

## IP Australia submission on the new National Cultural Policy

### Introduction

IP Australia is pleased to make this submission on the new National Cultural Policy (NCP) to the Office for the Arts in the Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts. For more information about IP Australia, please see Appendix A.

### Overview

As part of engagement on Indigenous Knowledge over several years, IP Australia has consistently heard calls for stand-alone legislation to protect Indigenous Knowledge (IK) from Aboriginal and Torres Strait Islander peoples.<sup>1</sup> These consultations highlighted that approaches to IK and its protection are incomplete and fragmented. Dedicated work on a coherent framework for IK protection provides a unique opportunity to address this fragmentation with a view to support Aboriginal and Torres Strait Islander peoples' culture and build economic opportunities.

A scoping study commissioned by IP Australia in 2023 sets out the economic case for IK to be legally protected through stand-alone legislation. However, it is understood that stand-alone legislation is a complex and long-term project, requiring partnership and significant engagement with First Nations communities.

Therefore in the short term, development of a pathway for the implementation of greater Indigenous Cultural and Intellectual Property (ICIP) protection in policy and legislation could be a meaningful way to support coordinated action across government.

For example, a new NCP initiative could be to develop an ICIP Strategy that identifies a range of measures to help protect and support ICIP as a way to harvest the significant work done to date under the existing NCP.<sup>2</sup> Such a strategy could set out aspects such as:

- short term regulatory or non-regulatory actions across portfolios
- opportunities for bolstering government initiatives by further co-ordination
- key principles for guiding ICIP use with consent

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<sup>1</sup> IP Australia uses 'Indigenous Knowledge' (IK) in this submission to refer to the traditional knowledge and traditional cultural expressions of Aboriginal and Torres Strait Islander peoples. Traditional cultural expressions include stories, dance, languages, symbols, and crafts. Traditional knowledge includes practices, skills, innovations and processes, which can be related to a range of fields, including agriculture, science, technology, medicine and the environment. IK is sometimes referred to as Indigenous Cultural and Intellectual Property (ICIP).

<sup>2</sup> A potential ICIP strategy could align with the Government's approval in principle of Recommendation 5.1 of the 2022 Productivity Commission Inquiry into Aboriginal and Torres Strait Islander Art Final Report.

- a road map of key steps for continued development of stand-alone legislation as the greatest impact initiative for ICIP.

The range of initiatives across the Australian Government highlight that attention to IK is relevant across portfolios. Actions to support respectful use and engagement with ICIP, including that lay the ground work for ICIP stand-alone legislation, could bolster the impact across the different work streams of government.

## The rationale for continued work on ICIP protection

In IP Australia's consultations on Indigenous Knowledge, the need for specific IK legislation has been a consistently raised theme. Stakeholders have talked about how IK, and ICIP, form a key part of culture and identity for Aboriginal and Torres Strait Islander people. For this reason, steps that protect IK holistically and ensure its fair use have a social and ethical imperative.

Additionally, Aboriginal and Torres Strait Islander peoples' IK in First Nations businesses can drive innovation and economic growth. First Nations businesses contribute \$16.2 billion in economic value and \$42.6 billion in social value to the economy,<sup>3</sup> across sectors such as medicine, cosmetics, bushfoods, environmental management, tourism, research and education. The value attributed to IK is estimated to range from up to 12% in First Nations fashion labels and commercialising bushfoods, to as much as 28% in First Nations-led land management.<sup>4</sup>

## Previous scoping study on stand-alone legislation

In 2020, the Intellectual Property Policy Group (IPPG), which coordinates IP policy development across government, was tasked to undertake further assessment of the scope and feasibility of stand-alone legislation.<sup>5</sup> Following this, IP Australia engaged Indigenous consultancy Ninti One Limited to do a scoping study into stand-alone legislation.<sup>6</sup> The scoping study, which included an interim report, targeted consultations and a final report of findings and recommendations, examined potential elements of a stand-alone legislation system that would support Aboriginal and Torres Strait Islander peoples to protect and commercialise their IK.

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<sup>3</sup> Supply Nation, *The sleeping giant rises report*, Supply Nation website, Supply Nation, 2025, accessed 18 September 2025.

<sup>4</sup> B Blackwell, K Bodle, J Hunt, B Hunter, J Stratton and K Woods, *The market value of Indigenous Knowledge: final report to IP Australia*, IP Australia website, IP Australia, Australian Government, 2019, accessed 16 September 2025

<sup>5</sup> The IPPG was asked to undertake this work in response to 'Recommendation 8' in the *Government Response to the House of Representatives Standing Committee on Indigenous Affairs Report on the impact of inauthentic art and craft in the style of First Nations peoples*, Office for the Arts website, Office of the Arts, Australian Government, 2020, accessed 5 June 2026

<sup>6</sup> Ninti One Limited, *Interim report: scoping study on stand-alone legislation to protect and commercialise Indigenous Knowledge*, IP Australia website, IP Australia, Australian Government, 2022, accessed 20 May 2026; *Scoping study on stand-alone legislation to protect and commercialise Indigenous Knowledge: final report*, IP Australia website, IP Australia, Australian Government, 2023, accessed 20 May 2026

According to the scoping study:

- The potential for First Nations businesses to generate economic and social returns from IK is unlikely to be realised without legally enforceable protections.
- Stand-alone legislation should be developed in partnership with Aboriginal and Torres Strait Islander peoples and be guided by their views, priorities and knowledge.
- Based on an initial cost-benefit analysis, implementing a new IK right would deliver a net benefit of just over \$1 billion in 2023 dollars over 20 years, increasing to \$1.8 billion if implemented with the complementary measures identified.

