

Dhawura Ngilan (Remembering Country): A Vision for Aboriginal and Torres Strait Islander Heritage

A Guide for Businesses

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Dhawura Ngilan Business and Investor Initiative

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ABBREVIATIONS AND ACRONYMS

ESG	Environmental, Social, and Corporate Governance
FPIC	Free, Prior and Informed Consent
ICH	Indigenous Cultural Heritage
ICIP	Indigenous Cultural and Intellectual Property
ICMM	International Council on Mining and Metals
IDS	Indigenous Data Sovereignty
IFC	International Finance Corporation
IJV	Indigenous Joint Venture
IPAs	Indigenous Protected Areas
JV	Joint venture
NAIDOC	National Aborigines and Islanders Day Observance Committee

RAP	Reconciliation Action Plan
TCE(s)	Traditional Cultural Expression(s)
TK	Traditional Knowledge
UNDRIP	United Nations Declaration of the Rights of Indigenous Peoples
UNGPs	United Nations Guiding Principles on Business and Human Rights

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INTRODUCTION AND CONTEXT

First Nations heritage is a holistic living heritage. First Nations people have lived in Australia since time immemorial. They have continued to practice culture despite the ongoing impacts of colonisation. They continue to affirm their identity.

The practice of managing and caring for culture is a key responsibility of First Nations cultural practice. It includes caring for Country, protecting sacred sites and rock art sites, caring for plants and animals, caring for objects and upholding stories and passing on knowledge.

There are many ancient places in our Country – its landscapes and waterscapes. There are also places of First Nations cultural significance in urban areas including missions, and protest sites. Many of these places carry connected stories, song lines and other aspects of intangible heritage.

First Nations cultures are an integral part of the rich tapestry of Australia's history and identity. They must not only be protected but valued and celebrated. All Australians – businesses and investors, governments and individuals – share the responsibility of caring for the rich and diverse cultural heritage in our country.

I. The Dhawura Ngilan Vision

Dhawura Ngilan (Remembering Country): A vision for Aboriginal and Torres Strait Islander heritage in Australia (Dhawura Ngilan) embodies the long-held aspirations of First Nations people for their heritage.¹ It is endorsed by the Heritage Chairs of Australia and New Zealand, following extensive consultations with First Nations stakeholders and peak representative bodies, advisory councils and committees. The Vision aims to inform policy, underpin legislative change and inspire action to protect and conserve Indigenous Cultural Heritage (ICH).²

The *Dhawura Ngilan* Vision has four vision statements:

- 1) Aboriginal and Torres Strait Islander people are the Custodians of their heritage. It is protected and celebrated for its intrinsic worth, cultural benefits and the wellbeing of current and future generations of Australians.
- 2) Aboriginal and Torres Strait Islander heritage is acknowledged and valued as central to Australia's national heritage.
- 3) Aboriginal and Torres Strait Islander heritage is managed consistently across jurisdictions according to community ownership in a way that unites, connects and aligns practice.
- 4) Aboriginal and Torres Strait Islander heritage is recognised for its global significance.

Central to achieving these aims is ensuring that the principles set out in the United Nations *Declaration on the Rights of Indigenous Peoples (UNDRIP)* are acknowledged, respected and followed.³ The Vision supports Aboriginal and Torres Strait Island people to share the stories

¹ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 4

<<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

² Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 4

<<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

³ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) ('UNDRIP').

they want to tell, in ways they want to tell them, and for any decisions which affect them to be made only with their Free, Prior and Informed Consent (**FPIC**). *A new standard of Best Practice*

"...there are serious deficiencies across Australia's Aboriginal and Torres Strait Islander cultural heritage legislative framework, in all state and territories and the Commonwealth."⁴

Indigenous Cultural Heritage (**ICH**) in Australia is governed under a complex web of national and state and territory laws. Current laws and policies in Australia are, for the most part, unfit for the purpose of protecting and conserving ICH.⁵ This is true for several reasons:

- Frameworks often focus more on applications and consent to destroy heritage, rather than actively protecting cultural heritage;⁶
- Laws empower ministers and government officials as the decision-makers, requiring little to no consultation with First Nations custodians of cultural heritage;
- Laws focus predominantly on physical aspects of heritage (sites, objects and ancestral remains) and fail to recognise and protect intangible heritage;
- State and territory laws offer varying and limited levels of protection across different jurisdictions;
- Federal protections are only accessible once state and territory legislative mechanisms have been exhausted, which is often too late.

Due to the deficiencies in these laws, it is incumbent on businesses and investors to reach beyond legislative standards and implement leading practice for cultural heritage as defined by First Nations people.

The *Dhawura Ngilan* document sets out a series of Best Practice Standards in Indigenous Cultural Heritage management and legislation.

"The objective of the Standards is to achieve the aspirations identified above; that is to facilitate ICH Legislation and policy across the country that is consistently of the highest standards."⁷

These Standards provide an opportunity for jurisdictions to collectively work with First Nations people to identify, protect, conserve, present and transmit for future generations the unique heritage of Australia.⁸

⁴ Joint Standing Committee on Northern Australia, Parliament of the Commonwealth of Australia, *A Way Forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge*, (Report, October 2021) xi.

⁵ First Nations Heritage Protection Alliance, *First Nations Peoples' Cultural Heritage is Australia's Cultural Heritage* <<https://culturalheritage.org.au/>>.

⁶ First Nations Heritage Protection Alliance, *First Nations Peoples' Cultural Heritage is Australia's Cultural Heritage* <<https://culturalheritage.org.au/>>.

⁷ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 32.

⁸ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 13.

II. Purpose of the Dhawura Ngilan Guide for Businesses

Dhawura Ngilan offers a Vision of Australian cultural heritage that is protected and celebrated by all. As a policy document, it sets out the high-level goals and ambitions for legislative reform and systemic change. The Best Practice Standards detailed in Part C of the Vision document guide government and legislators in cultural heritage management across jurisdictions. The purpose of the Dhawura Ngilan Guide for Business is to operationalise the standards for the private sector. The objective of the Guide is to achieve the aspirations identified in the Vision.

The Dhawura Ngilan Guide for Businesses provides actionable guidance and tools for the private sector to use in bringing the *Dhawura Ngilan Vision* to life. This Guide assists companies across all sectors to work alongside First Nations people in the protection and celebration of cultural heritage.

This guide provides practical and First Nations-led advice to both Australian and international companies on how to manage their businesses in a way that ensures no negative impacts on Country, heritage sites, knowledge and places, and to enable and support First Nations people to manage and protect their heritage and Country.

III. What can businesses do?

Businesses are uniquely placed to drive the shift toward best practice cultural heritage management. There is substantial and growing expectation from industry, governments, civil society and investors that companies must respect all human rights, and First Nations rights in particular. This comes in the context of changing conversations around issues such as decolonisation, reconciliation, racial injustice and inequality, and a growing public expectation that companies will adopt environmental, social and governance (**ESG**) considerations in its operations and corporate strategy.

Companies' responsibility to respect human rights includes the responsibility to assess and address their human rights impacts on First Nations people. To ensure First Nations cultural heritage is protected, companies must be transparent and accountable. They must respect and uphold First Nations people's rights to free, prior and informed consent (**FPIC**).

*'Businesses have a crucial role to play in ensuring that they respect Indigenous rights throughout their strategies, operations and business relationships.'*⁹

Investors are increasingly calling for companies to align with international leading practice and meet broader stakeholder expectations with respect to cultural heritage. Further, there is increasing pressure for companies to ensure they are aware of and comply with changes happening internationally and within their local jurisdictions.

By aligning their business operations and strategy with the Dhawura Ngilan principles, businesses with operations in Australia are demonstrating a positive intent and commitment to supporting First Nations-led standards for cultural heritage management in Australia.

⁹ UN Global Compact Network Australia, KPMG Australia and the University of Technology Sydney, *The Australian business guide to implementing the UN Declaration on the Rights of Indigenous Peoples* (Report, 12 November 2020) 4 <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>.

IV. Key Concepts

Country

Country is more than the physical land, waterways and seas, it includes all living things on land and in seas. The word 'Country' also reflects the values, stories, resources, the laws, responsibilities, ancestral heritage, and language all related to a place. For First Nations people, the relationship to Country is symbiotic. Country is language, ancestry and spirit. It forms the identity of First Nations people.

Custodian

First Nations people are connected to Country and culture. They are responsible for taking care of it, and for ensuring its ongoing health and endurance. They are not owners of culture or Country, in the way that Western society views ownership, but rather are Custodians or caretakers in line with cultural practice.

Culture

Culture refers to the holistic ways of living, knowing and being of Aboriginal and Torres Strait Islander people, their ideas, customs and values as practised and refined by people and communicated from generation to generation.

Caring for Country

Caring for Country is a cultural obligation placed on First Nations people as custodians and stewards of the land. In caring for Country, First Nations people draw on laws, knowledge and customs that have been inherited from ancestors and ancestral beings. The capacity for First Nations people to care for Country means that First Nations knowledge systems can continuously evolve and be passed on through the generations.

Cultural Heritage

Indigenous cultural heritage is not just restricted to physical sites and objects but includes intangible heritage too. It refers to knowledge, lore, practices, people, objects, and places that are meaningfully connected to identity and Country. Indigenous cultural heritage is fundamental to all aspects of First Nations cultures; it has historical, social, cultural, and spiritual value. To First Nations people, cultural heritage does not just reside in the past, it is living and dynamic, and forms a vital aspect of the lives and cultures of Australia's First Nations people today.¹⁰

Holistic

Holistic is a term used throughout this guide and it describes the interconnectedness of Country, culture, heritage and the health and wellbeing of First Nations people. People are healthier when Country and culture are safe, cared for and revitalised.

Cultural safety

Cultural safety can mean creating an 'environment that is safe for people: where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge, and experience of learning, living and

¹⁰ Ian Cresswell, Terri Janke and Emma L Johnston, *Australia State of the Environment 2021: Overview* (Report, July, 2022) 77 <<https://soe.dcceew.gov.au/sites/default/files/2022-07/soe2021-overview.pdf>>.

working together with dignity and truly listening.¹¹ Cultural safety is an experience felt by First Nations people; not a standard of competence to be attained by non-First Nations people.

Cultural safety is critical to the holistic health and wellbeing of First Nations Australians. It requires a solid foundation of cultural awareness and must incorporate the principles of self-determination to ensure meaningful and genuine interactions. Culturally safe practice, behaviours, and attitudes, work symbiotically with self-determination and are underpinned by a foundation of cultural awareness, respect, and sensitivity.

Indigenous Cultural and Intellectual Property, or ICIP

First Nations people have the right to maintain, control and protect their cultural knowledge, practices, and knowledge systems.¹² This is at the heart of First Nations identity. Indigenous cultural and intellectual property ('ICIP') is all encompassing. It includes traditional cultural expression such as songs, dance and languages, as well as traditional knowledge such as medicinal and ecological knowledge. This right is interconnected with the First Nations right to self-determination. See section 3.3 for more detail.

Self Determination

Under the UNDRIP, the right to self-determination is a central pillar to ensuring that First Nations peoples are able to preserve their unique identities and cultures. Self-determination means that First Nations peoples have the right to have autonomy and control over their own lives and futures, and their community's place in the world. In Australia, this also means having the freedom to govern themselves in matters related to their own internal or local affairs.

¹¹ Robyn Williams, 'Cultural Safety: what does it mean for our work practice?' (1999) 23(2) *Australian and New Zealand Journal of Public Health*.

¹² *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) Art 31 ('UNDRIP').

