

# RIGHTS TO INDIGENOUS KNOWLEDGE (ICIP) POLICY

vOct2019

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*‘Indigenous Knowledge’ includes all Traditional Knowledge, Traditional Cultural Expressions and Cultural Knowledge both tangible and intangible wherever located and includes all aspects of Indigenous Cultural Heritage.*

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# 1 THE PEOPLE AND LOCATIONS COVERED BY THIS POLICY

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- 1.1 This Policy relates to the Indigenous Knowledge of the Mirarr People and Mirarr Country.
- 1.2 The Mirarr People are the Traditional Aboriginal Owners of Mirarr Country in North East Kakadu National Park and West Arnhemland in the Northern Territory.
- 1.3 Under Aboriginal law and custom, the Mirarr People have primary rights over Mirarr Country and Mirarr Indigenous Knowledge and also hold concurrent rights over Indigenous Knowledge within the broader Kakadu National Park and West Arnhemland region.
- 1.4 Guidance must be sought from the Contact Organisation in order to determine whether any Indigenous Knowledge is Indigenous Knowledge over which the Mirarr People hold rights under Aboriginal law and custom and rights to protect their Intellectual Property and their right to Confidentiality under Australian law.
- 1.5 See attached an indicative map showing the broader area within which Mirarr People reside and enjoy rights and interests under Aboriginal law and custom. This map is not a precise depiction of Mirarr Country for the purposes of interests in land under the Aboriginal Land Rights (Northern Territory) Act 1976. This map shows the area for which any potential proponents who wish to use or refer to Indigenous Knowledge should make contact with the Mirarr People in accordance with this Policy. Where relevant, potential proponents may be directed to neighbouring Peoples either instead of or in addition to Mirarr People.
- 1.6 The Mirarr People have developed this policy to enable the protection, enforcement and exercise of their rights to their Traditional Knowledge. The Mirarr People have determined that the Contact Organisation for this policy is

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Email : gundjeihmi@mirarr.net

## 2 THE OBLIGATIONS AND RIGHTS TO INDIGENOUS KNOWLEDGE COVERED BY THIS POLICY

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- 2.1 The rights of the Mirarr People are those described in the *UN Declaration of the Rights of Indigenous People* 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, 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.

- 2.2 Mirarr People are obliged under their Aboriginal law and custom to observe and uphold a body of rules, values and traditions establishing standards and procedures related to the use, ownership and communication of Indigenous Knowledge and that govern social processes including decision-making, compliance and penalty for non-observance.
- 2.3 Aboriginal law and custom gives rise to equitable rights including but not limited to fiduciary obligations, obligations of confidence and confidentiality and obligations pursuant to equitable trusts attaching to the exercise of rights.
- 2.4 Indigenous Knowledge over which the Mirarr People hold rights under Aboriginal law and custom and under Intellectual Property laws includes :

Traditional Knowledge (TK) being the knowledge resulting from intellectual activity in a traditional context, and includes know-how, practices, skills and innovations. Traditional knowledge can be found in a wide variety of contexts, including: agricultural knowledge; scientific knowledge; technical knowledge; ecological knowledge; medicinal knowledge, including related medicines and remedies; cosmology; and biodiversity-related knowledge. This includes knowledge about genetic resources.

and

Traditional Cultural Expressions (TCE) and refers to tangible and intangible forms, or a combination thereof, in which traditional knowledge and cultures are expressed, communicated or manifested through actions, material cultural heritage, music and sound, and verbal and written expression. Examples include physical sites, objects and artefacts, languages, music, performances, literature, song lines, stories and other oral traditions, dance, games, mythology and belief systems, rituals, customs, kinship systems, narratives, names and symbols, designs, visual art and crafts, tool-making and food-gathering practices and architecture.

and

Cultural Knowledge (CK) encompasses particular forms of expression of the knowledge of places—such as dance, art, stories, kinship and ceremonies including knowledge of plants and genetic resources and includes knowledge that is not to be openly-shared, but which is transmitted through particular genealogically and spatially referenced processes

- 2.5 Any formal legal rights that arise under Australian law such as Intellectual Property laws and the Law of Contract including all statutory and other proprietary rights including but not limited to copyright and neighbouring rights, all rights in relation to inventions (including registered and not yet registered patent rights), plant varieties, circuit layouts, registered and unregistered trademarks, designs, the right to have Confidential Information (including trade secrets and know-how) kept confidential, and all other rights resulting from intellectual activity in industrial, scientific, literary or artistic fields operate and apply in conjunction with the operation and application of the Aboriginal law and custom of the Mirarr people.

