



Law Council
OF AUSTRALIA

A new legislative framework to address and protect Indigenous cultural and intellectual property rights

Department of Infrastructure, Transport, Regional Development,
Communication, and the Arts

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- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
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The Chief Executive Officer of the Law Council is Dr James Pople. The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council's website is www.lawcouncil.au.

Acknowledgements

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Executive Summary

1. Recognition and protection of Indigenous cultural and intellectual property (ICIP) rights for First Nations people is an essential part of their cultural heritage.¹ These rights are unique in that they are passed on from generation to generation,² and are rights that belong to a group of people, as opposed to one person.³ First Nations communities possess distinct aspects of their knowledge, creative expressions, and innovations,⁴ which are often very deep-rooted and at times difficult to define. Additionally, First Nations communities also have cultural products, expressions, and manifestations⁵ that are intricately woven into all other facets of society.⁶
2. However, First Nations knowledge, culture, creative expressions, and innovations have been in ways at 'odds with conventional western notions of intellectual property'.⁷ For example:
 - (a) **Communal ownership:** Under Indigenous customary law, traditional knowledge or cultural works are more likely to have been created over many generations and are deemed to be owned collectively by the tribal or family group (i.e., communally owned), whereas, in non-Indigenous law, for copyright to exist in a work it must be original and attributed to a specific individual or individuals.⁸
 - (b) **Oral traditions and transient artwork:** Section 35 of the *Copyright Act 1968* (Cth) requires that any copyrighted work must be in material form (i.e., a physical or tangible embodiment of the work). However, ICIP is 'traditionally orally based and transferred through practice'⁹ such as songs, dances and stories (told through a painting) and can also be transient in nature such as body and sand paintings.¹⁰

¹ Rupert Myer, [Report of the Contemporary Visual Arts and Craft Inquiry](#) (June 2002) 150.

² Terri Janke and Robynne Quiggin, [Indigenous cultural and intellectual property: the main issues of the Indigenous arts industry in 2006](#), (10 May 2006) 11.

³ Ibid.

⁴ Rupert Myer, [Report of the Contemporary Visual Arts and Craft Inquiry](#) (June 2002) 150.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid. See also Dr Terri Janke, [Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights](#) (1998) 50 – 96. Terri Janke provides a guided discussion on the existing domestic laws that address ICIP, and to what extent they protect ICIP rights. See also the Arts Law submission on this consultation where it was noted that the *Copyright Act 1968* (Cth) was introduced to incentivise creative output, but it does not sufficiently grapple with the differences in creative output for First Nations Australians. Stand-alone legislation that effectively protects these types of rights, will work to incentivize creative output containing ICIP.

⁸ Standing Committee on Environment, Communications, Information Technology and the Arts, [Indigenous Art – Securing the Future: Australia's Indigenous visual arts and craft sector](#) (20 June 2007) 11.8. See also section 32 of the *Copyright Act 1968* (Cth) states that for copyright to exist in a work, it must be original. Artwork that is based on or derived from a tradition pre-existing theme may not be considered original, meaning no copyright over that particular piece of art subsists. Further, subsection 35(4) of the *Copyright Act* attributes ownership to an identified individual or individuals. This makes it particularly challenging for First Nations artists to claim rights over literary, dramatic, or artistic works to one person or specific persons as it would be claiming rights over certain materials that belong to the community. A similar issue exists in the *Designs Act 2003* (Cth) where protections are afforded to designs in relation to products and items (see section 8). However, this poses issues with certain designs such as 'Indigenous clan insignias' which may not be commercially applied to a product, therefore they won't be registerable under the Act and thus not afforded protection.

⁹ Terri Janke et al., [Rights to Culture: Indigenous Cultural and Intellectual Property \(ICIP\), Copyright and Protocols](#) (29 January 2018).

¹⁰ Standing Committee on Environment, Communications, Information Technology and the Arts, [Indigenous Art – Securing the Future: Australia's Indigenous visual arts and craft sector](#) (20 June 2007) 11.14.

- (c) **Expiration of intellectual property rights:** While ICIP is recognised to an extent in existing legal frameworks, the expiration of general copyright and design protection poses a significant risk to the cultural works and designs by First Nations communities. The lapse of these protections can lead to unauthorised use and misappropriation of these works, undermining the integrity and cultural significance those works holds for First Nations communities.¹¹
- (d) **Sale of inauthentic products and the Australian Consumer Law:** Sections 18 and 29 of the Australian Consumer Law (**ACL**)¹² prohibit misleading or deceptive conduct and false or misleading representations in the marketing and sale of products and services, including First Nations art and craft products and merchandise. However, the ACL does not preclude the sale of inauthentic art and craft products, unless they are falsely labelled.¹³
3. The Law Council has for a long time supported *sui generis* legislation as the likely best long-term option to resolve the complex challenges of properly recognising and protecting ICIP within current legislative frameworks.¹⁴ Stand-alone legislation honours and respects the culture and traditions of First Nations communities,¹⁵ acknowledges First Nations contributions by ensuring that their legacies are preserved, and fosters cultural continuity and respect for First Nations identities. Accordingly, we welcome and support the Department of Infrastructure, Transport, Regional Development, Communication, and the Arts (the **Department's**) consultation on the development of stand-alone legislation to protect ICIP rights.¹⁶
4. There are sections of our submission where we have deferred to the guidance of First Nations people and communities, recognising that these issues are best addressed by First Nations people themselves. This approach aligns with the principle of self-determination,¹⁷ which affirms the right of First Nations peoples to freely determine their political status and pursue their economic, social, and cultural development. Our contributions in this submission are therefore focussed on some of the legislative design considerations that the Department will need to consider in establishing these stand-alone rights. Accordingly, we make the following

¹¹ See section 33 of the Copyright Act which provides that the duration of copyright protection is generally the life of the artist plus 70 years and section 46 which provides that a duration of a design registration is maximum 10 years.

¹² *Competition and Consumer Act 2010* (Cth) schedule 2 (Australian Consumer Law), sections 18 and 29.

