Preparing studies and reports: contractual and ethical issues

1 Purpose

This Practice Note is designed to provide guidance on contractual and ethical issues that commonly arise in professional heritage practice when studies and reports are prepared on places of cultural significance. It highlights the obligations of the parties to act ethically towards each other, and towards all others for whom the place may be significant. It highlights, and suggests solutions to, some common issues that often arise.

This Practice Note replaces the Guidelines to the Burra Charter: Procedures for Undertaking Studies and Reports (1988).

Cultural heritage is the inheritance of this generation and future generations. Because of its enduring importance and our ethical responsibilities today and to future generations, this Practice Note is based on the three principles:

- Responsibility: practitioners and clients will act responsibly towards each other, the place and its values.
- Openness and transparency: the results of investigations of cultural heritage places should be publicly accessible except where this would breach cultural protocols, privacy or put the place at risk.
- Fairness: parties involved in undertaking studies and reports on cultural heritage places should act ethically, openly and fairly with each other.

This Practice Note should be used in conjunction with the Australia ICOMOS Burra Charter, 2013 (hereafter Burra Charter), other Practice Notes and guidance issued by Australia ICOMOS, and the ICOMOS Ethical Commitment Statement (ICOMOS: 2002).

Adherence to the Burra Charter and the ICOMOS Ethical Commitment Statement (ICOMOS: 2002) is required of members of Australia ICOMOS.

This Practice Note does not provide legal advice. For advice on contractual and legal issues, consult a solicitor.

The client and practitioner may also be guided by advice about ethical, procedural and legal matters from a professional body of which one or both are members. Nothing in this Practice Note overrides any requirement to conform to the codes of conduct of other professional bodies of which the practitioner is a member.

Australia ICOMOS recognises that some contracts offered to practitioners do not accord with the ICOMOS Ethical Commitment Statement (ICOMOS: 2002) or with the requirements of good practice. Australia ICOMOS therefore intends to prepare additional advice to members in relation to matters such as moral rights, intellectual property and copyright to supplement this Practice Note.
This Practice Note is for:

**Practitioners—consultants, academics, researchers and advisers**
- In responding to a brief
- In undertaking commissioned work
- In setting the terms and conditions of engagement
- In defining how a research project will be conducted.

**Clients**
- In defining the brief and terms and conditions of a commission
- In developing contract documents.

**Heritage agencies**
- In setting standards of practice
- In establishing standard briefs for particular types of work
- In their guidelines and procedures about how studies and reports are done.

**Scope**
This Practice Note covers:
1. Purpose
2. Terminology
3. Achieving sound practice
4. Defining and scoping a study or report
5. Contracts and agreements
6. Authorship
7. Review of work by the client
8. Public participation and review
9. Finalisation of a study or report
10. Public access to studies and reports
11. Disputes
12. Resources.

Attachment 1: Additional information on Moral Rights, Copyright and Intellectual Property.

### 2 Terminology

**Client**: means a person or organisation commissioning the study or report

**Practitioner**: means a person or organisation undertaking the study or report. A practitioner may be an employee or consultant.

**Studies and reports**: refers to the range of types of studies and reports that might be undertaken in relation to a place or places of cultural significance, including but not limited to: heritage advice (about a place, on a planning application etc.); heritage studies or surveys (studies designed to identify heritage places across a locality or wider area); typological studies; assessments of cultural...
significance; conservation management plans; conservation works specifications and schedules; condition assessments; heritage impact statements; heritage advice in response to a specific problem; and maintenance plans.

**Moral rights:** Moral rights are rights provided to creators under copyright law in order to protect both their reputation and the integrity of their work. In Australia, moral rights are established under the *Copyright Amendment (Moral Rights) Act 2000.* Attachment 1 provides a general explanation of moral rights provisions.

**Copyright:** the Commonwealth *Copyright Act 1968* recognises and protects the rights of those who create original material. Attachment 1 provides a general explanation of copyright.

