals in Towards 2032**

- **100% of Queensland destinations have a First Nations Tourism Plan by 2025**
- **Double the number of market-ready Indigenous tourism businesses owned and operated by Aboriginal and Torres Strait islander people or organisations by 2032**
- **Grow visitation to Indigenous product and experiences, proportionate to overall rate of targeted growth<sup>7</sup>**

To achieve these goals and aspirations, Towards 2032 presents a range of recommendations that emphasize the need for Indigenous-owned, operated and led businesses, increasing cultural understanding, and creating opportunities for First Nations peoples in the tourism industry.<sup>8</sup>

To learn more about Towards 2032, visit the website for the Department of Tourism Industry and Sport [dtis.qld.gov.au/tourism/tourism-industry-reference-panel](https://dtis.qld.gov.au/tourism/tourism-industry-reference-panel)



## 1.2.2 Support for First Nations Tourism

To leverage Queensland's unique cultural heritage and grow the First Nations tourism sector, QTIC is supported by the newly established Queensland First Nations Tourism Council (QFNTC), the QTIC Indigenous Champions Network (QICN), and Regional Tourism Organisations (RTOs). QFNTC is a strategic, coordinated entity which supports and gives voice to First Nations tourism businesses and communities across Queensland. Facilitated by QTIC, the not-for-profit association exists as an independent and separate entity that serves its members, stakeholders, and First Nations tourism as a wholly independent industry body. QICN is a network of tourism businesses that have worked collectively to identify potential opportunities, support workplace experiences, and invest in resources that assist with the recruitment, employment, and retention of Indigenous people in Queensland's tourism industry. The RTOs Network plays a role in marketing First Nations tourism operators in their regions. There are also many tourism operators and businesses that have individually supported First Nations employment, training, and partnerships.

The First Nations tourism sector is additionally supported by three levels of Government – Federal, State and Local Governments. Many local governments are increasingly investing in the promotion and development of First Nations tourism as part of their destination experiences. The Queensland Government supports First Nations tourism through the Department of Tourism, Innovation and Sport (DTIS). Towards 2032 is an initiative of DTIS and it is the government's key policy shaping the next long-term Queensland tourism industry strategy. DTIS also Chair the Queensland Indigenous Tourism Government and Industry Reference Group, made up of Indigenous tourism voices and leading sector enablers. As well as provides services including the Growing Indigenous Tourism in Queensland Fund and the Our Country Advisory Service (OCAS). OCAS helps grow the sector, providing targeted support, advice, toolkits and voice to emerging and established Indigenous tourism operators, sectoral aligned businesses, and community owned organisations. Tourism and Events Queensland (TEQ) is a Statutory Body of the Government and provides a range of industry resources and marketing tools to support the development, growth and marketing of Aboriginal and Torres Strait Islander tourism experiences. TEQ has two First Nations Board Members and an Aboriginal and Torres Strait Islander sub-committee of its board.

The Queensland Government also supports the First Nations tourism ecosystem through its investment in National Park Joint Management through the Department of Environment and Science (DES), small business and training through the Department of Employment, Small Business and Training (DESBT), and through investment in arts and culture by Arts Queensland and the arts statutory bodies such as Queensland Art Gallery and Gallery of Modern Art (QAGOMA), Queensland Theatre (QTC), and Queensland Performing Arts Centre (QPAC).

The Federal Government supports First Nations tourism in Queensland through funding the National Indigenous Tourism Advisory Group (NITAG), which includes representation from QTIC, and a Federal Indigenous Tourism Fund (ITF). Federal Government departments providing support include Indigenous Business

Australia (IBA) and the Indigenous Land and Sea Corporation (ILSC). This support ranges from IBA loans during COVID-19, to new enterprise grants under the ITF and partnerships through IBA and ILSC. In the near future, greater links will also be forged with Austrade and Tourism Australia.

### Further Information

The QTIC website includes information about Indigenous tourism and links to the First Nations Tourism Plan and the QFNTC, and QICN [qtic.com.au/indigenous-tourism/](http://qtic.com.au/indigenous-tourism/)

The Tourism and Events Queensland website provides information and resources including guides about Queensland Indigenous Tourism Trends and Queensland Indigenous Tourism Sector Analysis [teq.queensland.com](http://teq.queensland.com) The Department of Tourism Industry and Sport's Our Country Advisory Service is also available online [dtis.qld.gov.au/tourism/first-nations/our-country-advisory-service](http://dtis.qld.gov.au/tourism/first-nations/our-country-advisory-service)

General information about Queensland's Aboriginal and Torres Strait Islander peoples is available on the Queensland Government website's First Nations portal which provides a comprehensive range of information covering topics from Cultural Awareness, Heritage and the Arts through to Land Use, Native Title and Environment [qld.gov.au/firstnations](http://qld.gov.au/firstnations)



Image supplied by Tourism and Events Queensland

## 1.3 How to Use this Guide

The Guide has been developed first and foremost to provide the mainstream tourism industry with information and tools to recognise, respect and protect Indigenous people's traditions and cultural intellectual property rights when operating a tourism business across Queensland. The information can also be applied by First Nations tourism businesses working with other Indigenous groups and communities from different regions. In addition to these audiences, the Guide enables tourism businesses to better inform tourists, through their dialogue and interactions, how to also recognise, respect and protect Indigenous peoples' traditions and cultural intellectual property rights. QTIC, government and non-government organisations may also use this Guide when engaging with the First Nations tourism sector in Queensland.

### 1.3.1 Application

- a. **Non-Indigenous tourism businesses** engaging with First Nations peoples, businesses, and communities in the tourism industry.
- b. **QTIC and other agencies** in their engagements with First Nations peoples, businesses, and communities in the tourism industry.
- c. **First Nations tourism businesses** seeking best practice guidance in their operations, for example requiring compliance with the protocols by their suppliers, service providers or tourist customers, and other Indigenous groups and communities.
- d. **First Nations peoples and communities** seeking best practice guidance and require compliance by tourism operators and tourists they work with, and other Indigenous groups and communities.

### 1.3.2 Structure

The Guide is presented in 4 key parts.

- **Part 1 - Introduction to the QTIC Best Practice Guide for Working with First Nations Tourism in Queensland** presents introductory information including a summary of First Nations Tourism in Queensland, an overview of the foundational concept of Country and a helpful guide to determining the most appropriate Indigenous group/s to work with for your business or project entitled *Whose Country Am I On?*
- **Part 2 - Cultural Protocols for Working with First Nations Businesses and Communities** includes an introduction to Indigenous Cultural and Intellectual Property and Legal Considerations for Tourism Businesses and presents a range of cultural protocols which are grouped into three main categories to reflect various stages of interactions with First Nations businesses and communities: Recognising People and Place; Respecting Culture and Heritage; and Community Engagement and Consultation.
- **Part 3 - Procurement Support for First Nations Businesses and Communities** summarises public and private sector Indigenous procurement programs and introduces a 'Pledge for Procurement' for the tourism industry to support First Nations businesses and communities. The section also provides tips on finding Indigenous businesses and raises awareness about the unethical practice of 'black cladding'.

- **Part 4 - Accreditation for Working with First Nations Businesses and Communities** provides a snapshot of the Respecting Our Culture certification program and QTIC's plans to develop a new accreditation program for working with First Nations businesses and communities in Queensland.

The information in these sections is enhanced with tips, further reading, and sections that consider 'What does it mean for my business?'

Importantly, the Guide presents key considerations for engaging with the First Nations tourism sector by introducing general information. It is not intended to provide or substitute legal advice, or to prescribe every detail and action for engaging with First Nations groups and communities, and related organisations and agencies. If your business requires specific advice, details are provided for the relevant organisations to contact. The strength of your engagement will stem from the time and efforts invested into your own research, planning and interactions with First Nations businesses and communities, and the Guide provides the baseline information and practices to inform respectful interactions and engagement.

### 1.3.3 References

The Guide draws on a number of references, including Queensland Government websites and information from the National Indigenous Australians Agency (NIAA) and the Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS). In relation to Indigenous Cultural and Intellectual Property, the Guide references the landmark report *Our Culture, Our Future, Report on Australian Indigenous Cultural and Intellectual Property Rights* which shone a spotlight on ICIP and paved the way for an ever-growing body of work that has shaped the cultural heritage landscape and discussions across Australia, including the formation of the Larrakia Declaration in 2012. As the discussions have evolved, so has awareness of ICIP, and the Guide acknowledges and builds on existing frameworks and principles to present protocols and best practice initiatives that can be adapted to working with First Nations groups and communities across Queensland.

#### Important Information: Understanding Diversity

It is important to understand that a one-size-fits-all approach does not apply to engaging with First Nations businesses and communities because there is no such thing as a single Indigenous culture in Australia. First Nations communities across Australia are incredibly diverse and have different cultural practices, cultural expressions, cultural knowledge, and cultural identities. This is especially relevant for Queensland's tourism industry because the sector covers over 250 language groups, all the way from the South-eastern corner to the most northern Torres Strait Islands. Each of these language groups has provided over 60,000 years of stewardship to Country.





Image supplied by Tourism and Events Queensland



### 1.3.4 Important Information: Whose Country Am I On?

To make the most of this Guide, the fundamental question that should always be asked is *Whose Country Am I On? Is it Yugambah, Butchulla, Bidjara or Mabuyag?* There are over 250 possible answers to this question, and establishing whose Country you intend to visit, consult or operate from is essential to providing context and detail to the information presented in this Guide. This understanding will point you in the right direction in relation to where to direct your enquiries, where to request permissions or permits, and where to find out more information. Defining Country and who speaks for Country is the most important pathway to respectful, effective and authentic engagement with First Nations businesses, groups and communities.<sup>9</sup>

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*Wherever you are in Australia you are on the lands and waters of Australia's First Peoples. Only traditional custodians can speak for and welcome visitors to their homelands.*<sup>10</sup>

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#### What is Country?

Country is the term used to describe the lands, waterways and seas to which First Nations people are connected. The term contains complex ideas about law, place, custom, language, spiritual belief, cultural practice, material sustenance, family and identity.<sup>11</sup> Traditional Owners and custodians maintain stewardship of Country and they are the entry point for all levels of inquiry and engagement. For the purposes of identifying whom to speak with in relation to your tourism query, consider Country as the land, waterways and seas where you are seeking to establish your business operations or project.

#### Who are Traditional Owners?

Traditional Owners, or Traditional Custodians, are the descendants of the original inhabitants of an area who have an ongoing connection to the land. They are the individuals who have the authority to speak on behalf of Country. For example, the Traditional Owners of Brisbane are recognised as the Turrbal and Jagera peoples, whereas the Gimay-walubarra yidinji people are the Traditional Owners of Cairns and surrounds. Traditional Owners are descended from families that can trace their genealogy to pre-colonisation. It is important to know that Traditional Owners are distinct from 'historical' peoples, who are individuals and/or groups who have lived in an area but are descended from different families and areas. Displacement, forcible removals, or voluntary migration are all possible reasons for relocation, and it is both respectful and beneficial to bear this distinction in mind when seeking to understand ownership and connection to an area or community.

#### How do I Identify Country?

Identifying Country relating to the area where you would like to visit, consult or operate is straightforward in some instances because the Traditional Owners are well known. However, sometimes the answers aren't obvious, especially in areas where native title hasn't been determined, so some research might be required and the following tools and resources provide the most appropriate starting points.<sup>12</sup>

#### Maps

Online maps detailing areas and language groups are available to guide your research, and they are also a great starting point for visualising the diversity of First Nations groups and communities in Queensland.