DN PRINCIPLES FOR THE PRIVATE SECTOR

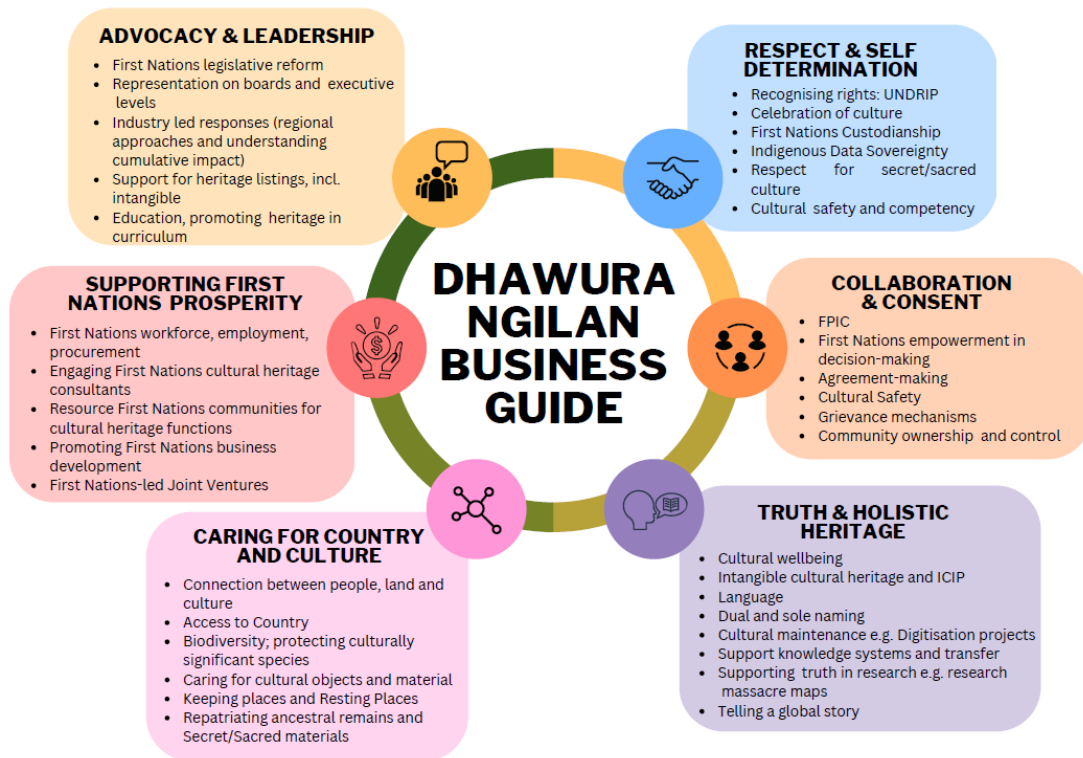


Figure 1. Dhawura Ngilan Principles and Actions

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INTEGRATING THE DHAWURA NGILAN PRINCIPLES WITHIN BUSINESS

This implementation guide outlines the practical steps that businesses can take to align their operations and strategy with each of the Principles outlined above.

How to use this Guide

Recognising that different types of business operations can impact human rights in different ways, each of the six sections below outlines a series of Key Actions associated with each Dhawura Ngilan Principle. For ease of reference, companies and their respective industries have been categorised under the following categories.

- Companies with **land, water and sea-based** activities, including mining and extractives, agriculture, construction, infrastructure, telecommunications or utility providers, real estate, etc.
- Companies with **knowledge and research**-based activities, including universities, collecting institutions like museums and galleries, think tanks, technology and R&D companies, law firms, consultancies, etc.
- Companies with **design and creative** outputs, including arts and culture, musicians, theatre companies, design firms, architecture companies, marketing and advertising firms, manufacturing, retail, etc.
- Companies that **work directly** with First Nations partners, culture or knowledge, including project proponents, research partners, health and social enterprises, etc.
- Companies who do not work directly with First Nations partners, culture or knowledge, but who **have third party relationships or value chains** which impact cultural heritage, including banks, joint venture companies, parent companies, international partners, not-for-profits, philanthropists, etc.

These categories are not mutually exclusive. For instance, a tourism company running a bus tour in Queensland may have land-based activities relating to its tour route, knowledge-based in the information it shares with its customers, and creative outputs from its marketing materials and the design printed on the side of the bus. In such a case, that company should seek to apply the Key Actions from all three relevant sections.

Companies aligning with the Key Actions in this Guide will be able to demonstrate leading practice with respect to management and protection of First Nations cultural heritage. Investors can use this Guide as an accountability tool for companies in which they invest, as well as adhering to the Principles in their own operation as businesses. Finance companies may also refer to the Dhawura Ngilan Guide for Investors for guidance on how to assess whether funded companies are demonstrating good practice.

This Guide also serves as a useful tool for government agencies, both as a standard setting document, and also to guide their activities as proponents or project funders in relation to cultural heritage.

Importantly, this Guide will be a useful resource for First Nations communities as a tool to assess the actions of businesses and hold them to their commitments with respect to management and protection of First Nations cultural heritage.

1. Respect and self-determination

1. *The company respects, values and celebrates First Nations cultural heritage.*
2. *The company empowers First Nations leadership and respects First Nations peoples' right to self-determination.*
3. *The company recognises the rights of First Nations people as Custodians of their cultural heritage.*¹³
4. *The company respects First Nations cultural heritage as living heritage.*

The *Dhawura Ngilan Vision* is for First Nations heritage to be “protected and celebrated for its intrinsic worth, cultural benefits and the wellbeing of current and future generations of Australians.”¹⁴

This vision requires that people and organisations go beyond what the law requires of them, reach for higher standards, and continually strive to **celebrate** culture. First Nations heritage is valued as central to Australia’s national heritage,¹⁵ rather than seen as a hurdle or obstacle for projects and development.

1.1. Creating a rights-based approach

The *United Nations Declaration on the Rights of Indigenous Peoples* (**UNDRIP** or the **Declaration**) sets the international standard for respecting and protecting First Nations rights across the world.

*Indigenous peoples have the right to maintain, control, protect and develop their **cultural heritage, traditional knowledge and traditional cultural expressions**, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to **maintain, control, protect and develop their intellectual property** over such cultural heritage, traditional knowledge, and traditional cultural expressions.*¹⁶

Companies should seek to adopt a human rights-based approach to cultural heritage management, founded in a culture of respect for First Nations self-determination.

¹³ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 14

<<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>. ‘Custodians’ is written here with a capital ‘C’ to reflect the language used in the Vision.

¹⁴ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 7

<<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

¹⁵ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 7

<<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

¹⁶ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) Art 31.

The *UN Guiding Principles on Business and Human Rights* (UNGPs) are the universally accepted international framework for integrating respect for human rights within business.

“Principle 14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure.”¹⁷

At the outset, the company should ensure that respect for the human rights of all First Nations stakeholders is incorporated within its company human rights policy. It should also ensure that human rights due diligence is undertaken to adequately identify, prevent, mitigate, and account for any human rights risks to people or impacts associated with company operations and supply chains.¹⁸ The company should also establish an accessible and culturally appropriate grievance mechanism, to allow for First Nations stakeholders to seek effective remedy from the company where their rights have been violated.

These responsibilities under the UNGPs are proportionate to the size and influence of the company. Smaller enterprises may have less capacity and more informal due diligence structures than larger companies, however their responsibility will also be measured against the severity of their human rights impacts.¹⁹ The underlying principle remains in any case – companies are fully and equally responsible for respecting cultural heritage as part of human rights due diligence.

In practice, this means ensuring broad understanding of the human rights of First Nations people is consistently held across the organisation. It means always considering the impact that projects may have on First Nations people and their lands, water and resources. It means recognising that First Nations people are the Custodians and carers of all the lands, waters and skies in Australia, regardless of whether the domestic legal system has recognised any definable rights.

In order to establish this organisational understanding, companies need to invest time and resources into educating their staff, contractors, partners and clients. This will require a shift in mindset and corporate culture.

1.2. First Nations leadership

First Nations peoples have the right to self-determination. Many of the Principles and Key Actions in this Guide specifically require that companies ‘support First Nations-led’ activities such as truth telling, education, or remediation of Country. Even where this is not explicit, companies

¹⁷ United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework* (Report, 2011) 15; 16.

<https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf>

¹⁸ Australian Council of Superannuation Investors, *ACSI Policy on Company Engagement With First Nations People*, (Report, December 2021) <<https://acsi.org.au/wp-content/uploads/2021/12/ACSI-Policy-on-Company-Engagement-with-First-Nations-People.Dec21.pdf>>;

¹⁸ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) Art 23; 32.

¹⁹ United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework* (Report, 2011) 15

<https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf>

implementing the Dhawura Ngilan Business and Investor Guides must seek to meaningfully involve First Nations people in all actions in relation to First Nations heritage.

Any decisions or activities which relate to First Nations people or culture should only proceed with their meaningful consultation and involvement.

It is a vital element of this right that First Nations people are empowered to make any decision in relation to their cultural heritage. Within the scope of legislative instruments, First Nations people may wish to make decisions contrary to the protection of heritage, in the interests of achieving other benefits for community. Where possible, options to achieve both outcomes should be explored – heritage protection and community benefit. But it is also available to a First Nations group to allow for heritage to be impacted.

The central point to this guidance is the **right of First Nations people to choose**. This is self-determination in action.

1.3. Custodianship of a living culture

Custodianship means a responsibility to care for Country and Culture. First Nations people are diverse, but all have the obligation to continue to look after Country and heritage and continue to nurture cultural practice.

First Nations people are the Custodians and primary interpreters of Culture, and this relationship and responsibility must be respected. Companies can work towards upholding these rights by supporting keeping places, and long-term First Nations ownership and care of cultural objects.

1.4. What we can do

What all companies can do:

PRINCIPLE	KEY ACTIONS
Respecting, valuing and celebrating First Nations cultural heritage	Celebrate First Nations events and significant dates such as NAIDOC
	Staff undergo cultural competency training at all levels of the organisation
	Seek opportunities to engage First Nations artists, service providers, consultants and others for the needs of the business
	Ensure that the company operational-level grievance mechanism is sensitive to issues relating to the protection of cultural heritage
Empowering First Nations leadership	Support First Nations people to advance within your organisation, as managers, leaders, executive and board members
Respecting First Nations rights, including the right to self-determination	Build relationships with local First Nations communities, and seek to understand their aspirations and how you can work together to assist them
	Adopt a company-wide human rights policy and associated implementation framework that reflects the company’s commitment to respecting human rights, including those outlined in the UNDRIP
	Educate staff about the meaning and significance of the UNDRIP
	Exploring opportunities to share any First Nations-relevant knowledge or data held by the company with community

Recognising First Nations custodianship of culture	Support for local, regional and national Keeping Places (for knowledge or cultural materials) or Resting Places (for ancestral remains). Support may mean: <ul style="list-style-type: none"> - Funding and resourcing - Offering capacity building opportunities - Holding materials until adequate care facilities can be established (i.e. climate controlled environment; two-factor authentication system, etc) - Supporting or using existing Keeping Places like Ara Iritja or Mukurtu CMS - Identifying cultural material in any records or collections held by the company, and then making it accessible or repatriating it to community
	Empowering First Nations communities to accept repatriated materials, including by assisting them with making applications, dealing with legislative processes, or by resourcing them to develop adequate facilities to accept custodianship of sensitive materials.
Respecting the living and ongoing nature of First Nations heritage	Acknowledge First Nations traditional custodians before commencing meetings, or for larger events or meetings, engage and pay a local traditional custodian or cultural authority to give a Welcome to Country

What companies that work directly with First Nations partners, culture or knowledge can do:

PRINCIPLE	KEY ACTIONS
Respecting, valuing and celebrating First Nations cultural heritage	Attributing and acknowledging First Nations contributions to projects and products, including knowledge, consultation, design techniques, bush foods or medicines, knowledge of Country, or other contributions
Empowering First Nations leadership	Engaging local First Nations consultants and experts to advise on projects relating to their Country
	Look to opportunities for First Nations collaborators to step into leadership positions on projects
Respecting First Nations rights, including the right to self-determination	Respecting cultural decision-making processes during engagements and consultation, including allowing sufficient time for deliberation
Recognising First Nations custodianship of culture	Explore creative ways to enable First Nations people to describe and represent their cultures.

What companies with land, water or sea-based activities can do:

PRINCIPLE	KEY ACTIONS
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Respecting, valuing and celebrating First Nations cultural heritage	Cultural Heritage Management Plans (or equivalent) contain details of community aspirations, and how the plan will address them
	Signage on project sites and in relation to cultural heritage areas that details the significance for the local community (should only be done in collaboration with the community)
Respecting First Nations rights, including the right to self-determination	Supporting First Nations groups' aspirations for listing heritage places, and only making listing applications in alignment with First Nations wishes
Recognising First Nations custodianship of culture	Facilitating First Nations access to sites and Country before, during and after projects (where safe and practicable)
	Repatriate cultural material found on project sites to the rightful traditional custodians of the relevant Country, or to Keeping Places as instructed by the traditional custodians

2. Collaboration and consent

5. ***The company engages early and widely with interested First Nations parties on cultural heritage matters.***
6. ***The company has culturally appropriate engagement processes.***
7. ***The company holistically applies Free, Prior and Informed Consent (FPIC) in cultural heritage matters.***
8. ***The company engages in agreement-making on equal terms with First Nations people in relation to cultural heritage decisions.***
9. ***The company has effective feedback processes and grievance mechanisms.***

2.1. Due diligence

The UNGPs expect businesses to carry out human rights due diligence to ensure they assess and address adverse human rights impacts:

"In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed."²⁰

Human rights due diligence is defined in the UNGPs as assessing actual and potential human rights impacts (Guiding Principle 18), integrating and acting upon the findings (Guiding Principle

²⁰ United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (Report 2011) 17.

<https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf>.

