Australian Government

IP Australia

Indigenous Knowledge Consultation Paper

February 2021

ACKNOWLEDGEMENT

IP Australia acknowledges the Aboriginal and Torres Strait Islander peoples of Australia. We acknowledge the Traditional custodians and owners 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 relationship to the land, waters and seas and their rich contribution to society.

INTRODUCTION

IP Australia aims to enhance Australia's IP system to support Aboriginal and Torres Strait Islander peoples to benefit from and protect their Indigenous Knowledge (IK). To inform how we do this, we seek feedback on:

1. *Establishing an Indigenous Advisory Panel* – providing a formalised Indigenous voice to IP Australia.
2. *Measures for trade mark or designs using Indigenous Knowledge* – changes to processes to ensure IK owners benefit from, or have consented to, the use of their IK as the basis for rights.
3. *New requirements to declare the source of Indigenous Knowledge used in new innovations* - make it easier to determine if IK has been used in a patent or plant breeder's right, and encourage conversations about access and benefit sharing.
4. *Labelling to promote authentic Indigenous Products* – exploring interest in labelling schemes that distinguish authentic Aboriginal or Torres Strait Islander goods.

If you would like to know more about how we have arrived at these options, please see the background section of this paper.

HAVE YOUR SAY

As part of the National Agreement on Closing the Gap, the Australian Government is committed to shared decision-making with Aboriginal and Torres Strait Islander people. The options in this paper have been developed through consultation and refinement with Aboriginal and Torres Strait Islander stakeholders and are presented for further feedback and direction setting as IP Australia considers potential changes.

We are interested to hear, particularly from Aboriginal and Torres Strait Islander peoples, about the four options presented in this paper and what might work best.

To get involved:

- Take our 15-minute survey online.
- Email your comments or submission to IKProject@ipaustralia.gov.au.
- Join our mail list to receive a monthly update.
- Email us your phone number and we will call to get your feedback.

CONTENTS

1. ESTABLISHING AN INDIGENOUS ADVISORY PANEL TO IP AUSTRALIA

An Indigenous Advisory Panel would provide an independent voice for Aboriginal and Torres Strait Islander perspectives on the IP system. The Panel would help ensure IP Australia administers the IP rights system in a way which recognises the significance of IK.

How it could look

The proposed Panel would be able to provide views and advice to IP Australia for consideration at a high level.

A Panel could have a number of permanent members, who are supported by a pool of rotating members. The rotating members would support representation from different regions, a range of technical expertise, and a mix of genders. These rotating members would be included into meetings based on the issues being considered.

IP Australia would provide support to the Panel and make sure it has the information it needs. For example, examiners at IP Australia could assist with identifying IK issues in IP applications, make preliminary assessments, and request the Panel's consideration on applications where required.

The final form of a Panel, and how it works, would be finalised with the input of selected members.

Functions

The proposed Panel could have a range of functions that create better connections between IP Australia and community on IP and IK issues. Key functions for the Panel could include:

- ADVOCACY AND POLICY: Advising on strategy and policy for promoting IK recognition in IP systems including domestic and international policy.
- EXAMINATION: Providing advice to IP Australia on IP applications that include IK. This could include engaging with cultural authorities on evidence provided by applicants (such as about consent) and processes for considering IK applications.
- ENGAGEMENT: Engaging with Aboriginal and Torres Strait Islander communities on IP Australia's work relating to IK and supporting Aboriginal and Torres Strait Islander people to access IP Australia's information and services.

Membership

IP Australia could approach people to be members of the Panel based on a range of factors, such as:

- COMMUNITY CONNECTION: Demonstrated experience in engaging with communities and an understanding of contemporary IK and IP issues.
- SKILLS-BASED: A diversity of skills and experience to relevant to the establishment of processes and procedures. This could include an understanding of the Indigenous business community, IP, and Aboriginal and Torres Strait Islander culture, language and symbols.
- DIVERSITY: Representatives from across different regions to help provide a range of perspectives and a mix of genders.

Questions:

Q1: What have you seen work in other successful Panels or similar groups that IP Australia could consider here?

Q2: How should a Panel engage with communities or peak and representative bodies?