The most well-known map is the AIATSIS *Map of Indigenous Australia* which represents the language, social or nation groups of Australia and includes the Torres Strait Islands [aiatsis.gov.au/explore/map-indigenous-australia](http://aiatsis.gov.au/explore/map-indigenous-australia)

First Languages Australia publishes the *Gambay - First Language map* which is an interactive national map that plots language groups and their corresponding language centre [gambay.com.au/languages/](http://gambay.com.au/languages/)

The State Library of Queensland provides an interactive resource map for the Indigenous Languages Project, which aims to raise awareness of the diversity of Queensland's Aboriginal and Torres Strait Islander languages. [slq.qld.gov.au/discover/aboriginal-and-torres-strait-islander-cultures-and-stories/languages/queensland/indigenous-languages-map](http://slq.qld.gov.au/discover/aboriginal-and-torres-strait-islander-cultures-and-stories/languages/queensland/indigenous-languages-map)

The Torres Strait Regional Authority *Map of the Torres Strait Region* provides a close view of the main 18 island communities as well as the two Northern Peninsula Area Mainland communities of the Torres Strait region [tsra.gov.au/\\_data/assets/pdf\\_file/0017/3158/DOC13-001711-TSRA-Map-Torres-Strait-Region-Feb-2013.pdf](http://tsra.gov.au/_data/assets/pdf_file/0017/3158/DOC13-001711-TSRA-Map-Torres-Strait-Region-Feb-2013.pdf)

#### Organisations

There are several key organisations that can be contacted to assist with your inquiries and provide targeted information. They can be contacted via phone or email, and it is wise to bear in mind that these organisations are merely entry points. While they may be able to assist you with identifying Country, it cannot be assumed that they have authority to speak or grant permissions on behalf of Traditional Owners. Finding out who speaks for Country is one part of a broader process, which is explored in Part 2. Cultural Protocols.

#### Local Government Authorities

As a starting point, local Traditional Owner groups are often acknowledged on shire and council websites, and this will provide you with general information for that area. Find the relevant area with a simple online search for the local government authority and the first page of the website will often feature an acknowledgment of Country that refers to the Traditional Owners.



## Queensland's Regional Tourism Organisations

Your Regional Tourism Organisation may also be able to provide relevant information and contacts for your area. Queensland's 13 RTOs are listed on the Tourism and Events Queensland website [teq.queensland.com/au/en/industry/who-we-are/contact-us/regional-tourism-organisation-contacts](http://teq.queensland.com/au/en/industry/who-we-are/contact-us/regional-tourism-organisation-contacts)

## Native Title Representative Bodies and Prescribed Body Corporates

For targeted enquiries, there are 5 Native Title Representative Bodies (NTRBs) and Native Title Service Providers (NTSPs) in Queensland representing distinct regions and they can provide information regarding Country and Traditional Owners in their respective areas. NTRBs and NTSPs are organisations set up to assist Indigenous groups with native title claims and managing Country. They are essentially peak representative bodies for Prescribed Bodies Corporate (PBCs), which are corporations that represent the interests of native title holders. PBCs might also be referred to as Registered Native Title Bodies Corporate (RNTBC), and if native title hasn't been determined the group may be referred to as a Registered Aboriginal Party (RAP). The NTRBs and NTSPs in Queensland are:

- North Queensland Land Council [nqlc.com.au](http://nqlc.com.au)
- Carpentaria Land Council Aboriginal Corporation [clcac.com.au/home](http://clcac.com.au/home)
- Cape York Land Council Aboriginal Corporation [cylc.org.au](http://cylc.org.au)
- Queensland South Native Title Services Ltd [qsnts.com.au](http://qsnts.com.au)
- Gur A Baradharaw Kod Torres Strait Sea and Land Council

The National Native Title Tribunals website enables searches of Prescribed Body Corporates across Australia via Native Title Vision, an interactive map which shows PBCs across Australia and the individual states and territories <http://www.nntt.gov.au/assistance/Geospatial/Pages/NTV.aspx>

There is also the national Prescribed Body Corporate website that provides information for native title groups and corporations. It includes a Find a PBC search page to search PBC profiles and locate contact details across Australia <https://nativetitle.org.au/find/pbc>

By accessing these tools and organisations it will be possible to identify the most appropriate entry points for working with First Nations groups and communities in your area. Importantly, you will need to allow time to find out information and build relationships and be aware that multiple voices within Indigenous groups and communities will need to be heard in instances where consultation and decision-making are required. Specific information regarding how to engage with Indigenous groups and communities is explored in Part 2. Cultural Protocols for Working with First Nations Businesses and Communities.



Image supplied by Tourism and Events Queensland





Image supplied by Tourism and Events Queensland



## Part 2: Cultural Protocols for Working with First Nations Businesses and Communities

### 2.1 What are cultural protocols?

Generally speaking, cultural protocols are customs and codes of behaviour for guiding engagement with particular cultural groups. They establish a basis for ethical and respectful conduct, with the protocols in this Guide providing best practice protocols to consider when interacting with First Nations businesses, groups and communities in Queensland's tourism industry.

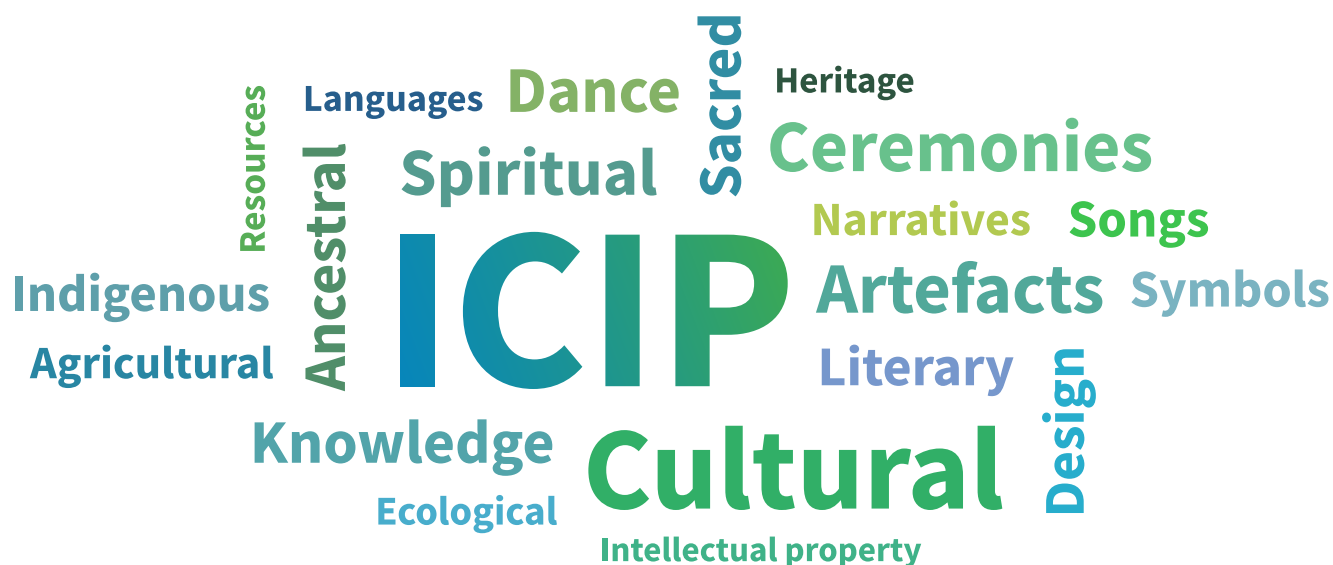
### 2.2 Why are cultural protocols important?

Protocols lay the foundation and framework for building respectful relationships and serve to protect Indigenous Cultural and Intellectual Property. While cultural protocols are recognised by Aboriginal and Torres Strait Islander communities as the right way to do business, for many years protocols have not been acknowledged and ICIP has been open to widespread exploitation across many industries due to inadequate legal protections, as well as pervasive social, political and commercial disregard for the rights of First Nations peoples.

Recognising cultural protocols in the tourism industry is one step towards redressing these inequities, by providing a framework for genuine engagement and inclusion in the tourism industry and broader Queensland economy. The effect of your business observing and implementing cultural protocols demonstrates recognition and respect for First Nations culture, stories and connection to Country, and that the wider mainstream tourism industry is committed to the sustainable growth of a thriving, dynamic, diverse and collaborative First Nations tourism sector in Queensland.<sup>13</sup>

### 2.3 What is Indigenous Cultural and Intellectual Property?

#### 2.3.1 Defining Indigenous Cultural and Intellectual Property



The term Indigenous Cultural and Intellectual Property or ICIP originated from the 1992 United Nations Draft Declaration on the Rights of Indigenous Peoples, and an authoritative list of types of ICIP was presented in the landmark Australian report 'Our Culture, Our Future' in 1998. ICIP or cultural heritage covers both tangible and intangible heritage and includes:

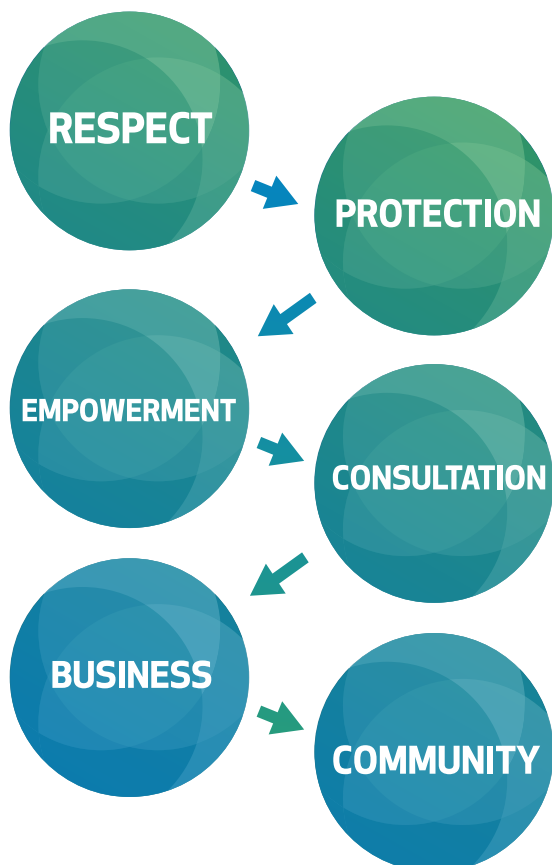
- Literary, performing, and artistic works (including music, dance, song, ceremonies, symbols and designs, narratives, and poetry)
- Languages
- Scientific, agricultural, technical, and ecological knowledge
- Spiritual knowledge
- All items of moveable cultural property including burial artefacts
- Indigenous ancestral remains and human genetic material (including DNA and tissues)
- Cultural environment resources (including minerals and species)
- Immoveable cultural property (including significant and sacred sites and burial grounds)
- Documentation of Indigenous Peoples' heritage in research reports, papers and books and films, photographs, videos, or sound recordings

The types of cultural heritage in this list are mirrored in the Larrakia Declaration Principles and referred to as customary law and lore, land and water, traditional knowledge, traditional cultural expressions and cultural heritage. It is important to understand that these definitions are not static: they represent an ever-growing and evolving body of cultural heritage and, as noted earlier, there is no such thing as a one-size-fits-all approach because of the diversity of First Nations peoples and communities across Queensland and Australia. This means that the types of cultural heritage relevant to one First Nations business or community will not necessarily have wider application across other First Nations businesses or communities. This also means that protocols for using ICIP may differ across each group.