¹³ House of Representatives Standing Committee on Indigenous Affairs, [Report on the impact of inauthentic art and craft in the style of First Nations peoples](#) (December 2018) [4.84]. The Committee indicated that the Australian Consumer Law cannot deal with issues of inauthentic Indigenous products... making it inadequate to deal with the misappropriation of culture. Stand-alone legislation may be the best long term option to resolve this complex issue.

¹⁴ House of Representatives Standing Committee on Indigenous Affairs, [Report on the impact of inauthentic art and craft in the style of First Nations peoples](#) (December 2018) xxi (Recommendation 8). See also Law Council of Australia, [Interim Report on stand-alone legislation to protect and commercialise Indigenous Knowledge](#) (10 November 2022); Law Council of Australia, [Aboriginal & Torres Strait Islander Visual Arts & Crafts Inquiry](#) (14 September 2022) [24] – [30] and Law Council of Australia, [Enhance and Enable – Indigenous Knowledge Consultations 2021](#) (3 June 2021) [102].

¹⁵ A similar approach provides support for the stand-alone protection offered to Indigenous cultural heritage in various State and Commonwealth legislation including: *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth); *Aboriginal Heritage Act 1972* (WA); *Aboriginal Heritage Act 1988* (SA) and *Aboriginal Heritage Act 2006* (VIC).

¹⁶ Department of Infrastructure, Transport, Regional Development, Communication and the Arts, [Indigenous cultural and intellectual property rights](#).

¹⁷ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th pln mtg, Agenda Item 68, Supp No 49, UN Doc A/RES/61/295 (2 October 2007) annex. art 3.

recommendations and suggestions to the Department in developing stand-alone legislation addressing ICIP rights:

- (a) the underlying principles and objectives of the stand-alone legislation should be based on principles set out in the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**),¹⁸ the International Covenant on Civil and Political Rights (**ICCPR**)¹⁹ and the International Covenant of Economic, Social and Cultural Rights (**ICESCR**);²⁰
- (b) the Australian Constitution's race power²¹, external affairs power²² and, to a certain extent, intellectual property power²³ can provide a sufficient constitutional basis for enacting legislation and implementing policies relating to ICIP;
- (c) definitions or concepts in the stand-alone legislation should be clear and easy to apply, broad enough to include intangible forms of expression, and should also recognise that ICIP rights are perpetual and communal;
- (d) the scope of ICIP protection should be determined in partnership with First Nations communities, and should include literary, performing, and artistic works; knowledge (including scientific, agricultural, technical, ecological, and spiritual); tangible and intangible cultural property; traditional foods; archival footage and all forms of media;
- (e) ICIP legislation should protect a range of rights, including rights to prior informed consent, to the secrecy of Indigenous knowledge, to commercial benefits, to attribution, to the protection of sacred sites, and to the prevention of misuse;
- (f) ICIP rights should be enforceable communal/collective legal rights that are well defined, not onerous for First Nations communities to enforce, and developed through comprehensive consultation;
- (g) enactment of ICIP legislation should be accompanied with education and communication strategies to ensure a broader awareness and respect for ICIP rights in the community;
- (h) the experiences of other international jurisdictions should be considered to inform the development of Australia's ICIP legislation;

¹⁸ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th pln mtg, Agenda Item 68, Supp No 49, UN Doc A/RES/61/295 (2 October 2007) annex.

¹⁹ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966m 999 UNTS 171 (entered into force 23 March 1976, except Article 41 which came into force generally on 28 March 1979; entry into force for Australia 13 January 1980, except Article 41 which came into force for Australia on 28 January 1993).

²⁰ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

²¹ *Australian Constitution* s 51 (xxvi). This head of power gives the Commonwealth Parliament to make laws for the peace, order, and good government of the Commonwealth with respect to ... the people of any race for whom it is deemed necessary to make special laws. It is well established that the races power can be used to enact special laws for the benefit of Aboriginal and Torres Strait Islander peoples – see for example *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168 and *Kruger v Commonwealth* (1997) 190 CLR 1.

²² *Australian Constitution* s 51 (xxix). This head of power gives the Commonwealth Parliament to make for the peace, order, and good government of the Commonwealth with respect to external affairs.

²³ *Australian Constitution* s 51 (xviii). This head of power authorises the Commonwealth Parliament to make laws with respect to copyright, patents of inventions and designs, and trademarks.

- (i) ICIP legislation should be developed in a manner consistent with international standards and obligations, as well as existing domestic legal frameworks and codes concerning intellectual property law. Importantly, ICIP legislation should be developed carefully to avoid interfering with existing First Nations rights under the law; and
 - (j) the drafting approach for the ICIP legislation should reduce complexity as much as possible, and include a mechanism to review the effectiveness of the legislation over time.
5. Please note that, for the purposes of this submission, we have used the terms 'Indigenous', 'Aboriginal and Torres Strait Islander' and 'First Nations' interchangeably to reference the Aboriginal and Torres Strait Islander people belonging to this country.
6. The Law Council looks forward to providing additional insights and contributions to the Department in future consultations on this important area of law reform.

Sui generis legislation addressing ICIP rights

Fundamental concepts in developing the ICIP legislation

Key principles and objectives of the new law

7. The Law Council considers that the development of laws and policies that recognise and protect ICIP should be directed towards realising applicable rights set out in UNDRIP, the ICCPR and the ICESCR. These international instruments include the rights of First Nations people to:
- (a) self-determination—a central right derived from common article 1 of the ICCPR and ICESCR—which enables First Nations people to be able to make decisions about matters that affect their lives;
 - (b) provide free, prior informed consent before the adoption and implementation of legislative or administrative measures that may affect them;²⁴
 - (c) seek redress through effective mechanisms, which may include restitution, developed in conjunction with Indigenous peoples, with respect to their cultural, intellectual, religious, and spiritual property taken without their free, prior, and informed consent or in violation of their laws, traditions, and customs;²⁵
 - (d) maintain, control, protect and develop their cultural heritage, traditional knowledge, and traditional expressions, as well as the manifestations of their sciences, technologies, and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports, and traditional games and visual and performing arts.²⁶ This enables First Nations communities to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expression,²⁷ a right that gives expression to the central right of self-determination as applied to ICIP;
 - (e) practise and revitalize their cultural traditions and customs—this includes the right to maintain, protect and develop the past, present, and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies, and visual and performing arts and literature.²⁸

²⁴ United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Agenda Item 68, Supp No 49, UN Doc A/RES/61/295 (2 October 2007) annex, art 19.