**Intellectual property:** intellectual property refers to ‘creations of the mind for which exclusive legal rights exist under the law’. Intellectual property may include traditional Aboriginal knowledge. Attachment 1 provides a general explanation of intellectual property. Such creations of the mind can include art, music, discoveries and inventions. In relation to undertaking heritage studies and reports, intellectual property may include things related to the business of the client or consultant (trade marks, names, logos, systems etc.) and for the consultant or researcher includes their professional knowledge gained through education, training and past work.

### 3 Achieving sound practice

**3.1 Advice**

Advice offered by a practitioner in a study or report should be well considered and reflect current standards in heritage practice. Limitations should be explicitly stated.

**3.2 Standards of research, documentation and analysis**

In undertaking a study of a heritage place, the practitioner will follow sound heritage practice standards in researching, documenting and analysing the place and information about the place. Depending on the scope and nature of the study, this may include making a thorough, durable and accessible record of the place, of all research undertaken and of all conservation processes and works recommended or carried out.

**3.3 Urgent action**

Where the practitioner believes that urgent action may be required to avert a threat to a place of cultural significance, the practitioner should immediately draw attention to the issue, advise on the best course of action to take, or the specialist skills needed to address the issue. This may result in a variation to the scope of work for the practitioner.

**3.4 Client to disclose**

To enable practitioners to fulfil their professional responsibilities, clients need to be clear about their objectives and aspirations in relation to the project and the place. This may mean disclosing confidential information to the practitioner and requiring that it remain confidential, and providing access to existing information, previous studies, reports and data held by the client or known to the client.
4 Defining and scoping a study or report

4.1 Scoping the work in a brief

Before commencing work and preferably before entering into a contract or other agreement, the client and practitioner should develop and agree on a brief that defines:

- The scope of work to be undertaken
- The outcomes, deliverables or products that will result from the work
- Key dates for commencement of the work, for progress reports, and completion of draft and final reports
- Specialist skills that will be employed on the work, and this may include designated practitioners and/or an agreed basis for their engagement
- Any requirements on the format or reproduction of any reports resulting from the work, including the number of reports to be produced at each stage of the work and any specifications associated with publication on the internet or in hard-copy form
- Materials, support or information to be provided by the client or by others on behalf of the client that is essential for the practitioner to complete the brief (e.g. GIS data, previous reports etc.)
- Any constraints or limitations that need to be recognised because they may affect the conduct of the work (these would be documented in the study or report as well)
- How authorship will be attributed, including acknowledgement of the contributions of sub-consultants and any others (including community members) who materially assisted in the work (see also 6.2 below)
- Moral rights, copyright and intellectual property (see 6.3, 6.4, 6.5 below)
- Confidentiality, in relation to the conduct of the work and/or the products of the work (see 6.6 below)
- Legislation, charters, guidelines, practice notes, ethical statements that will be used to guide the conduct of the work
- The basis for establishing fees and expenses for the defined work, and for any extensions to the work
- The basis on which fees and expenses will be paid (for example: specified dates; achievement of milestones or stages in the works; delivery of a report etc.).

For specific types of work, other details will need to be determined between client and practitioner. For example, the boundary of a place, the extent of the setting to be considered or specific aspects of the work requiring more or less intensive study.

4.2 Guidance on scoping

Scoping the work is a critical step, and the scope should be agreed prior to commencing. The scope and any limitations should be disclosed during the conduct of the study and in the resultant report. Such limitations may include for example, available resources or budget, access to information or specialist knowledge, access to the place etc.
A practitioner should not assume that a client is expert or knowledgeable about the nature of the study or report to be undertaken. Part of the practitioner’s implicit role may be to inform and educate the client about the nature of the work – before, during and at the end of the project.

Project briefs do not always cover all of the elements that a practitioner knows will be required to undertake a study in accordance with sound heritage practice, possibly because the client does not fully understand the nature of the work. It is the responsibility of the practitioner to alert the client to any significant omissions in a brief, and by doing so the practitioner can play a very important role helping the client scope the work accurately.