The rights connected to ICIP include First Nations peoples' rights to:

- own and control their cultural and intellectual property.
- ensure that any means of protecting their cultural and intellectual property is based on the principle of self-determination.
- be recognised as the primary guardians and interpreters of their cultures and so regulate how stories and information are presented.
- authorise or refuse the use of their cultural and intellectual property according to customary law.
- maintain the secrecy of their knowledge and other cultural practices.
- be given full and proper attribution for sharing their heritage; and
- control the recording of cultural customs and expressions, the particular language which may be intrinsic to cultural identity, knowledge, skill and teaching of culture.<sup>14</sup>

The Larrakia Declaration translates these rights into 6 key principles to be applied within the tourism industry:



### 2.3.2 Current status of Indigenous Cultural and Intellectual Property rights in Australia

Despite the broad range of ICIP and connected rights, the Australian legal system accords limited legal protections to ICIP, and there is no single law that recognises all forms of cultural heritage and traditional cultural expression and traditional knowledge. As noted above, the term ICIP originated from the United Nations Declaration of the Rights of Indigenous Peoples. Article 31 of the Declaration states, among other things, that:

*'Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions...'*

The Declaration and connected rights have not been comprehensively enacted into domestic law, however, a combination of existing laws – such as cultural heritage and intellectual property laws – offer degrees of protection for certain types of ICIP, and stronger, wider protections may be applied when cultural protocols are embedded in licences, agreements and policies. As a result, if cultural protocols are proactively employed in tourism industry business practices, then there is scope to redress Australia's inadequate ICIP protections and prioritise building respectful relationships across the First Nations tourism industry. Importantly, observing protocols provides the foundation for establishing mutually beneficial and strategic partnerships to grow the First Nations tourism sector.

### 2.4 Legal considerations for Tourism and Indigenous Cultural and Intellectual Property

It is best practice for all parties participating in, and working with, the First Nations tourism industry to have a good grasp of the general legal landscape to ensure that they are operating both lawfully, as well as appropriately. In addition to recognising cultural protocols, tourism businesses need to ensure that they are entitled to undertake their operations in their place of business, are selling objects that they own, or have a valid licence for, and if interacting with the natural landscape they are not causing any unlawful or lasting harm to the land or flora and fauna.

The existing areas of Australian and Queensland legislation and common law to consider when engaging with First Nations tourism businesses, groups, and communities are:

- Cultural Heritage
- Land Rights
- Deed of Grant in Trust
- Native Title
- Indigenous Protected Areas
- Intellectual Property
- Consumer Law

#### 2.4.1 Aboriginal and Torres Strait Islander Cultural Heritage

There is no common definition of the term cultural heritage, and each jurisdiction deals with cultural heritage in a different way. In an Australian and Queensland legal context, it means significant Indigenous areas and objects, as well as evidence of archaeological or historical significance of Indigenous occupation of areas of



Queensland. Therefore, cultural heritage extends beyond artefacts and objects, to more intangible aspects such as areas of land that are significant because of Indigenous tradition or history of an Indigenous group. The Queensland statutory schemes established by the *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003*<sup>15</sup> impose a Cultural Heritage Duty of Care on all people undertaking any activity in Queensland to avoid unlawfully harming cultural heritage and to take all reasonable and practical steps to ensure that any harm is avoided, or if harm cannot be avoided, to be mitigated as best as possible.

The statutory scheme sets up a regime where tourism businesses can meet this duty of care by engaging directly with Indigenous groups and forming agreements, often called Cultural Heritage Management Plans, or through a system of self-assessment of impact through what is known as the duty of care guidelines. Similar to any other business operations in Queensland, tourism businesses need to assess whether their operations will have any impact on Aboriginal and Torres Strait Islander cultural heritage - both tangible and in-tangible, such as the construction of a building, or the operation of tours on land of significance to Indigenous people. If they do, a tourism operator must engage with the relevant local Indigenous group as part of the reasonable and practicable measures of the statutory scheme to minimise harm to cultural heritage. This engagement may result in a formal agreement, some form of terms of reference or memorandum of understanding as to how impact of operations will be managed so there is limited impact on cultural heritage. Unlawfully harming Aboriginal and Torres Strait Islander cultural heritage can result in hefty fines of up to \$137,850 for individuals and \$1,378,500 corporations.

### Further information

Identifying the relevant local Indigenous group to engage with starts with asking the question *Whose Country Am I On?* and in this context, it is aided by accessing resources on the website for the Aboriginal and Torres Strait Islander Cultural Heritage Database and Register. To find out how cultural heritage laws might apply to your business operations, further information is available online.

The Queensland Government's Cultural Heritage portal provides information about Aboriginal and Torres Strait Islander cultural heritage legislation, the cultural heritage duty of care, cultural heritage management plans, and general information about the cultural heritage register [qld.gov.au/firstnations/environment-land-use-native-title/cultural-heritage](http://qld.gov.au/firstnations/environment-land-use-native-title/cultural-heritage)

The Aboriginal and Torres Strait Islander Cultural Heritage Database and Register provides a public map of cultural heritage sites and information about specific criteria that must be met to register to access the database and register [culturalheritage.datsip.qld.gov.au/achris/public/home](http://culturalheritage.datsip.qld.gov.au/achris/public/home)



Image supplied by Tourism and Events Queensland

## 2.4.2 Land Rights

The fight for land rights by First Nations peoples in Australia has been an ongoing struggle since European settlement. However, a movement commenced by the Yolngu people in 1963 led to the 1963 Bark Petition in which the Yolngu petitioned the federal government to have their land back. Following this, in 1966 the Gurundji Strike was instigated and culminated in the 1966 Wave Hill Walk-Off, where an initial strike against working conditions progressed into a protest for land rights regarding a cattle station owned by a British company.

These early land protests and many more eventually led to various State and Territory governments passing legislation that pre-dates native title laws to provide forms of land rights for Aboriginal and Torres Strait Islander peoples. In Queensland, the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991* provides freehold land and long-term leases for Aboriginal and Torres Strait Islander people. These laws operate in addition to Commonwealth native title laws enacted in 1993 that were introduced following the Mabo decision. The renowned Mabo Case recognised the rights of the Meriam people, the Traditional Owners of the Murray Islands in the Torres Strait, and it overturned the myth of 'terra nullius' and that Australia belonged to no one at the time of colonisation.

Parcels of land which are the subject of either the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*, are usually entrusted to a Registered Native Title Body or Prescribed Body Corporate representing the Traditional Owners, or in the case of a Deed of Grant in Trust, to an Incorporated Aboriginal Council. If you are seeking to conduct tourism business activities such as camping or tours on land administered under these acts, it is important to identify the area of land and make enquiries to the respective local Registered Native Title Body, Prescribed Body Corporate, or Incorporated Aboriginal Council. The fundamental starting point will always be determining *Whose Country Am I On?* and progressing through the contact points listed in Part 1 of the Guide.

### Further information

To find out more about *Queensland's Aboriginal Land Act and Torres Strait Islander Land Act*, the Queensland Government website has a section dedicated to Environment, land use and native title which provides information, contacts and several maps relating to the land use considerations detailed in this part [qld.gov.au/firstnations/environment-land-use-native-title](http://qld.gov.au/firstnations/environment-land-use-native-title).

## 2.4.3 Deed of Grant in Trust

A Deed of Grant in Trust (DOGIT) is a regime under the land acts where a trust is set up by the Queensland Government to hold land in a type of collective title for First Nations peoples and their future generations. Between 1984 and 1986, fifteen DOGITs were granted in Queensland, and they allowed for the administration of former Aboriginal reserves and missions by local Incorporated Aboriginal Councils (IAC), better known as Aboriginal Shire Councils.

The main areas of Aboriginal DOGIT land are Cherbourg, Doomadgee, Hope Vale, Injino, Kowanyama, Lockhart River, Mapoon, Napranum,

New Mapoon, Palm Island, Pompuraaw, Oomagico, Woorabinda, Wujal Wujal and Yarrabah. Smaller areas of DOGIT land exist outside these areas.

Under a DOGIT, IACs may make laws, maintain housing and infrastructure, employment programs, and issue hunting and camping permits, amongst other things. To find out if your business activities impact on areas where there is a DOGIT in place, it is possible to view all locations on the interactive *Map of transferable land (DOGIT and Reserve) under Aboriginal Land Act 1991 and Torres Strait Islander Land Act 1991* provided below.

If your activities are likely to impact on any of these areas, it is important that the relevant IACs are contacted before engaging in any tourism related activities on land subject to a DOGIT regime. IACs will usually require you to gain permission to conduct activities such as tours or camping or bringing any visitors on DOGIT land and this will need to be negotiated with the relevant IAC on an individual basis.

### Further information

The Yarrabah Aboriginal Shire Council website provides an overview of the DOGIT trustee leasing Roles and Responsibilities [yarrabah.qld.gov.au/deed-of-grant-in-trust-dogit/](http://yarrabah.qld.gov.au/deed-of-grant-in-trust-dogit/)

More comprehensive information about DOGITs and the areas where they operate is available in the *Leasing Aboriginal Deed of Grant in Trust Trustee's Manual* produced by the Queensland Department of Resources [resources.qld.gov.au/\\_data/assets/pdf\\_file/0016/107017/leasing-aboriginal-deed-grant-trust-land.pdf](http://resources.qld.gov.au/_data/assets/pdf_file/0016/107017/leasing-aboriginal-deed-grant-trust-land.pdf)

The *Map of transferable land (DOGIT and Reserve) under Aboriginal Land Act 1991 and Torres Strait Islander Land Act 1991* highlights locations of DOGIT land [qgsp.maps.arcgis.com/home/webmap/viewer.html?webmap=32c2344467c34a90baf5503d8e7807c8](http://qgsp.maps.arcgis.com/home/webmap/viewer.html?webmap=32c2344467c34a90baf5503d8e7807c8)

## 2.4.4 Native Title

Commonwealth Native Title legislation is different to state-based land legislation because it is the recognition of traditional rights and interests of Indigenous peoples on areas of land and waters, whereas Queensland's land acts deal with parcels of freehold land and leases.

About twelve months after the Mabo ruling, the *Native Title Act 1993* (Cth) commenced and established a framework for recognising and protecting native title interests. For those rights and interests to be recognised by the common law of Australia, proceedings must be brought before the Federal Court and an Indigenous group must prove that they have an unbroken connection to their traditional land since colonisation. Proving an unbroken connection involves demonstrating that existing customs continue to be carried out in accordance with their connection to the land.

It is important to understand that native title can be extinguished by historic acts of the Crown such as the Grant of Freehold in the



construction of public works. Where Indigenous groups have made a claim for native title or have finalised their proceedings in the Federal Court and have a determination of native title, that group will have a number of procedural rights that may impact the tourism industry, particularly, where a tourism business is seeking the grant of a lease or a licence over an area of land owned by the Crown where native title continues to exist.

In these instances, the tourism business will be guided by the relevant State Department, such as the Department of Environment and Science, regarding the manner of engagement required with the native title claim group or the native title holders. For lesser tenures such as licencing or permits, that may involve merely notifying the Indigenous group of your activities, however for more certain forms of tenures such as leasehold and freehold grants, this may require entering into an Indigenous Land Use Agreement with the Indigenous group in order to receive consent for the grant of that particular tenure.