²⁵ *Ibid* art 11(2).

²⁶ *Ibid* art 31(1).

²⁷ *Ibid*.

²⁸ *Ibid* art 11(1).

Recommendation

- **The underlying principles and objectives of the stand-alone legislation addressing ICIP rights should be based on the principles set out in UNDRIP, ICCPR and ICESCR, which include the rights of First Nations people:**
 - **to self-determination;**
 - **to free, prior, and informed consent when developing laws and policies that affect them;**
 - **to an effective mechanisms for redress;**
 - **to the protection of cultural heritage and intellectual property; and**
 - **to practise and revitalise their cultural traditions and customs.**

Identified Constitutional head of power

8. The establishment of any legislative framework fundamentally relies on the Commonwealth's ability to enact a law under a suitable head of power in the Australian Constitution.²⁹
9. We note that the relevant head of power has not been identified in the reference documents to this consultation. Nevertheless, in absence of specified details, the most important legislative head of power underpinning *sui generis* legislation addressing ICIP rights is the race power.³⁰ The race power offers a robust and appropriate Constitutional basis for developing and implementing legislation that specifically addresses and protects the unique cultural and intellectual property rights of First Nations communities.
10. In addition to the race power, *sui generis* legislation addressing ICIP rights may also be supported by the following head of powers:
 - (a) The external affairs power:³¹ The scope of the external affairs power 'enables the federal parliament to legislate to implement Australia's obligations under international agreements irrespective of the subject matter of the agreements'.³² The Department can draw from various international legal instruments concerning intellectual property to which Australia is a party,³³ such as:
 - (i) ICESCR;³⁴

²⁹ Chief Justice RS French AC, [A Public Law Perspective on Intellectual Property](#) (25 July 2012) 18.

³⁰ *Australian Constitution* s 51 (xxvi). This head of power gives the Commonwealth Parliament to make laws for the peace, order, and good government of the Commonwealth with respect to ... the people of any race for whom it is deemed necessary to make special laws. It is well established that the races power can be used to enact special laws for the benefit of Aboriginal and Torres Strait Islander peoples – see for example *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168 and *Kruger v Commonwealth* (1997) 190 CLR 1.

³¹ *Australian Constitution* s 51 (xxix). This head of power gives the Commonwealth Parliament to make for the peace, order, and good government of the Commonwealth with respect to external affairs.

³² (1983) 158 CLR 1 (also referred to as the 'Tasmanian Dams case').

³³ Australian Government Productivity Commission, [Inquiry Report: Intellectual Property Arrangements](#) (23 September 2016) 605 – 614. In particular, see the table of all the B.1 on page 610 which provides a list of all the treaties that Australia is a party to that is administered by the World Intellectual Property Organisation.

³⁴ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 15(1)(c), which requires States Parties to recognise the right of everyone to benefit from the protection of the moral and material interest resulting from any scientific, literary, or artistic production of which they are the author.

- (ii) Convention on the Protection and Promotion of the Diversity of Cultural Expressions (the **CPPDC**),³⁵
 - (iii) United Nations Convention on Biological Diversity;³⁶
 - (iv) the various World Intellectual Property Treaties to which Australia is a party, including the *Paris Convention for Protection of Industrial Property*³⁷ (the **Paris Convention**) and the *Berne Convention for the Protection of Literary and Artistic Works*³⁸ (the **Berne Convention**).
- (b) The copyrights, patents of inventions and designs, and trademarks power (the ‘**intellectual property power**’):³⁹ The scope of this power authorises the Commonwealth to make laws that create, confer, and provide for the enforcement of, intellectual property rights in original compositions, inventions, designs, trademarks, and other products of intellectual effort.⁴⁰ While we haven’t in the timeframe of this consultation been able to conduct a detailed analysis of this head of power, it may be possible to rely on it in connection with the express or implied incidental power in the Constitution.⁴¹ However, it is worth noting that the scope of the intellectual property power may be insufficient to ensure the constitutional validity of a legislative framework aimed at addressing and protecting ICIP rights because:
- (i) the broad nature of ICIP, which includes traditional knowledge, cultural expressions and heritage does not neatly fit into the more specific concepts outlined in the head of power: that is, copyrights, patents, designs, and trademarks; and
 - (ii) copyright, patent, designs, and trademarks are designed to protect specific types of intellectual property typically associated with individual or corporate ownership and innovation. ICIP is considered to be owned by a community, rather than specified persons.

11. Identifying the relevant head of power at the outset ensures that any proposed legislation is Constitutionally sound and falls within the authority of the Commonwealth to enact. This clarity assists with preventing legal challenges that could delay or invalidate legislation in the future.

³⁵ *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (adopted on 20 October 2005), UNESCO, (entered into force on 18 March 2007). The CPPDC focuses primarily on the ‘diversity of cultural expressions, as circulated and shared through cultural activities, goods and services, the most contemporary transmitters of culture’. Australia has been a party to the Convention since 18 September 2009.

³⁶ *United Nations Convention on Biological Diversity* (adopted in 1992), UNEP, (entered into force on 29 December 1993) art 8(j) which emphasises the need to respect, preserve, and maintain the knowledge, innovations, and practices of Indigenous communities relevant for conservation and sustainable use of biological diversity. Australia has been a party to the Convention since 29 December 1993.

³⁷ *Paris Convention for the Protection of Industrial Property 1883*, [1972] ATS 12, (entered into force on 27 September 1975). Australia has been party to the Paris Convention since October 1925, and party to the Stockholm revisions since 27 September 1975.

³⁸ *Berne Convention for the Protection of Literary and Artistic Works* (Paris Act), opened for signature 24 July 1971, [1978] ATS 5 (entered into force on 15 December 1972). Australia has been a party to the Berne Convention since 14 April 1928.