Q3: What role should the Panel have when problems/conflicts arise about the use of IK?

2. MEASURES FOR TRADE MARK OR DESIGN RIGHTS USING IK

IK such as art, craft, stories, language, and song can be a basis for Indigenous businesses to create unique brands and products. IP Australia aims to enhance the trade marks and designs systems to prevent rights being granted over IK in circumstances that Aboriginal or Torres Strait Islander people or communities consider is inappropriate, unfair or offensive.

In previous IK consultations we heard that it is not appropriate for IP Australia to make decisions about culture or consent. The options presented in this paper try to balance this concern while ensuring the respectful use of IK.

Current checks and the gaps

IP Australia checks that all trade mark and design applications meet legislative requirements. When it comes to IK, IP Australia currently may reject an application if we find that it uses:

- IK that is secret or sacred[1]
- the name of a group or nation, but without any connection to that group or nation
- an Aboriginal or Torres Strait Islander word, where that word should be available for other businesses to use to describe their goods or services.

However, this does not cover everything. For example, an application using an Aboriginal word which is not the name of a person or nation may not be something we can reject. New checks could be introduced to address this type of gap.

Asking for more evidence about the use of IK

For any new checks introduced regarding IK, Indigenous and non-Indigenous applicants would be asked to provide evidence that demonstrates their application can be accepted by IP Australia.

IP Australia could receive additional information regarding the use of IK, such as:

- a statutory declaration that describes the circumstances surrounding use of IK, whether an applicant is using their own IK or covering consent obtained.
- letter/s of consent, such as from an Aboriginal or Torres Strait Islander organisation or language centre
- other evidence of a consultation process or authority to use IK.

Q4: Would you have concerns about providing a statutory declaration, a letter of consent or other evidence, if you wanted to use IK (such as words or symbols) in a trade mark application? If so, what would your concerns be?

[1] Secret or sacred knowledge refers to IK that has a spiritual significance, embodying spiritual practices, beliefs, and customs. Depending on the knowledge, its use may be restricted to certain people or contexts. Misuse or disclosure of this knowledge can be highly offensive and/or distressing.

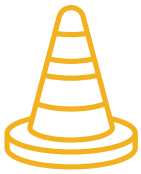
Options for new ways to check trade marks using IK

The three options in this section present new ways that IP Australia can consider applications where someone seeks to use IK in a trade mark. The preferred option would likely be implemented by adding to the available checks or 'grounds for rejection' that IP Australia has under the *Trade Marks Act 1995 (Cth)*. IP Australia is interested to hear which of these options would be effective.

Option 1: Asking for evidence of consent

IP Australia could ask an applicant looking to use IK in a trade mark whether they require, or have obtained, consent. Based on what the applicant provides, IP Australia would assess whether there was enough information about consent to allow the application to continue.

This decision would have to be based on the evidence of consent provided. It could include looking at whether it appears the applicant needs consent or took the right steps to get consent. IP Australia may not always be able to assess the appropriateness of a whole consent process but could make a finding that reasonable steps were taken. An Indigenous Advisory Panel could have a role in assessing the evidence received.



Option 2: Assessing if cultural offense to a community or communities is caused

A check relating to cultural protocols could see IP Australia asking whether a particular use of IK is offensive to the community, Traditional Owners or Custodians of that IK.

To implement this option, IP Australia would need a definition of **cultural offensiveness** to work from. A definition could look at whether it appears that IK is being used:

- by someone other than the Traditional Owner
- without free prior informed consent from the Traditional Owner
- in a way that breaches cultural protocols.

IP Australia would need evidence from the applicant or from others to answer these questions. At times, it may be difficult to access this information. An Indigenous Advisory Panel could have a role in decisions about cultural offensiveness, which could involve connecting with the relevant community, Traditional Owners or Custodians.

Option 3: Looking at if the use of IK is deceptive

IP Australia could look at applications that use IK to see if they **falsely suggest** to consumers that there is connection between the applicant's business and an Aboriginal or Torres Strait Islander person, community, or nation. This would involve IP Australia investigating if IK is used in a trade mark and asking the applicant for information on how they are connected to the source of the IK. A person may be able to show they are part of the community. Alternatively, the applicant may have a partnership or arrangement with custodians of IK. An Indigenous Advisory Panel could help consider whether a particular use of IK might make the trade mark misleading or deceptive.