### **3 APPROPRIATE RECOGNITION OF OUR RIGHTS OVER INDIGENOUS KNOWLEDGE**

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- 3.1 Any use of or reference made to the Indigenous Knowledge of the Mirarr People requires the written agreement of the Mirarr People based on terms agreed by the relevant Cultural Decision Makers. Such agreement must be formalised via the Contact Organisation.
- 3.2 All parties including institutions, universities, governments, museums, galleries, individuals, artists, performers, filmmakers, media and other project proponents of all kinds must notify the Contact Organisation in writing of any proposed use of or reference to the Indigenous Knowledge of the Mirarr People. This includes proposals to provide access to any other party and the use of existing materials and resources over which there is a property right, copyright or other legal right vested in any party other than the Mirarr people. It also includes legacy materials and orphan works.
- 3.3 Direct approaches to individuals and informal arrangements, discussions or meetings are not proper recognition of rights. Such approaches, made independently of the contact organisation, will not meet the ethical standard required by the Mirarr people and are a breach of this policy.
- 3.4 All proposed Research that includes reference to Indigenous Knowledge must also have approval from a Human Research Ethics Committee as described in the National Statement on Ethical Conduct in Human Research (NHMRC). The application for ethics approval must refer to this policy and adopt its terms.
- 3.5 Letters of Support alone are not an adequate basis for demonstrating evidence that a proposal has the support or consent of Mirarr People and are inadequate recognition of the rights covered by this policy.
- 3.6 This policy should be used to ensure recognition of the special knowledge of Mirarr people about biological resources as referred to in Regulation 8A.01 *Environment Protection Biodiversity Conservations Regulations*.

## **4 OBTAINING FREE PRIOR AND INFORMED CONSENT**

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- 4.1 Notifying the Contact Organisation under 3.2 is the first step in obtaining consent to the use of or reference to the Indigenous Knowledge of the Mirarr People. For Research Proposals, the Expression of Interest form must be completed and submitted.
- 4.2 After receiving notification, the Contact Organisation will be responsible for identifying the relevant Cultural Decision Makers for the proposal and for obtaining an initial response to the proposal.
- 4.3 Step 1 concludes when the Contact Organisation notifies the proponent that the proposal has been refused or has preliminary approval for further consideration. The Contact Organisation may, but is not obliged to provide reasons for the decision.
- 4.4 Step 2, if applicable, requires the proponent to present a summary of their proposal to a face to face meeting arranged by the Contact Organisation. The timing, scale and location of the meeting will depend on the nature of the proposal. The Proponent must attend the face to face meeting and may be required to meet the reasonable costs of arranging the meeting.

- 4.5 A proponent will be required to present the following information at the face to face meeting:
- A description of the proposal
  - A statement of any benefits of the proposal to the Mirarr People
  - A statement of any risks of the proposal
  - A summary of the proposed arrangements for intellectual property rights in the product or outcome of the proposed use of or reference to Indigenous Knowledge including any proposals for attribution, transfer or sharing of rights and benefits or other arrangements.
  - The timeframe over which the proponent wishes to maintain engagement and collaboration with the Mirarr people.
  - Arrangements for evaluating the benefit of the Proposal after the completion of the project including how any risks of unauthorised use of Indigenous Knowledge will be managed.
  - The financial arrangements and budget for the project for which the use of or reference to Indigenous Knowledge is required.
  - The opportunities for direct participation by the Mirarr people in the project.
  - Offers of assistance or community support for related projects of relevance to the Mirarr people.
  - Disclosure of any other parties involved in the project.
  - Details of how any recorded knowledge, data or project materials will be managed and repatriated to the Mirarr people.
- 4.6 Step 2 concludes when the Contact Organisation notifies the proponent that the proposal has been refused or has approval for negotiation of formal written consent or a detailed agreement. The Contact Organisation may, but is not obliged to, provide reasons for the decision.
- 4.7 Step 3 is the negotiation of written consent or a detailed agreement. The form of the consent or agreement will depend on the nature of the proposal. Unless otherwise specified, the terms of this policy will apply to the consent or agreement as if they were conditions of the consent or agreement.
- 4.8 The Mirarr People may, from time to time, develop specific policies about certain classes of project such as rock art proposals, film making including augmented and virtual reality projects, restricted information or any other matter and this policy will apply subject to the more detailed policy.

