



National Office
Level 1, ALIA House
9-11 Napier Close
Deakin ACT 2600

Postal Address
PO Box 24
Deakin West ACT 2600

info@amaga.org.au
02 6230 0346

IP Australia

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e: consultation@ipaaustralia.gov.au

Re: Protection of Indigenous Knowledge in the Intellectual Property System

The Australian Museums and Galleries Association (AMaGA) welcomes the opportunity to provide feedback on policy options that relate to the intellectual property responsibilities of IP Australia and help promote the cultural integrity and economic potential of Indigenous Knowledge.

Before briefly addressing specific options, we will outline who we are and what we do, stress the importance of the cultural sector to Australia, and reference the critical documents that underpin our comments.

Who we are

AMaGA is the national membership association and peak advocacy body representing museums and galleries. We encompass a wide and diverse range of national, state, regional and community museums, art galleries, historic sites, botanic and zoological gardens, research centres, Indigenous cultural centres, and Keeping Places across Australia.

All of our members are, however, linked by a shared dedication to culture and the communities they serve. They understand that Australian cultural life is a dynamic ecosystem that generates creativity and innovation and contributes to the social and economic wellbeing of the country.

AMaGA is an advocacy, research, service and professional development organisation. We seek to enhance the value of Australia's collections, public programs and stories by sharing knowledge, developing skills, inspiring innovation and providing leadership and the authoritative voice in protecting and promoting our arts, science and cultural heritage.

We advocate for museums and galleries, identify and undertake strategic research, inform policy, set ethical standards and run a broad range of essential training programs. More information on the organisation and our members can be found at

<https://www.museumaustralia.org.au/annual-reports-0>

We build on a history of museum professional association activity that extends back to the 1930s, have branches in every state and territory, and support professional national networks of expertise. This submission draws both on the lived experience of our galleries and museums, and state, national and international research, expertise and standards. It does not, however, provide legal advice.

Key Research and Principles

Current research is revealing the deep value of arts, culture and heritage to society and the economy in increasing numbers of ways, including business innovation and health and wellbeing. A foundational part of Australia's arts, culture and heritage is Indigenous knowledge.

AMaGA is committed to leading the understanding of a greater and deeper level of Indigenous engagement in museums and galleries. This means respecting and connecting with and

supporting the Aboriginal and Torres Strait Islander people – artists, knowledge holders, cultural workers, traditional owners, custodians, communities – the First Australians – and their Indigenous Cultural and Intellectual Property (ICIP), in all aspects of museum and gallery activities and projects.

The key foundations for our feedback in this submission are the following research and policies:

1. FIRST PEOPLES: A ROADMAP FOR ENHANCING INDIGENOUS ENGAGEMENT IN MUSEUMS AND GALLERIES

AMaGA has just completed the development of a 10-Year Indigenous Roadmap for Change in the cultural sector. Implementation of this will be crucial for breaking down barriers and improving the participation of Indigenous individuals and communities in our museums and galleries. Most importantly, the Roadmap sees a future where Indigenous communities have control of their cultural material.

The Roadmap was developed in 2017-2018 in conjunction with an Indigenous Advisory Group, and Terri Janke and Company. Terri Janke and Company ran extensive consultations in order to understand what the sector needed to change and how to effectively implement the Roadmap. This consultation involved surveys, an audit report, a literature review, 13 nationally run workshops, direct teleconferences, attendance at national and international conferences, and meetings with leaders throughout the sector.

Drawing on this range of research, five Key Elements for Change were crafted, with associated action options and critical pathways to success. These five elements are the backbone of the Roadmap. They highlight where the sector needs to improve and how it can do so. They are:

- Reimagining Representation
- Embedding Indigenous values in museum and gallery practices
- Increasing Indigenous opportunities
- Two Way caretaking of cultural material
- Connecting with Indigenous communities.

2. FIRST PEOPLES: CONNECTING CUSTODIANS

Principles and Guidelines for Australian museums and galleries working with First Peoples cultural material

Over the last 50 years there have been shifts towards changing the relationships between museums and galleries and Indigenous people. To assist in this, our organisation developed its 1993 policy, *Previous Possessions: New Obligations: Policies for Museums in Australia and Aboriginal and Torres Strait Islander Peoples* and then in 2005, the revised policy, *Continuous Cultures, Ongoing Responsibilities: Principles and guidelines for Australian museums working with Aboriginal and Torres Strait Islander cultural heritage*. These documents set standards of Indigenous employment, care of collections, repatriation and management of sacred and secret material.

Under the terms of reference for the 10-Year Indigenous Roadmap project, Terri Janke and Company were contracted to make recommendations for updates to the 2005 *Continuous Cultures, Ongoing Responsibilities* policy.

The recommendations were drawn from insights and information gained in the extensive consultations for the development of the Roadmap. In particular, the recommended updates incorporate some shifts in perspective from the needs of museums and galleries to those of Indigenous communities in their relationships with the sector.

There will be consultation on the proposed updates and the final policy will be endorsed in 2020.