Q5: Which of the three options, consent, offensiveness or deceptiveness do you prefer? Why?

Q6: What information should people provide to show they should be able to use IK in a trade mark? How does this change between an Indigenous and non-Indigenous applicant?

Q7: What sort of decisions about the existence of consent do you think IP Australia can make? How could an Indigenous Advisory Panel add to these decisions?

Q8: What do you think IP Australia should do in the case of an applicant providing evidence that they took all the steps they think are necessary, but did not (or could not) get written consent or find a person or authority to provide consent?

Options for better identification of trade mark and design applications using IK

Option: Additional application questions about IK

Filling out an application form is the first step in the process of getting a trade mark or design right. IP Australia could change the application form to require people to state upfront if they have used IK. This would make it easier to identify cases when IK is used. A new question about IK in the application form could highlight to non-Indigenous applicants that use of IK requires consideration of respectful use and consent.

Asking people to identify IK in their application form would not change how IP Australia assesses applications.

This option could be:

- A simple question, where people need to self-identify if they used IK. This would help IP Australia direct these applications to specialist staff for checking.
- Alternatively, a more detailed requirement could ask people to additionally identify where they got IK from, and to provide more information about the circumstances. This extra information could help IP Australia understand the context and any authorisation obtained to use the IK.

Q9: If IP Australia asked you to identify if you had used IK, or to name the source where you found the IK, do you think either would be an onerous requirement? Why or why not?

Option: Tools to find out about IK in trade marks and designs

Details about all Australian trade marks and designs applications are available and searchable online through IP Australia's website. Knowing what appears in other applications is important for businesses as an existing application or registration could block someone from getting a trade mark or design if it uses similar words, imagery or ideas. With so many trade marks and designs out there, it may be tricky to find which ones use IK. There are independent paid monitoring services that can keep an eye on applications, but not everyone may be able to access this kind of service.

IP Australia could look at developing tools to help assist Aboriginal and Torres Strait Islander people monitor and find the applications of interest:

- Explore having online portals or a web app that provides a way for people to keep up to date. This could be a way to provide notifications on trade marks or designs if they are flagged as containing IK.
- Investigate how a list of trade mark and design applications identified as containing IK could be collated and shared.

Q10: What do you think is the best way to help Indigenous businesses find out if IK they want to use is in other trade marks and designs?

Q11: Would new avenues to highlight IK in trade mark or designs help combat misappropriation, or could it cause additional issues?

3. REQUIREMENTS TO DECLARE WHEN IK IS USED IN NEW INNOVATIONS

The Australian patent system does not currently require the applicant to tell IP Australia if they used genetic resources or traditional knowledge to develop their invention.

A disclosure of source requirement in the patent and plant breeder's rights (PBR) systems would make it clear where genetic resources and/or traditional knowledge have been used to develop an invention or a new plant variety. This could help with:

- *Acknowledgement and Recognition* – Where Aboriginal and Torres Strait Islander people have contributed knowledge to research and innovation, this should be recognised by researchers, scientists, and innovators.
- *Traceability* - It can be challenging to trace what happens after a researcher first collects a genetic resource or traditional knowledge.
- *Better consideration by IP Australia* – Patents and plant breeder's rights protect new inventions. If something already exists or is known, it should not receive IP protection and it can be part of the prior art.[2] Disclosure can help IP Australia to find prior art.
- *Encouraging best practice* – A requirement to disclose can help demonstrate the importance of working respectfully with Aboriginal and Torres Strait Islander people, including having appropriate consent and access and benefit sharing (ABS) arrangements in place.

A disclosure of source requirement is also being explored internationally through the World Intellectual Property Organisation (WIPO) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). Australia supports this work, but IP Australia is also keen to get feedback on what sort of system could work best domestically.

Key concepts for this section

A **genetic resource** (GR) can be any biological material, including plants, fungi, and animals.

Traditional knowledge (TK) includes know-how, practices, skills, and innovations. It can include valuable insights relating to the properties of genetic resources.

