

## 1 Background

### 1.1 Who we are

The Australian Institute of Marine Science is Australia's tropical marine research agency.

Our functions under our enabling legislation include carrying out research and development in relation to marine science and marine technology, and encouraging and facilitating the non-commercial and commercial application of the results arising from such activities. More recently, our approach also recognises the unique rights, interests and responsibilities to care for land and sea Country held by Australia's First Nations peoples.

### 1.2 Our mission

As documented in the [AIMS Strategy 2030](#), our mission is to provide research and knowledge of Australia's tropical marine estate required to support growth in its sustainable use, effective environmental management, and protection of its unique ecosystems.

In fulfilling this mission, AIMS generates important and valuable marine-related datasets, discoveries and technology, often in partnership with collaborators including First Nations people. Project data needs to be managed and shared in a way that maximises their utility for First Nations people and AIMS' stakeholders, including the scientific community and the Australian public. Our research with Aboriginal and Torres Strait Islander people follows best practice, aligns with codes of ethics and guidelines produced by the Australian Institute for Aboriginal and Torres Strait Islander Studies, and data management must appropriately protect their Indigenous Cultural and Intellectual Property (ICIP) rights in Traditional Knowledge.

## 2 Purpose

The purpose of this Intellectual Property & Indigenous Cultural and Intellectual Property Policy (IP & ICIP Policy) is to describe the approach that AIMS takes to:

- generating, managing and sharing its IP, both through non-commercial and commercial means; and
- recognising and protecting ICIP rights of First Nations peoples in Traditional Knowledge, including processes for consultation and obtaining Free, Prior and Informed Consent (FPIC) to only collect and use any Traditional Knowledge with appropriate expressed permissions.

The details of how this is achieved in practice are separately prescribed in AIMS' [IP Procedure and ICIP Procedure](#).

## 3 Scope

### 3.1 Who is covered by this policy?

AIMS works with its partners in government, industry, First Nations people, other research organisations and universities and the community to deliver its objectives.

This policy applies to all circumstances where AIMS is involved in creating or acquiring IP or ICIP, including through its employees, students and affiliates or through collaborations or commercial engagements with third parties, including First Nations people.

## 3.2 What is covered by this policy?

- 3.2.1 Intellectual property generated by AIMS which generally extends to:
- (a) copyright in datasets, databases, data products, field and laboratory books, reports, scholarly articles, proposals, computer programs, audio and visual recordings (such as photos and videos), drawings, designs, schematics, figures, code, software, presentations;
  - (b) registered and non-registered trademarks relating to AIMS' logo and branded programs and publications; and
  - (c) patentable and non-patentable inventions and discoveries, including field and laboratory books or any other form of documentation of research activities relating to such inventions and discoveries.
- 3.2.2 Background IP incorporated into projects that was generated by AIMS or another party prior to a project's commencement.
- 3.2.3 Third party IP contributed to projects by collaborators from time to time.
- 3.2.4 Indigenous Cultural and Intellectual Property (ICIP) in Traditional Knowledge contributed to projects from time to time.
- (a) ICIP in this Policy means Traditional Knowledge over which rights exist, including customary Lore rights, separate to other legal or intellectual property rights.
  - (b) Traditional Knowledge means any traditional knowledge and cultural expressions of Indigenous peoples, and includes:
    - i. traditional ecological knowledge, biodiversity-related knowledge, scientific knowledge, technical knowledge, agricultural knowledge, medicinal knowledge and related medicines and remedies, cosmology, knowledge about genetic resources, languages, words, music, performance, literature, song lines, stories, dance, games, mythology, other oral traditions, rituals, customs, narratives, names, symbols, designs, visual arts and crafts, and architecture;
    - ii. knowledge and expressions past, present and emerging; and
    - iii. any Intellectual Property rights that arise in that knowledge or expression.
  - (c) Lore in this Policy means a complex set of knowledge, beliefs, structures, customs, practices, codes, rules and standards, of a particular First Nations group passed from generation to generation including by oral tradition.

## 3.3 What is not covered by this policy?

Factual data that is collected or generated by AIMS (excluding data that is Traditional Knowledge) does not generally in and of itself comprise copyright or other kinds of intellectual property, and this policy does not apply to such data.

## 4 Principles

The following section outlines the guiding principles that AIMS uses to create, manage, protect and share its IP, use other parties' IP, and use and protect ICIP.