³⁹ *Australian Constitution* s 51 (xviii). This head of power authorises the Commonwealth Parliament to make laws with respect to copyright, patents of inventions and designs, and trademarks.

⁴⁰ *Nintendo Co Ltd v Centronics Systems Pty Ltd* (1994) 181 CLR 134,160 (Mason CJ, Brennan, Deane, Toohey, Gaudron and McHugh JJ). The constitutional basis for the development of the *Patents Act 1903* (Cth), the *Copyright Act 1905* (Cth), the *Trademarks Act 1905* (Cth), and the *Designs Act 1906* (Cth), was held to be under the intellectual property power.

⁴¹ See the *Australian Constitution* s 51 (xxxix).

Recommendations

- **The Department should clearly outline the relevant head of power underpinning the stand-alone legislation on ICIP in their future consultation papers.**
- **The Department should note that the race power, the external affairs power and to a certain extent the intellectual property power provides a sufficient constitutional basis for enacting legislation and implementing policies relating to ICIP.**

Scope of the legislation

12. The Department should keep the following concepts—identified by Dr Terri Janke in her *Our Culture Our Future* report⁴²—in mind when drafting the stand-alone legislation:
- (a) **Tangible vs intangible:** Any definitions or concepts used in the stand-alone legislation should be ‘broad and should not require an expression to have a material form’.⁴³ Members of the legal profession indicate that the scope of the legislation needs to be broad enough to capture the full extent of protection sought by First Nations people. Legislation that is static, or backward looking, siloed or compartmentalised, is unlikely to meet the needs of First Nations people, given that a great deal of First Nations material is not in material form.
 - (b) **Rights in perpetuity:** The ICIP legislation should recognise that ICIP rights are rights to ‘cultural material in perpetuity’.⁴⁴ This means that the Department needs to understand that ICIP rights do not have an expiration date (as contemplated in the Copyright Act and the *Designs Act 2003* (Cth), for example). This acknowledges that cultural heritage is timeless and integral to the identity and continuity of First Nations communities.
 - (c) **Communal vs individual ownership:** In many First Nations cultures, cultural heritage and intellectual property is owned collectively, rather than by one individual. The stand-alone legislation should ensure that communal rights are recognised and protected, preventing individuals from claiming exclusive ownership over cultural materials that belong to that community, without free, prior informed consent.
 - (d) **Traditional knowledge vs new knowledge:** The stand-alone legislation should focus on traditional knowledge rather than new knowledge. This is because most Indigenous knowledge is ancient, passed down through generations, and does not meet the criteria of being new or original according to patent or copyright law.

⁴² Dr Terri Janke, [Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights](#) (1998) 184.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

Recommendations

- The Department should ensure that any definitions or concepts in the stand-alone legislation are broad enough to include intangible forms of expression, addressing the needs of First Nations people.
- The Department should also recognise that ICIP rights are perpetual and communal, reflecting the timeless and collective nature of First Nations cultural heritage.

Contents of the Legislation

ICIP categories that need to be protected under the new law

13. Members of the legal profession have expressed the view that aspects of ICIP that require legal protection should be identified primarily by reference to input from First Nations people in recognition of the right to self-determination. We recognise that this is consistent with the approach of the Department, which has committed to a First-Nations led approach.
14. To assist the Department, we have prepared the following table detailing the broad ICIP categories and what each ICIP category would cover:

ICIP Category	Description
Literary, performing, and artistic works	Includes songs, music, dances, stories, ceremonies, oral traditions, rituals, traditional practices, symbols, plays, languages, paintings (including sand and body), poems, symbols, sculptures, languages, and designs.
Knowledge	Encompasses scientific (including artificial intelligence and biotechnological innovations), agricultural, technical, ecological knowledge (including cultigens, medicines and any phenotypes of flora and fauna) ⁴⁵ and spiritual. ⁴⁶
Tangible and Intangible Cultural Property	Covers all items of movable and immovable cultural property, including sacred and historically significant sites, burial grounds, and ancestral remains. Also includes physical artifacts, tools, and clothing.
Documentation of Indigenous heritage	Includes archives, film, photographs, videotape, audiotape, and all forms of media.
Traditional foods	Includes knowledge and practices related to the cultivation, harvesting, preparation, and consumption of traditional foods.

⁴⁵ CSIRO, Indigenous Cultural and Intellectual Property Principles, 3.

⁴⁶ Jean Kearney and Terri Janke, [Rights to Culture: Indigenous Cultural and Intellectual Property \(ICIP\) Copyright and Protocols](#) (29 January 2018).

Recommendations

- **The Department should recognise literary, performing, and artistic works; knowledge (including scientific, agricultural, technical, ecological, and spiritual); tangible and intangible cultural property; traditional foods and archival footage and all forms of media as being covered by ICIP.**
- **The Department should work in partnership with First Nations communities to further determine the specific types of ICIP that ought to be protected by stand-alone legislation.**

Rights for Traditional Owners that need to be protected under the new law

15. The Law Council defers to First Nations communities to determine which rights need to be protected under the new law. As a preliminary observation, drawing from Dr Janke's *Our Culture Our Future* report,⁴⁷ (which integrates the views of First Nations communities), the following rights of Traditional Owners should be protected in the stand-alone ICIP legislation:
- (a) The right to own and control ICIP.
 - (b) The right to define what constitutes ICIP and/or Indigenous Heritage.
 - (c) The right to ensure that any means of protecting ICIP is premised on the principle of self-determination, which includes the right and duty of First Nations peoples to maintain and develop their own cultures and knowledge systems and forms of social organisation.
 - (d) The right to be recognised as the primary guardians and interpreters of their cultures, arts, and sciences, whether created in the past, or developed by them in the future.
 - (e) The right to apply for protection of ICIP rights which, where collectively owned, should be granted in the name of the relevant First Nations community.
 - (f) The right to authorise or refuse to authorise the commercial use of ICIP in accordance with Indigenous customary law.
 - (g) The right to prior informed consent for access to, use and application of ICIP, including Indigenous cultural knowledge and cultural environment resources.
 - (h) The right to maintain the secrecy of Indigenous knowledge and other cultural practices.
 - (i) The right to benefit commercially from the authorised use of ICIP, including the right to negotiate terms of such usage.
 - (j) The right to full and proper attribution.
 - (k) The right to protect Indigenous sites including sacred sites.

