



# Intellectual Property (IP) in Australian Law

## Briefing Paper No. 1

### Plain language material

IP, or intellectual property, refers to things that people hold, or own, that they have created on the basis of their ideas and creativity. Examples of intellectual property are original thoughts and ideas that are written down in papers, reports, books and film; or are made into sound, film or video recordings; or are put into other media. IP can also be inventions, or new plant varieties that have been created. IP in general is something that is new, unique, distinct and original.

Intellectual property rights (IPRs) are rights that the holders and owners of IP have, which are created, and protected by law.

Western law provides protection for intellectual property rights and encourages or supports the owners and holders of IP if they wish to make money from their IP or use it in some way for gain or advantage.

Intellectual property laws provide for **exclusive rights** over the use, sale or licensing of IP. They thus prevent or deter people from making money from the IP of others without legal permission, or from misusing the IP of others.

IP law can only protect a product or thing if it is in a physical or **'tangible'** form. So for these laws to protect the cultural rights of Aboriginal and Torres Strait Islander people – in aspects of culture such as their dreaming stories; ceremonies; and knowledge of country, including plants and animals – this knowledge has to be written down, recorded or filmed. This is one of the ways that IP law is limited in terms of the protection it can give to Aboriginal and Torres Strait Islander culture and heritage.

There are other limitations of IP law. One of these limitations is that a right in intellectual property only lasts for a limited time. This means that IP law cannot protect things in Aboriginal and Torres Strait Islander culture that are ancient. Another limitation is that IP law requires that IP has been created by a single individual (although note that copyright can be jointly held; see below). This means that IP cannot generally protect the collective or communal products produced by clans or

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other Aboriginal and Torres Strait Islander groups. In general, IP laws are more concerned with supporting the commercial gain from peoples' IP, rather than with protecting culture and heritage.

Although IP law is mainly about the individual or corporation, there are some limited ways for a **group** to benefit from IP law. For example, Aboriginal and Torres Strait Islander people can make sure that they are joint owners of copyright in works that are made involving aspects of their culture such as language, stories, song, or information about their environmental knowledge (see Briefing Paper No. 2).

Within the Design and Trademark laws, it is possible to protect local knowledge belonging to a group or community. This can be done by registering Aboriginal and Torres Strait Islander cultural material such as words, designs, symbols and so on if these originate in a particular area or region under the 'geographic indicators' provisions. More information about this is in Briefing Paper No. 3.

Aboriginal people in the Northern Territory have also used the *Copyright Act 1968* to claim damages for the misuse of their clan designs in art works.

Aboriginal and Torres Strait Islander people can use IP laws when they negotiate with scientists or others in research and development projects, if they are involved in activities such as business or cultural tourism, or for projects where Aboriginal and Torres Strait Islander people's knowledge of plants and animals may be used by the wider community, in commercial products or processes, or for research purposes. In a similar way, if Aboriginal and Torres Strait Islander people make products to sell (such as soap or oil) using traditional knowledge, then they need to ensure that they protect their rights in intellectual property.

When Aboriginal and Torres Strait Islander people participate in research projects and share their knowledge with researchers, then their ideas, cultural information, words, language and stories are written down or recorded. In these situations Aboriginal and Torres Strait Islander people should make sure their rights in their IP are protected. At the same time, Aboriginal and Torres Strait Islander people should also make others aware that they have rights in what is sometimes called Indigenous Cultural and Intellectual Property (ICIP). This refers to the Aboriginal and Torres Strait Islander knowledge, and all the other parts of Aboriginal and Torres Strait Islander cultural heritage that are not recognised or protected under Western laws.

Some of the ways that Aboriginal and Torres Strait Islander people can make sure Western IP laws are used for their benefit include declaring that they own copyright in their culture, and disclosing the traditional knowledge of plants and animals they already own before any patent applications are made. There are other ways they can make use of existing IP laws, and legal advice should be sought to make sure things are done properly for Aboriginal and Torres Strait Islander people.



The main laws that are used to protect intellectual property in Australia include:

- *Copyright Act 1968* (see [Briefing Paper No. 2](#) for more detail)
- *Trade Marks Act 1995* (see [Briefing Paper No. 3](#) for more detail)
- *Designs Act 2003* (see [Briefing Paper No. 3](#) for more detail)
- *Patents Act 1990* (see [Briefing Paper No. 4](#) for more detail)
- *Plant Breeders Rights Act 1994* (see [Briefing Paper No. 4](#) for more detail)

### Summary implications of IP law:

- The main focus of IP laws is on individual ownership of knowledge and on the production of people's creations or ideas in a physical form, such as a recording, or a written work. This means:
  1. IP laws generally cannot accommodate group or community rights
  2. That knowledge is 'owned' as a form of property (in a similar way to how you might own a car) rather than being shared, used and transmitted among particular people, or held by knowledgeable senior people, until they decide to pass it on to younger people
  3. That IP laws cannot support or protect the passing on of knowledge, such as through story, dance or song. IP law requires knowledge to be in the form of some physical thing that you can see and touch. It does not allow for knowledge that is practised, as it is for example through hunting, gathering, fishing and other ways of living on country.

### Some select references

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