A **patent** is granted for an invention that is new, useful, involves an inventive step. It provides the applicant with a monopoly for 20 years, or up to 25 years for pharmaceuticals.

A **plant breeder's right** protects a new plant variety that is distinct, uniform, and stable. It provides the applicant with a monopoly for 20 years, or 25 years for a tree or vine.

[2] 'Prior art' is information on inventions that have already been publicly disclosed.

What needs to be declared? – The 'Source'

The 'source' is the information that would need to be disclosed by an applicant. Declaring information about the source provides the basis for recognition of the origin of the genetic resource or traditional knowledge used.

International discussions are considering a standard to require applicants to disclose the primary sources of origin (country, specific region within country, or community) as a priority, and where the primary source is not known, the source it was obtained from (secondary source) if that is known.

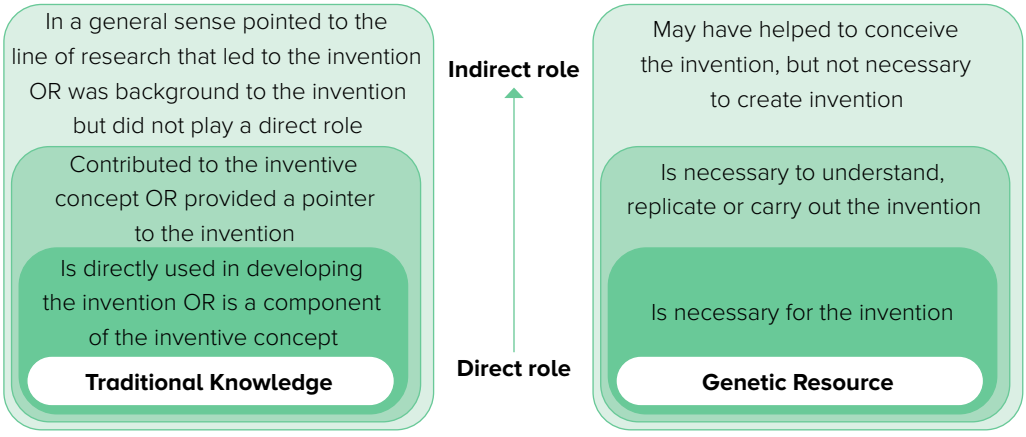
There can be challenges in how the source or origin is identified. There can be more than one origin, for example a genetic resource may be harvested and grown outside the country or region it originates from. Traditional knowledge may also be shared among multiple communities. This can create complexity in identifying the correct information. Clear rules can help by providing some clarity about what needs to be disclosed and when.

In practice, the requirement for disclosure of source could work like this:

1. **For genetic resources, you must**
    a. disclose the country or specific region of origin, or if not known or applicable then,
    b. disclose where the genetic resource was obtained, such as a research centre or gene bank.
2. **For traditional knowledge, you must**
    a. disclose and acknowledge the Aboriginal or Torres Strait Islander peoples or Indigenous community that provided the traditional knowledge, or if not known or applicable, then,
    b. disclose where the traditional knowledge was obtained from, such as scientific literature, publicly accessible databases and patent applications or publications.

When should disclosure be required? - Direct versus indirect use

A key issue for implementing a disclosure requirement is determining what uses of genetic resources or traditional knowledge should be captured. In some cases, traditional knowledge may be a key aspect of how an invention is conceived. For example, traditional knowledge about the medicinal properties of a plant might directly lead to the invention of a new medicine. In other cases, the connection between traditional knowledge and the innovation might not be so direct. This diagram demonstrates how genetic resources and traditional knowledge can play a direct role or be further removed from an invention that is seeking patent protection.



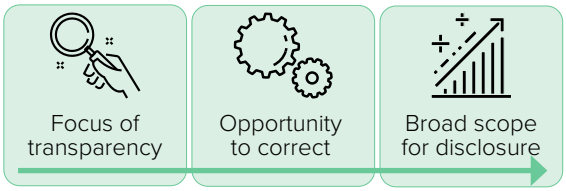
Disclosure should help encourage researchers and innovators to provide appropriate acknowledgement when knowledge and resources are being used. Disclosure should also be part of the conversation about the benefits which can flow to communities for their contribution to the innovation. Payments can be one way of sharing benefits, other mechanisms can be considered:

- access to the results and findings of research
- collaboration, cooperation and contribution through education or training
- sharing of technology developed
- participation in innovation development and commercialisation
- shared ownership of IP rights.