The policy provides a framework for Indigenous engagement in museums and galleries. It aims to:

- Recognise and respect Aboriginal and Torres Strait Islander people's rights to access, maintain, control and benefit from their cultural heritage in line with the United Nations' Declaration on the Rights of Indigenous People;
- Enshrine best practices for engagement and relationship building with Indigenous peoples, culturally appropriate two-way interaction and knowledge sharing;
- Promote respectful use of Indigenous Cultural and Intellectual Property (ICIP), as well as establish best practices for ICIP management;
- Advise and guide museum and gallery staff, partners and collaborators concerning standards that must be met in relation to Indigenous engagement and ICIP rights;
- Publicly acknowledge and encourage the wider recognition and respect for Indigenous people and their cultural heritage in museums and galleries; and
- Enhance trust of Indigenous individuals, communities and groups by showing appropriate respect or acknowledgement of cultural rights.

This policy promotes best practice for engagement with Indigenous people by reference to the following standard setting, national and international documents:

- United Nations Declaration on the Rights of Indigenous Peoples, 2007;
- UNESCO, Convention for Safeguarding of the Intangible Cultural Heritage, 2003;
- Our Culture: Our Future, Report on Australian Indigenous Cultural and Intellectual Property Rights, 1999;
- Protocols for producing Indigenous Australian visual arts (Australia Council for the Arts, 2007 and the forthcoming 2019 update);
- Pathways and Protocols: a filmmaker's guide to working with Indigenous people, culture and concepts (Screen Australia, 2009; to be updated in 2019);
- Indigenous Art Code, 2009; and
- Indigenous Australian Art Charter of Principles for Publicly Funded Collecting Institutions, 2009.

It is recommended that IP Australia draws on the relevant data, critical pathways, and action options in the Roadmap, and the Guidelines for Policy and Procedure in the Principles document, in considering policy options to enhance the promotion and protection of Indigenous Knowledge in Australia.

Specific Comments

The Proposals: we support exploration of the feasibility of the twelve proposed initiatives outlined in the consultation paper with the following caveats:

- Proposal 1: support the use of IP rights to promote Indigenous products
 - There have apparently been previous difficulties with a mark that puts the onus on Indigenous artists to prove their product is authentic, so much care and consultation would be required to develop this approach
- Proposal 5: develop a national database of Traditional Knowledge and genetic resources
 - This would be a huge and never-ending undertaking, with many exclusions due to the type of material, such as secret, sacred or in a threatened habitat.
 - Museums and galleries would hold significant amounts of this information, however much is still unprovenanced or appropriated. The necessary identification and

consultation processes with Indigenous communities would need extensive time and resources.

We strongly support in particular the initiatives that focus on standardising research protocols and guidelines, and research and commercialisation agreements (proposals 2 and 3), training and legal support to Indigenous communities (proposal 7), an Indigenous Advisory Panel (proposal 11) and education and awareness (proposal 12).

Acknowledgement: Indigenous knowledge systems have generally been undervalued or absent in museums and galleries. This particularly relates to science, technology and ecological understanding. There is much that the world can learn from Aboriginal cultures and traditional knowledge in terms of finding solutions to our global problems. An improved national intellectual property system along with specific cultural sector initiatives recommended in the Roadmap are critical actions in this regard.

Indigenous languages are also essential components in both research and knowledge management, and relationship building. The Roadmap recommends that museums and galleries embrace the use of local Indigenous language descriptions throughout their organisations.

Acknowledgement and respect are key in building trusting relationships with Indigenous communities.

Digital Access: AMaGA is co-convenor of the GLAM Peak network (peak bodies in the galleries, libraries, archives and museums sector), which focuses on digital access to collections. The network advocates to strengthen the relationship between Indigenous peoples and the cultural sector through Indigenous representation in sector policy and decision-making and ensuring culturally appropriate management of Indigenous collections.

The work of GLAM Peak has revealed the power of digital discoverability and access to collections for increasing participation and connection by people in all walks of life and regions in Australia, and in enabling the creation of new artworks and forms of knowledge. Digital access is a key action option in the 10-year Roadmap and in supporting many of the initiatives being considered by IP Australia. GLAM Peak would be a valuable partner in digital access initiatives and education programs.

Conclusion

AMaGA supports the aim of IP Australia to investigate options which may enhance the protection and promotion of Indigenous knowledge in Australia. A coherent and comprehensive national strategy is required, and galleries and museums are well placed to contribute to what will be a complex but vitally important undertaking.

Reading/References

Indigenous Roadmap: <https://www.mgaindigenouroadmap.com.au/>

Policy Guidelines: <https://www.museumsaustralia.org.au/policies-submissions>

(PDFs of both these documents will be available online in early February)

GLAM Peak and Digital Access frameworks: <http://www.digitalcollections.org.au/framework>

Six case studies in developing digital access to collections in 2016:

<http://www.digitalcollections.org.au/case-studies>



Alexandra Marsden
National Director