19), tracking responses (Guiding Principle 20), and communicating how impacts are addressed (Guiding Principle 21).²¹

To conduct effective due diligence, companies need to establish and build meaningful and trusted relationships with local communities who may be affected by their activities. Responsible due diligence in the context of cultural heritage rights refers to:

- Engaging early with First Nations communities and consulting on the project proposal to assess any potential impacts for cultural heritage.
- Considering cultural events, seasonal changes and sorry business when setting consultation and project timeframes.
- Taking feedback from consultation into account and adapting the project plan as required to address any risks of negative impacts.
- Staying in contact with First Nations communities throughout the project process and providing meaningful updates.

2.2. Engaging early and building relationships

First Nations people place significant value on trust and respect. Trust cannot exist without a relationship, and relationship building requires time, dedication and adequate resourcing.

In order to build enduring relationships, companies must understand their local context from a political, legal and cultural perspective. Companies who have spent time getting to know the First Nations people and groups who have interests in their areas of operation are more likely to achieve positive and mutually beneficial outcomes relating to cultural heritage.²²

Companies should seek to understand:

- Community priorities or aspirations
- Roles and responsibilities of different members of the community, and the relationships between them
- Any traditional decision-making or governance processes
- The surrounding Country, local species, lands and waters, and local communities

Companies must also be aware of their own organisation's historical interactions with First Nations people, and conscious of any ensuing hurt or intergenerational trauma that may exist. Companies should own their histories and seek to meaningfully understand the impacts of their activities on First Nations people. Companies should use past blunders as opportunities for learning and growth.

Importantly, companies should also seek to understand existing power imbalances that exist between First Nations and non-First Nations peoples and engage with an appreciation of this

²¹ United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (Report, 2011) 19-24
<https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf>.

²² UN Global Compact Network Australia, KPMG Australia and the University of Technology Sydney, *The Australian business guide to implementing the UN Declaration on the Rights of Indigenous Peoples* (Report, 12 November 2020) 17 <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>.

power imbalance in mind. Companies should work to mitigate this imbalance wherever possible – often accompanied by truth telling (see section 3.1 below).

2.3. What is culturally appropriate consultation?

Companies need to work with First Nations people on a variety of matters and projects. Often, non-First Nations people are nervous to consult with First Nations people, for fear of doing the wrong thing and causing offence.

There are many existing resources and guidelines on this topic, with varying modes of application that are context specific. Nevertheless, there are some simple, foundational rules that companies should remember when communicating and working with First Nations people to ensure that engagements are respectful and productive.

When to engage?

Engagement with First Nations communities regarding projects or activities that may affect them is conducted in the project planning phase.

Dhawura Ngilan states that during assessments of development proposals, management of cultural heritage should not be left as the last consecutive approval required in the process. The same approach applies for all projects by companies in the private sector. Cultural heritage management needs to be addressed as a key part of the planning process, where engagement, timeframes, agreements, research surveys and budgets are considered in the early stages.

Early engagement ensures both adequate time for the First Nations group to consider a proposal and that ICH considerations are not perceived as the 'last impediment' to project sign off.²³

Who to speak to?

Cultural authority: Companies should ensure they are consulting with First Nations people who have the cultural right to speak for Country.

“Often it is the senior Custodians who have the authority to speak for country in their role as repositories of knowledge about places.”²⁴

The right to speak for Country may only be determined by First Nations people themselves. There may also be a diverse range of people with the right to speak for Country, particularly in contexts of large regions, contested borders, or projects or activities that cover multiple areas.

Companies should conduct background research on the relevant community or area. Identify who the potential traditional custodians are, and if they have a representative organisation (e.g. Aboriginal corporation, Elders Council, language centre, arts centre, PBC or native title body, etc). Utilise First Nations peak bodies for the relevant area, such as native title service providers, healthcare providers, or land councils.

²³ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 36

<<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

²⁴ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 9

<<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

With respect to a project on land or waters subject to a native title claim or determination, the Prescribed Body Corporate (PBC) under the *Native Title Act* most likely has cultural authority. In some cases, statutory land councils, where the basis of the statutory regime is recognition of Traditional Ownership, will likely have cultural authority in relation to land held under the statutory regime. Lands held under the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth.) and the Anangu Pitjantjatjara Yukunytjarra Land Rights Act 1981 (SA) will satisfy this definition. Sometimes, the simplest way to ascertain the right people to speak for Country is to ask. Companies may ask people within their staff or networks who have relationships with the community for advice, ask a representative organisation, or ask the community directly.²⁵

It is good practice to ask, when consulting with First Nations people, “Is there anyone else we should speak to?”

Interested parties: Companies must also ensure they are consulting with all First Nations people, groups or organisations who have an interest in or may be affected by the proposed work or decision.

EXAMPLE: A company was seeking consent for a land-based project on the traditional Country of an Aboriginal group. They engaged with and obtained consent from the representative Aboriginal Corporation for the land, but not from another Aboriginal group whose songlines travelled over the relevant area.

What should they have done? The company should have engaged with all Aboriginal groups with interests in the area relevant to the project, including those who do not reside directly on the land affected, but who might be impacted from impacts to songlines, or physical elements such as animal movements, waters and streams.

Key takeaway: Engagement is not sufficient if consent is only obtained from one impacted group. Leading practice consultation and FPIC means seeking consent from all impacted groups.

From a legal viewpoint, the definition of an ‘interested party’ may be construed broadly.

CASE STUDY: Tipakalippa and the sea country drilling project²⁶

Munupi Elder Dennis Tipakalippa successfully challenged an application by Santos to expand their gas drilling project off the Tiwi Islands, on the grounds of insufficient consultation with traditional owners. Consultation with the Tiwi Land Council and the Northern Land Council were found to be not enough, as those bodies did not represent interests in sea country.

Santos’ argument that it was ‘unworkable’ for companies to identify and consult with a large group of individuals instead of representative bodies

²⁵ Bradley Moggridge, *Indigenous Engagement Protocols for Threatened Species Researchers*, (Report, 9 August 2020) 10 <<https://www.nespthreatenedspecies.edu.au/publications-and-tools/indigenous-engagement-protocols-for-threatened-species-researchers>>.

²⁶ See also *Tipakalippa v National Offshore Petroleum Safety and Environmental Management Authority (No 2)* [2022] FCA 1121 <<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2022/2022fca1121>>.

was rejected. The Court also noted that it should not be assumed that sending an email with an information package (even if followed up with another email) constitutes adequate consultation.

Key takeaway: Consultation processes must be robust, comprehensive and adaptable. Simply because a process is difficult or time- or resource-intensive is not an acceptable reason for it not happening.

Where to engage?

Companies should make the effort to visit First Nations communities, if invited. Taking the time to visit Country and understand the cultures and ways of life of local First Nations groups can go a long way toward building meaningful and positive relationships. It demonstrates a willingness to work with First Nations people in a collaborative manner on equal terms.

How to engage?

- Companies should engage with First Nations communities in good faith and with a rights-approach with the goal of ensuring mutually beneficial outcomes.²⁷ Outcomes categorised as benefitting First Nations people should be defined by First Nations people.
- Companies should be sensitive to First Nations styles of communication.²⁸
- Engagements should occur on equal terms, and with acknowledgment and mitigation of any power imbalances.²⁹
- Companies should stay connected to communities regarding projects, sites, use of ICIP and heritage like language and stories, etc. Ongoing engagement supports relationship building and trust.
- Consultation and engagement should be ongoing. Companies should listen frequently to First Nations communities, and offer opportunities for feedback.

2.4. FPIC in practice

Free, Prior and Informed Consent, or FPIC, is the international standard set by the *United Nations Declaration on the Rights of Indigenous Peoples* for projects that affect the rights of First Nations people.

²⁷ UN Global Compact Network Australia, KPMG Australia and the University of Technology Sydney, *The Australian business guide to implementing the UN Declaration on the Rights of Indigenous Peoples* (Report, 12 November 2020) 21 <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>.

²⁸ UN Global Compact Network Australia, KPMG Australia and the University of Technology Sydney, *The Australian business guide to implementing the UN Declaration on the Rights of Indigenous Peoples* (Report, 12 November 2020) 21 <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>.

²⁹ UN Global Compact Network Australia, KPMG Australia and the University of Technology Sydney, *The Australian business guide to implementing the UN Declaration on the Rights of Indigenous Peoples* (Report, 12 November 2020) 17 <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>.

Australia is a unique country. The *Uluru Statement from the Heart* refers to First Nations people who ‘walk in two worlds’.³⁰ Being a responsible company in Australia means respecting these two worlds. Companies should seek to understand the cultural and historical significance of where they operate, and to respect and advance the value of this land we now share. By respecting human rights, companies can demonstrate a willingness to accept the invitation to walk with First Nations “in a movement of the Australian people for a better future.”³¹

In practice, companies should consider whether their First Nations engagement frameworks align with leading practice and, in particular, assess how expectations regarding FPIC are reflected within these processes. This should be done both by introducing systems and also training. For instance, companies should work to ensure that the requirement of FPIC is well understood throughout (by delivering training on FPIC), but they should also build FPIC considerations into the company project lifecycle (e.g. by setting and embedding expectations about when and how FPIC should be obtained throughout a project’s lifecycle, from exploration through to decommissioning and closure).

By embedding a hard requirement for the organisation to obtain the FPIC of relevant First Nations stakeholders, companies can demonstrate respect for First Nations rights, set a strong foundation for meaningful and mutually beneficial partnerships, and avoid risks associated with financing, operations, social licence and reputation.³²

What does FPIC look like?

Acknowledging power imbalances and avoiding coercion. Large businesses and corporate processes can be intimidating, even unintentionally. Companies should make efforts to acknowledge and mitigate this, by conducting meetings in informal settings, giving First Nations groups space to consider proposals, and being flexible to requests from First Nations people.

Empowering First Nations participation. First Nations groups are highly sought after for consultation, partnerships and other opportunities. They also often have duties under statutory regimes including native title and cultural heritage management which are not adequately funded. Companies seeking consultation and consent with First Nations groups should resource them for their time and labour in considering the project.³³

Providing clear, concise and comprehensive information about the project, risks and benefits. Ensure information is accessible and contains all necessary details. Companies should ask First Nations groups if there is anything else they may wish to know, and keep lines of communication open.

³⁰ *Uluru Statement from the Heart* (Web Page, May 2017) <<https://ulurustatement.org/the-statement/view-the-statement/>>.

³¹ *Uluru Statement from the Heart* (Web Page, May 2017) <<https://ulurustatement.org/the-statement/view-the-statement/>>.

³² UN Global Compact Network Australia, KPMG Australia and the University of Technology Sydney, *The Australian business guide to implementing the UN Declaration on the Rights of Indigenous Peoples* (Report, 12 November 2020) 22 <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>.

³³ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 36 <<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

Re-seeking new consent for changes to the project plan. FPIC is not a one-stop shop, but rather an ongoing process. Companies should maintain relationships and communication channels with First Nations groups to ensure consent throughout the lifecycle of the project.

Allowing sufficient time for First Nations groups to consider the proposal. Traditional decision making and governance processes take time. They often require consultation with community authorities and Elders, and cannot be rushed. Companies should engage in consultation early, and have well thought out processes that are inclusive and transparent.

“A central component of the principle of Free, Prior and Informed Consent under UNDRIP is that the affected Indigenous community has adequate information and adequate time to consider that information in making any decision that may affect their ICH [Indigenous Cultural Heritage].”³⁴

Flexibility in project design and outcomes. First Nations groups may not agree with a project as proposed, but they may agree to a modified version of a project. Companies should implement First Nations feedback and proposed changes as far as possible to give effect to First Nations control and co-design.

Collaborating on closure planning. Consent differs at various stages of the project lifecycle. Ongoing consent means collaborating at every stage, even at the very end as the project is being concluded. Consider how activities will be wrapped up, what measures will be implemented post-project, can any resources or documentation be useful to support continuing cultural practice, how ongoing communications will be managed, etc.

Taking ‘no’ for an answer. Consent means allowing First Nations groups to withhold consent. FPIC requires that project proponents respect First Nations groups’ right to say no.