Tourism businesses that require land access should keep up to date with any changes in the areas that they operate because native title claims can be made at any time by a native title group. In mid-2021, native title was recognised in nearly 30% of Queensland and approximately 25% of the State was subject to remaining claims, totalling over 430,000 square kilometres.<sup>16</sup> All parties with an interest in the area of a native title claim, may become a respondent to the Federal Court proceeding to protect their interests, by having their interests noted in any Federal Court orders confirming the determination of native title. The National Native Title Tribunal and the Native Title Service Providers listed earlier can provide information on how to do this and what you should know, and specific information regarding tourism businesses and activities in national parks and other areas is detailed below.

## Native Title and National Parks

Keeping up to date with any changes is particularly important to tourism businesses operating in areas of Crown Land such as national parks, conservation parks, resources reserves, recreation areas and forests which is where native title is unlikely to be extinguished in the past. For example, if you currently operate in or plan to operate in a national park and your business requires a Commercial Activity Permit. The Department of Environment and Science is the appropriate agency to guide you and they will be able to provide specific advice regarding the administrative requirements arising from a native title claim and its impact on your business operations.

### Further information

Information about Commercial Activity Permits for Queensland's national parks, conservation parks, resources reserves, recreation areas and forests is available on the Business Queensland website [business.qld.gov.au/industries/hospitality-tourism-sport/tourism/starting-up/regulations/parks-recreation-forests](https://business.qld.gov.au/industries/hospitality-tourism-sport/tourism/starting-up/regulations/parks-recreation-forests)

To find out how Native Title operates and applies to your tourism business or projects visit the National Native Title Tribunal website [nntt.gov.au/Pages/Home-Page.aspx](https://nntt.gov.au/Pages/Home-Page.aspx)

Further information about Land Rights and the Mabo Case is available on the AIATSIS website [aiatsis.gov.au/explore/land-rights](https://aiatsis.gov.au/explore/land-rights)



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## 2.4.5 Indigenous Protected Areas

Another regime relevant to tourism related activities on Country are Indigenous Protected Areas (IPAs). IPAs are parts of land and sea that are managed by Indigenous groups (usually local Aboriginal or Torres Strait Islander Councils or Aboriginal or Torres Strait Islander Corporations) as protected areas for biodiversity conservation through agreements made with the Commonwealth government.

Not only are IPAs put in place to look after Country, but they also create jobs for local Aboriginal and Torres Strait Islander peoples. Such jobs may include ranger programs where members of the community are employed to look after their land, including interacting with visitors and protecting areas of cultural significance such as rock art, cultural history and language.

Similar to the DOGIT regime, it is important that you contact the relevant Indigenous body that administers the relevant IPA to ensure that you may conduct activities on the country and if you can bring visitors to the area. It may also assist any tourism business to gain local knowledge of the significance of the IPA and any cultural stories that the business may use in relation to its tourism experience.

### Further information

To identify whether your business operates on or near an IPA, it is possible to review an interactive map of IPAs published by the National Indigenous Australians Agency. If your business activity does impact on an IPA, it is advisable to engage with the relevant NTRB/PBC in that region for specific advice. Further information about IPAs and a map of IPAs is available on the National Indigenous Australians Agency website [niaa.gov.au/indigenous-affairs/environment/indigenous-protected-areas-ipas](http://niaa.gov.au/indigenous-affairs/environment/indigenous-protected-areas-ipas)

For IPAs that have a funded ranger program, it is also possible for enquiries to originate with the relevant ranger program. The Queensland Government website provides information about Indigenous Land and Sea Ranger programs and locations in 36 areas across the state map [qld.gov.au/environment/plants-animals/conservation/community/land-sea-rangers](http://qld.gov.au/environment/plants-animals/conservation/community/land-sea-rangers)

## 2.4.6 Intellectual Property

Intellectual property (IP) law protects creations of the mind, such as artworks, designs and inventions, and symbols, names and images used in business. IP includes copyright, trademarks, patents and designs and extends to confidential information.

Your business can exercise IP rights to protect your work from unauthorised uses and protect your brand and reputation. In doing so, caution must be exercised to avoid infringing the IP rights of others. When dealing with First Nations businesses, groups and communities in the tourism industry it will be seen that there are special considerations to navigate, largely because the existing IP framework does not recognize Indigenous communal rights or the oral transmission of cultural knowledge from generation to generation.

### 2.4.6.1 Copyright

Australian copyright laws protect a wide variety of expressions, including literary, dramatic, musical, and artistic works that have been reduced to material form, sound recordings, published editions and more. Copyright covers things like books, poems, lyrics and music (if these have been written down and recorded) and artworks of all types, and handmade artefacts.

It is an infringement of the owner's copyright to do things such as reproducing the works, publishing them, performing them, making them available online, exhibiting them and more, without the owner's permission. However, copyright issues can be difficult for Indigenous artists and artisans, as copyright is founded on Western legal principles that don't fit well with many Indigenous traditions. Many Indigenous cultural expressions are very ancient or do not have an identifiable author but rather are communally created and transferred through generations of a single community. In such cases, this means that, despite the communities being the cultural custodians of such expressions, there is nothing to prevent third parties from reproducing them, often in culturally inappropriate ways.

A culturally appropriate mindset and approach will ensure that tourism businesses and consumers, especially those connected to arts centres, galleries, retailers, and festivals, understand their obligations under copyright law, and also understand how to treat Indigenous cultural expressions in a culturally respectful and appropriate manner by observing cultural protocols. This includes for example, not attempting to copy, mimic or appropriate Indigenous styles of works if there is no genuine connection to the relevant Indigenous community, or reproducing an authentic artwork without the author's permission.

### 2.4.6.2 Moral Rights

In addition to the rights derived from copyright, the creators of cultural works also have moral rights. These are:

- a right of attribution – that is, a right to be credited as the creator of the work in a way that's clear and reasonably prominent. For example -
  - the creator's name should always appear next to an artwork in an exhibition or gallery; or
  - the creator's name should always appear in the credits of a film; or
  - the creator's name should always appear with any published writing.
- the right not to have authorship falsely attributed – that is, the right to not have another person named as the creator of the work. For example:
  - an artwork can't be credited to another person or passed off as your own.
- the right of integrity – that is, the right not to have the work subjected to derogatory treatment, which includes anything that results in material distortion or alteration of the work that is prejudicial to the creator's honour or reputation. For example:
  - the work can't be changed without the express permissions of the creator; or



- o the work can't be destroyed without asking if it should be returned; or
- o the work can't be shown in a way that damages its meaning.<sup>17</sup>

Always bear in mind that appropriate attribution of the creator of any artwork is key and ensure not to adapt any artworks without permission. These rights are extremely important when considering Indigenous artworks that are used for marketing and similar purposes in the tourism industry.

### Further information

General information about copyright and moral rights is available on the Arts Law Centre of Australia's website and they also facilitate Artists in the Black, which is a specific program for Indigenous artists and legal issues [artslaw.com.au/artists-in-the-black/artists/](http://artslaw.com.au/artists-in-the-black/artists/)

Factsheets on the Australian Copyright Council website provide further information about Indigenous artists and copyright [copyright.org.au/](http://copyright.org.au/)

If your business trades in Indigenous art, it is also important for you to know about the member-based National Indigenous Art Code which advocates for a fair, ethical and respectful Aboriginal and Torres Strait Islander Artwork market [indigenouartcode.org/](http://indigenouartcode.org/)



Image supplied by Tourism and Events Queensland



Image supplied by Tourism and Events Queensland



### 2.4.6.3 Trademarks

A trademark distinguishes one business from another, and it can be a word, phrase, logo, colour, scent, shape or style. Unlike copyright, trademarks must be registered and there is a comprehensive application process to IP Australia to determine a trademark's distinctiveness.

Trademark applications can be rejected if they are 'scandalous or contrary to law' and IP Australia considers whether a trademark may offend Indigenous people, however, there are no mechanisms in the application process to consider whether Indigenous people have consented to use of their ICIP. Therefore, it is advisable to always identify and engage with the relevant Indigenous group or community if there is the possibility that they have a connection to a registerable idea, which might potentially be the use of an Indigenous word or phrase, that a tourism operator is seeking to trademark for their business or project.

### 2.4.6.4 Designs

The design features of a product are its visual features which can refer to shape, configuration, patterns and ornamentation and they can be protected under design law. Design law may be useful for protecting multiple copies of products such as furniture, jewellery, printed textiles or ceramics and design applications must be lodged with IP Australia. Manufacturing arts, crafts and replica artefacts that have an Indigenous style or connection to an Indigenous group or community may pass the registration process, however there is a very real possibility of cultural appropriation and the products being regarded as a 'rip-off'. Again, it is advisable to seek advice and permission for any Indigenous designs you intend to use in your business.

### 2.4.6.5 Patents

Patents protect inventions and they grant the owner exclusive rights to decide how their invention is used. Similar to designs and trademarks, a rigorous application process is required. Patent rights are granted for a set period of time, which is generally 20 years in Australia. ICIP includes agricultural, scientific, technical, ecological, medicinal, and biodiversity-related knowledge and some of this knowledge is often shared in developing bush food and bush medicine products that are available in the tourism industry. It is, therefore, important to understand that traditional knowledge which has been shared communally over generations may be vulnerable to exploitation, so some groups and communities may be hesitant about sharing their knowledge without appropriate safeguards or permissions in place.

### 2.4.6.6 Confidential Information

Safeguarding information through confidentiality agreements is one way to protect business secrets such as bush medicine formulas and recipes and other technical information. Confidentiality or non-disclosure agreements with Indigenous individuals or businesses may be necessary in some transactional relationships, particularly where sensitive or secret information is considered, and it will prevent unauthorised copying of the ideas or other uses without permission.

#### Further information

IP Australia has an Indigenous Knowledge IP Hub that is suited to tourism businesses seeking to find out more about IP and Indigenous groups and communities [ipaustralia.gov.au/indigenous-knowledge-ip-hub/#respectfully](http://ipaustralia.gov.au/indigenous-knowledge-ip-hub/#respectfully)

### 2.4.7 Misleading and Deceptive Conduct

Similar to appropriating Indigenous artwork, it is also a contravention of the Australian Consumer Law to engage in conduct that is misleading or deceptive, or that is likely to mislead or deceive. It is also a contravention of the Australian Consumer Law to make false or misleading representations about goods and services, such as that they are from a particular place, or have an affiliation with a particular group.

For example, it would be a contravention of the Australian Consumer Law for a retail shop to suggest that artefacts for sale were handmade within the local Indigenous community when in fact they were mass-produced overseas. There are currently no laws against non-Indigenous people producing or selling fake artworks or artefacts in an Indigenous style, however, it is against the law to make any false or misleading claims regarding the provenance of those products.

Galleries, retailers and consumers can prevent unethical practices by being aware of the gap in the legislation, and by seeking to verify the authenticity of any products they are considering purchasing by requesting a certificate of authenticity from the seller, which provides information about the provenance of the products and their creator.

#### Further information

General information about rights and responsibilities in relation to selling Indigenous souvenirs and artwork is available on the Queensland Government website [qld.gov.au/law/laws](http://qld.gov.au/law/laws) Search for 'avoid false and misleading claims about Indigenous souvenirs and artwork'.

It is also important to know about the 'Fake Art Harms Culture' campaign to lobby the Australian Government to introduce legislation to address the proliferation of fake Aboriginal and Torres Strait Islander art and art products. The campaign was created to address concerns about fake artworks and artefacts that have no connection to First Nations culture or communities. These mass-produced goods – mostly aimed at the tourist market – are often made from non-traditional materials and feature inauthentic and culturally inappropriate designs. They range from bamboo didgeridoos to key rings to paintings.<sup>18</sup> Information about the campaign can be viewed on the National Indigenous Arts Code's website [indigenousartcode.org/fake-art-harms-culture/](http://indigenousartcode.org/fake-art-harms-culture/)





Image supplied by Tourism and Events Queensland



## 2.5 Cultural Protocols for Best Practice in Queensland's Tourism industry

Now that the framework regarding Indigenous Cultural and Intellectual Property has been established, it's possible to explore some of the cultural protocols that should be recognised when engaging with the First Nations tourism sector.