### 4.1 General

At a general level, AIMS:

- (a) seeks to collaborate and partner with industry, First Nations people, the not-for-profit sector and members of the research and scientific community to promote the generation of valuable IP that may include background IP, third party IP and ICIP;
- (b) fosters an innovative workplace culture where the creation of IP is valued and rewarded;

- (c) seeks to optimise the scientific, social, cultural, environmental and economic benefits arising from our IP and use of ICIP;
- (d) will ensure appropriate arrangements are in place to identify and capture, value, protect, manage, and commercialise (if appropriate) our IP, including through the provision of procedures and protocols for our staff and students;
- (e) will ensure appropriate arrangements are in place to document IP used in projects including background IP, third party IP, and new IP generated, and ensure that the ownership and use rights in relation to third party IP are agreed;
- (f) seeks to ensure the right balance is struck between openly sharing our IP with others in some instances and maximising the value of the IP we generate through commercialisation;
- (g) will take a flexible approach in considering options for sharing of IP to maximise the value and impact of the IP, including public dissemination, exclusive and non-exclusive licensing, assignment and / or reciprocal agreements to promote collaboration with third parties;
- (h) seeks to ensure collaborative and commercial dealings appropriately identify and document IP governance arrangements, whereby ownership and control of IP should generally vest with the party best placed to manage the IP and its potential utilisation;
- (i) should obtain a reasonable and proportionate return on investment where our IP is expected to generate commercial returns;
- (j) seeks to create, protect, manage and commercialise our IP in accordance with best practice and the guidance provided by the *Australian Government Intellectual Property Manual* and the *Intellectual property principles for Commonwealth entities*;
- (k) will periodically review our IP governance arrangements to ensure they remain appropriate, effective and contemporaneous with our Ministerial mandate and Commonwealth policy;
- (l) considers ICIP rights in addition to any legal or intellectual property rights that exist in material which contains ICIP and will hold its partners, collaborators and contractors to the same standard;
- (m) acknowledges that the owners and custodians of any ICIP provided to AIMS or other party under a project are the First Nations peoples who have provided or contributed that ICIP;
- (n) will seek FPIC from the owners and custodians of any ICIP for any use of their ICIP, and require any partners, collaborators or contractors to do the same.
- (o) will abide by the decisions of the ICIP owners and custodians, and will ensure that the use of ICIP remains within the scope of FPIC granted.
- (p) is committed to ongoing consultation, collaboration and co-design processes with relevant First Nations peoples in projects involving their ICIP; and
- (q) will respect and adhere to specific cultural protocols that govern access and use of ICIP as advised by the relevant ICIP owners and custodians.

## 4.2 Moral rights

AIMS recognises the moral rights of creators of IP in accordance with the *Copyright Act 1968 (Cth)* and that these are personal to the creator and cannot be sold, licensed or assigned.

AIMS will seek to ensure that the moral rights of a creator of IP are respected and that others respect those rights. Subject to any contracted obligation, AIMS' use of the whole or part of a work will appropriately acknowledge the creator of the work.

### 4.3 Protecting Indigenous Cultural and Intellectual Property (ICIP)

AIMS acknowledges the Aboriginal and Torres Strait Islander Peoples as the Traditional Owners/custodians of the land and sea Country where AIMS operates. AIMS acknowledges First Nations peoples as the owners and custodians of ICIP rights in Traditional Knowledge. Owners and custodians of ICIP may make Traditional Knowledge available to AIMS from time to time.

AIMS considers ICIP rights in Traditional Knowledge as arising separately and additionally to any other legal or IP rights in new Project IP which is created using Traditional Knowledge. If any Traditional Knowledge is used to create new IP rights, AIMS will consult with the relevant ICIP Owners and Custodians for the purpose of ensuring that any Traditional Knowledge is recognised and protected in accordance with AIMS Indigenous Cultural and Intellectual Property (ICIP) Procedure.

AIMS practices the principle of FPIC and only collects and uses the Traditional Knowledge of Indigenous peoples with appropriate expressed permissions.

Part of this process includes working with the owners and custodians of ICIP and any other relevant parties to establish rules and processes for:

- (a) seeking, obtaining and recording FPIC and the purpose for which it is given;
- (b) identifying, recording, using, adapting, supplementing, sharing and documenting any ICIP contributed in a project;
- (c) identifying any special categories of ICIP that are culturally sensitive and should be treated appropriately; and
- (d) communicating and implementing future changes to, or withdrawal of, FPIC.

AIMS is committed to ensuring owners and custodians of ICIP are recognised as such and appropriately attributed or acknowledged. Where consent to publish or share ICIP has been obtained, AIMS staff will consult with the relevant owners and custodians of that ICIP about how they wish to be attributed or acknowledged.