## **5 CULTURAL HERITAGE PROTECTION STANDARD FOR MIRARR COUNTRY**

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- 5.1 All access, use or development on Mirarr Country is subject to prior compliance with the attached Cultural Heritage Protection Standard for Mirarr Country to ensure that no Mirarr Indigenous Cultural Heritage is placed at risk of damage or otherwise disclosed without authorisation.

- 5.2 Compliance with the standard is required in addition to any other requirement for a permit, consent, land use agreement or other agreement under the *Aboriginal Land Act (NT) 1980, Northern Territory Aboriginal Sacred Sites Act (NT) 1984, Heritage Act (NT) 2011, Aboriginal Land Rights (Northern Territory) Act 1976, Native Title Act 1993, Environment Protection and Biodiversity Conservation Act 1999, Aboriginal and Torres Strait Islander Protection Act 1984, Protection of Moveable Cultural Heritage Act 1986.*
- 5.3 This Standard applies in addition to any other non-Mirarr process for the protection and management of Indigenous Cultural Heritage by non-Mirarr including by the Aboriginal Areas Protection Authority, Northern Land Council , Heritage Branch responsible for the Heritage Act NT 2011, Parks Australia, the Director of Parks and the Kakadu National Park Board of Management.
- 5.4 Aboriginal Areas Protection Authority, Northern Land Council , Heritage Branch responsible for the Heritage Act NT 2011, Parks Australia, Director of Parks and the Kakadu National Park Board of Management are required to act in accordance with the Standard in exercising their functions on Mirarr Country.

## **6 AGREEMENTS AND WRITTEN CONSENTS FOR USE OF INDIGENOUS KNOWLEDGE**

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- 6.1 Due to the high number of requests for access to, use of and reference to Indigenous Knowledge, the Mirarr people will require proponents to consider the Standard Forms of Agreement and Consent which are regularly used by the Mirarr People.
- 6.2 The consideration, negotiation and finalisation of an agreement or consent may be a simple process for a small proposal or for repeat proposals and extensions. For new proposals the process may require the Contact Organisation to undertake consultations and enquires to identify the relevant Cultural Decision-Makers and to consider the proposal itself. The process may take weeks or in more complex matters it may take months or longer. It is essential that all proponents respect the role of the Contact Organisation in fulfilling this critical cultural task under the direction of the Mirarr people.
- 6.3 All proposals for use of and reference to Indigenous Knowledge must include resources to meet or contribute to the costs of finalising the agreement or written consent. The use of the Standard Agreements and Consent means that these costs can be kept to a minimum.

## **7 OUR PRIORITIES FOR AREAS OF RESEARCH AND PRODUCTION**

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- 7.1 The Mirarr People from time to time, develop priorities for research, community development, cultural programs, land management, history, education, creative arts, language, ceremony, data collection and other community activities. These priorities may or may not be available to the public, such as published Caring for Country plans.

- 7.2 Proposals for the use of or reference to Indigenous Knowledge will be assessed against the priorities of the Mirarr People and proposals that are not relevant to the priorities of the Mirarr People may be refused.
- 7.3 Proponents wishing to use or refer to the Indigenous Knowledge of the Mirarr People should make enquiries of the Contact Organisation about the current priorities of the Mirarr People in order to give consideration to designing proposals that are particularly relevant to the Mirarr People.