The protocols in this guide establish a baseline for respectful interactions and engagement, and the most appropriate way forward is to learn from the First Nations business, group or community you are seeking to engage. The protocols are underpinned by the Principles of the Larrakia Declaration and the key pillars of Queensland's First Nations Tourism Plan, and they are grouped into three categories of interactions in the tourism industry between tourism businesses and First Nations groups, businesses and communities. The fundamental principle that should guide all interactions is respect; as well as awareness of the right to self-determination, which is an 'ongoing process of choice' to ensure that Indigenous communities are able to meet their social, cultural, and economic needs.<sup>19</sup>



### 2.5.1 Recognising People and Place

#### 2.5.1.1 People

The official definition of an Aboriginal or Torres Strait Islander person is someone who is of Aboriginal or Torres Strait Islander descent, identifies as an Aboriginal person or Torres Strait Islander, and is accepted as such by the community in which he or she lives. It is therefore up to the individual or group to share their language or clan group rather than risk incorrect and inappropriate assumptions.

Always be aware that questioning how a First Nations individual or group chooses to identify and represent themselves runs the risk of being offensive. In modern-day Australia it is not appropriate to use terms such as full blood, half-caste, or quarter caste, or to tell someone that they don't 'look', 'speak', or 'act' Aboriginal or Torres Strait Islander. Doing so stereotypes and denigrates Indigenous people on the basis of incorrect assumptions, so it is preferable to always allow individuals and groups to represent their own cultural identity.

#### Further information

Reconciliation Australia's *Narragunnawali: Reconciliation in Education* program provides A Guide to Using Respectful and Inclusive Terminology on their website. The information is targeted at promoting reconciliation in the education sector, however, it is useful for many audiences and includes tips on preparing written messages about or for First Nations peoples in communications and marketing [narragunnawali.org.au/about/terminology-guide](http://narragunnawali.org.au/about/terminology-guide)

#### 2.5.1.2 Elders

Elders are respected members of the community who possess cultural knowledge and responsibilities. The term originates from traditional times when Elders held the lore and wisdom of the tribe and passed it on to younger generations. In modern times, the title of Elder signifies a level of respect and status within the community and it does not always equate to being an older or senior member of the community. Elders hold a special status and should always be acknowledged at events and functions, and community members may refer to them as 'Uncle' or 'Aunty'. Non-Indigenous people may also use these titles when speaking about them or to them in direct conversation, however, always be guided by the individual and their preference.

#### 2.5.1.3 Gender

Some cultural knowledge or activities such as cultural dances or songs will be gender-specific and known only to a man or a woman and may only be accessed or shared with another person of that gender. There are no established rules in relation to when and how non-Indigenous people should be aware of 'men's business' and 'women's business', so it is best to ask and not to take offence if you are excluded from participating in certain activities or receiving certain information, particularly if there is a consultative component to your project or activities.

## TIP: Kinship Systems

It is also important to recognise that some communities still follow complex, traditional kinship systems which apply to interactions between family members. For example, in some communities, a mother-in-law may not have direct contact with her son-in-law and will seek to avoid being in close proximity to them. The observance of rules such as these can impact on communications, and it is always wise to ask if there are any kinship protocols that you need to be aware of if you are visiting remote areas and intend to bring community members together.

### 2.5.1.4 Deceased Persons

In many communities it is inappropriate to use the name, voice or image of someone who has passed away. If seeking to reproduce their name, voice or image, permission must be sought in writing from the family for each usage, and it is advisable to include a cultural warning with the reproduction to avoid causing distress or offence to the deceased's families and communities.

If alerted to someone's passing, it is important to remove any references to the deceased from all public arenas such as websites, photographic databases, publications, community service announcements, etc.

Each time an image, name or voice is displayed publicly within any communications, this message or similar must be displayed in a highly visible position:

*Aboriginal and Torres Strait Islander people should be aware that this document / website may contain images or names of people who have since passed away.*

It is also important to note Sorry Business, which is a period of mourning after someone dies and it can be observed for a number of days or extend into weeks in many communities. It is important to be mindful of cultural commitments within the community during Sorry Business. This may impact on availability or attendance of people within the community for participation in any activity or event during this time and travelling to the community.

### 2.5.1.5 Welcome to Country

A Welcome to Country is practiced when Traditional Owners welcome others to the land of their ancestors. It involves conducting a welcome for visitors which can take many forms, including singing, dancing, smoking ceremonies or a speech in traditional language or English.

Significant events and functions should begin with a Welcome to Country undertaken by a recognised member of the community who is a descendant from that particular Country. Importantly, only Traditional Owners can speak for and welcome visitors to Country, otherwise the 'welcome' must take the form of an Acknowledgment of Country.

A Welcome to Country should be conducted at festivals, events or project openings, conferences, community engagement forums or any significant event where First Nations issues, programs or services are being promoted. The format and content of the Welcome to Country should be discussed with the appropriate organisation, community, or Elders.

### 2.5.1.6 Fee for services

It is appropriate and fair to pay for cultural services such as a Welcome to Country because of the time, effort and cultural knowledge included in the service. Fees should be negotiated with the Traditional Owners when planning the event and the inclusion of traditional dance or a smoking ceremony will generally involve a higher payment.

### 2.5.1.7 Acknowledgement of Country

An Acknowledgement of Country pays respect to Traditional Owners and other First Nations people in attendance at the beginning of a meeting, speech or formal event. It is recognition of the continuing relationship between First Nations peoples and Country. Unlike a Welcome to Country, it is performed when a Traditional Owner is unavailable and can be given by a non-Indigenous person or an Aboriginal and Torres Strait Islander person who is not a traditional owner for the area where the event is taking place.

An example of a statement of Acknowledgement of Country is:

*I would like to acknowledge the traditional owners of the lands on which we meet today (insert appropriate name here) and the Elders, past and present. I acknowledge the ongoing connection that Aboriginal and Torres Strait Islander people have to this land and recognise Aboriginal and Torres Strait Islander people as the original custodians of this land. I would also like to acknowledge any Aboriginal and/or Torres Strait Islander people that are present here today.*

Acknowledging Elders is often a key feature of an Acknowledgment of Country and it might also be appropriate, depending on the circumstances, to acknowledge any significant sites in the vicinity of the activity. In recent times, it has also become increasingly popular for people to undertake verbal acknowledgments in webinars and teleconferences, and to include written acknowledgments on websites or email signature blocks.



Image supplied by Tourism and Events Queensland



### 2.5.1.8 Other Ceremonies and Significant Dates

Smoking ceremonies, ceremonial dances, and observing a minute's silence are examples of other ceremonies. The relevant community group or organisations you are engaging can assist with determining if other ceremonies should be conducted in relation to a particular activity or event, and this can be ascertained through a respectful consultation process.

Indigenous communities across Australia also acknowledge numerous culturally significant dates, and these may provide opportunities for your business or organisation to collaborate with or acknowledge the First Nations tourism industry or businesses.

#### Further Information

A list of Culturally Significant Dates that celebrate or recognise Aboriginal or Torres Strait islander Peoples is available on the Queensland government website [qld.gov.au/firstnations/cultural-awareness-heritage-arts/dates](http://qld.gov.au/firstnations/cultural-awareness-heritage-arts/dates)

#### Tip: Arranging a Welcome to Country

The Queensland Government's general information line 13 QGOV (13 74 68) can be called to find out information about having a local Elder conduct a Welcome to Country or Acknowledgement in that region. Business owners are asked to check the Queensland regional map to identify the region for the event before calling the line. The areas on the map are:

- Torres Strait islands
- Far North Queensland
- North Queensland
- Central Queensland
- South West
- South East Queensland (north)
- South East Queensland (south)

Further information is available on the Queensland Government website [qld.gov.au/firstnations/cultural-awareness-heritage-arts/welcome-to-country](http://qld.gov.au/firstnations/cultural-awareness-heritage-arts/welcome-to-country) or your RTO may be able to assist and provide direct contacts.

The AIATSIS website also provides useful information about the context and content of Welcome to Country and Acknowledgement of Country [aiatsis.gov.au/explore/welcome-country](http://aiatsis.gov.au/explore/welcome-country)

### 2.5.1.9 Cultural Safety

In addition to the points noted above, it is important for the wider tourism industry to understand that some activities and issues are sensitive for First Nations peoples.

Social and political issues such as Indigenous deaths in custody, dispossession (including land and culture), the Stolen Generations, Reconciliation, Native Title, Land Rights, social dislocation and racism, affect the lives of many First Nations people and sometimes these areas can be difficult to address, particularly with non-Indigenous people.

There are also sensitive cultural and spiritual beliefs that are equally important in this context and must be treated with the same courtesy and respect as all contemporary religions. Therefore, it is important to actively listen to and respect all viewpoints and beliefs and avoid voicing strong or contrary opinions, even when you do not hold the same beliefs and opinions.

#### What is Cultural Competence?

One of the ways to gain a deeper understanding of cultural sensitivities and cultural safety is to understand cultural competence.

Cultural competence is defined as a long-term, ongoing process of personal insight and development revolving around understanding our own values and beliefs and where they have come from. It links to the knowledge base we have of what culture means to ourselves and what culture means to people from other cultures. We are conceptually competent in another culture to the extent that we can comprehend the way they are interpreting actions, behaviours and events in their environment.<sup>20</sup>

As a business owner, manager or employee who engages with the First Nations tourism industry, you may want to consider and reflect on your cultural competence skill level. Cultural competence training, or cultural awareness or cultural capability training as it is sometimes referred to, can offer your business or organisation tailored training for individuals or groups.

The Queensland Government website provides information about how to approach cultural capability training for your business. Whether you're looking for foundation-level online training or intense face-to-face workshop sessions, they have published a guide on how to make the right decision when purchasing training <https://www.qld.gov.au/firstnations/education-training/cultural-capability>

One such program is AIATSIS's Core Cultural Learning which is described as an innovative online course developed to strengthen your business or organisation's cultural capability. It's designed to be informative, interactive and to create a greater awareness of the vast history and cultural heritage of First Nations peoples [aiatsis.gov.au/about/what-we-do/core-cultural-learning](http://aiatsis.gov.au/about/what-we-do/core-cultural-learning)

## Recognising People and Place - What does it mean for my business?

- Always make an effort to ascertain 'Whose Country Am I On' and identify who speaks for Country, including Traditional Owners/Custodians and Elders.
- Respect diversity and appreciate that there is no such thing as one size fits all - there are differences between rural, regional and remote communities and traditional and contemporary practices.
- Avoid using outdated terms to identify Aboriginal or Torres Strait Islander peoples or make assumptions about their identity in all interactions.
- Recognise and respect Traditional Owners/Custodians and Elders and ensure they are acknowledged at significant events, functions and ceremonies.
- Pay appropriate remuneration for the time and effort involved in cultural services such as a Welcome to Country and other ceremonies by negotiating an appropriate fee with the relevant Indigenous group.
- Respect gender protocols and recognise that many communities distinguish between the roles of men and women and the information and activities they may participate in and share.
- Do not use the name voice or image of someone who has passed away unless you have been given express permission by the family and always display a deceased persons warning notice.
- Keep in mind that English is a second or third or even fourth language in some communities and that it is essential to always speak clearly and listen carefully to avoid miscommunication.
- Always respect all points of view and beliefs and avoid voicing strong or contrary opinions, even when you do not hold the same beliefs and opinions.