⁴⁷ Dr Terri Janke, [Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights](#) (1998) 46 – 47.

- (l) The right to own and control management of land and sea, conserved in whole or part because of their Indigenous cultural values.
- (m) The right to prevent the derogatory, culturally offensive, and unauthorised use of ICIP in all media.
- (n) The right to prevent distortions and mutilations of ICIP.
- (o) The right to preserve and care, protect, manage, and control Indigenous cultural objects, Indigenous ancestral remains, Indigenous cultural resources such as food resources, ochres, stones, plants and animals and Indigenous cultural expressions such as dances, stories, and designs.
- (p) The right to control the disclosure, dissemination, reproduction and recording of Indigenous knowledge, ideas and innovations concerning medicinal plants, biodiversity, and environment management.
- (q) The right to control the recording of cultural customs and expressions, the particular language that may be intrinsic to cultural identity, knowledge, the skill, and teaching of culture.

Creation of a communal/collective legal right under the new ICIP legislation

16. Several of the rights mentioned above relate to the collective or communal aspect of ICIP: that is, the ownership and control of cultural and intellectual property by a community rather than by a specific person or persons. The Law Council previously expressed views in its submission to IP Australia regarding the creation of an enforceable communal legal right covering ICIP.⁴⁸ In summary, we recommended the following:
- (a) careful consideration will need to be given to the definition and scope of a new collective right, and whether and how there would be any exceptions to this right;
 - (b) the new collective right cannot be onerous on First Nations communities, and there needs to be comprehensive consultation as to its implementation;
 - (c) there should be a co-ordinated approach to the creation of a new collective right, both domestically and internationally; and
 - (d) consideration could be given to existing examples, including the scheme of cultural rights that applies in Panama⁴⁹ and to the way in which the Kimberley Aboriginal Law and Culture Centre supports the traditional cultural practices of the 30 language groups of the Kimberley region.⁵⁰

⁴⁸ Law Council of Australia, [Interim Report on stand-alone legislation to protect and commercialise Indigenous Knowledge](#) (10 November 2022) 4.

⁴⁹ [Special System for the Collective Intellectual Property Rights of Indigenous Peoples ACT](#) 20 June 26, 2000 (Published in Gaceta Oficial (Official Gazette) No. 24,083 of June 27, 2000).

⁵⁰ Kimberley Aboriginal Law and Culture Centre ([webpage](#), accessed on 27 June 2024).

Recommendations

- **The Department should establish robust ICIP legislation that:**
 - **includes an enforceable communal/collective legal right ensuring it is well-defined, not onerous for First Nations communities, and developed through comprehensive consultation.**
 - **protects rights such as prior informed consent, secrecy of Indigenous knowledge, commercial benefits, proper attribution, protection of sacred sites, and prevention of misuse.**

Key Terms and Definitions

17. The Law Council addresses the following questions asked by the Department concerning key terms and definitions to be included in the ICIP legislation:

Which terms do you prefer:

- *Indigenous/First Nations/Aboriginal and Torres Strait Islander?*
- *Ownership/Custodianship?*
- *Traditional Owner/ Traditional Custodian?*

Communal ownership

- *How should communal custodianship/ownership of ICIP be recognised when several families may have rights to a design/symbol/style/story?*
- *How should decisions to approve the use of ICIP be made?*
- *How should free, informed, and prior consent be ensured?*
- *Who will speak for community? Who will be the rights holders?*
- *How should ICIP disagreements be resolved within communities?*

18. Given the complexity and sensitivities involved, we defer to the guidance of First Nations people and communities regarding how they wish to be addressed individually/collectively and issues around communal ownership. In doing so, the Law Council recommends that the Department ensure that any key definitions and terms are clear and easy to apply.
19. The Victorian Bar has recommended that the Department's consultation include consideration of what has worked, and not worked, for Registered Aboriginal Bodies under the *Aboriginal Heritage Act 2006* (Vic), "traditional owner groups" under section 3 of the *Traditional Owner Settlement Act 2010* (Vic), and decision making and authorisation processes at section 251A of the *Native Title Act 1993* (Cth). In particular, the Victorian Bar noted that:
- (a) Part 5A of the *Aboriginal Heritage Act 2006* (Vic) provides a regime for the registration of Aboriginal intangible heritage and for Aboriginal intangible heritage agreements. However, this Register⁵¹ is not publicly available because it contains culturally sensitive information.

⁵¹ [Aboriginal Cultural Heritage Register and Information System](#) – this is an online portal of the Victorian Aboriginal Heritage Register providing resources and services to various stakeholders throughout Victoria.

- (b) Anecdotal evidence suggests that, whilst tangible heritage has been widely recorded on the Register, there are a very limited number of registrations for intangible cultural heritage and few, if any, intangible cultural heritage agreements have been entered into. Exploring the reasons for this is likely to be useful for the drafters of the ICIP Commonwealth legislation.
- (c) Similarly, these organisations may be well-placed to identify Registered Aboriginal Parties (**RAPs**) whom the Department could approach for further consultation, particularly RAPs who have already taken steps to protect their intangible culture through registration on the Register and through other mechanisms.
- (d) The experience of barristers working in this area is that lack of funding is partly responsible for the poor uptake of these provisions. There may also be a lack of trust, with the possibility that some First Nations people are reluctant to disclose their intangible culture for the purposes of the Register. Matters of security, privacy and how the right to access information (including secret and sacred information) will need to be sensitively managed. This is an issue that Yoorrook Justice Commission has had to grapple with.⁵²
- (e) Consultation with the Yoorrook Justice Commission may also be advantageous to understanding how they have managed data protection, security, and access issues.

