



Australian Government  
IP Australia



Delivering a world leading IP system

# Protection of Indigenous Knowledge in the Intellectual Property System

Work Plan 2020-2021

September 2020



## **Acknowledgement**

IP Australia acknowledges the Aboriginal and Torres Strait Islander peoples of Australia. We acknowledge the Traditional Custodians of the lands on which our agency is located and where we conduct our business. We pay our respects to ancestors and Elders, past, present and emerging. IP Australia acknowledges Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to the land, waters and seas and their rich contribution to society.

# Introduction

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## IP Australia

IP Australia is the Australian Government agency that administers intellectual property (IP) legislation relating to patents, trade marks, designs and plant breeder's rights. IP Australia does not have responsibility for copyright policy, which is administered by the Department of Infrastructure, Transport, Regional Development and Communications.

## Objectives

IP Australia is looking at how Australia's IP system can help support the cultural integrity and economic potential of Indigenous Knowledge held by Aboriginal and Torres Strait Islander people, which includes:

- **Traditional Knowledge (TK)** – know-how, practices, techniques and skills; and
- **Traditional Cultural Expressions (TCEs)** – visual imagery, performance, design, words and names.

## Purpose of this document

This document sets out our intended work for calendar years 2020 and 2021. It includes information about how we intend to progress with further analysis, consultation and implementation of the proposals which received support during our consultation on Indigenous Knowledge issues. The work plan has been designed to reflect findings from our consultations with Indigenous and non-Indigenous people.

This work plan was first released in December 2019 but amendments have been made in response to COVID-19 as well as to include work we will undertake relating to 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*. This work plan will benefit from consultations with the arts industry and development of an *Indigenous Visual Art Action Plan* announced in September 2020 following the release of the government response.

## Background

In August 2019, we published a consultation report providing a summary record of the feedback we received. Four themes emerged from the consultations, and we are mindful of the need to conduct work on IK in a manner that reflects these four themes:



### Control

Indigenous people want to be able to control who uses Indigenous Knowledge and how it is used.



### Protection

Indigenous people are seeking measures that can be used to stop unauthorised use of Indigenous Knowledge and impose sanctions against misappropriation.



### Recognition

Indigenous people want to be recognised as the owners of their Indigenous Knowledge.



### Respect

Indigenous people want their ownership of Indigenous Knowledge and the cultural protocols associated with it to be respected.

IP Australia previously published a consultation paper in September 2018, further exploring the issues raised in a 2017 discussion paper. Part A of our consultation paper provided an overview of those issues and asked stakeholders if there were additional issues that we should consider. Part B of the consultation paper focussed on issues that relate particularly to the responsibilities of IP Australia.

In 2017, IP Australia and the Department of Industry, Innovation and Science commissioned a discussion paper, Indigenous Knowledge: Issues for protection and management, from Terri Janke and Company. This discussion paper provided a comprehensive examination of the issues affecting protection and management of Indigenous Knowledge and identified six key issues.

Information about the process we have undertaken, including copies of the discussion paper, consultation paper, consultation report and submissions received are available on our website at <https://www.ipaustralia.gov.au/understanding-ip/getting-started-ip/indigenous-knowledge/indigenous-knowledge-project>. If you are interested in Indigenous Knowledge, you can subscribe via the website and stay up to date as our work progresses.

# IP Australia Indigenous Knowledge Work Plan 2020-2021

	PROPOSAL	OBJECTIVE	NEXT STEPS	TIMELINE	RESULT/S
1	<b>Economic Valuation Report on IK by the Centre for Aboriginal Economic Policy Research</b>	Release report and encourage the development of valuation methods for IK-based goods and services	CAEPR Report Released Launch event Insight series developed and released to share key-findings from Report	December 2019 – Launch of Report Early -Mid 2020 – Release of Insight Series	Increased information about the economic value of IK is publicly available to inform discussion about IK  Launch event and Insight series encourage on-going conversations with stakeholders
2	<b>Indigenous Advisory Panel</b>	Increase IP Australia’s access to expertise in respect to IP applications containing IK	Development of potential models for an Indigenous Advisory Panel for IP Australia  Release of Options Paper and further consultation with stakeholders about potential models	Late 2020 – Engagement with IK and IP experts on options  Early 2021 – Options Paper release and public consultations commence	Determination on workable models supported by stakeholders for implementing an Indigenous Advisory Panel
3	<b>Measures to prevent registration of trade marks or designs using IK offensively or without consent</b>	Provide means to prevent the registration of a trade mark or design bearing a TCE without the consent of Traditional Owners, or where its use would be offensive	Development of options to prevent registration, including possible legislative changes  Release of Options Paper and further Consultation with stakeholders on options	Late 2020 – Engagement with IK and IP experts on options  Early 2021 – Options Paper release and public consultations commence	Identified options to progress to prevent offensive trade marks being registered or to implement consent requirements  Potential legislative changes earmarked to progress