## 2.5.2 Respecting Culture and Heritage

The rights of First Nations peoples to own and control their ICIP must always be respected and protected by the wider Queensland tourism industry. This includes all representations of culture, stories and connection to Country, and supporting First Nations businesses, groups and communities to develop authentic products and experiences as a vehicle to practice and revitalise cultural traditions and languages and derive economic benefits from their traditional lands.<sup>21</sup> All types of businesses in the tourism industry can play a role in respecting culture and heritage and in growing awareness across the sector.

### 2.5.2.1 Safeguarding Indigenous Cultural and Intellectual Property

Respecting and protecting Indigenous Cultural and Intellectual Property rights safeguard cultural heritage from exploitation and mitigates the gaps in intellectual property and relevant domestic laws noted at 2.3.2. In brief, Australian laws such as copyright law or consumer law can only protect individuals to a certain degree and do not recognize communal rights or the oral transmission of cultural knowledge from generation to generation. These are intrinsic features of First Nations cultural heritage, and it is important to undertake extensive consultation to identify and seek appropriate permissions from the relevant groups or communities when seeking to use ICIP. As always, the starting point in seeking any relevant permissions is identifying Whose Country Am I On? Additional guidance regarding appropriate engagement and consultation is detailed at 2.5.3 Community Engagement and Consultation.

The following types of ICIP are examples of areas that lack protection in Australian law, but could still achieve degrees of recognition and protection if cultural protocols are followed:

- A style or method of art that is practised by a particular group or community.
- The underlying information that is put into a work e.g., the story told in a painting that is owned by a group or community.
- Traditional words and languages.
- Performances such as dance and music which have not been recorded or written down.
- Products or processes based on traditional knowledge such as traditional medicines or methods (for example, traditional methods of weaving).<sup>22</sup>

The protocols in this section provide baseline information about how to navigate these issues respectfully and additional resources are available via the links. In instances where First Nations groups or communities do permit access to cultural material, it is essential to always provide proper attribution for their contribution, which involves coordinating an appropriate acknowledgment to protect their moral rights.

### 2.5.2.2 Indigenous Imagery

As stated in the section on copyright, many Indigenous cultural expressions are very ancient or do not have an identifiable author, and this includes artworks that may no longer be in copyright or instances where communal knowledge or sacred and secret material is used. Regardless of the origin of the work, it is best practice to consult with the relevant First Nations artist, group or community

to seek permission to reproduce the work in any way. For example, reproducing ancient rock art or Indigenous motifs in marketing materials without permission or acknowledgment is unacceptable exploitation of ICIP.

### 2.5.2.3 Photography, Recordings and Publishing

Permissions such as release forms must always be sought to take photographs or recordings involving First Nations peoples, and explanations provided in relation to why they are needed and what they will be used for. If the purpose changes, further permissions must be sought to accommodate the new use.

When writing and publishing about First Nations issues it is important to consider how the work affects the Indigenous people who are subjects of the matter. Many stories have a connection to a particular land or family and in many cases, there may be specified people who are the owner of a particular story. Before publishing, ensure the material does not depict or expose confidential, personal and/or sensitive information or reinforce negative stereotypes. Permission must always be sought from the person or group that owns the Cultural IP and any potential issues discussed with them prior to publishing.

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*In Queensland, there is such a rich diversity of Aboriginal and Torres Strait Islander stories across the state that make up our identity – we must capitalise on the arts within tourism to connect, showcase culture and highlight the importance of storytelling and truth-telling.<sup>23</sup>*

*Cameron Costello, Deputy Chair, Queensland Tourism Industry Council  
and Interim Chair of Queensland's First Nations Tourism Council.*

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### 2.5.2.4 Secret and Sacred Material

First Nations peoples have the right to restrict access to information and objects that are secret and sacred. Examples of secret or sacred materials are images, artefacts or descriptions of ceremonies that may only be viewed by initiated members of a community, or that are considered 'men's business' or 'women's business'. Included in this category are published and archival documents that were granted permission many years ago because the individuals or communities involved were unaware the material would be published or made public. Permitted reproductions may occur in some instances where written permission from the relevant group or community has been granted.

Respecting individuals, groups and communities' privacy and confidentiality is essential, and it is critical to consult with the group or community in question to ascertain when categories of information require extra consideration and care.

### 2.5.2.5 Sensitive Material

In addition to the social, cultural and political sensitivities noted above in relation to establishing Cultural Safety, it is important to understand that there are also categories of sensitive information, which might include information recalling traumatic events and

practices experienced by First Nations peoples, such as records relating to the stolen generation. When faced with the prospect of dealing with such material, always seek disclosure and permission first from the relevant individuals, group or community to avoid the possibility of offence or distress.

### 2.5.2.6 Authentic Product Development

Being mindful of the authenticity of products and experiences in the First Nations tourism industry protects ICIP and minimises 'rip-offs'. In practice, this equates to making efforts to understand the cultural origin of experiences and products and their connection to particular First Nations groups or communities. This could range from questioning the supply chain behind the wholesale purchase of Indigenous arts and crafts, to the integration of local cultural stories into tours and activities, in both Indigenous and non-Indigenous owned businesses. The Fake Art Harms Culture campaign that was noted at section 2.4.7 highlights the prevalence of 'rip-offs' and the need for specific legislation and greater industry awareness. Further, First Nations groups and communities are entitled to put forward the correct interpretations and use of their cultural heritage, to protect their integrity and safeguard against exploitation.

#### Further information

The Australia Council's Protocols for Using Cultural and Intellectual Property in the Arts is a comprehensive online publication for individuals who work with Indigenous artists or engage with Indigenous cultural heritage in projects. It is the leading work in this area and it includes detailed information and key resources, including:

- Project checklists for implementing protocols
- Sample Traditional Custodians Notice
- Sample Cultural Sensitivity Warning
- Sample Next of Kin Clause

[australiacouncil.gov.au/investment-and-development/protocols-and-resources/protocols-for-using-first-nations-cultural-and-intellectual-property-in-the-arts/](http://australiacouncil.gov.au/investment-and-development/protocols-and-resources/protocols-for-using-first-nations-cultural-and-intellectual-property-in-the-arts/)

The Arts Law Centre of Australia website also provides comprehensive information about ICIP, copyright and permissions for media, photography and filming and recording stories. Key resources include information sheets on copyright, moral rights, contracts, and ICIP. There are also sample policies available for purchase such as:

- Cultural and Intellectual Property Policy for Festivals and Performances
- Cultural and Intellectual Property Policy to Film/ Photograph an Art Centre
- Cultural and Intellectual Property Policy for Indigenous Stories
- Cultural and Intellectual Property Policy for Academic Research

[artslaw.com.au/](http://artslaw.com.au/)

### Respecting Culture and Heritage – What does it mean for my business?

- Only buy Indigenous art from art galleries or Indigenous art centres that are members of the Indigenous Art Code or directly from the artist.
- Only buy artefacts or other items of cultural significance from businesses who clearly display the provenance of their products. This includes, for example, boomerangs, didgeridoo and implements.
- Always request a certificate of authenticity or further information to verify the origin of an artwork or artefact. It is also helpful to request information about how much of the proceeds are returned to the artist or community.
- Always request permission from the artist before publishing photographs or videos of an artwork by contacting them and seeking written permission in the form of a release agreement.
- Always check that you have permission to film or photograph a cultural ceremony, dance, song and spoken word/speeches from the creators of the work.
- Always check that you have permission to publish any video or photographs on social media or elsewhere and don't copy or adapt an artwork without the artist's permission.
- Always credit any authors, creators or contributors to ceremonies, dance, or songs and never try to take credit for work that you didn't create yourself.
- Always check that you have permission from the people you are working with to touch or handle objects of cultural significance, including implements, artefacts, instruments, and clothing.
- Avoid touching rock art or engravings or any objects at any site you are visiting, unless invited by the Traditional Owners.
- Never remove anything from a place of cultural significance. This includes but is not limited to, stones and shells.





### 2.5.3 Community Engagement & Consultation

First Nations peoples should be engaged in all decisions involving their ICIP and its use within the tourism industry. Many communities have experienced consultations that lack transparency and authenticity, and sometimes there is a sense of resentment towards excessive consultations that merely pay lip service and fail to deliver tangible outcomes. Therefore, when working with First Nations businesses, groups and communities in the tourism industry, it is necessary to always prioritise their self-determination, to ensure that Indigenous communities can meet their social, cultural, and economic needs. Further, it is important to be aware that community engagement and consultation is a process, rather than a 'one-off' exercise that serves to tick a box.

#### 2.5.3.1 Planning and Research - Whose Country Am I On?

Effecting planning and research will ensure respectful engagement and consultation with the appropriate First Nations group or community, which takes into consideration their unique characteristics and protocols. This is extremely important because of the cultural diversity across the mainland and Torres Strait Islands, and the nuances of urban, regional, and remote areas and traditional and contemporary practices. Your starting point will always be asking the question *Whose Country Am I On?* to identify the Country and Traditional Owners and who has the authority to engage. In some instances, this will require basic enquiries, however, in other instances, where there might be unsettled claims over Country or both Traditional Custodians and 'historical owners', extra facilitation may be required. Never assume that one person has authority on behalf of an entire group or community, because in some communities and areas there may be internal factions and differences. Organisations that will be able to provide assistance in the planning and research stages and assist with any queries regarding who has authority to speak for Country, include the Regional Tourism Organisations, Native Title Representative Bodies and Service Providers and Prescribed Bodies Corporate listed in Part 1 of this Guide in the section titled *Whose Country Am I on?*

Useful information to include in your research will include the area's demographics, local organisations, history, protocols, community access permits and appropriate travel times, and any current issues or sensitivities. It is also very important when visiting Indigenous communities to understand that access may be limited during ceremonies and seasonal changes, and that some areas may be completely off-limits even when permits and permissions are granted by the community.

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**Remember: There is no such thing as one-size-fits-all. The strength of your engagement will stem from the time and efforts invested into your research, planning and interactions with the First Nations Tourism Sector.**

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### 2.5.3.2 Communication

Respectful engagement and consultation require honest communication with First Nations peoples about the purpose of the engagement – including being clear about your intentions, being prepared to explain the purpose and reach of activities and proposals, openness about your organisations or business's capacity to meet community expectations, and being prepared to follow through on any agreements made.<sup>24</sup> The methods and manner of communication should be suited to the activity or proposal and the information needs of the individual, group or community being consulted. For example, presenting large amounts of written materials for a meeting about land access for tours or camping would not be helpful when seeking to engage with a remote community where English is a second language, whereas employing a local community guide or translator via the community office would minimise any major communication gaps.

Communication should also take into account body language, verbal and non-verbal communication, kinship and gender taboos and other protocols specific to a particular area. These nuances can be queried in the research and planning stages to ensure appropriate manners and behaviour.

#### Tip: Communication

Good manners are important in all business interactions. When working with First Nations individuals, businesses and communities, good manners include active listening, observing body language and not being too loud, pushy or over-bearing. It is also important to understand that avoidance of eye contact or delayed answers to questions are not a sign of disrespect, particularly when working with Elders or in remote areas.