## 8 OUR ENGAGEMENT PROTOCOL

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- 8.1 The Mirarr People continue to hold and own Indigenous Knowledge and recognise that this knowledge is of interest and great potential benefit to their community and to the wider Australian and international community. The Mirarr People note that their Indigenous Knowledge is part of the cultural heritage of Kakadu National Park and to the extent it relates to the listing is recognised as being of Outstanding Universal Value under the World Heritage Convention. The Mirarr People offer to share their Indigenous Knowledge and provide access to such knowledge and the country to which it is connected on the condition that the terms of this Policy are observed, including the following principles for engagement.
- 8.2 Engagement with the Mirarr people requires a professional approach. This includes respect for the role of the Contact Organisation and other statutory organisations through which the Mirarr People conduct their business. Personal relationships and private arrangements should co-exist but not be substituted for professional engagement.
- 8.3 Engagement with the Mirarr people requires collaboration. Collaboration should be ongoing and potentially long term. The Collaboration should be on an institutional level and should endure past any change of personnel. Proposals must include provision for evaluation and reporting on post-project legacy issues.
- 8.4 Engagement with the Mirarr people requires participation. Mirarr People should be involved at the initial design and conception stage of Proposals. Every project must demonstrate a value to the Mirarr People as well as value to the Proponent or other target audience.
- 8.5 Engagement with the Mirarr people requires fairness. Proposals should include a component of skills transfer or contribution to the Mirarr Community via volunteer work, training or other resources that the Proponent is qualified to offer.  
Mirarr People and their community must be paid for their participation and included in the budget for the Proposal. Mirarr People should undertake tasks and provide services to the greatest extent possible.
- 8.6 Engagement with the Mirarr people requires recognition. Acknowledgements and agreements must include adequate provisions for both the protection and the enforcement and accountability of future use of Traditional Knowledge. This is not achieved solely by including Mirarr individuals as co-authors or co-creators. Proponents should use the standard form of agreements developed by the Mirarr People and offered by the Contact Organisation.

## 9 RIGHTS OF CONFIDENTIALITY AND COPYRIGHT

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### CONFIDENTIAL INFORMATION.

- 9.1 The traditional Aboriginal lands of the Mirarr People are not open to the public and access requires a permit under the *Aboriginal Land Act (NT) 1980* or permission to enter pursuant to the *Environment Protection and Biodiversity Conservation Act 1999*.
- 9.2 All Indigenous Knowledge related to the Mirarr traditional Aboriginal lands and people is Confidential Information being confidential to the relevant cultural decision-makers for that information.
- 9.3 Use, reference to or reproduction of Mirarr Indigenous Knowledge without consent is a breach of the right of the relevant cultural decision-makers for their confidential information to be kept confidential.
- 9.4 The exercise of other Intellectual Property rights by non-Mirarr including all rights in relation to inventions (including patent rights, all rights in relation to plant varieties (including plant breeders rights), registered and unregistered trademarks (including service marks), designs, and circuit layouts, and all other rights resulting from intellectual activity and know-how (whether patentable or not) that include, refer to, are based on, derive from or otherwise incorporate any Indigenous Knowledge of the Mirarr people is a breach of the duty to keep Confidential information confidential and is unlawful unless an agreement has been reached with the Mirarr people for the use of their Confidential information (all Indigenous Knowledge of the Mirarr people) in accordance with this policy.

### COPYRIGHT

- 9.5 Where consent is provided for the use or reference to Mirarr Indigenous Knowledge in a work to which copyright attaches, the consent will be on condition that such copyright be transferred to the Contact Organisation on behalf of the Mirarr People unless otherwise specified.
- 9.6 Where copyright is transferred to the Contact Organisation, an irrevocable Licence to use the copyright material for non-commercial purposes may be granted to the creator of the work.
- 9.7 The Mirarr People via the Contact Organisation hold the moral rights over rock art located on Mirarr land as described in Part IX *Copyright Act*. All such rock art must be correctly attributed to the Mirarr People and not falsely attributed. Mirarr People have the right to protect their rock art from any derogatory treatment and to protect the integrity of its authorship.