“...the ultimate decision regarding whether interference with ICH is acceptable or not, must rest with the affected Indigenous community.”³⁵

FPIC is:	FPIC is not:
✓ A dynamic and ongoing process	✗ A one-off authorisation
✓ co-design – equal decision-making roles, listening and implementing feedback	✗ only consultation, or consultation as a ‘tick box’ process
✓ sensitive to the context of the project; communities and histories	✗ viewed narrowly
✓ allowing time for all parties to properly consider	✗ rushed to meet deadlines

³⁴ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 36

<<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

³⁵ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 36

<<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

✓ may require multiple consents from interested parties	✗ consent from one person
✓ open lines of communication and regular updates between First Nations groups and partners	✗ only reaching out when you have deadlines
✓ having policies and processes established to stand the test of time	✗ relationships rely on individuals without a succession plan
✓ working creatively to make projects be mutually beneficial	✗ only identifying the needs of the project proponent
✓ recorded in agreements	✗ verified only by verbal means
✓ the project only goes ahead with the agreement of the impacted First Nations community/ies	✗ consultation feedback is considered, but ultimately the project proceeds with or without community consent

Figure 2. FPIC in practice

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AT A GLANCE COMPARISON: FPIC
Dhawura Ngilan and other existing industry standards

Dhawura Ngilan Vision and Best Practice Standards	International Council on Mining and Metals – Indigenous Peoples and Mining: Position Statement and Good Practice Guide	International Finance Corporation – Performance Standard 7: Indigenous Peoples
Australia Focused	International Standard	International Standard
Focuses on working towards best practice standards and recognises the importance and centrality of FPIC	Focuses on working towards best practice standards and recognises the importance and centrality of FPIC	Focuses on working towards best practice standards and recognises the importance and centrality of FPIC
States that FPIC is crucial and that Indigenous people have the ‘ultimate decision’ in relation to ICH	States have the right to make decisions according to applicable national laws. FPIC should be regarded as a ‘principle to be respected to the greatest degree possible’	First considers Indigenous rights under national law, nature of commercial projects and their potential consequences and then works to obtain FPIC. Document outlines specific circumstances requiring FPIC
Focuses on all kinds of cultural heritage, including place based traditional knowledge and intangible heritage	Focuses on the specific impact of mining and metal projects, however recognises the wide range of interests of Indigenous people in relation to the land	Focuses on sustainable development and risk management related to environmental and social sustainability
Mentions and emphasizes UNDRIP as an important foundational guideline, but one that is not fully comprehensive or without limitations	Mentions and emphasizes UNDRIP as an important foundational guideline, but not one that is fully comprehensive or without limitations	Mentions The World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines) as their technical reference documents for international industry practice
Focuses on truth telling, history and, on the ongoing manifestation of colonisation More principle based and does not set out very comprehensive processes or provide specific actionable tips	Principle based but also more pragmatic in approach, largely centred on how their specific projects affect Indigenous people and outline comprehensive consultation and decision making processes	Much more pragmatic in approach, set out performance standards but largely centred on how their specific projects affect Indigenous people Outlines comprehensive consultation and decision making processes and provides actionable tips
Points out need for appropriate and effective collaboration with states, governments departments and authorities	Points out need for appropriate and effective collaboration with states, governments departments and authorities	Points out need for appropriate and effective collaboration with states, governments departments and authorities
Ultimate decision maker is the First Nations community	Ultimate decision maker is the company	Ultimate decision maker is the company

Figure 3. FPIC in existing industry standards

2.5. Managing any disputes with cultural safety

Under the UN Guiding Principles on Business and Human Rights, companies are expected to implement culturally appropriate and accessible grievance mechanisms which allow human rights defenders to seek remediation of adverse human rights impacts that the business may be involved in.

“Principle 29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.”³⁶

First Nations communities and organisations may use these guides to measure and hold accountable those companies with whom they are partnering, or who are working on their Country. Disputes and grievances relating to cultural heritage need to be managed with cultural safety, care and respect. This may include:

Avoiding large scale disputes with ‘check ins’ and early intervention. Prompt responses can go a long way to de-escalate conflict. The company strives to anticipate the wishes of each party, identify the foreseeable conflicts, and consider how they might be resolved. It also has effective systems for regular engagement and checking in with First Nations partners, to identify and manage potential problems before they arise.

An effective method by which First Nations people can register complaints or grievances. The company is easily contactable and has a person or team responsible for managing relationships and responding to contact enquiries. Be conscious that First Nations communities may be hesitant to raise complaints. Ensure the process is accessible, responsive, respectful and safe. Where possible, ensure that grievances from First Nations groups are heard by a representative from the company who is First Nations, provided that this fits within their role and responsibilities.

Efficient and flexible complaints management procedures. The company responds to complaints in reasonable time but appropriate allowance is made for cultural decision making and adaptable timeframes if needed by the First Nations party/ies.

Engaging First Nations facilitators for third-party dispute resolution. Mediation or other forms of alternative dispute resolution by third party facilitators should be led by First Nations people. Processes must reflect local needs, be community driven and recognise local culture, law and language.

Issues and solutions are documented where appropriate. The company has clear systems and processes for documenting disputes and challenges, as well as the actions taken and outcomes achieved. This is secondary to respecting the **confidentiality** of the parties involved, or if the issue is culturally sensitive.

³⁶ United Nations Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework* (Report, 2011) 31
<https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>.

Evaluation and reflection. The company has periodic reviews of past issues and disputes to reflect on successes and learnings. Information is communicated across the organisation to prevent similar mistakes or disputes arising in future.

For any environment, be it the workplace or an accessible service, cultural safety must be at the forefront of all interactions with First Nations peoples.

2.6. What we can do

What companies that work directly with First Nations partners, culture or knowledge can do:

PRINCIPLE	KEY ACTIONS
Engage early and widely on cultural heritage matters	Build relationships with local First Nations groups, even where there is not an immediate project relevance.
	When considering a new project which may involve First Nations people, Country or Culture, make contact with the relevant First Nations groups at the very start of the project. Take a broad approach. Contact all groups who may have interests, whether direct or indirect – do not limit consultation to land councils and determined native title holders.
	Ask who are the right people to speak for the Country or subject matter for your project. Be sure to engage broadly with all relevant people and communities.
Culturally appropriate engagement processes	Begin by asking the community how they wish to be engaged with, and developing a collaborative plan for communicating before, during and after the project.
	Visit Country for engagements and negotiations, if invited.
	Engage a First Nations liaison or facilitator to manage engagements and ensure culturally safe communications.
	Stay connected and maintain relationships following project conclusions – don't just reach out when you want something and then disappear once you've got it.
Holistic application of FPIC	Ensure that First Nations communities are fully informed of their rights, as well as any potential risks, impacts or benefits from the project. Larger companies may consider funding independent legal advice for the First Nations community to ensure their understanding.
	Develop detailed company policies for leading practice application of FPIC, that allow for First Nations groups to say no.
	Be respectful of timelines for engagement, consultation and decision-making. Deliberation and approval processes for First Nations groups and communities do not run at the same pace as corporate entities.
	Seek consent as both a process and an outcome; as the result of fair negotiated agreement, not a tick-box consultation.
	Not falling back on legal mechanisms, such as getting Cultural Heritage Management Plans approved by the Minister instead of in collaboration with local First Nations communities

Agreement-making on equal terms	Be flexible in project design and accept proposed changes and feedback from First Nations partners as much as possible.
	Use consent forms and agreements to record permissions.
Effective feedback processes and grievance mechanisms	Support First Nations communities to provide feedback, i.e. Resource them to attend project progress check-in meetings.
	Be responsive to feedback and requests from First Nations communities and partners, and implement feedback in project plans and processes.

Other companies may not have direct relationships with First Nations people or cultural heritage but may be otherwise linked. Companies funding community support projects may not interact with First Nations communities directly, but still have a responsibility to ensure that the organisation(s) it funds are exhibiting best practice cultural heritage management in alignment with this Guide.

These companies – including banks, not-for-profit organisations, charities, missions, philanthropists, grant funds, parent companies where a subsidiary is directly engaging, and many others – serve a support function for companies that are directly engaging with First Nations people and cultural heritage.

NOTE: Finance companies may also refer to the Dhawura Ngilan Guide for Investors for guidance on how to assess whether funded companies are demonstrating good practice.

What companies whose value chains impact First Nations communities or cultural heritage can do:

PRINCIPLE	KEY ACTIONS
Engage early and widely on cultural heritage matters	Build relationships with local First Nations groups, even where there is not an immediate project relevance. Facilitate relationship and open communications where the business has existing relationships that may assist the directly-engaging company.
Culturally appropriate engagement processes	Set clear standards for engagement, FPIC and agreement making and ensure the directly-engaging company understands their obligations and responsibilities.
Holistic application of FPIC	Be seen to be at the forefront of positive First Nations engagement by implementing the other Key Actions included in this Guide – being a public advocate for First Nations rights, implementing staff cultural competency training and organisation-wide policies for respecting human rights and ICIP Protocols.
Agreement-making on equal terms	
Effective feedback processes and grievance mechanisms	
	Support the directly-engaging company by providing best practice policies, training, contracts and other templates, and other useful tools to assist their engagement.
	If FPIC or other best practice engagement standards are not met, consider opportunities to educate and correct their processes.

3. Truth and holistic heritage

10. *The company actively supports First Nations people engaging in truth telling about heritage.*
11. *The company recognises and values intangible cultural heritage and upholds Indigenous Cultural and Intellectual Property rights.*
12. *The company supports First Nations people to maintain and ensure the endurance of First Nations cultural heritage.*
13. *The company respects Indigenous Data Sovereignty.*

3.1. What is Truth Telling?

Truth telling about Australia's past is an important step to changing rights for First Nations Australians, and reconciling the relationship between First Nations and non-First Nations peoples. Truth telling involves marking previously untold and unrecognised parts of history to develop a shared understanding of our history and the contemporary impacts of colonisation and dispossession.³⁷ Understanding the truths of the past can help address trauma experienced by First Nations peoples and to ensure that the same mistakes are not repeated.³⁸ This is why it is a key component of healing and reconciliation.

Reconciliation Australia's *State of Reconciliation in Australia* report describes 'historical acceptance' as one of five interrelated dimensions that represent a holistic picture of reconciliation.³⁹ This is included alongside with race relations, equality and equity, unity, and institutional integrity. The Yoorrook Justice Commission in Victoria is embarking on a state-wide initiative of truth telling, and has outlined the importance of protecting heritage and in creating self-determined cultural centres and Keeping Places.⁴⁰

Understanding First Nations history can assist companies engage better with First Nations people. It can also equip the team with greater knowledge of First Nations issues, local and national, which may impact how decisions are made.

3.2. Beyond Reconciliation

Rather than reconciliation being a 'tick the box' exercise, corporations should apply the reconciliation framework to policies and operational activities that are related to First Nations peoples, land, waters, knowledge and resources. Given the influence that businesses have in

³⁷ Reconciliation Australia, *Truth Telling Symposium Report* (Report, 5-8 October 2018) 6 <<https://www.reconciliation.org.au/wp-content/uploads/2021/09/Truth-telling-symposium-report-2018-web.pdf>>.

³⁸ Reconciliation Australia, *Truth Telling Symposium Report* (Report, 5-8 October 2018) 6 <<https://www.reconciliation.org.au/wp-content/uploads/2021/09/Truth-telling-symposium-report-2018-web.pdf>>.

³⁹ Reconciliation Australia, *The State of Reconciliation in Australia* (Report, February 2016) 7 <https://www.reconciliation.org.au/wp-content/uploads/2021/03/State-of-Reconciliation-Report_FULLL.pdf>.

⁴⁰ Yoorrook Justice Commission, *Yoorrook with Purpose: Interim Report* (Interim Report, 2022) 51 <<https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/06/Yoorrook-Justice-Commission-Interim-Report.pdf>>.

society, there is a moral and economic imperative to ensure that business operations are fit-for-purpose in a reconciled Australia.⁴¹

Business reconciliation considers a shared vision, strategic cooperation and leading practices that support and uplift the broader First Nations community.⁴² This can first start with self-education, then training and educating staff and non-First Nations partners. Businesses should educate board members, management and staff, sub-contractors and others in their sphere of influence on the history of First Nations peoples, including the history and ongoing trauma of massacres, displacement from country and alienation of rights as well as the Stolen Generations. Education includes analysing and understanding the culture within businesses. Ask: How does your business perpetuate systemic bias?

Businesses should also raise awareness within their organisations of the United Nations *Declaration on the Rights of Indigenous Peoples*, the developments in Treaty-making within Australia, and leading practice Indigenous engagement protocols, like True Tracks® ICIP Protocols.

Case Study – ICIP True Tracks® Protocols

Indigenous Cultural and Intellectual Property (ICIP) rights are First Nations peoples' rights to their cultural heritage. These rights are drawn from Art 31(1) of the UN Declaration on the Rights of Indigenous Peoples, which states that 'Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions...'⁴³ Since Australia has not adopted or ratified the declaration into domestic legislation, it is not legally binding. Dr Terri Janke developed the True Tracks® Protocols as an alternate way of protecting ICIP and to guide people to creating meaningful relationships and connections with First Nations peoples and their knowledge.

The True Tracks Principles are 10 principles that businesses may use to think through issues that may arise for projects involving ICIP. Although they may appear in a sequential line, and separate from each other, they are deeply interconnected and dependent on each other. Their strength lies in how they work in combination.

1. **Respect:** respect for the custodianship of First Nations peoples over their ICIP.
2. **Self-Determination:** empower First Nations peoples in decision making and create First Nations-led projects.
3. **Consent and Consultation:** acknowledge the need for ongoing consultation, collaboration and free prior and informed consent from First Nations peoples.