Image supplied by Tourism and Events Queensland

### 2.5.3.3 Consultation

Respectful consultation includes implementing cultural protocols such as a Welcome to Country, and recognising Elders or Traditional Custodians, and extends to adapting the delivery of traditional consultation practices and processes to suit the intended group or community. To make the most of your opportunity:

- Allow adequate resources such as meeting costs or travel expenses to support the consultation, particularly in remote areas;
- Allow acceptable lead-in time of at least 1 month to ensure that everyone has sufficient notification and opportunity to engage;
- Define the activity and its intended outcomes from the outset to manage expectations;
- Ensure information caters to all levels of literacy and there are ample opportunities for participation by all interested parties;
- Avoid strict timekeeping and deadlines – the people who speak for country will respond when it is appropriate;
- Allow different and opposing views to be represented, heard and respected;
- Define a clear follow up process and intended outcomes and
- Allow time and flexibility for decision-making to ensure that the most authoritative voices and views are included in reaching a decision.<sup>25</sup>

*Traditional Owners are the ultimate judges on whether the consultation process has been meaningful.<sup>26</sup>*

#### Tip: Visiting Communities

- Arrange permits to enter a community if you are visiting or conducting tours, and seek permissions before arriving.
- Read signage, including road signs, and stay within the dedicated boundaries of the place you are visiting. For example, stay on the track and boardwalks; it's not just respectful, it's also a safety precaution.
- Do not drive or walk through unmarked areas without first seeking permission. For example, don't climb rocks and cliffs as they may be sacred land, or drive through unmarked roads or private property.

#### Tip: Dress Codes

When visiting communities, dress appropriately for seasons and landscape and wear modest clothing, including modest swimwear if you are visiting coastal communities. In some areas, it may be more appropriate to wear shorts and a t-shirt to swim in rather than a standard swimsuit.

### 2.5.3.4 Decision-Making

In reaching a decision, the standard of consent is Free, Prior and Informed Consent (FPIC). This fundamental standard is prescribed in various international instruments such as the UN declaration on the Rights of Indigenous Peoples (UNDRIP) and it should be obtained for any activity that takes or uses cultural knowledge or intellectual property, or projects that affect Indigenous peoples' lands, territories or other resources.<sup>27</sup>

As the name suggests, the elements of FPIC are genuine inclusion, disclosure, and respect for Indigenous peoples' decision-making processes.<sup>28</sup> The three elements (free, prior and informed) qualify and set the conditions of consent as a decision-making process. It is not a legislated legal standard in Australia, but it is linked to the right to self-determination, and it is the most recognised and respectful standard to integrate into tourism related consultations and decision-making.

#### Important Information: Free Prior Informed Consent

##### What is FPIC?

There is no definitive standard for obtaining FPIC, however the following questions provide some guidance to consider:

**Free** Can the First Nations businesses and communities you are working with say no?

**Prior** Have the First Nations businesses or communities been given adequate time to consider and discuss giving consent to your project or activity before it starts?

**Informed** Have the First Nations businesses or communities been provided with all the information they need to know to make an informed decision? Including the nature, size and duration of a project including any positive and negative impacts? Has the information been provided in a format that is easy to understand and caters to all levels of literacy?

**Consent** Is the consent in writing? Can conditions around areas such as ICIP or protocols be applied to the consent? Can the consent be revoked?<sup>29</sup>

### 2.5.3.5 Sharing Benefits

Sharing benefits from the commercial application of cultural heritage is integral to growing First Nations tourism businesses and increasing economic participation across the wider tourism industry. This means that First Nations businesses, groups and communities are supported to engage in strategic partnerships and joint ventures to facilitate the development of competitive and sustainable tourism enterprises.<sup>30</sup> Historic economic marginalisation and many years of unchecked cultural appropriation and exploitation have perpetuated First Nations disadvantage. Now, the focus should rightfully shift to



proper compensation of First Nations peoples for commercialisation of their cultural heritage on mutually agreed terms.

The equitable sharing of benefits includes reimbursing individuals, groups and communities for their contribution, providing employment opportunities, capacity building, and sharing data, and ensuring all new or subsequent uses of ICIP bestow new benefits. Determining what is appropriate is ascertained through consulting with the First Nations businesses or communities on what benefits would be preferred for their participation in projects.<sup>31</sup> For example, tours, charters or campgrounds on Indigenous lands should provide appropriate compensation that genuinely reflects the commercial benefit derived from accessing the land. There are no prescribed guidelines or formulas for quantifying an amount, so the key is to negotiate with the Traditional Owners and accord them the same respect and benefits that would apply in negotiating within the mainstream tourism industry.

### Further information

The AIATSIS website includes a guide to *Engaging with Traditional Owners* which provides further information and a diagram about FPIC and information on finding the right Traditional Owners to engage with [aiatsis.gov.au/publication/94688](https://aiatsis.gov.au/publication/94688)

Another guide available on the AIATSIS website is the *Principles for engagement in projects concerning Aboriginal and Torres Strait Islander peoples* [aiatsis.gov.au/publication/94687](https://aiatsis.gov.au/publication/94687)

### Empowering Engagement and Consultation – What does it mean for my business?

- Always research the area, group or community you wish to engage and plan ahead. Desktop research and contacting them by phone and/or email will be the best starting point to inform each of these steps.
- Based on your research, make enquiries into the cultural protocols observed by local groups and communities and always remember that a one-size-fits-all approach does not apply.
- Ascertain from the business or community you are seeking to engage whether any permits and permissions to enter the community are required in advance of your visit.
- Remember that communities may be closed at certain times due to Sorry Business or ceremonies and travel will not be permitted.
- Always develop a clear plan for engagement that sets clear expectations for all parties.
- Engage a guide or translator where appropriate and ensure to pay them fairly for their time and effort.
- Liaise with the community to arrange a Welcome to Country and ensure that Elders and other respected persons are given special status.
- Always allow adequate resources for all meeting, travel and associated costs, especially to remote areas that may be difficult to access.
- Always allow adequate time to make arrangements and engage the Traditional Owners.
- Always observe body language and non-verbal communication and allow time for people to listen and speak.
- Always ensure that Traditional Owners are involved in any decision-making processes and that the standard of consent is Free, Prior and Informed Consent.
- Ensure that meetings are inclusive and enable participants to engage in a variety of formats.
- Avoid developing tightly scheduled itineraries and meeting agendas and do not become impatient if your schedules not met. Your priorities and timeframes may not be the same as theirs and traditional timekeeping is unlikely to be effective.
- Always create opportunities to share benefits within agreements or activities undertaken with First Nations groups, businesses or communities.

## 2.6 Strengthening Cultural Protocols and Indigenous Cultural and Intellectual Property

Now that there is an understanding of cultural protocols and the broad legal framework relevant to the First Nations tourism industry, there is scope to highlight how the wider Queensland tourism industry can be proactive in respecting and protecting ICIP.

The key starting point is evidently respectful relationships and working in partnership with First Nations businesses and communities to achieve shared objectives and outcomes. Whether it is in relation to co-designing industry-focused policies and programs, increasing Indigenous training and employment opportunities, or establishing collaborative joint ventures, there are many opportunities to increase Indigenous voices and participation in tourism in Queensland.

From a commercial and business perspective, developing MOUs and embedding ICIP protocols into agreements, licences and policies is a practical avenue for protecting ICIP that elevates moral obligations to legal obligations, and creates avenues for genuine benefit sharing in tourism ventures. Examples of areas where agreements can protect ICIP, as well as create arrangements for benefit sharing include:

- Employment Agreements
- Joint Venture Agreements
- Collaboration Agreements
- Licensing Agreements
- Funding Agreements
- Interview/Image Releases

Organisations and businesses that interact with First Nations tourism can also protect ICIP by implementing policies that mandate requirements to seek permissions for any ICIP usages, and which also support cultural practices and cultural safety for Indigenous employees, partners, or related groups and stakeholders. mainstream tourism industry.

### Further reading

Further discussion about how businesses can respect and protect ICIP can be found in the online *Australian Business Guide to Implementing the UN Declaration on the Rights of Indigenous Peoples* [unglobalcompact.org.au/wp-content/uploads/2020/11/Australian-Business-Guide-to-Implementing-the-UN-Declaration-on-the-Rights-of-Indigenous-People\\_FINAL.pdf](https://unglobalcompact.org.au/wp-content/uploads/2020/11/Australian-Business-Guide-to-Implementing-the-UN-Declaration-on-the-Rights-of-Indigenous-People_FINAL.pdf)



Image supplied by Tourism and Events Queensland



## 2.7 Case Study – YACHATDAC

### YACHATDAC - Case Study for the QTIC Best Practice Guide to Working with First Nations Tourism

YACHATDAC provides a unique Indigenous tourism product that is not offered anywhere else in Australia. Based in Barcaldine on the lands of the Innigai people, YACHATDAC, the Yambangku Aboriginal Cultural Heritage and Tourism Development Aboriginal Corporation, provides 'Guesting On-Country', which is an immersive culture and history experience, including day and night tours with walks to traditional Aboriginal sites, glamping and camping in the outback, and native foods hunting and tasting.

"Guesting" is YACHATDAC's culturally appropriate way of describing how they, as the First peoples of the area, wish to engage and share their Country with visitors. Guesting offers a unique hands-on, intimate experience and insight into local culture, history, and practices of the Innigai people. Guesting aims to educate while providing guests with a once in a lifetime opportunity to meet and spend time with contemporary Traditional Custodians, who are learning from the past while walking together to build a stronger tomorrow.

One of YACHATDAC's key attractions is the Turraburra Story Wall, which is a 200 metre rock art gallery filled with tens of thousands of engravings, paintings and petroglyphs. It tells the story of the Seven Sisters and it is believed to be the only site in Australia, and quite possibly the world, that shares the story in such detail.

Turraburra was formerly known as Gracevale Station and the Innigai Traditional Custodians had not been able to access the property without the owner's consent, and cultural heritage sites across the 8.870 hectare cattle station had not been formally recorded or studied. In April 2019, the Indigenous Land and Sea Council (ILSC) purchased the property on behalf of the Innigai Traditional Custodians to reconnect to Country to pursue tourism and other socio-economic, cultural and environmental benefits for local Aboriginal people.<sup>32</sup>

This important acquisition enabled YACHATDAC to grow and it shows just how First Nations peoples are transforming the way tourism operates on their lands and waters. YACHATDAC's Managing Director, Suzanne Thompson, believes that YACHATDAC is a strong model for protecting and preserving cultural heritage, and strengthening cultural identity through the inter-generational transfer of knowledge and culture. In turn, this knowledge is shared with the broader community through Guesting, and visitors receive the benefit of genuine cultural immersion and learning on Country.

YACHATDAC also provides opportunities for visitors to learn about Caring for Country, which encompasses land restoration and management, fire stick burning, biodiversity offsets, carbon farming, and wildlife conservation.

