Submission in response to a new National Cultural Policy

Submission by the Australian Digital Alliance and the Australian Libraries and Archives Copyright Coalition

Submitted Monday 29 August 2022

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https://digital.org.au/resources/new-national-cultural-policy-joint-submission
https://alacc.org.au/new-national-cultural-policy-joint-submission

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Introduction

The opportunity to create a National Cultural Policy does not come often in Australia, despite the importance of the arts and cultural sector to the Nation. The Australian Digital Alliance (ADA) and the Australian Libraries and Archives Copyright Coalition (ALACC) congratulate the government on prioritising this work. We support the development of a National Cultural Policy for Australia and we welcome the opportunity to make a submission to the Office for the Arts in response.

The Government has proposed using the former Creative Australia policy as a starting point for developing the new National Cultural Policy. The ADA and the ALACC agree this is a logical starting point, but urge the government to carefully consider the rapid changes that have occurred in the 10 years since that policy was launched. Australian arts and culture exists in a different world now.

The Creative Australia policy recommended a review of the *Copyright Act 1968*'s appropriateness in the digital environment. This process has not been completed. Australia's copyright law remains outdated. We call on the government to pass the Copyright Amendment (Access Reform) Bill 2021[1] (the Bill) as part of the new National Cultural Policy. The issues the Bill proposes to address are longstanding and increasingly urgent.

We understand the wide scope of the consultation, but the ADA and the ALACC have limited our comments to the important role of copyright and Indigenous Intellectual Cultural Property (ICIP) in supporting the creation of and access to culture, and the key reforms that need to occur to support creation and access into the future.

Should the Department require additional information, the ADA and the ALACC would welcome the opportunity to make further comments. Our principal contact with respect to this submission is our Executive Officer/Copyright Law and Policy Adviser, Sarah Powell, who can be reached at sarah@digital.org.au or on 02 6262 1118.

[1] Department of Infrastructure, Transport, Regional Development and Communications (2021) *Copyright Amendment (Access Reform) Bill 2021 Exposure Draft*. Available at https://www.infrastructure.gov.au/department/media/publications/copyright-amendment-access-reforms-bill-2021.

About the Australian Digital Alliance

The Australian Digital Alliance (ADA) provides a voice for the public interest in access to knowledge, information and culture in copyright reform debates. The ADA unites those who seek copyright laws that both provide reasonable incentives for creators and support the wider public interest in the advancement of learning, innovation and culture. More information about the ADA is available at digital.org.au/about.

About the Australian Libraries and Archives Copyright Coalition

The Australian Libraries and Archives Copyright Coalition (ALACC) (formerly the Australian Libraries Copyright Committee (ALCC)) is the main consultative body and policy forum for the discussion of copyright issues affecting Australian libraries and archives. The ALACC and its members support a copyright framework that appropriately protects the interests of right holders while ensuring access to important cultural, educational and historic content for the public's benefit. More information about the ALACC is available at alacc.org.au/about.

List of recommendations

Below is a summary of our main recommendations in response to the proposed new National Cultural Policy:

- It is recommended that the new cultural policy **recognises Indigenous Cultural Intellectual Property (ICIP)** and establishes a First Nations-led process to determine and implement optimal policy, legal and nonlegal mechanisms to support ICIP.
- **Passage of the Copyright Amendment (Access Reform) Bill 2021** (Access Reform Bill) should be prioritised and expedited under the National Cultural Policy.
- Barriers to **equitable access to Australia's cultural heritage** held in cultural collections – including copyright, funding and other matters – should be addressed to increase the discoverability, accessibility and availability of cultural heritage and strengthen the role of GLAM (galleries, libraries, archives and museums) institutions. Passing the Access Reform Bill will go a long way to achieving this.

First Nations first

The ADA and the ALACC welcome the inclusion of a pillar that prioritises Aboriginal and Torres Strait Islander Arts and Culture in a future national cultural policy. The diversity of Aboriginal and Torres Strait Islander cultures in Australia, and the importance of their art, knowledge systems and wisdom to this country, remains under-recognised in some parts of the Australian community.

To properly centre First Nations artists and creators, the piecemeal approach to ICIP needs to be addressed. Currently ICIP is protected to varying extents through intellectual property (IP), cultural heritage, consumer protection and contract, leaving significant gaps. These gaps can only be addressed through recognition of ICIP and a First Nations-led process for designing specific ICIP protection mechanisms, including legal and regulatory instruments, as well as nonlegal options such as Protocols and industry practices (e.g. The Tandanya Declaration, ATSILIRN Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services, First Peoples: A Roadmap for Enhancing Indigenous Engagement in Museums and Galleries and others). The upcoming Purrumpa: First Nations Arts & Culture National Gathering 2022 is a logical focal point for consultation.

A framework must provide full coverage of ICIP, work cooperatively with existing areas of protection and provide enough flexibility to accommodate the needs of a range of First Nations creators and communities. We support the Productivity Commission's recommendation that "a multi-pronged approach to protecting and recognising rights would mean that regulatory responses can be tailored to specific types of ICIP (for example, visual arts and crafts, languages or ancestral remains, etc.). In turn, this would enable a more nuanced and fit-for-purpose approach to protection."[2] Additionally, the development of this pillar should be done in harmony with the government's implementation of The Uluru Statement from the Heart, and with reference to the principles in the United Nations Declaration on the Rights of Indigenous People (UNDRIP).

A place for every story

An aspiration to support diverse Australian stories is a welcome one. This requires affording diverse voices agency, autonomy and opportunities to create, tell and share their stories, and for those stories to be discoverable. All of these actions are enabled through copyright.

Materials held in Australia's cultural collections are an important source of content for a range of creators and communities. But our outdated copyright system limits how users can reuse collections materials and curtails libraries, archives and cultural institutions ability to do their work.

[2] Productivity Commission (2022), p 223.

The Access Reform Bill sought to encourage the use of collections materials by reducing or removing copyright barriers. To empower and inspire Australians to become diverse storytellers, the passing of these reforms should be prioritised. The proposed reforms will reduce the administrative burden on institutions, greatly increase equitable access to cultural heritage, facilitate new uses of collections materials, allow greater use of new technologies to deliver libraries and archives services and ensure they are well placed to quickly respond to disruptions such as the ongoing COVID-19 pandemic.

The centrality of the artist

The cultural policy should recognise, respect and champion the important contributions creators make to arts and culture as creators and as users of copyright material. Passing the Access Reform Bill will open up a wide range of collections material for new productive and creative uses by creators and communities. The ADA and the ALACC encourage the government to continue to pursue the reforms proposed in the Bill as enabling equitable access to cultural collections is a driver of creativity.

Strong institutions

GLAM institutions are critical services that allow the public to access our rich cultural heritage. Passing the Access Reforms would strengthen GLAM organisations. They will reduce 'red tape' while encouraging GLAM institutions to make more of their collections material available online. Greater discoverability of and access to cultural collections will strengthen the role of GLAM institutions in the public.

Reaching the audience

To complement the reforms proposed in the Access Reform Bill, the government should further invest in Trove as a national aggregator of digital collections materials from the National Library of Australia (NLA) and its many partners. By extension, further investment in digitisation, digital preservation, cataloguing, metadata, discoverability and accessibility initiatives is needed to support institutions to improve equitable access to their collections, particularly regional and small institutions.