⁴¹ Canadian Council for Aboriginal Business, *Canadian Council for Aboriginal Business: Business Reconciliation in Canada* (Guidebook, September 2019) 10 <https://www.ccab.com/wp-content/uploads/2019/09/Business-reconciliation-in-canada_WEB-final_AA.pdf>.

⁴² Canadian Council for Aboriginal Business, *Canadian Council for Aboriginal Business: Business Reconciliation in Canada* (Guidebook, September 2019) 10 <https://www.ccab.com/wp-content/uploads/2019/09/Business-reconciliation-in-canada_WEB-final_AA.pdf>.

⁴³ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) Art 31 ('UNDRIP').

4. **Interpretation:** consider how the voices of First Nations peoples can be heard, represented and involved in the interpretation of our culture. Support the right of First Nations peoples to be the primary guardians and interpreters of our culture.
5. **Cultural Integrity:** respect First Nations cultural heritage and ensure that when using ICIP that the use or the context is not harmful or inappropriate.
6. **Secrecy and Privacy:** respect the secrecy and privacy of First Nations sacred and ritual knowledge in accordance with customary laws.
7. **Attribution:** ensure First Nations people are attributed as the owners of ICIP, and this is in addition to copyright attribution.
8. **Benefit Sharing:** share benefits from the use of ICIP, especially for commercial use. Benefits can be monetary and non-monetary.
9. **Maintaining First Nations Culture:** consider how a proposed use might impact on the future use by others who are entitled to inherit the cultural heritage.
10. **Recognition and Protection:** use the laws, policies and practices in place at organisations to recognise these rights. Protection can be achieved by using laws, protocols and contracts to help ensure the recognition of ICIP. These rights must be recognised as ongoing, which means that engagement must also be ongoing.

3.3. Valuing intangible heritage and ICIP

Both within Australia and throughout the world, notions of heritage are dominated by sites and objects. These tangible aspects of heritage, while important, do not make up the whole picture.

First Nations heritage is made up of inseparable components of both tangible and intangible heritage. It includes places and objects, as well as songs, stories, songlines, ceremonies, cultural practices, languages, kinship ties, knowledge and other cultural values connected to those places and objects.

Companies should take a holistic view of cultural heritage, including placing adequate value on both the tangible and intangible. Companies should support First Nations people to control the recording and digitisation of place-based traditional knowledge like place names and songlines, along with information and stories about tangible sites and objects.⁴⁴

The 'Further Resources' section at the end of this Guide lists several materials which may assist with gaining an understanding of intangible cultural heritage.

3.3.1. What is ICIP?

ICIP, or Indigenous Cultural and Intellectual Property, refers to First Nations people's rights to their cultural heritage. ICIP incorporates all types of tangible and intangible heritage, including:

⁴⁴ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 16 <<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

- Traditional knowledge (**TK**) (including scientific, agricultural, technical and ecological knowledge, ritual knowledge),
- Traditional cultural expressions (**TCEs**) (including stories, artworks, designs and symbols, literature and languages),
- Performances (ceremonies, dance and song),
- Cultural objects (including, but not limited to arts, crafts, ceramics, jewellery, weapons, tools, visual arts, photographs, textiles, contemporary art practices),
- Sites, places, cultural landscapes and waterscapes and knowledge associated with them
- Ancestral remains (human remains and tissues),
- Cultural environment resources (including minerals and species),
- Secret and sacred material and information (including sacred/historically significant sites and burial grounds), and
- Documentation of First Nations peoples' heritage in all forms of media such as films, photographs, books, reports and records taken by others, sound recordings and digital databases.⁴⁵

ICIP incorporates both tangible (sites, objects) and intangible (knowledge, oral stories, performances) elements.

Understanding ICIP requires respect for cultural protocols around knowledge holding, cultural authority, permissions, and communal ownership. First Nations cultural heritage is a dynamic, living heritage that is handed down from generation to generation, which means that modern and emerging knowledges that have been developed by First Nations people based on history and culture can also be classified as ICIP.

Under the UNDRIP, First Nations people have the rights to:⁴⁶

- own, control, maintain and expand their ICIP;
- ensure that any means of protecting ICIP is based on the principle of self-determination;
- be recognised as the primary guardians and interpreters of their cultures;
- authorise or refuse to authorise the commercial use of ICIP according to First Nations customary laws;
- maintain the secrecy of First Nations knowledge and other cultural practices;
- guard the cultural integrity of their ICIP;
- be given full and proper attribution for sharing their cultural heritage; and
- control the recording of cultural customs and expressions and the particular language which may be intrinsic to cultural identity, knowledge, skill and teaching of culture.

Companies will note that many of the DN Principles reflect and resemble these ICIP rights.

⁴⁵ Terri Janke, Michael Frankel and Company, *Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights* (Report, 1998) <https://www.terrijanke.com.au/files/ugd/7bf9b4_2740d8cff7d24320b70f8a34015f9a53.pdf>.

⁴⁶ Terri Janke, Michael Frankel and Company, *Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights* (Report, 1998) 47 <https://www.terrijanke.com.au/files/ugd/7bf9b4_2740d8cff7d24320b70f8a34015f9a53.pdf>.

3.3.2. Story telling

Storytelling is central to First Nations culture. Companies should support First Nations storytelling, and this involves listening to stories to gain greater insight, and also amplifying these stories to support Australia's heritage narrative as one of survival and cultural achievement.⁴⁷

First Nations people value storytelling as a means of connecting, understanding history and imparting. This intergenerational practice is handed down through families and communities. Stories come from people, and Country. The right to tell a story is part of a person's cultural identity and connection. This is also true for a person's life story. Care must be particularly taken when recording, using and publishing cultural stories from First Nations people.

In the context of business, corporations may capture stories of people for understanding culture, but also for promoting their work. Cultural protocols around who can speak for Country, who can share stories should be considered. Companies should follow ICIP Protocols.

3.4. Indigenous Data Sovereignty

Indigenous Data Sovereignty (IDS) arose in response to the treatment of First Nations peoples and communities across the world by conventional and colonial data collection and management practices. IDS challenges conventions of traditional data collection that does not allow First Nations people to have agency over what data is collected, by whom and for what purpose.

Canadian First Nations communities created an early conception of IDS in 1998 by developing the OCAP® (Ownership, Control, Access and Possession) principles. These principles applied self-determination to data practices, and recognises community rights and interests in the information collected. Following this, national First Nations data networks and collectives in Australia, New Zealand, the USA and elsewhere have developed principles, and advocated for the self-determination of First Nations peoples in relation to data.

Companies must be aware of IDS across all decision-making around the collection, use, storage and management of Indigenous Data.

Companies can determine if IDS applies in any context by asking:

- Is this information about First Nations people?
- Was it collected from First Nations people?
- Does it impact First Nations people?

If the answer to any of the above is yes, then the information is Indigenous Data.

Many companies will hold different kinds of Indigenous Data. Banks may hold customer data for First Nations people or businesses. Research companies may hold field notes or interview recordings from First Nations people talking about bush foods or bush medicines. Mining companies may hold geospatial data with information on the location of heritage places or sacred sites. Universities may hold data about First Nations student numbers or related analytics. All these examples are different kinds of Indigenous Data, and may be significant or useful to First Nations communities.

⁴⁷ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 19
<<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

Companies should consider the importance of IDS in projects that involve digitising and recording projects. As it often involves digital repatriation and data that directly impacts First Nations peoples and communities, IDS should be applied to these projects.

For more guidance on the principles and application of Indigenous Data Sovereignty, refer to the 'Further Resources' section. Specifically, refer to:

- *Maiam Nayri Wingara Indigenous Data Sovereignty Collective Principles*⁴⁸
- Global Indigenous Data Alliance, *CARE Principles for Indigenous Data Governance*⁴⁹
- Tahu Kukutai and John Taylor (eds), *Indigenous Data Sovereignty: Towards an Agenda*⁵⁰

3.5. Reimagining and restoring Aboriginal place names

Place names have cultural significance for First Nations people. By naming places with First Nations language names or by adopting dual naming, places are reimagined, and Australians are made aware of the deep heritage of this nation.⁵¹ Restoring Aboriginal place names celebrates and recognises the culture and heritage of the region, and reinstates its importance across time.⁵² Companies should support the naming of places, geographic features, sites and areas with First Nations languages. This could also include naming buildings and projects.

However, it is important that adequate consultation is undertaken and that consent is obtained from Traditional Owners before undergoing such changes. Companies should be especially careful to consult with First Nations people before seeking to trademark any First Nations language words, as this takes the control of language away from First Nations people.

Companies should be guided by the *National Policy Principles for the Use of Aboriginal and Torres Strait Islander Place Names*,⁵³ which was developed to recognise the close relationship First Nations people have with the land. First Nations people have the right to decide on the use of names, and consultation and consent processes will need to be followed.

3.6. Languages

Traditional languages are a vital part of First Nations identity and are fundamentally embedded in First Nations cultural practices. Language is more than simply a means of communication, but also a major component of intangible cultural heritage which carries meaning beyond the

⁴⁸ Maiam Nayri Wingara & Australian Indigenous Governance Institute, *Indigenous Data Sovereignty* (Communique, 20 June 2018) <<https://www.maiamnayriwingara.org/mnw-principles>>.

⁴⁹ Stephanie Carroll et al, 'The CARE Principles for Indigenous Data Governance' (2020) 19(XX) *Data Science Journal* 1 <<https://doi.org/10.5334/dsj-2020-042>>.

⁵⁰ Kukutai, Tahu and John Taylor (eds), *Indigenous Data Sovereignty: Towards an Agenda*, ANU press, 2016) 34 <<https://press.anu.edu.au/publications/series/caepr/indigenous-data-sovereignty>>.

⁵¹ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 19 <<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

⁵² NSW Department of Planning and Environment, *Renaming Ben Boyd National Park* (Report, 29 September 2022) <<https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Parks-reserves-and-protected-areas/Parks-management-other/renaming-ben-boyd-national-park.pdf>>.

⁵³ Committee for Geographical Names In Australasia, *Policy guidelines for the recording and use of Aboriginal and Torres Strait Islander Place Names* (Guidelines, October 1992). <https://www.icsm.gov.au/sites/default/files/aboriginal_names_0.pdf>.

individual words. Language provides a path for the transmission of cultural knowledge and heritage, such as through storytelling.

The practice of speaking and learning first languages has been associated with a greater sense of belonging and empowerment, as well as being interwoven with participation in other forms of cultural heritage. There has been a history of culturally damaging policies, which have threatened the loss of many First Nations languages and harmed First Nations people's connection to culture, ancestors and spirit. This disconnection can be incredibly damaging to First Nations sense of cultural identity.

Businesses can support in revitalising the transmission of cultural knowledge and heritage by correctly using and seeking permission to use First Nations language words. Businesses can also support the creation of language resources and databases to support education around cultural heritage. See section 6.5 below.

3.7. Health and Wellbeing and Heritage

The protection of culture is linked to the health and well-being of First Nations people. Many First Nations people suffer cultural harm by not having access to sites, or to see the destruction of their ancient rock art sites destroyed. The cultural harm and psychological hurt that occurs with First Nations peoples' heritage being lost or threatened is in violation of internationally recognised human rights.

Companies should recognise that due to First Nations people's role as custodians of heritage, not having access to sites or seeing the destruction of cultural heritage takes a toll on the health and wellbeing of First Nations people. When First Nations communities cannot connect with Country, they are severely impacted and have worse health outcomes, lower life expectancy and complex social circumstances impeding their ability to practice culture.⁵⁴

The poor health of First Nations people can be improved with greater understanding of the interwoven nature of culture and Country, facilitating access to Country, and greater respect of First Nations cultural heritage.

3.8. Supporting Cultural Strength and Maintenance

Companies should seek to participate and support projects and initiatives that expand and maintain culture. These programs must be First Nations-led, but could be aimed at sharing culture either within First Nations communities or with non-First Nations people more broadly, both domestically and internationally.

3.8.1. Digitising and recording projects

First Nations cultural heritage has suffered through centuries of dispossession, gradual decline and loss. Place-based traditional knowledge is traditionally passed down through kinship ties and generations, relying on verbal communication and relationships of trust and cultural connection.

Throughout colonial history, historians and anthropologists have disrupted this traditional process with non-First Nations styles of recording information. However, in the context of cultural loss and dispossession, records of cultural knowledge can now be valuable resources to First Nations communities seeking to revitalise culture.

⁵⁴ 'Outlook and Impact' *Australia State of the Environment* (Web Page, 2021) <<https://soe.dceew.gov.au/indigenous/outlook-and-impact>>.

For many decades, repositories of information on First Nations culture and history have been collected and placed in the archives of resource companies, government agencies and academic institutions. These places are often inaccessible to First Nations communities. Being kept inaccessible and separate from First Nations communities prevents the transmission of knowledge for future generations.