## 10 MANAGEMENT OF INDIGENOUS KNOWLEDGE DATA AND RECORDINGS

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- 10.1 Where Indigenous Knowledge has been recorded with consent as part of a proposal, no secondary use may be made of any data-set, image, file or other record made without the consent of the Mirarr People in accordance with this policy.
- 10.2 Where consent has been given for Indigenous Knowledge to be referred to in an open access publication, the following statement should be included with the publication :
- The language, images and information contained in this publication includes reference to Indigenous knowledge including traditional knowledge, traditional cultural expression and references to biological resources (plants and animals) of the Mirarr people. The source Indigenous knowledge is considered “Confidential Information”; traditional law and custom applies to it and the Mirarr people assert ownership over it. Any Mirarr related language, images and information are published with the consent of Gundjehmi Aboriginal Corporation as the representative of the Mirarr people for the purposes of education and specifically for use only in the context of this published work. Please contact Gundjehmi Aboriginal Corporation to request permission to refer to any Indigenous knowledge in this publication.
- 10.3 All records, images, collections, data-sets, files and digital information relating to Indigenous Knowledge that is produced must be repatriated to the approved data base maintained by the Contact Organisation on behalf of the Mirarr People.
- 10.4 Any unauthorised secondary use or reference to Indigenous Knowledge that occurs at any time during or after a proposal is the responsibility of the proponent whose project created or delivered access to the record or image used. That Proponent must take all available steps to prevent such unauthorised use where it has come to the attention of the proponent.

## **11 PROTOCOL FOR DELIVERING BENEFIT FROM USE OF OUR INDIGENOUS KNOWLEDGE**

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- 11.1 Any use of or reference to the Indigenous Knowledge of Mirarr people by non-Mirarr interests should deliver benefit for the Mirarr people. While obtaining written consent is essential, the requesting of consent alone is not benefit to the Mirarr people.
- 11.2 Benefit can be in the form of financial payments, improving protection of Indigenous Knowledge, creating enduring employment opportunities, delivering a service or completing a project at the request of the Contact organisation, transferring skills and providing relevant training, developing programs or resources for community education and health improvement, building or providing infrastructure or equipment or otherwise providing opportunities of value for members of the Mirarr people or for the protection of Mirarr country.
- 11.3 A benefit sharing agreement benefit sharing from any use of Indigenous Knowledge whether a commercialisation or not and including research, publications, creative arts production, film and educational resources production,

- 11.4 Proposals for the use of or reference to Indigenous Knowledge should build on the work of the Contact Organisation and should contribute to the development of existing programs, databases, technologies and Indigenous Knowledge protection and management strategies. This includes cooperating with employees, consultants, other proponents and collaborators where requested. Where possible, databases, catalogues and other repositories of the data, recordings, images or other outputs from a proposal should be produced in a format that is compatible with that used by the Contact Organisation

## 12 USE OF BIOLOGICAL RESOURCES

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- 12.1 The biological resources and biological products and processes that have been used over centuries in Mirarr Traditional culture are Mirarr Indigenous Knowledge to which this policy applies.
- 12.2 Any proponent wishing to study, use, research, access or otherwise deal with the Mirarr Biological Resources and Indigenous Knowledge must ensure that there is an access and benefit sharing agreement with the Mirarr People and Free Prior Informed Consent in accordance with the process in this policy.
- 12.3 Use of Australian or other intellectual property systems of registration and ownership of patents or otherwise that purport to legitimize exclusive ownership and control by non-Mirarr entities over any Mirarr traditional biological resources, biological products and processes or other properties of biological resources that have been used over centuries constitutes misappropriation of Mirarr Indigenous Knowledge unless an Access and Sharing Agreement and Free Prior Informed Consent have been negotiated in accordance with this policy.
- 12.4 As traditional owners of Indigenous Knowledge of the uses and properties of Kakadu Plum (*Terminalia Ferdinandiana*), the Mirarr People do not consent to the grant of any patent or application of the use of Kakadu Plum in Australia or in any other jurisdiction without an Access and Benefit Sharing Agreement and the Free Prior Informed Consent in accordance with this policy.
- 12.5 This Policy is a Community Protocol as referred to in Article 12 of the Nagoya Protocol on Access to Genetic Resources and the Fair and equitable Sharing of benefits Arising from their Utilisation.
- 12.6 The information contained in *An-me Arri-ngun* is Indigenous Knowledge of the Mirarr People and this policy applies to it.
- 12.7 All benefit sharing agreements to which Regulation 8A.07 *Environment Protection and Biodiversity Conservation Regulations* applies that relate to the biological resources of the Mirarr People or otherwise derived from Mirarr country must be consistent with this policy. The Commonwealth should not enter into an Access and Benefit Sharing Agreement with an Access Party in relation to Mirarr Country or any biological resources of Mirarr Country unless an agreement has been entered into between the Access Party and the Mirarr People in accordance with this policy. Such an agreement must include both the relevant Aboriginal Land Trust and the Contact organisation are parties.
- 12.8 'Prior and informed consent' as referred to in the Nagoya Protocol, in relation to the Mirarr people over their traditional knowledge associated with their genetic resources is to be obtained in accordance with this policy.