YACHATDAC's Guesting experiences are available to families, school groups, corporates, group bookings, international bookings, conservation tourism, and many others. To find out more about YACHATDAC visit their website <https://yachatdac.com.au/>







Farewell from  
**Turraburra**

We hope you  
enjoyed your  
experience

"Ancient Traditions  
Walking Together with  
Contemporary Visions"

Guesting  
on Country

YACHATSAC  
Ancient Traditions Walking Together with Contemporary Visions





Image supplied by Tourism and Events Queensland



## Part 3: Procurement Support for First Nations Businesses and Communities

### 3.1 Public and Private Sector Indigenous Procurement Programs

Strengthening the First Nations business sector by setting targets to procure goods and services from Indigenous businesses is integral to the Queensland Government's goal of increasing the employment, independence and wellbeing of Aboriginal and Torres Strait Islander people.<sup>33</sup> In 2017, the Queensland Indigenous (Aboriginal and Torres Strait Islander) Procurement Policy (QIPP) commenced, and it provides a whole-of-government framework to procure 3% of addressable spend from Aboriginal and Torres Strait Islander businesses in 2022. The QIPP parallels the Federal Indigenous Procurement Policy and comparative policies across other states. Objectives of the QIPP include:

- Increasing the capacity and capability of Indigenous businesses to successfully tender for Queensland Government contracts.
- Growing and developing a diverse and sustainable Indigenous business sector in Queensland by increasing the capacity and capability of Indigenous businesses to supply to the Queensland Government but also to supply to the private sector through supply chains and increased private sector demand.
- Improving employment outcomes and opportunities for Aboriginal people and Torres Strait Islander people to participate in the Queensland economy.<sup>34</sup>

Since the QIPP began, the Queensland Government has procured millions of dollars worth of contracts from Aboriginal and Torres Strait Islander businesses.

In the private sector, the Business Council of Australia created a framework for Indigenous procurement referred to as 'Raising the Bar'. The Raising the Bar framework has four key components:

- an Indigenous procurement target of 3 per cent of annual influenceable spend with Indigenous businesses over a five-year period
- the supporting systems and processes to achieve the target
- reporting and monitoring of spend against the target, and activities to develop Indigenous suppliers.

Many major organisations in Australia also have Reconciliation Action Plans (RAPs) which feature training, employment and procurement strategies. The growth in procurement related strategies in recent years highlights, the increasing awareness that procurement is a strong vehicle for growing Indigenous businesses and increasing Indigenous employment and economic participation.

#### Further information

The Queensland Indigenous Procurement Policy and Indigenous Procurement Guide are available on the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DATSIP) website

[dldsatsip.qld.gov.au/resources/dldsatsip/work/atsip/business-economic-development/qipp/queensland-indigenous-procurement-policy.pdf](https://dldsatsip.qld.gov.au/resources/dldsatsip/work/atsip/business-economic-development/qipp/queensland-indigenous-procurement-policy.pdf)

[dldsatsip.qld.gov.au/resources/dldsatsip/work/atsip/business-economic-development/qipp/indigenous-business-procurement-guide.pdf](https://dldsatsip.qld.gov.au/resources/dldsatsip/work/atsip/business-economic-development/qipp/indigenous-business-procurement-guide.pdf)

The National Indigenous Australians Agency website features the Federal Government's Indigenous Procurement Policy [niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy](https://niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy)

The Business Council of Australia's website provides a section on Indigenous Engagement and includes information about the *Raising the Bar Project* [bca.com.au/indigenous\\_engagement](https://bca.com.au/indigenous_engagement)

#### What are Reconciliation Action Plans?

A Reconciliation Action Plan (RAP) is a formal statement of commitment to reconciliation created in partnership with Reconciliation Australia. RAPs assist businesses of all shapes and sizes, at different stages of their reconciliation journey, to embed the purpose and principles of reconciliation into structured activities and targets. There are four RAP types – Reflect, Innovate, Stretch and Elevate – which allow organisations to continuously develop their reconciliation commitments.

To find out more about RAPs, talk to other businesses to find out their experiences and contact Reconciliation Australia. A good starting point will be the document 'Which RAP is right for you?' available via the Reconciliation Australia website [reconciliation.org.au/wp-content/uploads/2021/09/RAP-Levels-and-Framework.pdf](https://reconciliation.org.au/wp-content/uploads/2021/09/RAP-Levels-and-Framework.pdf)

Alternatively, your business may wish to initiate a simpler approach, by developing an Indigenous Engagement Strategy with specific measurable implementation actions, or a Statement of Reconciliation, which is a public assertion of your commitment to reconciliation and valuing the traditions, protocols and contributions of Aboriginal and Torres Strait Islander peoples.



## 3.2 Indigenous Procurement for Tourism

*“By leveraging even a small slice of the government’s spend, Aboriginal and Torres Strait Islander communities and businesses across the state can benefit significantly”<sup>35</sup>*

This statement rings true for tourism and what could be achieved by leveraging a small portion of the \$27.3 billion tourism industry in Queensland. ‘As one of the most thriving economic activities, tourism is well placed to contribute to Indigenous people improving their livelihoods. If managed responsibly and sustainably, Indigenous tourism can spur cultural interaction and revival, bolster employment, curb rural flight migration, empower women and youth, encourage product diversification, and nurture a sense of pride among Indigenous people.’<sup>36</sup>

Accordingly, best practice for working with First Nations businesses and communities in Queensland needs to extend to creating genuine procurement, training and employment opportunities for First Nations businesses and communities.

### 3.2.1 ‘Pledge for Procurement’

All non-Indigenous tourism businesses operating in Queensland’s tourism industry, and particularly those working on Country in rural, regional and remote areas, are encouraged to advocate for increased opportunities for First Nations businesses by subscribing to a ‘Pledge for Procurement’.

The ‘Pledge for Procurement’ is an initiative aimed at generating genuine procurement and employment opportunities across all tourism related sectors, and it involves taking three simple steps, which are:

- Embedding First Nations businesses in tourism supply chains to provide goods and services;
- Creating genuine employment opportunities for First Nations peoples; and
- Raising awareness about black cladding in the tourism industry and promoting genuine working relationships on equal footing.

The ‘Pledge for Procurement’ is designed to position procurement as a benchmark of best practice for working with First Nations businesses and communities. The three steps can be employed by any business and assigning your support to the pledge is a way of showing that your business is committed to facilitating the growth of the First Nations tourism sector in Queensland.

### Pledge for Procurement

I/We recognise and respect the unique cultural heritage of Queensland’s First Nations peoples and endeavour to support Queensland’s First Nations Tourism industry by creating genuine procurement and/or employment opportunities for First Nations businesses and communities.

I/We pledge to:

- Purchase goods and services from First Nations owned businesses and to embed First Nations businesses in tourism supply chains.
- Create genuine and meaningful employment pathways within my/our business that provide transferable skills and enhance future employability.
- Raise awareness about black cladding and promote genuine, equitable working relationships with First Nations businesses.

I/We pledge our support to the First Nations Tourism industry and acknowledge our support for enhancing entrepreneurial opportunities and economic empowerment for Aboriginal and Torres Strait islander peoples.

### 3.2.2 Identifying First Nations Businesses

For the purposes of the Queensland Indigenous Procurement Policy, an Aboriginal and Torres Strait Islander business is one that is at least 50 per cent owned by Aboriginal people and/or Torres Strait Islander people. The Black Business Finder, the Queensland Government’s Aboriginal and Torres Strait Islander business platform on the Industry Capability Network, states that an Aboriginal or Torres Strait Islander business is a business that fits one of the following categories:

- A business that is majority owned by Aboriginal or Torres Strait Islander people.
- A business that is 50% owned by Aboriginal or Torres Strait Islander people.
- A non-Indigenous business that employees at least 75% of Aboriginal or Torres Strait Islander workers.
- An equal Joint Venture agreement with a majority owned Aboriginal or Torres Strait Islander business entity.

### 3.2.3 Identifying Black Cladding

Generally speaking, 'black cladding' means presenting a non-Indigenous business as an Indigenous business, through branding or employing Indigenous employees, to take advantage of opportunities created for genuine Indigenous businesses. According to Supply Nation, 'black cladding' is the practice of a non-Indigenous business or individual taking unfair advantage of an Indigenous business or individual for the purpose of gaining access to Indigenous procurement policies or contracts. Unfair advantage involves practices and arrangements that result in disadvantage or detriment to an Indigenous business, or that do not represent a genuine demonstrated level of equitable partnership and benefit.

Examples of black cladding in Queensland's tourism industry might include:

- Joint ventures that represent Indigenous interests and ICIP but don't establish equitable benefit sharing; e.g. only 5% of profits are returned to the Indigenous JV partner;
- Non-Indigenous businesses appropriating Indigenous artwork and names in order to appear Indigenous owned.

Supporting the Pledge for Procurement will increase awareness about black cladding in the First Nations tourism industry and make it harder for exploitative practices to thrive. The subsequent benefit will be greater opportunities for authentic First Nations owned businesses, and this will enhance sustainable socioeconomic benefits for all First Nations peoples and communities.

### 3.2.4 Finding First Nations Businesses

The Black Business Finder currently has more than 600 Aboriginal and Torres Strait Islander businesses listed across a wide range of goods and services. There is also the Southeast Queensland Indigenous Chamber of Commerce at state level.

The national representative body for Indigenous procurement, Supply Nation, maintains the Indigenous Business Direct database. In addition, the Office of the Registrar of Indigenous Corporations (ORIC) and DATSIP regional offices holds information on Aboriginal and Torres Strait businesses in their region.

#### Further information

##### Finding First Nations Businesses

- Black Business Finder [bbf.org.au/](http://bbf.org.au/)
- Supply Nation's Indigenous Business Direct database [supplynation.org.au](http://supplynation.org.au)
- Southeast Queensland Chamber of Commerce [seqicc.com.au/](http://seqicc.com.au/)
- Office of the Registrar of Indigenous Corporations [register.oric.gov.au](http://register.oric.gov.au)
- DATSIP Offices [dsdsatsip.qld.gov.au/contact-us/regional-service-centres](http://dsdsatsip.qld.gov.au/contact-us/regional-service-centres)

##### Celebrating First Nations Businesses

Indigenous Business Month is October, and its aim is promoting the variety and depth of Indigenous businesses nationally and providing an Indigenous voice to the national conversation regarding business development. Visit their website to find out how your business or agency can support Indigenous Business Month [indigenousbusinessmonth.com.au/](http://indigenousbusinessmonth.com.au/)



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Image supplied by Tourism and Events Queensland

## Part 4: Accreditation for Working with First Nations Businesses and Communities

### 4.1 Developing a First Nations Tourism Accreditation Program

Queensland Tourism Industry Council is currently in discussions with a range of stakeholders to develop an accreditation program for working with First Nations tourism in Queensland. Stakeholders include the Queensland First Nations Tourism Council and their state and territory counterparts, RTOs and Ecotourism Australia, who currently administer the Respecting Our Culture (ROC) Certification. The ROC program encourages the wider tourism industry to operate in ways that respect and reinforce Indigenous cultural heritage and the living cultures of Indigenous communities.<sup>37</sup> It was developed in consultation with former peak body Aboriginal Tourism Australia (ATA), Indigenous communities, industry stakeholders and tourism operators.

The core components of the existing ROC Certification framework will inform the new accreditation standards. For businesses in the tourism sector, this means that the general benefits of pursuing certification will include:

- Providing your business with the tools and information to responsibly manage Indigenous cultural and natural experiences.
- Demonstrating your business's respect for and inclusion of Indigenous cultures and heritage.
- Showing that your business recognises sustainable business and environmental practices.

Accreditation will build on the best practice initiatives and protocols contained in the guide and will enhance your business's ability to undertake practical steps towards their implementation and recognising and respecting Indigenous cultural and intellectual property.

In addition to the primary First Nations accreditation program, it is envisaged that local and regional programs will be available through RTOs, to complement the broader initiative. Information about the programs will be communicated to the Queensland tourism industry prior to their launch.

#### Further information

If you are interested in learning more about the Respecting Our Culture (ROC) Certification, visit the Ecotourism Australia website <https://www.ecotourism.org.au/our-certification-programs/eco-certification>



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