Recommendation

- **The Department should ensure that any key definitions or terms that it proposes to include in the ICIP legislation are clear and easy to apply.**

Enforcement

20. The Law Council addresses the following questions asked by the Department concerning enforcement mechanisms to be included in the ICIP legislation:

How do Traditional Owners/ Custodians want to take action against possible breaches of their cultural rights?

- *Independently?*
- *With the assistance of a central cultural authority?*
- *Government or a Government agency to take action on their behalf?*

How should harm caused by breaches of cultural rights be addressed?

21. The Law Council recognises that First Nations people might have different preferences for taking action against breaches of their ICIP rights. Therefore, we respectfully defer to First Nations communities as they are best placed to answer which methods of enforcement they deem appropriate.
22. On this issue, the Law Council previously provided high level views to the Productivity Commission's Aboriginal and Torres Strait Islander Visual Arts and Crafts Inquiry, on its proposal to establish a National Indigenous Knowledge Authority (**NIKA**).⁵³ The Productivity Commission proposed that NIKA's role was to

⁵² Yoorrook Justice Commission, Yoorrook with Purpose (Interim Report, June 2022), 55- 56.

⁵³ Law Council of Australia, [Response to consultation on the Interim Report on stand-alone legislation to protect and commercialise Indigenous Knowledge](#) (10 November 2022) 6.

'work in partnership with Aboriginal and Torres Strait Islander people to assert, protect, and enforce their [Indigenous Knowledge] rights.'⁵⁴ In that submission, we suggested that:

- (a) it is critical that any regulatory body is appropriately funded to enable it to perform their tasks effectively, and the amount of funding should be carefully considered;⁵⁵ and
- (b) that regulatory body should also be accessible, low cost and prompt.⁵⁶

23. There may be concerns around duplication of responsibilities of existing regulatory bodies and services, such as ACCC and IP Australia, and Artists in the Black.⁵⁷ At the same time, a regulatory body can 'enhance the resources of existing support and enforcement mechanisms, including the non-governmental bodies providing legal advice and support services'.⁵⁸

Recommendations

- **The Department should consult with First Nations peoples and communities on their preferred approach about who should take action / who should assist in taking action against breaches of ICIP rights.**
- **If the Department is considering a separate body for enforcement purposes, that body should be appropriately funded, accessible, and responsive to the concerns of First Nations people and communities.**

Remedies

24. On remedies, Dr Janke noted in her *Our Culture Our Future* report that specific legislation on ICIP should allow:⁵⁹

'Indigenous groups to take legal action against infringers, allowing them to seek remedies similar to those available under intellectual property laws such as damages, account for profits, delivery up of infringing materials and injunction to restrain use'

25. The Law Council agrees with Dr Janke that the standard legal remedies such as damages, injunctions, and stop orders are likely to be necessary. As with our answers to the previous questions asked by the Department, the Law Council believes that the determination of any additional remedies should be guided by the perspectives and preferences of First Nations communities themselves. Their perspectives are crucial to ensuring that the methods and processes employed are culturally appropriate, respectful, and effective in protecting their ICIP rights.
26. The Victorian Bar recommends that the Department carefully consider a diverse range of options that empower traditional owners to contribute to determining

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ The Arts Law Centre Australia runs [Artists in the Black](#) which employs an Indigenous Coordinator to provide legal services and information to Indigenous artist, communities and arts organisation and informs advocacy work on issues relating to ICIP, such as the [Fake Art Harms Culture Campaign](#).

⁵⁸ Arts Law Centre of Australia, Copyright Agency and the Indigenous Art Code Ltd, [Joint Submission on IP Australia's Scoping Study on stand-alone legislation to protect and commercialise Indigenous Knowledge](#) (9 November 2022) 12.

⁵⁹ Dr Terri Janke, [Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights](#) (1998) 192.

appropriate remedies following harm. Emphasis should be placed on remedies that address cultural harm, create future opportunities for First Nations people, and incorporate flexibility and innovation. The Law Council further notes that a lot of useful work in this area has been done by Professor Natalie Stoianoff and the Indigenous Knowledge Forum, and suggest that this may be a useful point of reference for the Department.⁶⁰

27. The Law Council considers it important to recognise that a perfectly balanced scheme to protect cultural rights will be ineffective if First Nations communities and people who rely on the scheme are unable to access its remedies due to:
 - (a) prohibitive costs of enforcing cultural rights, including legal costs;
 - (b) the timeliness of the remedies provided;
 - (c) effective and culturally sensitive education and legal assistance for First Nations persons involved in relevant civil claims; and
 - (d) limited internet access and computer literacy for First Nations people in Remote, Regional and Rural communities.
28. In light of the above barriers, the Victorian Bar suggests that that the Department consider whether more informal and lower cost processes might be more appropriate to enable fair and effective access to justice for First Nations communities.
29. Therefore, while establishing a robust framework for protecting cultural rights is crucial, it is equally essential to ensure that First Nations people can effectively access and utilise these remedies.

Recommendations

- **The Department should consider providing First nations peoples with remedies similar to those available under intellectual property laws such as damages, account for profits, injunctions and stop orders.**
- **The Department should consult with First Nations peoples and communities about any other additional remedies First Nations peoples deem necessary to address cultural harm.**
- **The Department should ensure that First Nations people can effectively access and utilise the remedies available under the ICIP legislation.**

Additional Considerations

Education around Indigenous Cultural and Intellectual Property Rights

30. Fostering an understanding among broader society about ICIP rights can facilitate meaningful engagement and collaboration that honours First Nations perspectives. This also promotes cultural preservation, and supports the sustainable development

⁶⁰ See the work of the Indigenous Knowledge Forum [here](#). See also the Neva Danielle Collings, [Implementation of the Nagoya Protocol in Australia: Aboriginal and Torres Strait Islander peoples' governance of traditional knowledge and the roles and functions of incorporated community organisations](#) (2021).

of First Nations communities. This knowledge not only enriches our understanding of diverse cultures, but also promotes ethical practices in research, creative industries, and policymaking, fostering a more inclusive and respectful global community.