12.9 This policy applies in addition to the *Biological Resources Act NT 2006* and the *Environment Protection and Biodiversity Conservation Act 1999*.

## **13 OUR INDIGENOUS KNOWLEDGE IN COLLECTIONS, ARCHIVES AND OTHER WORKS AND RECORDINGS**

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- 13.1 Any Indigenous Knowledge of the Mirarr people that forms part of a collection, archive or is otherwise possessed without such possession being authorised by the Mirarr people must not be used, displayed, transferred, sold or dealt with without the consent of the Mirarr people in accordance with this policy and such Indigenous Knowledge is confidential information which must be kept confidential.
- 13.2 Any Indigenous Knowledge of the Mirarr People that forms part of a collection, archive or is otherwise possessed that is Secret or Sacred or is a Human Remains must be repatriated to the Mirarr People via the Contact Organisation.
- 13.3 The Mirarr People via the Contact organisation must be provided access to their Indigenous Knowledge held in any collection, archive or otherwise in the possession of a private party. This right of access includes a right to read, view and inspect materials that are not attributed or are poorly documented in order for the Mirarr people via the Contact organisation to ascertain whether those materials are or include Indigenous Knowledge of the Mirarr people.
- 13.4 No party is authorised to include references or information related to Indigenous Knowledge of the Mirarr people in a database, listing, catalogue or other directory whether available to the public or not without the consent of the Mirarr People in accordance with this policy. Any such consent will be in condition that the Contact Organisation on behalf of the Mirarr people will have copies of all references and information related to the Indigenous Knowledge of the Mirarr People and will have access to the database, listing, catalogue or other directory.
- 13.5 Where Indigenous Knowledge of the Mirarr people is kept in or forms part of a collection, archive or otherwise possessed with the consent or authorisation of the Mirarr People via the Contact Organisation, the Mirarr will continue to maintain cultural guardianship of that Indigenous Knowledge via the Contact Organisation.

## **14 MANAGEMENT OF RISKS AND EVALUATION OF PROPOSALS**

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- 14.1 Proposals for use or reference to any Indigenous Knowledge of the Mirarr people must include adequate provision for an assessment of risks and an appropriately resourced means of addressing risks. The key risks which must be considered are the risk of misuse or derogatory use of Indigenous Knowledge, the risk of the proposal imposing an a high level of time and resource demand on the Contact Organisation and the cultural decision-makers, the difficulty of monitoring any future use or misuse of the Indigenous Knowledge, the risk of Indigenous Knowledge being altered, misappropriated or poorly documented and the risk of data and materials not being repatriated to the Contact Organisation.
- 14.2 Proposals for use or reference to any Indigenous Knowledge of the Mirarr people must include adequate provision for an evaluation of the proposal after completion.

## **15 MEDIA, PUBLICATION AND REPRODUCTION**

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- 15.1 Written consent is required for sound and video recordings of interviews and live performances of Mirarr people.
- 15.2 The agreement by which consent is provided must provide for the copyright in the sound and video recordings of any live performances and interviews to be owned by the performer or speaker. No time limit is to apply to this right of ownership. A copy of the recordings must be provided to the performer or speaker.
- 15.3 Any edited forms of the recording of interviews and live performances must be checked and agreed to before any publication or inclusion in any library, archive, catalogue or collection.
- 15.4 Use, including any secondary or future uses of any recording requires formal authorisation and permission which should be obtained in accordance with this policy. The performers and speakers have a right to prevent unauthorised use of recordings

