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*Submission to consultation on the National Environmental
Standard for Data and Information*

1 Introduction

This submission is made to the to the Environmental Law Reform Taskforce by the National Native Title Council (NNTC) in collaboration with the Mabo Centre in relation to the *National Environmental Standard (Data and information) 2026 (Exposure Draft) (Draft D&I Standard)*.

The reform of the commonwealth environmental laws has provided an opportunity to better recognise the rights of Australia's Traditional Owners in its natural environment, to ensure improved protections for Aboriginal and Torres Strait Islander cultural heritage, and to facilitate improved of Traditional Owners in environmental decision making. It is important these objectives are enhanced in the final Standard.

It is appreciated that many of these outcomes will be achieved the means of the application of the First Nations Engagement Standard to be made under the reformed *Environment Protection and Biodiversity Conservation Act* as amended in 2025. (the Act). However, as noted in this submission, the other Standards to be made under the Act, including that currently under consideration, can, if not appropriately drafted, undermine these objectives. By contrast, if the recommendations contained in this submission are adopted, we believe the Standard can enhance the desired outcomes.

The key proposition contained in this submission is that that Aboriginal and Torres Strait Islander cultural heritage; including intangible cultural heritage, Traditional Environmental Knowledge (TEK) and Indigenous Cultural and Intellectual Property (ICIP), should be considered as valuable as modern Western science.

2 About Us

2.1 National Native Title Council

Established in 2006, the NNTC is the peak body for Australia's Native Title and other Traditional Owner organisations. The NNTC represents Native Title Representative Bodies and Service Providers as well as Prescribed Bodies Corporate recognised under the *Native Title Act 1993 (Cth.)* and other equivalent Traditional Owner Representative Institutions (TORIs) established under Traditional Owner land rights legislation such as the *Traditional Owner Settlement Act 2010 (Vic) (TOSA)*, the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)* and the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981 (SA)*.

2.2 The Mabo Centre

Launched in February 2025, the Mabo Centre is a First Nations-led partnership between the NNTC and The University of Melbourne. The Mabo Centre builds on the extensive and ongoing engagement with Traditional Owners undertaken by the NNTC.

Based on the University's Parkville campus, and working closely with Traditional Owners and communities, the Mabo Centre undertakes research to identify best practices, deliver training to strengthen and share knowledge, and develop local leadership skills to maximise economic outcomes through leveraging land and sea rights. Overtime, this will ensure strong principles of self-determination are embedded into native title agreements, better supporting community aspirations and provide greater opportunities for economic development and entrepreneurship on Country.

3 FAIR Principles aren't CARE Principles

One of the more insidious ongoing acts of systemic colonial racism occurs is the recognition of what is and what is not 'science'. Modern science is accepted as starting with the scientific revolution in the mid-16th to 17th centuries in Europe.¹ Principles established then have developed and are now considered to be based in observable, testable, and measurable evidence.² Such a definition of practice and resource management could also be applied to the methods applied over 70,000 years by Aboriginal and Torres Strait Islander peoples. However, TEK is not considered as being an equal scientific practice to modern Western science.

This inequality is writ large across the Draft D&I Standard but is perhaps most clear in the inclusion of the two almost opposing sets of principles. FAIR principles standardise

¹ Lawrence M. Principe, 'Introduction' in *Scientific Revolution: A Very Short Introduction*, 2011, 1–3.

² Science Council, *What is Science?* <https://sciencecouncil.org/what-is-science/> (accessed 30 June 2026).

what is considered contemporary scientific material – it is Findable, Accessible, Interoperable and Reusable.³ CARE principles on the other hand describe Indigenous Peoples' rights in their TEK and Indigenous Cultural and Intellectual Property (ICIP). Loosely defined, their use is for Collective benefit, they retain the Authority to control its use, those using it have a Responsibility to benefit sharing, and it is collected and used Ethically.⁴

Fundamentally, TEK and ICIP is not interoperable. The problem then is how to manage a system that requires interoperability but also needs to include a different set of data standards. This is to some extent managed through the Draft D&I Standard by including data requirements effecting TEK and ICIP at *Principle 5 – Ethical Data and Information* (Principle 5). Whilst it is important to clearly and independently articulate the unique challenges and requirements of using TEK and ICIP, it isolates them from the broader context and data management requirements. In doing so, TEK and ICIP can be viewed as optional and quite possibly onerous contributions.

