Australian Government
Department of Infrastructure, Transport, Regional Development, Communications and the Arts

**Questionnaire**

**Stand-alone legislation to protect**

**Indigenous Cultural and Intellectual property**

**A staged approach**

To ensure the legislation is developed as quickly as possible to take action on fake art, we are developing the legislation in stages. The first stage will address the issue of fake visual arts, merchandise and souvenirs.

**Community engagement**

We held 43 public engagement sessions in 38 locations across Australia, from 4 March to 6 May. To build on from these face-to-face consultations we are including three online sessions to be held on 3, 14 and 26 June.

**First Nations-led**

The legislation will be developed through a First Nations-led process. We are establishing a formal partnership with First Nations people to guide the development of the legislation. Expressions of interest for First Nations people to be members of the partnership will be available soon on our website, visit, [www.arts.gov.au/ICIP](http://www.arts.gov.au/ICIP).

**Have your say!**

We want to hear particularly from First Nations people, including artists and organisations, on what you want protected under the new stand-alone legislation.

Have your say and help us deliver Australia’s first stand-alone legislation to protect First Nations cultural expression.

Register to join a public engagement session or you can have your say online on our website, visit [www.arts.gov.au/ICIP](http://www.arts.gov.au/ICIP).

If you would like to talk to us directly, contact us at [ICIP@arts.gov.au](mailto:ICIP@arts.gov.au) or [1800 006 992](tel:1800006992) (opt 4).

**The issue**

The current legal framework does not provide adequate protections to ensure that only authentic art made by First Nations artists and communities with the approval of traditional custodians are created and sold. According to the Productivity Commission, over half of souvenirs and merchandise sold do not meet these criteria.

**Our commitment**

Through the National Cultural Policy, *Revive,* the Australian Government committed $13.4 million over 4 years to introduce new stand-alone legislation and other measures, to protect traditional knowledge and cultural expressions, including to address the harm caused by fake art, merchandise and souvenirs.

What is Indigenous Cultural and Intellectual Property?

Indigenous Cultural and Intellectual Property (ICIP) refers to the rights First Nations people have, and want to have, in relation to their culture.

Other terms used are **traditional knowledge** and **traditional cultural expressions.** T**raditional knowledge** describes any form of knowledge acquired in a traditional context. **Traditional cultural expressions**describes the various ways in which this knowledge is expressed including language, music, stories, dance, as well as visual arts and crafts.

**Topics for discussion**

The government recognises many First Nations communities and individuals have shared their views on this topic in the past. We deeply appreciate the time First Nations people have taken to do this and we will take that information into account as we develop the new law. We are also aware not everyone may have told the government what they would like to see in a new law. So, this consultation session is an opportunity for you to tell us what you would like to see in a new law, whether it's for the first time or not. The questions have been influenced by feedback First Nations peoples have given us before, about the important problems a new law could help solve.

**Scope of the legislation**

*We are doing a staged approach to the legislation. The first stage will deal with fake art, merchandise and souvenirs. Later stages will address broader ICIP rights*

**Instructions**

Please respond in **PRINT** or **TYPE**

When completed, return this form by email to [ICIP@arts.gov.au](mailto:ICIP@arts.gov.au) or post it to:

Standalone Legislation ICIP Team

GPO Box 594 Canberra, ACT 2601.

**Your Details**

|  |  |
| --- | --- |
| Name: |  |
|  |  |
| Email: |  |
|  |  |
| Phone: |  |
|  |  |
| Organisation: |  |

Or

I would like to be anonymous

Do you identify as Aboriginal and/or Torres Strait Islander?

Yes  No

Would you like to be added to our subscriber list for updates?

Yes  No

**Questions for your consideration**.

1. Which aspects of ICIP do you want protected under the new law? (multi selection)

|  |  |
| --- | --- |
| All art forms, symbols and designs |  |
| Languages |  |
| Medicine |  |
| Traditional foods |  |
| Biotechnology |  |
| Ecological knowledge |  |
| Spiritual knowledge |  |
| Artificial intelligence and emerging technologies |  |
| Other |  |

|  |
| --- |
| Please provide further detail: |

**Key concepts**

1. What key principles and objectives do you want included in the new law?

|  |  |
| --- | --- |
| [Free, prior and informed consent](https://www.ohchr.org/en/indigenous-peoples/consultation-and-free-prior-and-informed-consent-fpic)\* |  |
| Cultural harm – the harm caused by the use of appropriation of First Nations art and culture |  |
| Other |  |

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| --- |
| Please provide further detail: |

\*<https://www.ohchr.org/en/indigenous-peoples/consultation-and-free-prior-and-informed-consent-fpic>

**Key Terms and definitions**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Indigenous |  | Ownership |  | Traditional Owner |  |
| First Nations |  | Custodianship |  | Traditional Custodian? |  |
| Aboriginal and Torres Strait Islander |  |  |  | Other |  |

1. Which of the following terms do you prefer:

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| --- |
| Please provide further detail: |

Communal ownership

1. How do you want communal custodianship/ownership of ICIP to be recognised when several families may have rights to a design/symbol/style/story?

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1. How do you want decisions to approve the use of ICIP to be made?

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1. How do you want free, prior and informed consent to be ensured?

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1. Who will speak for community? Who will be the rights holders?

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1. How do you want ICIP disagreements to be resolved within communities?

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**Enforcement**

1. How do First Nations people want to take action against possible breaches of their cultural rights? (multi selection)

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

|  |
| --- |
| Please provide further detail: |

1. How do you want harm caused by breaches of cultural rights to be addressed?

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**Other measures**

1. What other assistance would help First Nations people to protect their art and culture?

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**Additional thoughts and considerations**

Any further comments?

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