In the case of clients who are not familiar with the nature of a particular type of study or report it is a good practice to meet the client early in the life of the project and work through exactly what work is to be undertaken and what material is to be developed. Examples of similar studies or reports can be helpful to explain the project.

4.3 When the scope proves inadequate

If while undertaking the work, the practitioner or client discovers that the scope of work established in the brief is no longer adequate to define, scope or limit the agreed work they will alert the other party and enter into discussions to find a mutually agreeable solution.

4.4 Revising the scope of work

If a practitioner or a client recognises that some aspect of the work will require additional investigation or more expertise than has been allowed for in the brief and budget, or a change to the terms of the agreement, a review of the scope should occur. This may result in a variation to the brief or contract.

4.5 Further investigations

Where there are unresolved aspects in a study, for example related to cultural significance, conservation policy, or strategies for the implementation of conservation policy, the practitioner should clearly define the unresolved aspects and advise the client how these might be resolved and of the benefits of undertaking further investigations.

Wherever possible, such matters should be brought to the attention of the client as early as possible in a study process to enable a decision about the further investigations to be undertaken in a timely and effective way.

4.6 Further evidence

When further evidence is revealed through research or physical investigation after the completion of a study or report, and where this information could have a bearing on the conservation of the place, it is desirable that the study or report be reviewed in the light of this new information to enable the study or report to be amended if necessary. It is preferable if the practitioner who undertook the original study or report can be re-engaged to undertake this review, or if this is not possible or practical, consultation with that practitioner is the next best alternative.
5  Contracts and agreements

5.1 Establishing a contract or agreement

A formal contract or agreement between a practitioner and a client is recommended. The form of the contract or agreement should suit the nature and scale of the work being undertaken. The project brief (including any changes agreed during negotiation of the scope of work and a consultant’s proposal) should always form part of the contract or agreement as it represents the understanding of each party as to the scope of the work.

There are Australian Standard terms of engagement and contracts well suited to engagement of a heritage practitioner for the range of types of studies and reports envisaged in this Practice Note. These are listed in Resources in section 12 below.

This Practice Note may be used to inform the development or refinement of a contract or agreement.

5.2 Unacceptable contract conditions

Where a practitioner is faced with clauses in a contract or agreement that are not in accordance with this Practice Note, the Burra Charter or the Ethical Commitment Statement, and where the practitioner considers that these clauses may adversely affect that conduct or outcome of the study or report, the practitioner should discuss these concerns with the client and seek a mutually agreeable solution.

Where a solution cannot be found, the practitioner may choose to withdraw from the study or report prior to commissioning.

Where an issue arises during a commissioned contract, the dispute resolution clauses of that contract would come into play. On request, Australia ICOMOS may offer assistance.

5.3 Seeking competitive proposals

Clients are entitled to seek competitive proposals for commissioned work. Competitive processes need to be fair for all who participate. Considering this:

- Open tenders may be required for complex and large projects. The effort involved in preparing and assessing open tenders may be substantial for the client and practitioners. An initial expression of interest process can be a better approach enabling a short list of potential practitioners to be determined based on expertise and experience, and detailed quotations then sought.

- Where there are only a few practitioners with the expertise and experience suited to the study or report, they should comprise the field invited to prepare a proposal. Ensure all suitable practitioners have been accurately identified before the field is narrowed. Including additional practitioners who are not considered suitable to undertake the work but just to make up ‘a field’ is inappropriate.

- Where a preferred practitioner has been selected, it is neither appropriate nor ethical to seek submissions or quotes from other practitioners.
6 Authorship

6.1 Responsibility for content

The content of studies and reports is the responsibility of the practitioner. Such studies and reports may not be altered without the agreement of the practitioner, except for editing, format and design changes which do not alter the meaning.

Factual matters that require amendment would normally be undertaken by the practitioner as soon as they become aware of the need for such amendments. The manner in which these amendments are undertaken would normally be determined by the practitioner and may include issuing an erratum.