Options for disclosure in patents

The responsibility to disclose would be on applicant applying for the patent. The system can be designed to motivate disclosure of source by either encouraging disclosure or imposing penalties for withholding information. There are two options to consider in deciding the best approach to disclosure.

Option 1: Encourage disclosure



A system which focuses on doing the right thing would encourage disclosure, rather than punishing missteps.

The system would focus on the benefits of having greater transparency about the direct and indirect uses of traditional knowledge and genetic resources. It would allow applicants and business to demonstrate their respect for the origins of the traditional knowledge and genetic resources they used. This would promote due diligence as a part of doing better business.

This option allows for a broader scope of genetic resources and traditional knowledge to be covered. It could allow opportunities to update or correct source information if not originally known. It does not introduce any new penalties. However, existing penalties in the patent system such as revoking a patent obtained through fraud would still apply.

Option 2: Introduce penalties

Alternatively, new penalties for intentionally withholding information could be introduced.

Penalties should be proportionate and reflect their intent to motivate applicants to disclose the source of genetic resources or traditional knowledge used. The impacts of penalties need to be considered for both the applicant and any potential beneficiaries of commercialised products. For example, revoking a patent would mean no more income or benefits are generated, which could have been shared with the Traditional Owners and communities.

If new penalties were put in place, there would need to be certainty about when the use of genetic resources or traditional knowledge would activate the disclosure requirement. This could be a narrow requirement that applies only where there is a direct use of genetic resources and/or traditional knowledge. A narrow scope could provide the required certainty to applicants to be able to fulfil the requirement.

Q12: Which option do you think provides the best outcomes in supporting fair use of traditional knowledge? Are there other ways to encourage disclosure?

Disclosure for plant breeder's rights

Genetic resources are essential for all PBRs. The Australian PBR Act currently requires 'the location at which the variety was bred' and 'the names of each variety (the parent variety) used in the breeding program' to be recorded. The PBR application form also captures whether the source material was subject to a Material Transfer Agreement.

The PBR legislation and application process does not currently require traditional knowledge to be disclosed if used. A disclosure of source for use of traditional knowledge in breeding PBRs could be added to the PBR system.

Q13: Should a disclosure of source be required for use of traditional knowledge that led to a new plant variety or was used in research to develop a new plant variety?

ABS and consent: Should we enable these to be publicly declared?

To complement existing laws, we could provide the opportunity for applicants to voluntarily provide evidence of any ABS or free prior informed consent (FPIC) they have in place. This could be a statutory declaration or an attachment to their IP right application and made publicly available. The intention would be for transparency to assist in achieving benefits flowing to Aboriginal and Torres Strait Islander people. It could help encourage businesses to work collaboratively with Aboriginal and Torres Strait Islander people, scientists, and Traditional Owners, with an avenue to demonstrate best practice approaches were followed.

Australia has signed but not yet ratified the Nagoya Protocol which would require an internationally recognised certification of compliance for use of genetic resources. ABS is currently administered under multiple laws each with differing requirements. These include the *Environment Protection Biodiversity Conservation Act 1999* and *Regulations* 2000 for Commonwealth land, and State and Territory laws on biodiversity and heritage for their respective areas. Introducing the differing requirements for ABS, from these multitude of laws, into the patent system would add further complexity for both Indigenous and non-Indigenous people.

Therefore, as a first step, we propose to provide an opportunity for sharing and recognition of consent and ABS in the patent system before considering any further changes.

Q14: Do you think having the ability to attach information on ABS or consent to IP rights would provide a useful basis for better conversations about ABS and consent?

Q15: What types of evidence of ABS/consent would it be possible to make available to IP Australia?

4. LABELLING OPTIONS TO PROMOTE AUTHENTIC INDIGENOUS PRODUCTS

The way products or services are labelled helps consumers understand the differences between options and make informed choices.