While this demonstrates stand-alone legislation would be a high impact change, it also supports the case for continued work and implementation on complementary measures that assist in addressing issues relevant to ICIP. These measures could provide a foundation for continued work towards stand-alone legislation. Some measures identified in the scoping study that could be considered and perhaps incorporated into an ICIP strategy, include:

- the establishment of a database system, managed by communities in accordance with cultural protocols, so third parties can identify IK and contact its owners
- capacity-building programs to support First Nations enterprise and business development.

## Connections with work across Government

Stand-alone legislation represents a primary way to recognise and protect IK. However, other initiatives across the Australian Government can be part of giving Aboriginal and Torres Strait Islander peoples greater control over their IK and could complement the longer-term development of stand-alone legislation (see Appendix B).

Although the focus of the NCP is the arts and culture sector, our consultations have highlighted that from an Aboriginal and Torres Strait Islander perspective such elements of culture are not separate from other traditional knowledge or practices. Therefore, an overly narrow approach to these topics may not be suitable. A continued effort with input across government, and with continued leadership by OFTA, represents a way forward to maximise the existing connections and collaborations created by work to date, and to look for different ways to turn them into positive outcomes for IK.

## CONCLUSION

Based on IP Australia's engagement with Aboriginal and Torres Strait Islander stakeholders, there has been a sustained call for further action in relation to ICIP. For this reason, IP Australia is supportive of the new NCP reflecting the importance of continued work in partnership on ICIP and stand-alone legislation and stands ready to support further work.

## Appendix A – Information about IP Australia

IP Australia is the Australian Government agency responsible for administering Australia’s patents, trade marks, designs and plant breeder’s rights systems, within the Industry, Science and Resources portfolio. As well as granting intellectual property (IP) rights under the laws it administers, IP Australia advises the Australian Government on IP policy, provides IP information and education services to business and the broader community, and regulates the IP attorney profession.

IP Australia’s purpose is to enable Australians to benefit from great ideas by providing a world-leading IP system. As part of our role, we aim to improve access to Australia’s registered IP system for First Nations Australians and support the cultural integrity and economic potential of Aboriginal and Torres Strait Islander peoples’ IK.

Since the publication of the National Cultural Policy, *Revive*, IP Australia has worked closely with the lead agency, Office for the Arts, and other Australian Government departments on steps towards developing stand-alone legislation to recognise and protect First Nations traditional knowledge and cultural expressions, including addressing the harm caused by fake art, merchandise and souvenirs.

## Appendix B – ICIP linked Government initiatives

Some initiatives that IP Australia considers relevant to IK include:

- IP Australia’s consideration of possible changes to patents and trademarks laws to improve the consideration of Aboriginal and Torres Strait Islander peoples’ IK in the patents and trademarks systems.
- The ICIP Principles developed by the Commonwealth Scientific and Industrial Research Organisation, which are a framework to ensure respectful engagement with Aboriginal and Torres Strait Islander peoples, and the respectful treatment and handling of ICIP.<sup>7</sup>
- The National Science and Research Priority ‘*Elevating Aboriginal and Torres Strait Islander knowledge systems*’, which calls for the science and research system to work towards respect for, preservation and protection of Aboriginal and Torres Strait Islander traditional knowledges, language, data sovereignty, cultural expressions and other intellectual property. This Priority also calls for research into approaches for protecting and managing Aboriginal and Torres Strait Islander cultural and intellectual property.<sup>8</sup> The National Science and Technology Council is developing advice to government on implementation of this Priority.

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<sup>7</sup> Commonwealth Scientific and Industrial Research Organisation (CSIRO), [Indigenous Cultural and Intellectual Property Principles](#), CSIRO website, CSIRO, Australian Government, 2024, accessed 20 May 2026

<sup>8</sup> Australian Government, [Australia’s National Science and Research Priorities](#), Department of Industry, Science and Resources (DISR) website, DISR, Australian Government, 2024, accessed 20 May 2026

- The prioritisation of First Nations research, development and innovation activities recommended in *Ambitious Australia: strategic examination of research and development*.<sup>9</sup> National frameworks developed to support the inclusion of First Nations knowledge in RD&I policies, programs and activities should include principles relating to ICIP.
- Priority Reforms and outcomes under the National Agreement on Closing the Gap, including:
  - Priority Reform One: Formal Partnerships and Shared Decision-Making;
  - Priority Reform Two: Building the Community Controlled Sector, particularly the strong sector elements under Clause 45 a-d of the National Agreement and in supporting the governance of Indigenous Knowledge through community-controlled organisations;
  - Priority Reform Three: Transforming Government Organisations, particularly the transformational elements as per Clause 59 a, b, e and f of the National Agreement including improving recognition of and engagement with Aboriginal and Torres Strait Islander knowledge systems;
  - Priority Reform Four: Shared access to data at a regional level, particularly data and information sharing elements, noting the importance of culturally appropriate governance of Indigenous data and knowledge under Clause 71 a-d of the National Agreement;
  - Outcome 8 - Strong economic participation and development of Aboriginal and Torres Strait Islander people and their communities
  - Outcome 15 - Aboriginal and Torres Strait Islander people maintain a distinctive cultural, spiritual, physical and economic relationship with the land and waters including associated knowledge systems;
  - Outcome 16 - Aboriginal and Torres Strait Islander cultures and languages are strong, supported and flourishing.<sup>10</sup>

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<sup>9</sup> DISR, *Ambitious Australia: Strategic Examination of Research and Development final report*, DISR website, DISR, Australian Government, 2026, accessed 21 May 2026

<sup>10</sup> Joint Council on Closing the Gap, *Closing the Gap targets and outcomes*, Closing the Gap website, Closing the Gap, Australian Government, 2020, accessed 20 May 2026