First Nations communities have been seeking greater access to and control over their cultural material and knowledge. Access, safe protection and preservation of culture, ancestral knowledge, artefacts, cultural heritage sites and landscapes is vital to the future of First Nations communities. Digitisation and record keeping projects provide a safe space for cultural knowledge and material to be safely stored and returned to First Nations groups.

Businesses can support by assisting in projects that promote the digitisation, mapping and community recordkeeping of First Nations cultural knowledge and material.

There is an opportunity for companies to return copies of heritage information and cultural material through digital repatriation. For example, mining companies with operations in WA returned cultural heritage survey information to traditional owner groups by creating a digital Keeping Place to be owned and controlled by the traditional owner organisation.

Another way companies can assist First Nations groups in heritage is to assist with capacity building. Drone technology, for example, is a way to exchange technological skills.

3.8.2. Supporting research and reform

Historically, museums and galleries collect and display First Nations cultural material with a colonial and aesthetic lens, with little acknowledgement of the living culture that connects to this heritage.⁵⁵ Over the past 40 years, there has been an increasing move towards changing the relationship and dynamics between these cultural institutions and First Nations people, with the aim to empower First Nations communities to determine how their cultural material is managed and represented.⁵⁶

Businesses can support cultural strength and maintenance by funding museums and galleries in researching and implementing these changes.

3.9. What we can do

What all companies can do:

PRINCIPLE	KEY ACTIONS
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⁵⁵ Terri Janke and Company, *First Peoples and Australian Museums and Galleries: A Report on the Engagement of Indigenous Australians in the Museums and Galleries Sector*, written for the Australian Museums and Galleries Association, 2018 (Report, September 2018) 1 <https://www.amaga-indigenous.org.au/files/ugd/f76062_c3d1135f79aa49a0aab72ebc59f7c355.pdf>.

⁵⁶ Terri Janke and Company, *First Peoples and Australian Museums and Galleries: A Report on the Engagement of Indigenous Australians in the Museums and Galleries Sector*, written for the Australian Museums and Galleries Association, 2018 (Report, September 2018) 1 <https://www.amaga-indigenous.org.au/files/ugd/f76062_c3d1135f79aa49a0aab72ebc59f7c355.pdf>.

Supporting First Nations people in truth-telling	Explore opportunities for how the business can recognise, understand, and accept the wrongs of the past and the impact of these wrongs on First Nations peoples
	Develop an internal or external statement outlining the business' position and advocacy in relation to truth telling, or include truth telling in the business' RAP targets
	Host events both internally and externally that empower truth telling about heritage, including ceremonies, memorials and public art displays. ⁵⁷
	Connecting with key First Nations organisations and inviting them to speak at events with paid fees.
	Support establishment of cultural or educational healing centres and institutions ⁵⁸
	Explore opportunities to support First Nations people to share stories of resistance, resilience and contribution ⁵⁹
Recognition of the holistic scope of heritage – the interconnection between tangible and intangible cultural heritage	Seek permission from relevant First Nations people before using language words, and pay Traditional Owners and/or language and culture experts both for their services and for a licence or right to use the word(s)
	Supporting First Nations-led initiatives for recording and digitisation of traditional knowledge
	Support First Nations campaigns for re-naming of rivers, creeks, places, sites, areas
	Appoint or create a role for a Heritage Officer within the organisation
	Assist First Nations people to undertake their own cultural mapping projects
Upholding ICIP rights	Offer cultural awareness and cultural competency training for staff, including ensuring understanding of tangible and intangible heritage
	Develop and implement a company-wide ICIP Protocol for managing traditional knowledge, cultural heritage and any other forms of ICIP. An ICIP Protocol can be as comprehensive or concise as the company needs to suit its work, but it is useful to any company to demonstrate best practice First Nations engagement.
	Educate and raise awareness of the Australian Business Guide to the <i>UN Declaration on the Rights of Indigenous People</i> and about First

⁵⁷ 'Reconciliation and Truth-Telling', *Reconciliation Australia*, (Web Page)

<<https://www.reconciliation.org.au/our-work/truth-telling/>>.

⁵⁸ Reconciliation Australia, *Truth Telling Symposium Report* (Report, Reconciliation Australia, 5-8 October 2018) 6 <<https://www.reconciliation.org.au/wp-content/uploads/2021/09/Truth-telling-symposium-report-2018-web.pdf>>.

⁵⁹ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 19 <<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

	Nations peoples' rights, culture and history; and the legacy of colonialism and the Stolen Generation
	Include ICIP clauses and leading practice obligations in contracts with third parties
Supporting cultural maintenance	Support First Nations people to revitalise language and create resources to educate and share
	Support in the renaming of places ⁶⁰ and creating self-determined cultural centres and Keeping Places ⁶¹
Respecting Indigenous Data Sovereignty	When recording any information about or relating to First Nations people (i.e. photographing First Nations people at an event, surveying Country, etc) – seek consent for the recording, and ask the relevant people how they would like the information to be stored, used and managed
	When using any information relating to First Nations people, ensure that data reflects the real lived experiences and perspectives of First Nations peoples and communities. Data should not exclusively focus on deficits or disadvantage.

PLUS:

What any company working with First Nations partners, culture or knowledge can do:

PRINCIPLE	KEY ACTIONS
Supporting First Nations people in truth-telling	Make space for First Nations accounts and experiences in conversations and engagements. Ensure that people's opinions are heard and respected
Upholding ICIP rights	Design and creative: Ensure that any use of First Nations designs or techniques is only done with consent and attribution (i.e. not selling or producing fake First Nations art or cultural material, like boomerangs or clap sticks)
Supporting cultural maintenance	Recognise the interconnected nature of cultural heritage and health and wellbeing by working to protect culture
	Land, water and sea-based: Facilitating access to sites and Country within project parameters (where it is safe to do so)
Respecting Indigenous Data Sovereignty	Seek consent from First Nations communities before collecting and using data that contains cultural knowledge
	Consult with the relevant First Nations communities about how data is stored, used and managed

⁶⁰ Reconciliation Australia, *Truth-telling*, (Web Page) <<https://www.reconciliation.org.au/our-work/truth-telling/>>.

⁶¹ Yoorrook Justice Commission, *Yoorrook with Purpose: Interim Report* (Interim Report, 2022) 51 <<https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/06/Yoorrook-Justice-Commission-Interim-Report.pdf>>.

	Share records of data and knowledge with First Nations people who are represented in it
	Engage First Nations experts to interpret First Nations data
	Engage First Nations people to lead projects, facilitate consultations, and collaborate on initiatives relating to First Nations

What companies with knowledge or research-based activities can do:

PRINCIPLE	KEY ACTIONS
Supporting First Nations people in truth-telling	Offer opportunities to First Nations people to respond to colonial accounts or outdated/offensive recorded material
Upholding ICIP rights	Create a care and interpretation policy for work with First Nations cultural material.
Supporting cultural maintenance	Support First Nations led projects in museums, galleries, public art, film, television, internet and in the media
	Support research and preservation projects, such as the Colonial Frontier Massacres map, and First Nations-led exhibitions in museums and galleries ⁶²⁶³
Respecting Indigenous Data Sovereignty	Ensure that First Nations communities have access to information and data, such as project outcomes, research outputs, etc.

4. Caring for Country and Culture

14. *The company empowers First Nations people to care for Country.*
15. *The company engages in First Nations-led remediation of Country affected by land-use activities and projects.*
16. *The company cares for cultural material and supports repatriation of Secret/Sacred material and ancestral remains, as advised by First Nations cultural authorities.*

4.1. Caring for Country and biodiversity

Care for country and it will care for you.

⁶² Terri Janke and Company, *First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries*, (Report, 2018) <https://www.amaga-indigenous.org.au/files/ugd/f76062_c67539d5b2e2433181f66b15ec499d89.pdf>.

⁶³ University of Newcastle, 'Colonial Frontier Massacres, Australia, 1780 to 1930, V3' *Centre for 21st Century Humanities* (Interactive Map) <<https://c21ch.newcastle.edu.au/colonialmassacres/map.php>>.

The First Nations worldview, begins and ends with Country. First Nations communities have successfully nurtured, cared for and been sustained by their lands for millennia before and during colonisation by centring their relationships with Country on reciprocity, mutuality and interdependence. First Nations people recognise that the environment is crucial for health and wellbeing and that the natural world is not distinct to or separate from human beings.⁶⁴ As a source of food, water, air, and raw material, it is directly intertwined with our culture and survival.

‘Caring for Country’ embodies responsibility, it is the cultural obligation placed on First Nations people as stewards and custodians of the land. It draws on laws, knowledge and customs that have been inherited from ancestors, and means that First Nations knowledge systems can continuously evolve and be passed on through the generations. Businesses and corporations have the opportunity to take part in this unique relationship by supporting First Nations people to care for Country and reconciling past harms by positive actions for the future.

European colonisation resulted in the devastation of cultural practices and the ongoing manifestation of colonialism in laws and policies disempower First Nations environmental management practices.⁶⁵ Many environmental programs fail to consider, incorporate, or pay attention to traditional obligations, customary activities, and access to Country. Standards for environmental surveys in land management projects may not adequately consider First Nations rights and interests. Companies need to be able to identify these gaps in order to adequately account for cultural heritage management in their operations.

First Nations knowledge provides valuable insight into caring for the environment for all Australians. First Nations Australians are the first scientists, technologists, engineers and mathematicians and respectful collaborations with other scientists are vital in shaping the country’s future.⁶⁶ First Nations-led Caring for Country is critical and First Nations cultural principles must be prioritised over economic interests in environmental management and development approvals.⁶⁷ First Nations heritage laws are not sufficiently grounded in these principles, which means that mainstream management and inadequate consent processes fail to protect Country and enable harm and disconnection.⁶⁸ This places the ethical responsibility on private sector actors to go the extra mile.

Businesses have a responsibility to remediate and rehabilitate land sites that have been used for activities or projects, such as resource extraction. Any remediation activities should be done in collaboration with the local traditional custodians, to ensure that Country is adequately cared for. Businesses can also support First Nations-led Caring for Country practices more widely such as cultural fire management, First Nations ranger activities and allowing access to sites. Businesses can support First Nations communities through the recognition and protection of culturally significant species, consulting them in relation to remediation of land previously used for projects, and supporting cultural practices such as the traditional and sustainable use of resources, fishing, hunting and other customary resource take. Colonisation has meant that First Nations

⁶⁴ ‘Outlook and Impact’ *Australia State of the Environment* (Web Page, 2021) <<https://soe.dcceew.gov.au/indigenous/outlook-and-impact>>.

⁶⁵ ‘Outlook and Impact’ *Australia State of the Environment* (Web Page, 2021) <<https://soe.dcceew.gov.au/indigenous/outlook-and-impact>>.

⁶⁶ ‘Outlook and Impact’ *Australia State of the Environment* (Web Page, 2021) <<https://soe.dcceew.gov.au/indigenous/outlook-and-impact>>.

⁶⁷ ‘Outlook and Impact’ *Australia State of the Environment* (Web Page, 2021) <<https://soe.dcceew.gov.au/indigenous/outlook-and-impact>>.

⁶⁸ ‘Outlook and Impact’ *Australia State of the Environment* (Web Page, 2021) <<https://soe.dcceew.gov.au/indigenous/outlook-and-impact>>.

people have been torn from Country, the path to their collective healing must see them back on Country.

4.1.1. *First Nations opportunities on activity sites*

4.2. **Caring for knowledge**

First Nations cultures share knowledge through oral tradition as an ongoing cultural practice. However, the recording and storage of knowledge transmitted orally is often without free, prior and informed consent being obtained, and no cultural protocols being understood and put in place.⁶⁹

Recording knowledge can have copyright implications. Taking photographs, video or sound recordings, or writing down a story which is being shared verbally, all create copyright works which are then owned by the creator of the recording. This is out of alignment with cultural best practice, whereby First Nations knowledge and ICIP should always remain owned by the First Nations Custodians.

The inappropriate recording of cultural knowledge and heritage creates distress for First Nations peoples and communities, or can even pose a danger for communities and First Nations who handle or view Secret/Sacred knowledge or ancestral remains. However, recorded heritage, even when recorded inappropriately, can still help to strengthen, maintain, protect and illuminate First Nations heritage.⁷⁰

Strengthening the agency of First Nations peoples and communities through facilitating First Nations control of recorded heritage is an important vehicle for healing and justice.⁷¹

4.3. **Care of objects and cultural material**

Often, companies and organisations hold cultural collections of materials, items, artworks or other culturally significant objects.

Often, historical displacement of First Nations communities and stealing of cultural material has resulted in unprovenanced material existing in collections. There is a risk that First Nations communities might have forgotten that piece of culture, and without access to it, might never revitalise it.