Australian law allows action to be taken against misleading or deceptive statements about products, in advertising or on packaging. However, there are some cases where an inauthentic product in the style of an Indigenous design can still be sold if it is not labelled as being 'authentic'. The creation and sale of these products can cause offense and cultural harm to Aboriginal and Torres Strait Islander people, while also taking away economic opportunities.

Setting up schemes for shared labelling of authentic Aboriginal and Torres Strait Islander goods could help address this problem by:

1. Helping producers and owners of IK to highlight the authentic goods and services they provide.
2. Making it easier for consumers to identify and choose authentic products.

IP Australia's focus in this consultation is to understand from Indigenous businesses what sort of labelling could support authentic Aboriginal and Torres Strait Islander arts and crafts, as well as products in other sectors such as traditional foods and medicines. It is important to understand from Indigenous businesses, creators, and producers whether they think labelling will be beneficial or would just add extra requirements or regulations.

As a regulator, IP Australia would not be able to own, hold or manage a labelling scheme for authentic Aboriginal and Torres Strait Islander products. We can however provide information and assistance to people considering using IP protection as a basis for their labelling. We can report back to the Government if there is interest in labelling and recommend what the next steps should be.

Labelling is just one part of solving the issue of inauthentic art and other products. The Australian Government also undertook public consultations in 2020 as part of developing a strategy to grow the Indigenous visual art industry.

Considerations when looking at labelling schemes for authentic Indigenous products

In the *House of Representatives Standing Committee on Indigenous Affairs* tabled *Inquiry into inauthentic art and craft in the style of First Nations peoples*, some submissions raised concerns about a previous labelling scheme for arts and craft products which was ultimately disbanded. These concerns are also important when considering the potential for a new labelling scheme across the visual arts and other sectors.

Issue	Concern
Proving Indigeneity as problematic	A labelling scheme should not have onerous requirements on people to prove they are Aboriginal or Torres Strait Islander.
Non-users perceived as inauthentic	The use of labels on authentic goods should be managed so that people who do not want to use it are not automatically considered non-authentic producers.
Recognising regionality is not possible in a national scheme	Labelling needs to be able to account for different styles of art, craft and other products across Australia. A national labelling scheme was unable to do this.
Consumer education and awareness	It may be a challenge to effectively promote the labelling so that retailers and consumers understand its meaning and significance. This could be a challenge in areas such as the souvenir market if foreign tourists do not understand what to look for.
Costs and limitations of enforcement	To stop others using the authenticity labels where they shouldn't, there will need to be organisations with resources to monitor correct use of the labelling and take action against its improper use.

A labelling scheme could be set up in a way to help address these concerns. For example, it could have rules and governance that allow for greater regional or community control around decisions about who can use the label, how it is marketed to consumers, and to guide when enforcement action should be taken.

Existing labelling options for authentic goods

The below outlines some of the existing options for labelling in current legislation.

- **Certification Trade Marks** (CTM) - can be a word, logo or symbol that is owned by a single organisation but can be used by anyone as long as they meet a set of rules that control when the CTM can be used. These rules could relate to where something is made, or how it is made. The organisation who owns the CTM is responsible for making sure the CTM is used correctly and may charge a fee to help meet the costs of doing this.
- **Collective Trade Marks** – a collective trade mark can be a word, logo or symbol that is owned by an association of producers. An association can be a group of people who work together under a set of rules they have agreed. It does not need to involve setting up a company. Producers who are part of the association are allowed to use its trade mark on their goods, while others outside the association are not.
- **Registered trademark symbol** ® is typographic symbol which can be used if the product or service has a registered trade mark, including collective or certification, with IP Australia. It helps consumers to identify when a mark is registered and falsely using this symbol carries penalties under the Trade Marks Act.
- **Geographical Indications** - A geographical indication is a name or term, that can be reserved for use on products where that name or term shows the products have a particular style or characteristic that is unique to that geographical area. A group of people from a particular place or region could agree that they want the name of that place to only be used on products coming from that area.

Each option would have its own complexities and processes that would need to be worked through. You can find more information about these options on IP Australia's website.

