



# ENHANCE AND ENABLE INDIGENOUS KNOWLEDGE CONSULTATIONS 2021

Summary of feedback  
September 2022



## Overview of Consultations

IP Australia is exploring ways to enhance Australia's Intellectual Property (IP) system to support Aboriginal and Torres Strait Islander peoples to benefit from and protect their Indigenous Knowledge (IK).

From 23 February 2021 to 31 May 2021 we consulted stakeholders on four options looking at how IK is considered in the IP system:

1. Establishing an Indigenous Advisory Panel – to provide a formal Indigenous voice to IP Australia.
2. Enhancing the process for trade marks and designs – by supporting IK owners to benefit from, and consent to, the use of their IK.
3. Declaring the source of IK in new inventions and plant varieties – encouraging transparency and recognition of IK owners.
4. Exploring interests in authenticity labelling – further promoting authentic Indigenous products.

IP Australia is aware that the IP system currently provides very specific protection. IP does not provide the full framework needed to protect IK. IP protection is based on western legal processes, and these are not always able to reflect the cultural protocols or ways of managing IK.

## General feedback on IP and IK

Some broad and important issues were raised:

- When talking about IK and IP, we are talking about two different knowledge systems. Trying to bridge them can be difficult. Any changes need to be carefully considered so they don't accidentally harm or negatively impact culture.
- Consultation and consent are key where people want to use IK, including in business or the IP system. Consent was seen as going back to the 'source': finding the right Elders, organisation, community, family, or person to provide permission.
- The need for more education and awareness of IP and protecting IK was raised by many people. Accessible and easy to understand information is needed about the IP system, what IP can and can't protect, and the impact of consenting to the use of IK in IP.
- Stand-alone legislation was seen as a way to provide for broader protection of IK.

## Feedback on the four options

### 1. Setting up an Indigenous Knowledge Panel

***We asked about setting up an Indigenous Knowledge Panel within IP Australia, made up of Aboriginal and Torres Strait Islander members, and the role it could have.***

We heard support for setting up an Indigenous Panel at IP Australia, noting that the Panel should:


- have a role in decisions about the use of IK in IP applications;
- advise IP Australia on strategy and policy to support people commercialising their IK;
- engage with communities on IK and IP issues;
- have real authority and should not be treated as a 'tick box' or 'rubber stamp' for already made decisions;
- be connected back to sources of cultural authority and to communities, place-based peak bodies, land councils and language and art centres;
- not try to represent or make decisions on behalf of all Aboriginal and Torres Strait Islander peoples; and
- include a mix of people as members based on expertise, gender, and location.

### 2. Measures for trade marks and designs

***We asked about what we could assess differently when people make trade mark or design applications that look like they are using IK.***

There was support for new checks by IP Australia relating to the use of IK in trade marks or designs. This was especially for cases where Aboriginal and Torres Strait Islander peoples would find the use of IK to be inappropriate, unfair, or offensive. We also heard that:

- consultation and consent are very important if people want to use IK in a trade mark or design;
- ensuring people were seeking consent, and following cultural protocols, was a key way to address offensive or problematic use of IK; and
- consent could look very different around the country. Flexibility would be needed in any new checks to reflect how ownership and consent works in different communities.



### *We asked what questions were appropriate for IP Australia to ask people seeking to use IK*

Stakeholders gave some support for:

- allowing applicants to state upfront to IP Australia if they have used any IK when applying for a trade mark or design;
- asking both Aboriginal and Torres Strait Islander applicants and non-Indigenous applicants about consent; and
- applications not being processed if there was no evidence of consultation or consent.

### *We asked about tools to find out about IK in trade marks and designs*

- There was some support for ways to make it easier to find out about IK being used in trade marks and designs. Comments included:
  - concern that this would involve collating applications with IK in a database. This could lead to more misappropriation; and
  - support for looking at ways to share already public information about applications to help see when IK was being used.

## **3. Disclosing use of IK in Patents and Plant Breeder's Rights (PBR)**

We asked about putting in a new rule for people to disclose if they have used IK as part of their patent or plant breeder's right application.

We heard support for a disclosure requirement when genetic resources or traditional knowledge are used for an invention or new plant variety. Some of the feedback included:

- Disclosure should link back to the original source. Applicants should include information they have such as what country a plant was grown on, and who grew it. It should also include who was consulted or gave authority relating to the use of IK.
- Mixed views on what the focus for disclosure rules should be. The focus could be transparency: making it clearer when IK was being used. Another option would be trying to prevent applications that might be using IK for new inventions without acknowledgement or sharing any benefits.
- Aboriginal and Torres Strait Islander applicants shouldn't get a penalty if they aren't able to comply with a disclosure requirement.
- The feedback showed that disclosure alone would not address all concerns about use of genetic resources or traditional knowledge. There was stakeholder support for the ability to attach information on access and benefit sharing (ABS) and consent to a patent application.

## **4. Labelling for Authentic Products**

We asked for views from Aboriginal and Torres Strait Islander creators and businesses about whether a labelling scheme would be a useful way to promote their authentic products.

There were mixed views on having a label for authentic products, with comments including:

- Many creators were concerned that it could have unintended negative effects on Aboriginal and Torres Strait Islander creators. There have been past attempts to have authenticity labelling that did not work well.
- The potential role of new technologies was raised as another way to help show that products were authentic.
- Many people were interested in more ways to reduce the sale of inauthentic Indigenous products. These included stand-alone legislation for IK, using consumer laws, or introducing other bans on the importation or sale of inauthentic products in Australia.

## **Conclusion and where to get more information**

Thank you to all those who took part in our consultations. We have taken on all the feedback and will use it to consider how we can take these options forward.

IP Australia will soon be releasing an updated IK Workplan outlining our next steps on IK. If you have further queries about this consultation, you can contact [IKProject@ipaustalia.gov.au](mailto:IKProject@ipaustalia.gov.au). You can also receive updates on our work by registering for our IK mailing list.

Do you have a question about IK and trade mark, designs, patents, or plant breeder's rights? Our call-back service, Yarnline or our [IK IP Hub webpage](#) are here to help support Aboriginal and Torres Strait Islander and non-Indigenous peoples or businesses working with IK and IP rights.