Sometimes, these artworks or cultural objects may contain secret or sacred knowledge.

Objects and materials held in collections must be adequately cared for, in collaboration with First Nations traditional custodians and in line with their wishes.

⁶⁹ Anne McConnell et al, *Australia State of the Environment 2021: Heritage* (Report, 2021). 25 <https://soe.dcceew.gov.au/heritage/introduction>.

⁷⁰ Anne McConnell et al, *Australia State of the Environment 2021: Heritage* (Report, 2021). 25 <https://soe.dcceew.gov.au/heritage/introduction>.

⁷¹ Australian Government Department of Communications and the Arts, *Australian Government Policy on Indigenous Repatriation* (Report, September 2016) 4 <https://www.arts.gov.au/sites/default/files/documents/australian_government_policy_on_indigenous_repatriation.pdf>.

The AMaGA Roadmap is a resource published by the Australian Museums and Galleries Association.⁷² Though aimed at museums and galleries, the principles and expectations outlined in this guide are likewise applicable to other organisations holding private collections.

4.4. Repatriation

It is harmful and distressing when ancestral remains and Secret/Sacred material are removed from Country or from their Custodians. The appropriation of heritage has been done by both Australian and overseas institutions. Repatriation promotes the broader respect and understanding of First Nations cultures and recognises the dignity of First Nations peoples and communities.⁷³

Secret/Sacred material can also include knowledge, information, stories, photographs, recordings, or other elements of tangible or intangible heritage.

The return of First Nations ancestral remains and secret and sacred material are important to preserve, revitalise and strengthen First Nations communities.⁷⁴

It is important for ancestral remains to be treated with dignity, by being returned to their rightful place on Country in a way that respects cultural protocols.⁷⁵ Within the many cultures of First Nations communities in Australia, it is known that ancestors cannot rest when they are far from their own Country.⁷⁶ The repatriation of ancestors respects the wishes of First Nations communities to care for their ancestors on Country.⁷⁷ In line with Dhawura Ngilan's leading-practice standards, companies can support the return of ancestral remains in a coordinated way. Companies should collaborate with heritage agencies and the First Nations communities connected to the ancestors they seek to repatriate, to develop a plan that identifies the collections which include their ancestors and how repatriation should be undertaken. A

⁷² Terri Janke and Company, *First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries*, (Report, 2018) <https://www.amaga-indigenous.org.au/files/ugd/f76062_c67539d5b2e2433181f66b15ec499d89.pdf>.

⁷³ Australian Government Department of Communications and the Arts, *Australian Government Policy on Indigenous Repatriation* (Report, September 2016) 4 <https://www.arts.gov.au/sites/default/files/documents/australian_government_policy_on_indigenous_repatriation.pdf>.

⁷⁴ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) <<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

⁷⁵ Australian Government Department of Communications and the Arts, *Australian Government Policy on Indigenous Repatriation* (Report, September 2016) 4 <https://www.arts.gov.au/sites/default/files/documents/australian_government_policy_on_indigenous_repatriation.pdf>.

⁷⁶ Anne McConnell et al, *Australia State of the Environment 2021: Heritage* (Report, 2021). 25 <<https://soe.dcceew.gov.au/heritage/introduction..>>

⁷⁷ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 23 <<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

repatriation plan that is informed by consultation with the community recognises that First Nations peoples and communities are the rightful custodians of their ancestral remains.⁷⁸

Secret/Sacred material should also be returned to First Nations peoples and communities. Similar to the repatriation of ancestral remains, the return of Secret/Sacred material respects the dignity of First Nations peoples and communities, and recognises the cultural context and protocol attached to those objects. Companies can support First Nations communities seeking to have Secret/Sacred material returned by collaborating to develop an appropriate plan for repatriation. This may mean funding, resourcing, training or capacity building to accept care of the material (i.e. climate controlled archival facilities, secure data management systems, etc). Companies must ensure that First Nations communities who wish to care for Secret/Sacred material on Country are empowered and resourced to do so.⁷⁹

4.5. What we can do

What all companies can do:

PRINCIPLE	KEY ACTIONS
Empower First Nations in caring for Country	Support ranger programs and other First-Nations led initiatives for caring for Country
	Advocate for First Nations voices in land management debates, such as cultural fire projects
	Consider 'downstream' and indirect impacts of company activities on biodiversity and culturally significant species
	Support First Nations groups in efforts to seek protection via legislative mechanisms for culturally significant species
Cares for cultural material	Educate staff, contractors and partners about the significance of First Nations cultural heritage and how it must be respected and protected
Supports repatriation of Secret/Sacred material and ancestral remains	Support for local, regional and national Keeping Places (for knowledge or cultural materials) or Resting Places (for ancestral remains). Support may mean: <ul style="list-style-type: none"> - Funding and resourcing - Offering capacity building opportunities - Holding materials until adequate care facilities can be established (i.e. climate controlled environment; two-factor authentication system, etc) - Supporting or using existing Keeping Places like Ara Iritja or Mukurtu CMS

⁷⁸ Australian Government Department of Communications and the Arts, *Australian Government Policy on Indigenous Repatriation* (Report, September 2016) 5
https://www.arts.gov.au/sites/default/files/documents/australian_government_policy_on_indigenous_repatriation.pdf.

⁷⁹ Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 24
<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>.

	Identifying cultural material in any records or collections held by the company, and then making it accessible or repatriating it to community
	Empowering First Nations communities to accept repatriated materials, including by assisting them with making applications, dealing with legislative processes, or by resourcing them to develop adequate facilities to accept custodianship of sensitive materials.

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What companies with land, water or sea-based activities can do:

PRINCIPLE	KEY ACTIONS
Empower First Nations in caring for Country	Engage First Nations people on projects with land or sea Country relevance
	Work with local First Nations communities to understand their priorities and concerns for the local area, and build their input into project plans
Facilitates First Nations-led remediation of Country	Rehabilitate and remediate sites used for land-based activities (such as mines) in collaboration with First Nations people
	Seek opportunities to remediate or repurpose decommissioned sites for the benefit of First Nations communities, i.e. using former mine accommodations for community housing, etc.
Cares for cultural material	Document efforts to avoid and otherwise minimise impacts on cultural heritage and areas of importance to First Nations people
	Implement clear policies and training across the company to support staff to identify and respond to situations where cultural material is found on site, i.e. artefacts, ancestral remains, etc.
Supports repatriation of Secret/Sacred material and ancestral remains	Have strong relationships with local communities and keep communication lines open in relation to material found on project sites
	Ensure comprehensive and up-to-date understanding of legal obligations in relation to cultural heritage in relevant State/Territory
	As far as permitted by local laws, act in alignment with the wishes of the relevant First Nations community in relation to material found on project sites

What companies with knowledge or research-based activities can do:

PRINCIPLE	KEY ACTIONS
Cares for cultural material	Build relationships with local communities to understand history and significance of items in cultural collections
	Conduct an audit of First Nations material in collections and make this information available to First Nations people

	Assist and train First Nations communities in managing collections, using resources, repatriation.
	Research unprovenanced material in collections and seek to find out its origins, and how it may be reconnected with its living Custodians
	Look at options for working with First Nations communities to develop collaborative agreements around the care of their cultural material. This might mean the community is recognised as the owner or custodian, but the organisation holds and cares for the heritage.
Supports repatriation of Secret/Sacred material and ancestral remains	<p>Educate staff to recognise signifiers of Secret/Sacred material in collections, i.e.</p> <ul style="list-style-type: none"> - Old photos or recordings depicting people who are likely deceased - Recorded accounts of cultural stories or songlines - Descriptions of cultural practices as 'men's business' or 'women's business' - Descriptions of scarification, birthing, or other ceremonial practices
	Facilitate and support repatriation of cultural material where requested by the First Nations community ⁸⁰

5. Supporting First Nations prosperity

17. The company enters into benefit sharing agreements with First Nations people for use of their knowledge, heritage, resources and assets.

18. The company supports First Nations economic advancement in relation to cultural heritage.

5.1. What does prosperity mean through a First Nations heritage lens?

Prosperity means improving First Nations economic wellbeing by giving opportunities to participate in education, employment and enterprise. The Business Council of Australia's Raising the Bar policy encourages Australian companies to work with First Nations communities and government to create jobs, First Nations businesses and the right conditions that can improve outcomes for First Nations people.⁸¹

Already many corporates have Reconciliation Action Plans with targets around employment and procurement.

⁸⁰ Terri Janke and Company, *First Peoples and Australian Museums and Galleries: A Report on the Engagement of Indigenous Australians in the Museums and Galleries Sector, Written for the Australian Museums and Galleries Association, 2018* (Report, September 2018) 45
<https://www.amaga-indigenous.org.au/files/ugd/f76062_c3d1135f79aa49a0aab72ebc59f7c355.pdf>.

⁸¹ 'Raising the Bar to Give Indigenous Australians Greater Opportunities', *Business Council of Australia* (Media Release, 05 August 2021)
<https://www.bca.com.au/raising_the_bar_to_give_indigenous_australians_greater_opportunities>.

5.2. Benefit sharing

First Nations people have the right to share in the benefits from the use of their culture or traditional knowledge especially for commercial use. When businesses are engaging with First Nations groups, such as in projects using cultural heritage for commercial purposes, a consideration should be made about how these groups and the rest of the community can have a share in the benefits of the project.

Businesses can enter into access and benefit-sharing agreements with First Nations land and knowledge owners. The Nagoya Protocol, of which Australia is a signatory to, states that benefits can be monetary, in the form of up-front or milestone payments, royalties, licence fees when commercialising work, and salaries.⁸²

However, the benefits don't always need to be monetary. Some non-monetary benefits that businesses may consider include giving First Nations groups access to research outcomes, giving employment or procurement opportunities, and providing copies of materials such as ownership or licencing of any copyright material produced. Ultimately, these benefits need to be negotiated with the individual or community sharing the cultural heritage.

5.3. Supporting First Nations businesses and entrepreneurship

Companies should support the growth of First Nations prosperity in the regions where the work has impact. Companies should recognise that First Nations people may be represented in remote areas. Opportunities for First Nations communities may be difficult to find where many First Nations communities are in remote communities where companies may interact. There is also a need to provide opportunities in urban areas.

Whilst the growth of the First Nations business sector has been strong in the past 10 years, many First Nations entrepreneurs lack access to capital and business mentors. Companies should support the development of First Nations entrepreneurial skills. There are a range of ways this can be accomplished including assisting with funding and loans, creating inclusive recruitment policies that are adapted to account for cultural differences, providing First Nations employees with ongoing training and support, permitting flexible arrangements to allow them to meet family and community obligations, sufficiently remunerating them for their labour, engaging with local First Nations community organisations and integrating First Nations businesses in their supply chain. However, it is important to note that while approaches that enable businesses to be a part of the supply chain are good, companies need to address succession by enabling businesses to be sustainable after mine closes for example. The aim should be to leave a positive business legacy so that First Nation affected communities are resilient and sustainable.⁸³

5.4. Economic partnerships

Companies should also develop economic partnerships with First Nations communities whose lands and culture are significantly impacted by cultural heritage. Companies should consult and

⁸² United Nations Convention on Biological Diversity (UNCBD), *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity* (Report, 2011) <<https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf>>.

⁸³ Department of Industry and Department of Foreign Affairs and Trade, *Working with Indigenous Communities: Leading Practice Sustainable Development Program for the Mining Industry* (Report, September 2016) 29 <<https://www.industry.gov.au/sites/default/files/2019-04/lpsdp-working-with-indigenous-communities-handbook-english.pdf>>.

develop relationship so they firstly understand what First Nations communities and businesses want out of an economic partnership.

5.4.1. *Indigenous Joint Ventures*

Companies should partner with First Nations businesses in a transparent and fair manner. Enabling procurement opportunities with First Nations business often includes the creation or use of Indigenous JVs.

A concern in the First Nations business sector is black-cladding. This occurs when a non-First Nations organisation uses a First Nations organisation as a front or pass through. Black-clad JV arrangements often feature the bulk of the benefits going to the non-First Nations partner and disadvantage or detriment to the First Nations business, and/or do not represent a genuine demonstrated level of equitable partnership and benefit.⁸⁴

Supply Nation is an organisation that works for First Nations advancement in business and industry. They have a robust process for verifying, monitoring and auditing the First Nations bona fides of businesses.

Companies wishing to partner and work with First Nations people and businesses can seek legitimate organisations through Supply Nation.

5.4.2. *Procurement policies*

Businesses have the choice about what to buy and where to buy their supplies from. Procurement policies and initiatives can help create jobs and opportunities for First Nations businesses and communities. Businesses can increase their spend with First Nations businesses across Australia by getting involved with organisations like Supply Nation, a leading national database of verified First Nations businesses, by seeking services through the Indigenous Chamber of Commerce in their state or territory, or by researching other First Nations business networks and forums.