The labelling could also take a new or different form based on the issue that needs to be resolved. For example, digital labelling and using a QR code on packaging or attached to a product. Using QR codes and other technology can give consumers the opportunity to use their phone to find out the story behind a product, where it comes from and who made it. This helps point people in the direction of authentic goods.

Case study – trade marks for supply chain verification

IP Australia is currently piloting Smart Trade Mark technology that allows consumers to verify they are buying a trade-marked product with an authenticated supply chain that uses blockchain technology. IP Australia is currently collaborating on a pilot that involves providing verified information to demonstrate how Kakadu plum sourced from traditional owners in Northern Australia has then gone to a manufacturer and is in the final product on a retailer's shelves. This information can then be made available to consumers, for example through a QR code.

These questions are targeted to Aboriginal and Torres Strait Islander people and businesses:

Q16: Does your business currently use any labelling or certification schemes, or any other way to promote authenticity of your products? If so, what are they and what about them works well?

Q17: What kinds of products or sectors do you work with? Which of the options for labels presented above do you think would be useful in your sector?

Q18: Would you be willing to pay a fee to use a CTM or label of authenticity on your product?

Q19: Do you think Government should play a role in the setting up of labelling schemes for authentic products? If yes, what sort of form do you think this should take?

A. Access to advice
B. Education
C. Funding
D. Other

ABOUT INDIGENOUS KNOWLEDGE AND INTELLECTUAL PROPERTY

What is Indigenous Knowledge?

This paper uses 'Indigenous Knowledge' or 'IK' as a term to cover a range of knowledge held and continually developed by Aboriginal and Torres Strait Islander people. It includes:

- *Traditional Cultural Expressions* – or 'TCEs' are sometimes referred to as 'folklore' and include languages, music, performances, songlines, stories, dance, symbols, designs, visual art, crafts, and architecture.
- *Traditional Knowledge* – or 'TK', refers to knowledge resulting from intellectual activity in a traditional context and includes know-how, practices, skills, and innovations. This can be in a range of contexts such as agricultural, scientific, technical, ecological, medicinal, and biodiversity-related knowledge. It includes knowledge about genetic resources.
    - A 'genetic resource' can be any biological material, including plants, fungi, and animals. In some areas within Australia, the informed consent of the local Aboriginal or Torres Strait Islander community is a precondition for permission to collect a genetic resource for commercial purposes, which may include research.

Even though the word 'traditional' is used to describe these concepts, it is important to remember that they are not static; they are continually used and built upon.

About IP Australia

IP Australia is responsible for administering Australia's IP rights system, specifically patents, trade marks, designs, and plant breeder's rights (PBRs). IP Australia does not manage the copyright system, which sits with the Department of Infrastructure, Transport Regional Development and Communications.

Our vision, to create a world leading IP system building prosperity for Australia, and our purpose, to ensure Australians benefit from great ideas, drives the work we do. Our work on Indigenous Knowledge is part of ensuring that Aboriginal and Torres Strait Islander people equally share in the prosperity that the IP system is intended to create.

For more information about the intellectual property rights that IP Australia administers, visit our website.

Background – Why is IP Australia consulting on these options?

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 IK and identified six key issues.

IP Australia published a consultation paper in September 2018, further exploring the issues raised in the discussion paper. Part A of that 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. This included a range of proposals for potential changes.

IP Australia's consultation on (1) an Indigenous Advisory Panel, (2) trade marks and designs measures and (3) a disclosure requirement for patents and plant breeder's rights follow-on from what we heard in our 2018 consultations. We have adapted these ideas to reflect what we heard and using additional feedback from this consultation will move to implement these changes.

Consultation on labelling for authentic Indigenous products is part of the Australian 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*. The work coming out of the Government response includes IP Australia's work as well as a range of work across government. This includes the development of an action plan relating to the arts and crafts sector specifically, which is underway following consultations held in 2020.

Further information about IP Australia's work on Indigenous Knowledge, including copies of all our publications and previous consultations are available on our website at https://www.ipaustralia.gov.au/understanding-ip/getting-startedip/indigenous-knowledge/indigenous-knowledge-project.

If you are interested in our work on Indigenous Knowledge, you can subscribe to our mail list via the website and stay up to date as our work progresses.