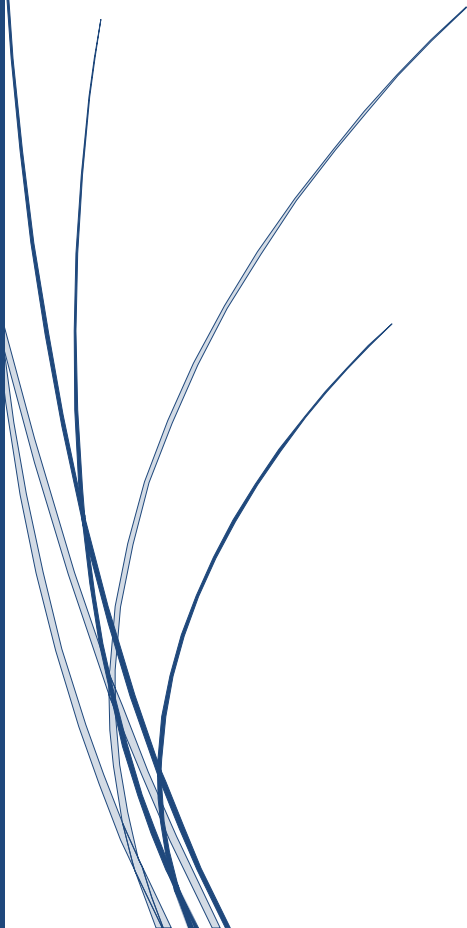




Managing Indigenous
Knowledge: Report 3

Options for IP Australia's Indigenous Advisory Panel

Executive Summary
Terri Janke and Company
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WARNING

The document contains names of deceased persons of Aboriginal and Torres Strait Islander. It also contains some language that might be considered offensive.

Important legal notice

The laws and policies cited in this book are current as at 30 June 2020. They are generally discussed for the purposes of providing this report. No person should rely on the contents of this report for a specific legal matter but should obtain professional legal advice from a qualified legal practitioner.



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Executive Summary

IP Australia are seeking insights and recommendations for establishing an Indigenous Advisory Panel (IAP) as part of progressing work on their 2019-20 Indigenous Knowledge Project. It is envisioned that an IAP to IP Australia would also assist with the protection and adequate handling of IK by the Australian IP system.

Contributing further to the recommendations of the *Indigenous Knowledge: Issues for Protection and Management report*,³ this paper will provide recommendations for an IAP for IP Australia with the hope of promoting a collective approach to protecting IK through engagement between Indigenous people, the wider Australian community and IP Australia.

Specifically, this report seeks to answer:

- What is the IAP governance structure, and who should be on it?
- What functions could the IAP play to assist IP Australia protect IK?

Article 31 of the United Nations' *Declaration on the Rights of Indigenous Peoples* recognises that:

*Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.*⁴

Noting that Indigenous people have a universal right to 'maintain, control, protect and develop' their IP over their IK and traditional cultural expressions (**TCE**), the establishment of an IAP could genuinely assist IP Australia meet this international standard.

The establishment of an IAP for IP Australia will assist with recognising the unique cultural, social and economic significance of Indigenous Knowledge to Australia. This will also assist IP Australia in fulfilling its vision for a world leading IP system that supports Indigenous businesses, rights holders and communities and individuals to prosper with IP protections.

The IAP is not about examiners receiving definitive answers about applications, but rather a source of guidance on cultural issues and referrals to other external authorities for examiners (where appropriate). The IAP could also be very influential in leading reforms to IP Australia policies and procedures to allow for the appropriate handling of IK.

There are a range of different Indigenous governance structures that government departments have put in place to advise them on Indigenous themes, in Australia and internationally. Examples of Indigenous-led systems of governance of advisory bodies were considered to determine the common principles that the IAP could adopt.

Summary of IAP Recommendations

Indigenous Advisory Panel

Functions	<ul style="list-style-type: none"> • EXAMINATION: To advise IP Australia in its role of registering IP that includes Indigenous Knowledge and Cultural Expression. • ADVOCACY AND POLICY: to advocate for strategy and policy for promoting Indigenous Knowledge recognition in IP systems including domestic policy and international agreement making • INCLUSION & DIVERSITY: to advise on inclusion, diversity and cultural safety issues and advancing reconciliation; increasing staff opportunity and procurement, and cultural competency. • INDIGENOUS ENGAGEMENT – to engage with Indigenous community, networking, and events; to promote IP Australia’s work to Indigenous Australians.
What areas are covered for examination?	The Panel would look at all IP including trade marks and patents, however this should be reviewed in 2 years to consider whether there needs to be two panels – one for trade marks and one for patents like NZ.
How established?	A Memorandum of Understanding (MoU) and a terms of reference. Some sort of government partnership agreement that ensures that the Panel cannot be removed by government.
How are members selected?	The members should be selected by IP Australia’s Director General in consultation with key stakeholders and Indigenous leaders. Then after the first Panel is appointed, any new members should be appointed in consultation with the Chair.
Chair	The Chair should be a well-respected Indigenous person who has extensive experience in Indigenous Cultural and Intellectual Property (ICIP) and trade marks.
Members	5 to 7 members including the Chair selected for their knowledge and skills in the technical area and Indigenous connections and standing in relevant industries. All, if not majority (75% or more) of members should be Indigenous.
Skills	A skills-based approach should be adopted, supporting a diversity of skills and experience in: Indigenous knowledge; protocols; law; science; marketing; designs; languages; cultural heritage; Indigenous IP; intellectual property; government; business; activism; and community engagement. There should also be a gender balance: a mix of men and women.
Term in Office	Optional. Given the technical skills needed, and that the first few years guidelines and consistency of process is being established, it may not be necessary to set a limit on the number of years a person can hold office. Rather people can be appointed for periods of three years, with no limit or maximum number of years.

Connecting Indigenous communities	The IAP is not a representative group. To support them to connect with Indigenous communities and to consult where needed with relevant Indigenous people in authority when needed for applications, an Indigenous connections officer should be hired to understand consultations and identify relevant community, organisations and experts to get information to assist the IAP with its advice.
Payments	Members to be paid an annual stipend and allocated monthly salaries. Review of fees are to occur annually.
Assessments for Examinations are completed as needed	The members can be given files for assessment as they arise and decisions can be coordinated back to the examiner. More difficult and complex decisions can be held over until the meetings.
How often will the IAP meet?	The IAP will meet every quarter. Out of session sittings to be called by the IAP if there are backlogs of TM applications to be reviewed. IAP Chairperson or designated secretary to monitor applications and coordinate out-of-session meetings.
How are members appointed?	The inaugural members should be appointed by the Director General of IP Australia. From there on out, members will be identified/nominated by current IAP members and a will need majority of support from IAP members to be appointed.
Reporting advice	The IAP's advice should be reported to the applicants, and records to be kept as precedents of decision making for consistency.
Development of guidelines and advisory notes	The IAP may develop guidelines for examiners, and applicants and prepare advisory notes on trends which occur in attempt to streamline the process in time.