Where the client wishes to amend a report or study, they must consult with the practitioner and seek their agreement to those amendments. Where the material to be amended is minor and does not affect the content or conclusions of the report, the practitioner should not unreasonably withhold agreement.

Where a study or report has been agreed by the client to be the final version, any requests for further revisions may represent a variation to the contract. However, where the practitioner has neglected to correct factual or other errors, it is expected they would undertake this work as part of their original contract.

Where a client seeks to modify the content or conclusions of a report or study in a way that represents a distortion or manipulation of the results, the practitioner may refuse to make such changes, may seek to have their name removed from the document and associated with the report or study, and may seek to have this acknowledged in writing by the client (including in the study or report).

6.2 The right to attribution

The author or authors of a report have the right to have their authorship acknowledged in all productions of the report.

The practical, material and intellectual contributions of others to a study or report will be fairly and accurately acknowledged.

6.3 Moral rights

Moral rights in a study or report should be retained by the practitioner to ensure the integrity of their work. A creator—such as a practitioner—may consent to their moral rights being used in in certain ways. This is called a 'creator’s consent'. For example, an employee may give their employer a general consent for works created in the course of their employment. Such a consent should be in writing and should detail the way in which the creator will allow their work to be used.

Where the practitioner is an employee and has granted moral rights to their employer, they should expect that their employer will seek to protect these rights on their behalf in contractual relationships with clients.
6.4 Copyright

Often clients seek to hold copyright in a study or report. It is best practice that copyright be jointly held by the client, the practitioner and potentially others who have materially contributed. The practitioner should be granted a free, perpetual licence to use the study or report and the material contained within it, with due acknowledgement.

At times the copyright may also be shared with a third party who has materially contributed to the work: for example, with an Indigenous organisation representing a particular Indigenous community.

A licence to use a study or report may also be granted to a third party, with the conditions of this use clearly defined.

Respect for copyright held by others is also an important professional and ethical issue. Copyright in historical materials is commonly held by the repository, and permission to use such materials for research purposes is usually obtainable with appropriate acknowledgement. Reproduction of such materials will usually require additional permissions and the payment of fees. This is also true for artworks and images. This is an important but potentially time-consuming process.

6.5 Intellectual property

Clients often seek to own all the intellectual property created by a practitioner who is undertaking a study or report under contract to the client. If applied strictly, this would mean that practitioners are not be able to bring the knowledge, expertise and skills gained in one project to the next project.

Contract provisions on intellectual property should recognise that both client and practitioner hold intellectual property that may be used to benefit the conduct of a study or report, and that they own and will continue to own that intellectual property on the conclusion of the project. Further, the client should only seek to own any intellectual property created through the project if that intellectual property was the intended product of the study. For example, a project to develop new branding for an historic place will result in a new brand name or logo and these will become part of the client’s intellectual property. Historical research may reveal information on the place being investigated and on other places; in this instance it would be inappropriate for the client to seek to own the research.

It is suggested that generally ownership of the primary materials created in the course of the study remains the property of the practitioner. And that ownership of the intellectual property rights of ethnographic information provided by Indigenous people would remain the property of the named persons.

6.6 Confidentiality

The practitioner will keep confidential all materials supplied by the client that are designated ‘Commercial in Confidence’ or have any other confidential status. This undertaking should be explained in the contract or agreement, and would apply to any co-researchers or sub-consultants.

Practitioners also need to respect any other confidentiality requirements placed upon them, for example by an informant in an oral history interview (see also Public access to studies and reports in section 10 below).
7 Review of work by the client

7.1 Review process

The process for review of a draft report by the client should be set out in the brief and should include:

- The number of iterations of a draft report that are anticipated
- The process for receiving and responding to comments
- That a single set of comments will be provided to the practitioner by the client (or allowance made for the practitioner handling comments from multiple sources)
- Whether the practitioner is required to summarise and report on public comments and/or reporting on how each comment has been addressed.

Complex or controversial projects are more likely to require additional drafts of the report, and this should be recognised and allowed for at the start of the project.

