

## Response: Interim report on stand-alone legislation to protect and commercialise Indigenous Knowledge (2022)

NATIONAL AND STATE LIBRARIES AUSTRALASIA (NSLA)

National and State Libraries Australasia (NSLA) represents the national, state and territory libraries of Australia and New Zealand. We welcome the opportunity to respond to IP Australia's interim report on stand-alone legislation to protect and commercialise Indigenous Knowledge (IK).

NSLA's Australian member libraries hold a large volume of collection materials relating to and created by Aboriginal and Torres Strait Islander peoples, languages and cultures, both contemporary and historical. As custodians of these materials, we acknowledge our collective, individual and moral responsibilities to ensure that management and access is culturally informed and respectful. This includes recognition and protection of the ongoing, communal nature of Indigenous Cultural and Intellectual Property (ICIP).<sup>1</sup>

NSLA libraries support the creation of First Nations-led stand-alone legislation to protect ICIP and IK. We also support the establishment of an Authority whose remit includes implementing processes to help third parties to identify and secure the consent of Traditional Owners to the use of their Indigenous Knowledge. In particular, we would welcome voluntary mechanisms, such as a database or register of IK information, that avoid overloading individuals or communities with cultural labour in fielding requests from different institutions.

Regarding stand-alone legislation, our submission to this consultation requests that any approach **consider the implications not only for commercial and future works, but also for historical and archival collections**, including materials that have missing or incomplete provenance information. Specifically, we ask the following:

1. That any new legislation does not negatively affect the capacity of cultural and heritage organisations and institutions to share materials for the purposes of research and study, where cultural permissions allow and according to provisions within, and legislated exceptions to, the *Copyright Act 1968*.
2. That any approach considers the historical and continuing barriers, including logistical, that impede First Nations people in knowing about and accessing historical collections by and about their communities, especially when copyright is held by non-Indigenous people.
3. That any new legislation does not preclude provision of sufficiently open access to collection materials for the accurate identification of custodians of those materials in instances where they lack provenance. Examples include donations of pastoral, anthropological and cultural items reflecting contact between European and First Nations communities.
4. That any new legislation recognises and considers the Indigenous Knowledge residing within collection datasets such as collection indexes and the metadata behind digital and digitised collections.
5. That consultation provides for consideration of the historical collection and publication of secret/sacred information and Indigenous Knowledge that has contemporary consequences for collecting institutions, their users, and First Nations communities.
6. That the consultation process for the development of any new legislation in Australia, even if its focus is primarily visual arts and crafts, includes representatives from national and state libraries and archives.

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<sup>1</sup> See NSLA Position statement: Indigenous Cultural and Intellectual Property (May 2021):  
<https://www.nsla.org.au/resources/indigenous-cultural-and-intellectual-property-icip>

For more detail about the work of libraries, and the importance of ICIP alongside specific components of copyright legislation that allow libraries to fulfil their legislated mandates at Commonwealth, State and Territory level, we refer to submissions by the Australian Libraries and Archives Copyright Coalition (ALACC), the Australian Digital Alliance (ADA), and the National Library of Australia (NLA).



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