31. Consistent with the comments made in the Arts Law Centre Australia, Copyright Council, and the Indigenous Art Code Ltd's joint submission to IP Australia on stand-alone legislation on Indigenous Knowledge,⁶¹ we consider that the enactment of ICIP legislation should be accompanied by a 'resourcing package to make the system accessible to Aboriginal and Torres Strait Islander peoples and businesses'.⁶² This would include:
- (a) 'education and communication strategies';⁶³
 - (b) 'education for the broader public to understand that [ICIP] rights exist and best-practice approaches to avoid infringing on [ICIP]';⁶⁴
 - (c) 'multilingual education and resources made available so that Aboriginal and Torres Strait Islander people and communities understand how [the new law] would operate and how they can use it to seek justice'.⁶⁵
32. Further, the Department can also prepare educational materials, which various sectors can incorporate into their own cultural awareness and competency training and resources, highlighting the significance of ICIP and its historical context.

Recommendation

- **The Department should ensure that ICIP legislation is accompanied by a comprehensive resourcing package that includes education and communication strategies and multilingual resources for Aboriginal and Torres Strait Islander communities, contributing to the integration of ICIP awareness into broader cultural competency training across sectors.**

Further collaboration, consultation, and education

33. Given the complexities and evolving nature of ICIP, we encourage the Department to:
- (a) **Continue to collaborate** with relevant stakeholders who specialise in intellectual property law. Joint efforts can foster greater synergy in addressing complex areas of law, and can also cultivate innovative approaches to navigating the practical challenges of protecting ICIP.
 - (b) **Consider** the work undertaken in other international jurisdictions such as:

⁶¹ Arts Law Centre of Australia, Copyright Agency and the Indigenous Art Code Ltd, [Joint Submission on IP Australia's Scoping Study on stand-alone legislation to protect and commercialise Indigenous Knowledge](#) (9 November 2022) 9.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

- (i) New Zealand: New Zealand has implemented protections of Mātauranga Māori: (most commonly known as the Māori knowledge).⁶⁶ Their trademark and patent laws include specific provisions for the protection of Māori knowledge and ‘help prevent the registration of trademarks or granting of patents that would be considered offensive by Māori or contrary to Māori values). Additionally, New Zealand *Wai 262 Report*⁶⁷ prepared under section 6(5) of the Treaty of Waitangi Act 1975 addresses the ownership and use of Mātauranga Māori. The reforms proposed by the Tribunal ultimately ‘aim to establish genuine partnerships in which Māori interests and those of other New Zealanders are fairly and transparently balanced’.⁶⁸
- (ii) Canada: Canada has designed a voluntary Framework Agreement on First Nations Land management⁶⁹ where land administration is transferred to First Nations via local Land Codes. Specifically, clause 18.2 provides First Nations the authority to enact laws with respect to land, the environment, and resources.⁷⁰
- (iii) Panama: Law Number 20 of 2000, creates a sui generis system for collective intellectual property rights for Indigenous art and culture with specific Indigenous cultural authorities that protect culture and knowledge.⁷¹
- (iv) South Africa: In South Africa, the *Intellectual Property Laws Amendment Act of 2013* aims to ‘to provide for the recognition and protection of certain manifestations of indigenous knowledge as a species of intellectual property’⁷² and establishes a National Council in respect of Indigenous knowledge, a National Database for the recording of Indigenous knowledge, and a National Trust and Trust Fund for purposes of Indigenous knowledge, in their copyright acts. Additionally, the *Promotion, Development and Management of Indigenous Knowledge Act of 2019*, provides for the protection, promotion, development, and management of indigenous knowledge.⁷³ This Act also establishes a National Indigenous Knowledge Systems Office and an Advisory Panel on Indigenous Knowledge.⁷⁴

Recommendation

- **The Department should consider and draw from the experiences of other international jurisdictions to inform its own design process for developing robust and effective policies.**

⁶⁶ New Zealand Intellectual Property Office, [Māori IP](#).

⁶⁷ Waitangi Tribunal, [Ko Aotearoa Tēnei: Report on the Wai 262 Claim](#) (2 July 2011).

⁶⁸ Justice.gov.nz, [‘Ko Aotearoa Tēnei: Report on the Wai 262 Claim Released Time to Move beyond Grievance in Treaty Relationship, Tribunal Says](#) (2 July 2022).

⁶⁹ See the [Framework Agreement on First Nation Land Management](#) clause 18.2.

⁷⁰ Ibid.

⁷¹ World Intellectual Property Organisation, [Traditional Knowledge Laws: Panama](#).

⁷² South African Government, [Intellectual Property Laws Amendment Act 28 of 2013](#).

⁷³ Republic of South Africa, Government Gazette, [Protection Promotion, Development and Management of Indigenous Knowledge Act 2019](#) (19 August 2019) 2.

⁷⁴ Ibid.

Other comments on legislative design

Consistency and alignment with international frameworks, domestic laws and domestic codes

34. The ICIP legislation must be consistent with international standards and obligations, as well as existing domestic legal frameworks⁷⁵ and codes⁷⁶ concerning intellectual property. This ensures alignment with treaties to which Australia is a party⁷⁷ and prevents conflicts, derogation of rights and legal challenges with domestic laws and codes.
35. The proposed ICIP legislation should complement existing domestic laws, and aim to work in tandem with those laws, whilst providing a comprehensive regime for protection and redress. This should be read in the context of how Australian domestic law has at times proved itself to be capable of providing prospective protection against, and retrospective redress of, harm to ICIP. For example:
- (a) In *Foster v Mountford & Rigby Limited*,⁷⁸ an injunction was granted to protect against the publication of an anthropologist's book in the Northern Territory on the basis of an apprehended breach of confidence concerning the content of secret ceremonies.
 - (b) *Milpurrurru v Indofurn Pty Ltd*,⁷⁹ involved copyright infringement over eight traditional Indigenous artworks. The trial judge awarded damages, including a component of recognition of the fact that the infringements had 'caused personal distress and potentially at least, ha[d] exposed artists to embarrassment and contempt within their communities', which losses were 'a reflection of the cultural environment in which the artists reside[d]'.⁸⁰
36. We consider that the Department should also give consideration to the following international instruments when developing the stand alone ICIP legislation:
- (a) **UNDRIP**.⁸¹ Given Australia has endorsed UNDRIP,⁸² incorporating the rights contained in the UNDRIP, in all the ways First Nations peoples encounter the political, economic, social, and cultural apparatus of the State, would provide a principled framework in which to approach the development of the ICIP framework. It would assist, at a practical legal and policy level, in ensuring

⁷⁵ For example, the Victorian Bar referred to sections 5 and 6 of the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), which provides an example of a treaty regime being established which explicitly states not to derogate from rights or expectations under other acts, such as the *Native Title Act 1993* (Cth), the *Aboriginal Heritage Act 2006* (Vic) or the *Traditional Owner Settlement Act 2010* (Vic).