7.2 Expert review

A client has the right to seek a technical review of a study or report, at the draft stage or after completion. In some instances, a technical review will occur through an expert or experienced steering committee or reference group established for the project.

Where a technical review or second opinion is sought by a client after completion of the commissioned work, the original practitioner should be offered the right of reply to the technical review or second opinion. This may involve a variation to the original contract.

In some complex, controversial or contentious cases it may be worthwhile for the practitioner to recommend that a peer review be undertaken as part of the project.

When a practitioner is asked to undertake a peer review or provide a second opinion on another practitioner’s work, they will always advise the original practitioner of this role, and may seek to be informed by the original practitioner of any limitations or concerns they experienced in the conduct of that study or report.

8 Public participation and review

Many heritage studies and reports include public involvement. This may involve a variety of community engagement activities, both during the development of the commissioned work, at the draft stage and when finalised.

People with associations with the place should be provided with appropriate opportunities to participate in development and review of a study or report (see Burra Charter Articles 1.15, 12, 26).

Practitioners need to develop skills in working with the general public, stakeholders and people with associations, or to engage a specialist to undertake these tasks.

The anticipated public and stakeholder engagement processes envisaged as part of a commissioned study or report, and the practitioner’s role in these processes, should be clearly defined in the brief.

Public exhibition and opportunity for comment should be provided on all projects where there is known public interest, potential conflict or controversy. The opportunity to comment may be open to
the general public and/or relevant individuals, organisations and specialists. A reasonable period of
time should be allowed for such comment.

It is often difficult to estimate the number and extent of comments when a project report is to be
offered for comment. It may be necessary for the practitioner to make an allowance of time based on
an estimated number and extent of comments, and seek a variation if the comments received
exceed that estimate.

It is important that the practitioner clearly understands how the comments received are to be handled
and responded to. For example, is the practitioner required to tabulate all comments and propose a
response to each, or prepare a public report on comments received? And what role will the client
take in this process?

9 Finalisation of a study or report

9.1 Practitioner role

The practitioner is responsible for providing the finished study or report to the client in the forms
agreed in the brief.

9.2 Editing and design

Where a report is to be edited or redesigned prior to publication or distribution, the practitioner will be
informed and involved in editorial and design decisions to the extent that these may alter the
professional advice provided by the practitioner or the overall quality of the work.

9.3 Publication & citation

Except where study or report is agreed to be confidential, a practitioner may seek the client’s
agreement to publication of the report by the practitioner. The client should not withhold consent
unless they intend to publish the report in the near future. Agreement about publication should be
included in the contract.

Practitioners have the right to include reference to all studies and reports in a list of their work.
Where a study or report is confidential, a practitioner must obtain the client’s agreement as to how
they may cite this work (see also Public access to studies and reports in section 10 below).

9.4 Surrender of material to the client

Some contracts ask that the practitioner surrender all contract materials to the client, including
copies of the practitioner’s own copy of the report or study. This is not an acceptable requirement. A
practitioner should be able to retain a copy of the study or report (and evidence of the work the
practitioner has undertaken) as part of normal business records and to enable moral and other
possible rights to be exercised.

9.5 Legal deposit

In Australia, there are requirements for the legal deposit of books, periodicals, maps and plans and a
wide variety of other types of publications. Legal Deposit ensures that Australian publications are
preserved for use now and in the future.
All studies and reports should be lodged in accordance with legal deposit requirements. Use of an ISBN is recommended. Prior agreement of the client should be sought.

9.6 Archival storage of records

The client is responsible for ensuring archival storage of records associated with the history and conservation of a place in accordance with Article 32.1 and 32.2 of the Burra Charter, 2013, that is:

32.1 The records associated with the conservation of a place should be placed in a permanent archive and made publicly available, subject to requirements of security and privacy, and where this is culturally appropriate.

32.2 Records about the history of a place should be protected and made publicly available, subject to requirements of security and privacy, and where this is culturally appropriate.

