

Stand-alone legislation for Indigenous Knowledge

The current legal framework does not and is not designed to provide First Nations people with the ability to obtain holistic recognition and protection of their Indigenous cultural and intellectual property rights. Any solution should be informed by and address the needs of First Nations people. It should recognise the cultural governance of First Nations peoples including their cultural authority to protect, use and share their IK as they see appropriate, which may include growing the demand for authentic Indigenous industries.

Problem statement by Indigenous Expert Reference Group

The Australian Government is conducting a scoping study to look at how new stand-alone legislation could help Aboriginal and Torres Strait Islander people to protect and commercialise their IK. We have identified four potential elements that could be a part of setting up new purpose built legislation and we would like to hear your thoughts on these, and if you think there are other elements that might be useful or appropriate.

The key element of the four shown below is a new right recognising communal ownership in TCE and TK. This right would recognise the ancient, continuing and evolving cultural knowledge and heritage of Aboriginal and Torres Strait Islander peoples.

Australian Government
IP Australia

What is IK?

The term 'Indigenous Knowledge' or 'IK' is used to cover a range of knowledge held and continually developed by Aboriginal and Torres Strait Islander peoples. It includes Traditional Cultural Expressions (TCE), Traditional Knowledge (TK) and knowledge relating to Genetic Resources (GR).



ELEMENT 1

A new legal right that recognises communal ownership of TK and TCEs, to fill the gaps where existing intellectual property protections don't apply



Protect IK which belongs to particular communities



Prevent fake products in 'Indigenous style' which might not belong to anyone

ELEMENT 2

Measures to deter trade and import of inauthentic product and labelling system to promote authentic products

ELEMENT 4

Measures to support and build the capacity of Indigenous businesses to manage and commercialise their IK



Grow Indigenous industries



Support Aboriginal and Torres Strait Islander people to assert, protect and enforce their IK rights

ELEMENT 3

National IK authority - organisation/s which has power to help people to protect and use their IK

HAVE YOUR SAY!

Go to our [consultation page](#) to read the Interim Report, fill out our survey, request a phone call, or submit written feedback.

Before the report is finalised we are seeking input, particularly from Aboriginal and Torres Strait Islander people on what kinds of laws or other mechanisms are needed to protect IK:

- Should each of the four elements above be part of a stand-alone legislation model?
- Are there other elements that should be considered?
- What broader benefits, costs or risks could stand-alone legislation have for Aboriginal and Torres Strait Islander people?

How might the model work in practice – a hypothetical

Scenario: An Australian company imports souvenir boomerangs made overseas for sale in a number of its shops. These products are decorated with 'look-a-like' Aboriginal style designs. The packaging and labelling does not say that the products are made by Aboriginal people.

In the **current system**, protection for a scenario like this is limited:

- If the design painted on the boomerangs copied the art of an Australian artist, the copyright of that artist might be breached. However, copyright does not apply to an artistic style or to very old art.
- The shape of the boomerang or how it works would not likely be protected by IP rights like designs and patents, because these only apply to new innovations.
- It would be difficult to use the Australian Consumer Law unless the shops were clearly falsely labelling and advertising the products as being authentic or if the products were misleading about the country of origin.

If there was **new legislation** – a new system could include other protections that could apply:

Model Element	How the elements might prevent misuse and misappropriation of IK	How the elements might help Aboriginal and Torres Strait Islander people to commercialise, licence or promote their IK
Element 1: New IK right	<ul style="list-style-type: none"> • Where identified, the communities that want to claim IK rights in the creation and use of unique boomerang styles, or the particular style of decoration used on the boomerangs, could take action against the company for breaching their IK rights. 	<ul style="list-style-type: none"> • Traditional Owners have the exclusive right to their IK. They could licence or give permission for use of their IK to businesses to gain economic benefits from it. • Free prior informed consent of the Traditional Owners of the IK would be needed. The company would have to collaborate with traditional owners (for the kind of boomerangs, or for the decorative designs).
Element 2: Measures to stop inauthentic products	<ul style="list-style-type: none"> • It becomes an offence to sell the products in Australia unless they were clearly labelled as not being authentic. • Border officials could have the power to detain shipments of the fake boomerangs coming into Australia unless made by, or with the permission of, the Traditional Owners. 	<ul style="list-style-type: none"> • The producers of genuine products could choose to use an authenticity labelling system which could include logos on the product or packaging and digital labels linking to information about provenance and consent from Traditional Owners. • Marketing campaigns would encourage tourists and consumers to identify authentic product using those labels.
Element 3: National IK Authority	<ul style="list-style-type: none"> • Work with border officials to help identify and seize imports of the fake product. • Assist the Traditional Owners to start legal proceedings against the importer to stop the sale of the inauthentic product. 	<ul style="list-style-type: none"> • Traditional Owners could use the body's services to negotiate licences and permissions to make genuine product.
Element 4: Business support	<ul style="list-style-type: none"> • Consumers would be less likely to buy fake products as there would be more ethical authentic products available. 	<ul style="list-style-type: none"> • Assistance to help Traditional Owners to develop their own products for sale and to grow strong businesses.

Please visit our [consultation page](#) for more information.