## **16 INDIGENOUS KNOWLEDGE USE IN ARTS AND CRAFTS**

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- 16.1 All creative arts projects including music, writing, visual arts, media arts and performing arts that uses or refers to Mirarr Indigenous Knowledge should be undertaken in accordance with the applicable Protocol produced by the Australian Council for the Arts (<https://www.australiacouncil.gov.au/about/protocols-for-working-with-indigenous-artists/>)
- 16.2 Where the applicable Protocol requires consultation and consent, that consultation and consent will be negotiated in accordance with this policy.
- 16.3 The appropriate contact protocol for individual Mirarr artists and creators is the contact organisation or the Marrawuddi Art Centre.

- 16.4 Individual Mirarr artists and creators' formal intellectual property rights including copyright, a right to attribution and a right to protect work against derogatory treatment operate in addition to a fiduciary obligation between the Mirarr People and the individual artist in relation to Mirarr traditional designs, motifs and styles to use Mirarr Indigenous Knowledge in accordance with traditional law and custom.
- 16.5 All rock art on Mirarr Country is a Traditional Cultural Expression and is the Indigenous Knowledge of the Mirarr People. Reproduction and any use of images, designs, motifs and styles that are characteristic of the rock art requires the consent of the Mirarr People in accordance with this Policy in addition to any permit that may be required under the *Environment Protection and Biodiversity Conservation Act 1999*
- 16.6 All Tangible Mirarr Indigenous Cultural Heritage such as Artefacts, Objects, Weavings, Engravings, Carvings or other traditional pattern or arrangement, wherever located, is Indigenous Knowledge and cannot be copied, or used in images, designs, motifs or styles that are characteristic of Mirarr Traditional Cultural Expressions without the consent of the Mirarr People in accordance with this Policy.

## 17 USE OF LANGUAGE AND NAMES

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- 17.1 Kundjeihmi and its closely related forms (collectively referred to as Kundjeihmi) is the traditional language of the Mirarr People and forms part of the Indigenous Knowledge of Mirarr People.
- 17.2 No use or reference can be made or representation or interpretation of Kundjeihmi Language and Names unless an agreement and consent has been negotiated in accordance with this policy. Agreements may include copyright and licence agreements, collection protocols and consent forms.
- 17.3 Consent and agreement in accordance with this policy must be obtained in addition to any agreement or licence regarding copyright in a sound recording or film containing Mirarr Indigenous Knowledge.
- 17.4 The appropriate contact protocol for use of Kundjehmi and for other West Arnhem Land Indigenous Languages is the Bininj Kunwok Regional Language Centre Ltd. (<https://bininjgunwok.org.au/>)
- 17.5 The Place Name "Kakadu" has been used since 1970s to refer to the area of land within Kakadu National Park or to refer to the entire Kakadu National Park in which Mirarr Country is included. No cultural permission was sought or provided for the use of "Kakadu" prior to it being included in *Commonwealth Gazette* notice on 13 May 1975. "Kakadu" is traditionally the name of a Language (also spelt Gaagadju) and the Name remains Indigenous Knowledge of the Mirarr People together with other closely related traditional owner groups in the northern part of Kakadu National Park who are part of a common speech community in which Gaagadju is one of six or more closely related languages.

- 17.6 The use of the name “Kakadu” in any application other than for the purposes of inclusion of the full title of Kakadu National Park requires the consent and agreement of the Mirarr People together with other closely related traditional owner groups which should be negotiated in accordance with this policy. In particular, any commercial use, brand registration, trade mark or other registered or exclusive use of the term is a misappropriation of Indigenous Knowledge unless the consent and agreement of the Mirarr People and other closely related traditional owner groups has been provided in accordance with this policy.

## **18 OTHER LEGISLATIVE REQUIREMENTS IN ADDITION TO THIS POLICY**

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- 18.1 The Mirarr People acknowledge that other laws of the Commonwealth and the Northern Territory provide for management and protection of aspects of Indigenous Knowledge. This policy should be applied in addition to those laws and the processes used to assist with culturally appropriate compliance with such laws.