10 Public access to studies and reports

10.1 Public access to information

All material related to the cultural significance of a place and to the protection of its heritage values should be placed on the public record to inform future owners and contribute to professional and public understanding, except where there is a reasonable requirement for confidentiality. Over time this will help create a pool of shared knowledge about cultural heritage places and their conservation and this benefits the community, practitioners and clients alike. Where confidentiality is essential, it is recommended that the existence of a study or report be noted on a public record associated with the place (for example by placing a note on a heritage register listing for that place). This may become important if future studies, reports or conservation actions are commissioned.

It may be that only some information contained in a study or report is sensitive. In such cases, it may be possible to produce a public version and a confidential version, or for the confidential information to be contained in a separate volume, so that the public version or volume is able to be placed on the public record.

On completion, a copy of a study or report (and any other relevant materials) should be placed in a publically accessible archive or repository, except in cases where confidentiality is essential. Ready access to such information will benefit future owners, custodians and their advisers.

11 Disputes

11.1 Resolution of conflict

The contract between the client and practitioner should provide for the resolution of conflicts and disagreements that arise during the course of the contract.

The first step should always be consultation with the other party to raise the issue of concern and seek a mutually acceptable solution. This should occur without delay, once the issue of concern is recognised.
12 Resources

Primary Resource


Other key guidelines

The following resources are noted as offering a sound basis for agreements between clients and practitioners:

Australian Standards

- Australian Standard 4122-2010: General conditions of contract for consultants (2010)
  This standard is designed to provide fair, reasonable and commercial terms of engagement, provide greater clarity in contractual terms and conditions, and reduce disputes. It can assist in streamlining the process of engaging a consultant.


- Australian Standard 4120: Code of tendering (1994). This code is particularly applicable to construction.

- Australian Standard 2124, 2125, 2127: General conditions of contract (1992)
  This standard combines general conditions of contract for certain types of contracted services (2124), appropriate conditions of tendering and form of tender (2125), and a form of formal instrument or agreement (2127)

These standards are available from http://www.standards.org.au/Pages/default.aspx

Model briefs

Model briefs have been prepared for a range of types of heritage studies and reports by State and Territory heritage agencies to establish a standard for that type of work and guide potential clients. Some also cover contractual arrangements between a client and a practitioner. Not all such contractual arrangements offered by State and Commonwealth heritage agencies accord with this Practice Note, and clients and practitioners are urged to read all contracts carefully.

Contact the relevant Commonwealth, State or Territory heritage agency to find out about any model briefs they may offer.

Web-based resources

Legal deposit: a copy of each book published must be lodged with the National Library of Australia (Canberra), and State laws require a copy to also be to be deposited in the applicable State Library. In several states - New South Wales, Queensland and South Australia – books published in those states are to be deposited in the library of the State Parliament. Legal Deposit ensures that Australian publications are preserved for use now and in the future.

Legal deposit is required for books, periodicals such as newsletters or annual reports, newspapers, sheet music, maps, posters, plans, charts, tables, programmes, catalogues, brochures or pamphlets.

**ISBN:** The International Standard Book Number (ISBN) is a 13-digit number that uniquely identifies books and book-like products published internationally. While an ISBN is not mandatory, and does not provide copyright on a work, its use is recommended as it is the principal world-wide ordering device for the international book trade and library market.


**Copyright:** The Australian Copyright Council is an independent, non-profit organisation, founded in 1968, and representing the peak bodies for professional artists and content creators working in Australia’s creative industries and Australia’s major copyright collecting societies. Go to [http://www.copyright.org.au/](http://www.copyright.org.au/)

**Responsible conduct of research:** The Australian Code for the Responsible Conduct of Research guides institutions and researchers in responsible research practices and promotes research integrity. It can assist practitioners to develop their own codes of conduct and procedures for the investigation of allegations of research misconduct by providing a comprehensive framework of acceptable academic standards. Available from [http://www.nhmrc.gov.au/guidelines/publications/r39](http://www.nhmrc.gov.au/guidelines/publications/r39)

**Human Research:** The National Statement on Ethical Conduct in Human Research is intended for use those conducting, reviewing or overseeing research with human participants, as well as potential research participants. Available from [http://www.nhmrc.gov.au/guidelines/publications/e72](http://www.nhmrc.gov.au/guidelines/publications/e72)
Attachment 1: Additional information on Moral Rights, Copyright and Intellectual Property

This attachment provides some further, general information on these matters. It does not provide legal advice. For legal advice on these aspects, consult a solicitor.