5.5. First Nations natural resource management

First Nations people taking control of caring for Country is essential to any vision for the future.⁸⁵ It is crucial to strengthening First Nations people and culture. This can mean entering into collaborative relationships with Traditional Owners, in which the Traditional Owners take a leadership role in heritage maintenance contexts.

Businesses can assist in building employment opportunities for First Nations people by providing funding and support to cultural ranger programs that employ and train rangers to manage and

⁸⁴ Supply Nation, 'Black cladding', *Frequently Asked Questions for Indigenous Suppliers* (Web Page) <<https://supplynation.org.au/about-us/black-cladding/>>.

⁸⁵ Victorian Aboriginal Heritage Council, *State of Victoria's Aboriginal Cultural Heritage Report 2016-2021* (Report, October 2021) 122 <<https://www.aboriginalheritagecouncil.vic.gov.au/sites/default/files/2022-09/VAHC-State-of-Victorias-Aboriginal-Cultural-Heritage-Report-2016-2021.pdf>>.

care for Country. First Nations ranger programs can play a large role in managing land and sea Country to achieve large-scale outcomes especially in Indigenous Protected Areas (IPAs).⁸⁶

5.6. What we can do

What all companies can do:

PRINCIPLE	KEY ACTIONS
Benefit sharing with First Nations communities	Work with First Nations businesses, not-for-profits and communities to achieve community aspirations, even where they are not directly connected to your business
	Sponsoring or participating in local First Nations events and ceremonies
Supporting First Nations economic advancement and 'closing the gap'	Employ First Nations staff and provide them with the necessary support, training, and resources
	Providing mentorship and networking opportunities for First Nations employees
	Embed culture and First Nations ways of thinking, being and doing in business practices and operations
	Use community development approaches
Economic support for First Nations businesses	Becoming members of Supply Nation, connecting with Indigenous business organisations and forums, and committing to procurement opportunities for First Nations businesses
	Integrate First Nations businesses in supply chains and consider succession and long-term sustainability
	Engaging in partnerships and joint ventures with First Nations organisations
Self-determined First Nations entrepreneurship	When partnering on projects or with First Nations businesses, harness existing community capacity and it's leaders, and facilitate community ownership and control
	Implement good governance and establish trusting partnerships
	Support First Nations organisation to apply for grants and other business development opportunities via education and training, resourcing, secondments, or other measures

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⁸⁶ Cresswell et al, *Australia State of the Environment: Overview* (Report, 2021) 143 <<https://soe.dcceew.gov.au/sites/default/files/2022-07/soe2021-overview.pdf>>; Social Ventures Australia Consulting, *Social Return on Investment – Consolidated report on Indigenous Protected Areas* (Report, 6 May 2021) <<https://www.niaa.gov.au/resource-centre/indigenous-affairs/social-return-investment-%E2%80%93-consolidated-report-indigenous-protected-areas>>.

What any company working directly with First Nations partners, culture or knowledge can do:

PRINCIPLE	KEY ACTIONS
Benefit sharing with First Nations communities	Offer First Nations groups compensation and due process in the case of commercial development of their contributed knowledge, ICIP, land or natural resources, together with culturally appropriate sustainable development opportunities
	Ensure fair and equitable sharing of benefits associated with project usage of natural resources and ICIP
	Explore options for how funds are given and shared, such as using trusts as seed funds for business development. E.g. through direct cash contributions, or towards community development
	Design and creative: Making royalty payments for sales of products made using the contributed ICIP
	Knowledge and research: Provide First Nations communities with access to research outcomes and materials, project reports and other useful information for the community to freely use for their own purposes (links to 3.4 Indigenous Data Sovereignty).
Economic support for First Nations businesses	Supporting First Nations businesses at a local level, where the company is working near the location to heritage
Self-determined First Nations entrepreneurship	When partnering on projects or with First Nations businesses, facilitate community ownership and control

What companies with land, water or sea-based activities can do:

PRINCIPLE	KEY ACTIONS
Benefit sharing with First Nations communities	Ensuring continued access to natural resources, identifying the equivalent replacement resources, or, as a last option, providing compensation and identifying alternative livelihoods if project development results in the loss of access to and the loss of natural resources independent of project land acquisition
	Providing First Nations communities with access, usage, and transit on land it is developing subject to overriding health, safety, and security considerations. ⁸⁷
Supporting First Nations economic	Provide funding opportunities and initiatives to support the demand for, and growth in Indigenous Protected Areas, as well as the

⁸⁷ International Finance Corporation World Bank Group, 'Performance Standards on Environmental and Social Sustainability' (1 January 2012) 4
https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards.

advancement and 'closing the gap'	increasing value placed on traditional knowledge and engagement in biodiversity conservation, land management and research. ⁸⁸
Self-determined First Nations entrepreneurship	Enabling ranger groups, or supporting First Nations organisations to employ and train rangers to manage Country. ⁸⁹

6. Advocacy and Leadership

19. The company is involved in industry-based solutions for working with First Nations cultural heritage.

20. The company promotes and supports First Nations-led education about cultural heritage in Australia and internationally.

6.1. What is advocacy from a First Nations heritage lens?

Being an advocate means using your voice and influence to advance the recognition of heritage rights and taking action where possible towards this. Advocacy through a First Nations heritage lens means advocating for the recognition of holistic heritage rights, and acknowledging the connections that First Nations people have to physical places, land, seas, waters, and skies, and knowledge, cultural practices, stories, songs and art. These are all connected to the place and landscapes, that companies work.

It is also important to acknowledge that cultural heritage exists also in urban areas, as there is a tendency for companies to focus on remote areas.

Advocacy means supporting and facilitating forums for people to speak and debate issues. This links to truth telling (Chapter 3) and fostering an environment for shared knowledge and collective learning and healing.

Companies should strive to be allies and enable First Nations peoples to be the ones to lead solutions. This means speaking to the right First Nations advocacy bodies, such as the First Nations Heritage Protection Alliance.

Companies should encourage staff to be allies for First Nations people – speaking up about heritage rights and being an advocate for anti-racism.

6.2. Acknowledging First Nations rights

Companies that engage with First Nations people should advocate for First Nations rights and their recognition. Companies can begin by making a public policy commitment to respecting all internationally recognised human rights, including the human rights of First Nations Australians enshrined in the UN Declaration of the Rights of Indigenous Peoples.

As the conversation matures, companies should live this commitment by engaging in the public policy and relevant legislative agenda as it pertains to the human rights of First Nations

⁸⁸ Cresswell et al, *Australia State of the Environment: Overview* (Report, 2021) 190 <<https://soe.dcceew.gov.au/sites/default/files/2022-07/soe2021-overview.pdf>>.

⁸⁹ Cresswell et al, *Australia State of the Environment: Overview* (Report, 2021) 190 <<https://soe.dcceew.gov.au/sites/default/files/2022-07/soe2021-overview.pdf>>.

Australians. Leading Australian companies who are strong advocates of First Nations rights also support national First Nations rights movements including Closing the Gap, constitutional change, recognition of a First Nations Voice to Parliament and ultimately a Treaty.

The Reconciliation Action Plan framework is a key way that companies have engaged in the past, and RA has important documents that can assist businesses be advocates for change in First Nations rights.

6.3. Being an industry leader

Companies should use their position and privilege within the economy to advocate for building a more just and sustainable local economy that also allows First Nations Australians to share in economic advancement. They should then scale this advocacy to venture partners, suppliers and customers through contractually binding service arrangements.

Setting an example by signing on to industry standards and guides (such as Dhawura Ngilan), celebrating culture at First Nations events, and lending a platform to First Nations voices on current issues are all ways by which companies can be industry leaders in cultural heritage management.

Companies engaging in First Nations-supported practices (i.e. remediation of sites used for land based activities, engaging in biodiversity work, returning land to First Nation ownership or control, etc) set a positive example for other members of the industry for how reconciliation can be attained in Australia.

6.4. The role of Board and Executives

A company's board has the responsibility of ensuring that the company respects the rights of First Nations people, and that there is compliance with this standard throughout all levels of operation. The board sets the tone and priorities that govern the company practice, and so, significant investment in board time should be allocated to understanding First Nations issues. This knowledge should be communicated with other members of the company. As the senior leadership of a company, there should be regular engagement with First Nations communities to ensure that First Nations peoples' concerns about cultural heritage are heard.⁹⁰

6.5. Teaching about heritage

Embedding education about First Nations cultural heritage in the curriculum is an important step to support truth-telling and to ensure that the truths of colonisation is told from a First Nations perspective.⁹¹ Such inclusion in the curriculum can influence broader community understanding and appreciation of First Nations history, culture and traditions that diverts from the Eurocentric view of history. It is important that businesses help to support First Nations involvement in these education programs for truth telling and self-determination.

⁹⁰ Australian Council of Superannuation Investors, *ACSI Policy on Company Engagement with First Nations People* (Report, December 2021), 3 <<https://acsi.org.au/wp-content/uploads/2021/12/ACSI-Policy-on-Company-Engagement-with-First-Nations-People.Dec21.pdf>>.

⁹¹ Victorian Aboriginal Heritage Council, *State of Victoria's Aboriginal Cultural Heritage Report 2016-2021* (Report, October 2021) 151 <<https://www.aboriginalheritagecouncil.vic.gov.au/sites/default/files/2022-09/VAHC-State-of-Victorias-Aboriginal-Cultural-Heritage-Report-2016-2021.pdf>>.

6.6. Ensuring a global audience

Dhawura Ngilan notes that an essential part of the vision for leading practice management of First Nations cultural heritage involves ensuring that a global audience hears and appreciates these stories.⁹² This includes amplifying First Nations stories and heritage values so that there is greater understanding and respect for these places, so that other people will respect culture and guard it from harm.

6.7. What we can do

What all companies can do:

PRINCIPLE	KEY ACTIONS
Being an industry leader, and involvement with collective and industry-based solutions	Publicly aligning with best practice standards, such as the Dhawura Ngilan Business and Investor Guides
	Hosting events for companies within a sector or industry to develop solutions that can effectively promote or deliver the goals of the Dhawura Ngilan guidelines
	Observing special dates commemorating and celebrating First Nations history and culture
	Leading solutions and approaches from an industry wide perspective by collaborating with other companies, and establishing acceptable norms in approaches for working with First Nations heritage
	Commission white papers and thought leadership, and films, documentary and discussion papers which are aimed at furthering industry understand of the Dhawura Ngilan guidelines
	Ensuring that leading practice First Nations agreement making standards are established within relevant industries
	Monitoring and evaluation mechanisms across industry – support for projects and collaborations that enable companies to better manage and reduce the accumulated impacts of a project or practice
	Developing community of practices for shared knowledge in free, prior and informed consent, and other approaches to the DN Principles
	Establishing grievance mechanisms, dispute resolution models, standards for damages and other practices that can assist better management of heritage
Being an advocate for First Nations rights	Advocating for the recognition in law and policy of the United Nations <i>Declaration on the Rights of Indigenous Peoples</i> and ensuring company compliance with these laws and policies.

⁹² Heritage Chairs of Australia and New Zealand, *Dhawura Ngilan: A vision for Aboriginal and Torres Strait Islander heritage in Australia and the Best Practice Standards in Indigenous cultural heritage management and legislation* (Report, 16 September 2020) 19 <<https://www.dcceew.gov.au/sites/default/files/documents/dhawura-ngilan-vision-atsi-heritage.pdf>>.

and heritage protection	Supporting recognition of holistic living heritage, that incorporates cultural landscapes, species and connected traditions, knowledge and people. E.g. supporting Caring for Country as an understood concept within industry, and recognising the rights of First Nations custodians to care for their land, seas and waters, and associated knowledge
	Supporting projects that raise awareness of the issues that First Nations people face and their call for rights in heritage, native title, closing the gap, environment and constitutional rights.
	Board and senior management exercise their influence to promote First Nations rights.
Support First Nations-led education about cultural heritage	Supporting the wider community to understand the holistic nature of First Nations heritage. All Australians have a responsibility to respect and protect First Nations heritage.
	Engaging First Nations consultants to provide cultural sensitivity training and education to all members of the value chain
	Funding the development of education resources (i.e. textbooks, information packets, video lessons, etc.) by First Nations people to share culture and knowledge about cultural protection
	Attending First Nations spaces where there is discussion in the localities that the company has activities, and the national First Nations spaces where national First Nations rights are discussed, such as the Garma Festival

PLUS:

What companies with knowledge or research-based activities can do:

PRINCIPLE	KEY ACTIONS
Support First Nations-led education about cultural heritage	Support First Nations histories and knowledge to be accessible and engaging for school students and youth. Work with national and state curriculum agencies and schools to support this objective
	Assisting to fill the gap between non-First Nations and First Nations understanding of heritage