⁷⁶ See [Indigenous Art Code](#) – a voluntary code to promote fair and ethical trade in works of art by Indigenous artists.

⁷⁷ Australian Government Productivity Commission, [Inquiry Report: Intellectual Property Arrangements](#) (23 September 2016) 605 – 614. In particular, see the table of all the B.1 on page 610 which provides a list of all the treaties that Australia is a party to that is administered by the World Intellectual Property Organisation.

⁷⁸ (1976) 14 ALR 71.

⁷⁹ (1994) 54 FCR 240 (also known as the 'Carpets Case').

⁸⁰ *Ibid* 227.

⁸¹ United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Agenda Item 68, Supp No 49, UN Doc A/RES/61/295 (2 October 2007) annex.

⁸² International Law Association, Rights of Indigenous Peoples, 75th Conference, ILA Resolution No 5/2012 (30 August 2012); Federico Lenzerini, 'Implementation of the UNDRIP Around the World: Achievements and Future Perspectives' (2019) 23 *International Journal of Human Rights* 51. See also Adam McBeth, Justine Nolan and Simon Rice, *The International Law of Human Rights* (Oxford University Press, 2011) 456.

that First Nations peoples have effective access to their collective and individual rights and to remedies for breaches of these rights.

- (b) **World Intellectual Property Organisation (WIPO) Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge:**⁸³ Although this treaty is yet to enter into force, we recommend the Department consider this instrument more broadly when considering provisions relating to patents on genetic resources and traditional knowledge associated with genetic resources. That consideration may also better prepare the Department to implement any future obligations that may arise from this treaty.
- (c) **United Nations Convention for Safeguarding of the Intangible Cultural Heritage 2003:**⁸⁴ Although Australia has not signed this convention, it provides a comprehensive framework for the protection of intangible cultural heritage, including elements such as traditions, rituals, and knowledge systems that are crucial to many First Nations cultures and. Using this framework can help the Department develop more holistic and effective ICIP legislation that adequately covers all aspects of intangible cultural heritage.

Recommendations

- **The Department should ensure that ICIP legislation is consistent with international standards and obligations, as well as existing domestic legal frameworks and codes concerning intellectual property law.**
- **The Department should ensure that the ICIP legislation does not derogate or interfere with the rights of First Nations peoples to bring action under existing domestic laws.**
- **The Department should consider consistency with the articles in UNDRIP, WIPO's treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, and the United Nations Convention for Safeguarding of the Intangible Cultural Heritage.**

Strategies to reduce complexity in legislation

37. We encourage the Department to ensure that, after integrating input from various stakeholders on the design, structure, and content of the ICIP legislation, the resulting laws are clear, reasonable, and proportionate. Complex legislation can make it challenging, expensive, and time-consuming for people to understand their legal rights and obligations, and ultimately restricts access to justice.⁸⁵
38. ICIP covers a wide range of intangible cultural expressions, traditional knowledge, and sacred materials, each with unique characteristics and significance within First Nations communities. We have outlined several strategies recommended by the

⁸³ *Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge* (opened for signature 24 May 2024), GRATK/SC/7 (not yet in force).

⁸⁴ *United Nations Convention for Safeguarding of the Intangible Cultural Heritage*, (opened for signature 17 October 2003), 2368 UNTS 3 (entered into force 20 April 2006).

⁸⁵ Attorney-General's Department, [Causes of complex legislation and strategies to address these](#) (16 June 2014) 1.

Attorney-General's Department⁸⁶ that we believe would be advantageous in the development of this legislation:

- (a) avoid complexity in the initial policy development stage;⁸⁷
- (b) consult drafters early in the policy development process;⁸⁸
- (c) allow enough time for developing legislation;⁸⁹ and
- (d) make sure legislation is comprehensible.⁹⁰

39. Given the evolving nature of ICIP, it is essential that the proposed ICIP legislation is regularly reviewed for 'readability, useability, ease of administration and policy desirability'.⁹¹ This will allow testing for 'continuing relevance' and can be an opportunity to 'pilot new strategies to improve clarity'.⁹² Relevantly, we recommend the new legislation should provide for a comprehensive review every five years, allowing adequate time for implementation and impact assessment before each review.

Recommendation

- **The Department include a mechanism within the legislation which requires the legislation to be reviewed, to test its continuing relevance and to pilot any new strategies to improve its clarity.**

⁸⁶ Ibid.

⁸⁷ Ibid 2. This ensures clarity and focus, enabling stakeholders to easily grasp the objectives and effectively contribute to shaping robust and coherent policies.

⁸⁸ Ibid 3. Drafters of the legislation can provide a cross-Government perspective on different methods of policy implementation and can provide views on [policies] that should promote clarity in the final outcome.

⁸⁹ Ibid. It is important for the Department to invest adequate time in developing this legislation. The proposed ICIP legislation signifies a transformative step towards recognising and safeguarding First Nations' cultural heritage and artistic contributions. Therefore, achieving successful implementation whilst also respecting First Nations culture will require careful planning and consideration.

⁹⁰ Ibid 4. It is important to consider the 'needs and interests of the reader when legislation is being developed'. This approach entails crafting language and structure that is clear, concise, and accessible to all stakeholders, including legal professionals, policymakers, First Nations communities, and the general public. For example, when drafting the key definitions, it is important that they are clear and easy to apply.

⁹¹ Ibid 6.

⁹² Ibid.