**Moral rights:**

In Australia, moral rights were introduced in December 2000 through the *Copyright Amendment (Moral Rights) Act 2000*. This legislation provides creators with three rights. They are: the right of attribution of authorship; the right not to have authorship of their work falsely attributed; and the right of integrity of authorship. This protects creators from their work being used in a derogatory way that may negatively impact on their character or reputation.

Moral rights last for the same time as copyright in a work, the term of which is usually the creator’s life plus 70 years.

Copyright is designed to protect the ‘economic rights’ of copyright holders. In comparison, moral rights protect the reputation and integrity of creators. Creators retain their moral rights even if they do not own the copyright in their work. Moral rights can only be held by individuals — corporate entities and organisations cannot claim moral rights in a work.

Moral rights cannot be transferred or sold, however a creator can consent to their work being used in a particular manner. This is called creator's consent and must be in writing and needs to specifically detail the way the creator will allow the work to be used. It may apply to current or future works, and employees are able to give their employer a general consent for works created in the course of their employment.

Moral rights may be infringed by not attributing a work to its rightful creator or falsely attributing the work to someone else; reproducing a falsely attributed work; treating a work in a derogatory fashion including distorting, mutilating or materially altering the work; and dealing commercially with or importing a work that had been treated in a derogatory fashion. If an infringement occurs the creator of the work is entitled to take legal action.

**Copyright**

Copyright — the rights of those who create original material — is recognised and protected under the Commonwealth *Copyright Act 1968*.

In relation to the scope of this Practice Note, such materials include literary works such as journal articles, novels, screenplays, poems, song lyrics and reports; computer programs, compilations such as anthologies – the selection and arrangement of material may be protected separately from the individual items contained in the compilation; artistic works such as paintings, drawings, cartoons, sculpture, craft work, architectural plans, buildings, photographs, maps and plans; dramatic works, musical works, cinematograph films, sound recordings, broadcasts etc.

Copyright protection is free and applies automatically when material is created. Copyright does not need to be registered. Copyright does not protect ideas, information, styles or techniques, nor does it protect names, titles or slogans. Australian copyright law applies to actions that take place in Australia, even if the material used was created or first published in another country.
Copyright of the work of an employee generally belongs to the employer, whereas a consultant usually owns copyright in what they create. The client who pays for the work to be created will generally not own copyright but will be able to use the work for the purposes for which it was commissioned. However, it is common practice today for clients, especially government clients, to seek to own the copyright exclusively in the work that a practitioner creates. This is done through contractual requirements. This Practice Note provided guidance on copyright in section 6.4.

There are particular provisions in the Copyright Act 1968 in relation to the rights of the Crown – this is referred to as Crown copyright. The Commonwealth and the Australian states own the copyright in works made by, or under their direction or control. This means that copyright in works prepared by a practitioner for the Crown automatically vests in the Crown, although it would not if the work were done for a non-government body. The terms ‘made by or under the direction of’ have been widely interpreted by some governments, and removal of these special provisions for the Crown has been advocated.

**Intellectual property**

Intellectual property refers to ‘creations of the mind for which exclusive legal rights exist under the law’.

Such creations of the mind can include art, music, discoveries and inventions. In relation to undertaking heritage studies and reports, intellectual property may include things related to the business of the client or consultant (trade marks, names, logos, systems etc.) and for the consultant or researcher includes their professional knowledge gained through training and past work.

Traditional Indigenous knowledge is a form of intellectual property however not all types of Indigenous traditional knowledge can be protected under the Act.