

Cultural knowledge and its protection



Consultation requirements for proponents

Part 6 National Parks and Wildlife Act 1974

Aboriginal people have a right to maintain, protect, use and manage their traditional knowledge. In recognising the rights and interests of Aboriginal people in their heritage, all parties concerned with identifying, conserving and managing this heritage should acknowledge, accept and act on the principles that Aboriginal people must control the way in which cultural knowledge and other information relating specifically to their heritage is used, as this may be an integral aspect of its heritage value (ACH 2002).

Protecting cultural knowledge

Those consulting with Aboriginal people about cultural significance must respect and observe Aboriginal peoples' protocols and values. The design and implementation of ethical standards and processes is critical to good practice in consultation with Aboriginal people and should be incorporated into the design of the consultation process.

Some information obtained from Aboriginal people may be sensitive or have restricted public access. When undertaking consultation with Aboriginal people in accordance with DECCW's *Aboriginal cultural heritage consultation requirements for proponents 2010*, the proponent should only collect cultural knowledge from Aboriginal people to the extent that it is required to understand and demonstrate:

- the cultural values in the area of the proposed activity, and
- the significance of any Aboriginal object(s) and/or place(s) that may be present.

The proponent should, in consultation with registered Aboriginal parties, develop and implement appropriate protocols for sourcing and holding cultural information. The matters to be included in any appropriate protocols developed should include, but need not be limited to, the following nine areas.

Cultural context

1. Cultural restrictions on access to the material.
2. Cultural restrictions on communication of the material.
3. Cultural restrictions on the location of the material.
4. Cultural recommendations on handling the material.
5. Any other contextual information.
6. The names and contact details of persons authorised within the relevant Aboriginal group to make decisions concerning the Aboriginal material and the degree of authorisation.
7. Details of any consent given in accordance with customary law.

Confidentiality

8. Level of confidentiality to be accorded to the material.

Access and use

9. Access and use, by the registered Aboriginal parties, of the cultural information in the material.

What are intellectual property rights?

Intellectual property rights are derived from a system of statute and common law. In its broadest sense, intellectual property is a generic term for rights established through law for the protection of economic investment of creative effort (McKeogh et al 2004). Intellectual Property Australia states that intellectual property 'represents the property of your mind or intellect' (IP Australia 2009).

Some rights must be applied for. These include rights to the grant of a patent over an invention. Other rights, such as copyright, come into existence once the work is created, if it meets certain criteria. All these rights last for a set amount of time.

There are a number of important differences between Aboriginal people's rights in relation to cultural knowledge and intellectual property rights, which include:

- they are communal rights, often vested in clan, family or other groups (e.g. language groups)
- they cannot be readily associated with a single, identifiable, individual creator, author or producer (e.g. rock paintings)
- they are managed and owned in accordance with customary rules and protocols, and are usually not sold or alienated in ways that conventional intellectual rights can be
- knowledge is usually held by the owners and their descendents in perpetuity, rather than for limited periods.

References

ACH 2002, pdf booklet, *Ask first: a guide to respecting indigenous heritage places and values*, viewed 24 November 2009, Australian Heritage Commission, Australian Government, www.environment.gov.au/heritage/ahc/publications/commission/books/ask-first.html.

IP Australia 2009, *What is intellectual property?* Description and types of intellectual property, viewed 24 November 2009, Australian Government, www.ipaustralia.gov.au/ip/copyright.shtml.

McKeough J, Stewart A and Griffiths PB 2004. *Intellectual property in Australia* (3rd edn), Butterworths, Sydney, NSW, p. 3.

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Photos: rock art (top left) and interpretive ranger training (top right) in Ku-ring-gai Chase National Park (Tim Porter/DECCW).