	PROPOSAL	OBJECTIVE	NEXT STEPS	TIMELINE	RESULT/S
4	<b>Increase Indigenous Australian engagement on issues at the World Intellectual Property Organisation (WIPO)</b>	Increase Indigenous Australian participation in the development of multilateral standards for the protection of Indigenous Knowledge at the WIPO Intergovernmental Committee (IGC)	Development of an engagement plan to share IGC work with Indigenous Australians  Investigate potential funding to increase attendance of Indigenous Australians at the IGC	Mid 2020 – Engagement plan developed  Implementation will be considered further once IGC meetings resume.	Greater Indigenous Australian participation in WIPO IGC and better sharing of IGC discussions
5	<b>Dictionary database for trade mark and design examiners</b>	To mitigate the risk of misappropriation of IK through the trade marks system by providing examiners with greater access to available and existing IK information resources	Investigation into better resources for examiners to search against existing databases for Indigenous words  Arrangements for appropriate access to databases  Additional training for examiners as required	Early-Mid 2020 – Investigation into databases.  Late 2020 – IT system changes and training investigated.	IP Australia investigates and, if appropriate, connects to new sources of information that support identification of IK in IP applications  IP Australia is more likely to pick up applications which use Indigenous words in examination
6	<b>Explore use of blockchain through an Indigenous IP Trust Badge</b>	Allow Indigenous IP Right holders to create and manage digital stamps of authenticity to promote their IK-based products	Investigation of potential partners to test use of IP Australia technology for authentic Indigenous Goods  Build appropriate systems and monitor trial	Late 2020-Early 2021 – Pilot project	A pilot project to test blockchain verification using IP Australia’s Trust Badge for authentic goods
7	<b>Disclosure requirement for traditional knowledge and genetic resource in patent and plant breeders’ rights applications</b>	Support Indigenous communities to prevent misuse of their IK through the patents and plant breeder’s rights systems	Development of options for implementation of disclosure requirement  Options Paper circulated to stakeholders for public consultation	Late 2020 – Engagement with IK and IP experts on options  Early 2021 – Options Paper released and public consultations commence	A preferred model for implementing disclosure requirement for patents is identified for progression subject to international developments

	PROPOSAL	OBJECTIVE	NEXT STEPS	TIMELINE	RESULT/S
8	<b>Education and Awareness</b>	To provide information for IK custodians about the IP system, their rights and the implications of sharing IK. To increase non-Indigenous stakeholder awareness about IK and appropriate use of IK	Continuing the review and redevelopment of IP Australia's <i>Nanga Mai Arung/Dream Shield</i> publication Development of a new social media campaign aimed at increasing business awareness of IK	End-2021 – Release revised Dream Shield and campaign for Australian business	A revised version of <i>Nanga Mai Arung/Dream Shield</i> which provides a reference point for Indigenous people looking to use or protect IK through the IP system  A new social media campaign which helps businesses, including non-Indigenous businesses, better understand IK and how it should be treated
9	<b>Explore links between patents data and the Atlas of Living Australia, a NCRIS facility hosted by CSIRO</b>	Increase transparency in the use of Australian native genetic resources and IK in claimed inventions	Investigation into whether data can be linked in an appropriate manner which provides useful results	Late 2020 – Early 2021 – potential connection to database piloted	Run a pilot to test possibilities for linking patent data to the Atlas of Living Australia
10	<b>Legal support and training</b>	Contribute IP-related content to Australian Government initiatives to increase Indigenous communities' capacity to engage in negotiations and monitor the use and development of their IK to prevent misuse	Exploratory work into gap/needs analysis Engagement with stakeholders	Subject to exploration	Better understandings of specific gaps and needs of Indigenous communities in negotiating, monitoring and protecting IK in relation to IP
11	<b>Protocols, standard contracts and funding conditions</b>	Work with other Australian Government agencies to consider measures to increase certainty for third parties seeking prior, full and informed consent to use or develop IK in their projects	Exploratory work into gap/needs analysis Engagement with stakeholders	Subject to exploration	Better understandings of possible options to improve effectiveness of existing protocols and contracting tools relevant to IK

	<b>PROPOSAL</b>	<b>OBJECTIVE</b>	<b>NEXT STEPS</b>	<b>TIMELINE</b>	<b>RESULT/S</b>
<b>12</b>	<b>Certification Trade Mark (CTM) for authentic Indigenous goods</b>	Consult stakeholders on the key elements and concerns relating to establishing a CTM for authentic products	Development of consultation plan Drafting of consultation paper Engagement with stakeholders	Late-2021 – Release findings related to CTMs	Stakeholder views on a CTM for authentic goods are confirmed and way forward identified.
<b>13</b>	<b>Investigate stand-alone legislation for protection of IK</b>	Contribute to a cross-government assessment on scope and feasibility of stand-alone legislation.	Establish working group under the IP Policy Group (IPPG) Desktop research Engagement with stakeholders	Mid-2022 - The IPPG to report back to the Government	A report assessing the scope and feasibility of potential stand-alone legislation.