3.1 Principle 1

Principle 1– Representative data and information **requires that data and information must have been;**

- **collected by a method that is scientifically robust and accounts for environmental conditions;⁵ and**
- **created, modelled or analysed using appropriate scientific or technical processes to ensure it accurately represents the conditions and context required for the decision.⁶**

In circumstances where this may not be achievable, the data and information must be:

- **from or based on authoritative sources (for example published datasets), or where no authoritative source for particular data,⁷ or**
- **the person providing the data and information has provided other evidence that demonstrates the data and information are representative and suitable for use.⁸**

It is clear from the very first principle that there is no place for TEK or ICIP within this regime.

³ Go Far, Fair Principles, <https://www.go-fair.org/fair-principles/> (accessed 25 June 2026).

⁴ Global Indigenous Data Alliance, *Care Principles for Indigenous Data Governance* <https://www.gida-global.org/careprinciples> (accessed 28 June 2026).

⁵ Draft D&I Standard, s8(2)(a)(i), 3.

⁶ Ibid, s8(2)(a)(ii), 3.

⁷ Ibid, s8(2)(a)(iv), 3.

⁸ Ibid, s8(2)(b)(ii), 4.

3.2 Principle 4

Principle 4 – Reusable data and information, examines the ways in which data is ‘collected, managed and provided in a way that enables reuse with minimal additional effort.’⁹ To achieve this, the data must be ‘provided in a format that enables reuse with minimal additional effort’¹⁰ and ‘accompanied by appropriate information to manage reuse’.¹¹ It would seem that the second requirement is provided to ensure that TEK and ICIP can be accommodated as this information includes (where relevant):

- information about any sensitivities,
- attribution,
- retention and disposal obligations,
- security controls,
- licensing and rights, and
- consent arrangements.¹²

3.3 Principle 5

The purpose of Principle 5 is to ensure that ‘data and information used in, or for the purposes of, making a decision under the Act are collected, managed and used responsibly to minimise harm, protect rights and privacy, and, where possible, incorporate cultural values.’ From the outset, cultural heritage values are considered as optional and viewed consistently throughout the Draft D&I Standard as being secondary to modern western science. To realise this purpose, the data and information must be ‘collected, managed and used responsibly to minimise harm, protect rights and privacy, and, where possible, incorporate cultural values.’¹³

Cultural information is not so much of substantive relevance as an ethical collection consideration.

4 Data and Information Ownership and Consent Processes

Indigenous Peoples rights to cultural heritage are collectively held. In order to manage these rights, particularly in relation to the provision FPIC to the use of TEK and ICIP, representative entities need be consulted rather than individuals.

⁹ Ibid, s11, 5.

¹⁰ Ibid, s11(2)(a)(i), 5.

¹¹ Ibid, s11(2)(a)(ii), 5.

¹² Ibid, s11(2)(a)(ii), 5.

¹³ Ibid, s12(1), 6.

The NNTC supports the Sea Country Alliance (Alliance) proposal of a model by which representative Traditional Owners entities can be consulted in management of collective rights. The Traditional Owner Representative Institution (TORI) model was developed in 2024 by the Alliance and has continued to provide a solid basis for the recognition of collectively managed cultural rights. Embedded in the *Offshore Electricity Infrastructure Regulations 2022 (Cth) (OEIR)*, the model requires consultation with the representative institutions of the affected collective rights holders. It is anticipated that such a proposal may be considered in the *EPBC Act* First Nations Engagement Standard.

6 Conclusion

If Aboriginal and Torres Strait Islander cultural heritage is to be protected and respected it must be included throughout legislative and regulatory systems. The anticipated *EPBC Act* First Nations Engagement Standard cannot alone provide all that is required. Rights defined in UNDRIP, the World Intellectual Property Organization *Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge*, and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity must be recognised throughout the reforms.

As well as the recommendations made above, we support those made by the Central Land Council (CLC) to:

1. explicitly recognise TEK as a legitimate and complementary evidence base for environmental decision-making.
2. explicitly recognise that “authoritative sources” with respect to data and information can include ranger groups.
3. explicitly recognise that the requirement that “appropriate scientific or technical processes” be used in the creation, modelling or analysis of data or information does not apply to, and should not be used to discount, TEK and cultural data and information.
4. explicitly require proponents to provide clear guidance on any protocols that attach to the use, sharing, storage, and reproduction of cultural data, and associated metadata – e.g. if data is with respect to women’s business / women’s site – this should be made clear, and clear parameters should be prescribed around who can and can’t access and use data.
5. not allow reuse unless there is clear evidence that Traditional Owners have given FPIC to reuse – and there are appropriate data sharing arrangements in place to ensure Traditional Owners retain all rights with respect to the reuse of this data, including the right to be compensated for the reuse of this data.
6. embed compliance with CARE, ICIP and Indigenous Data Sovereignty (IDS) principles within the principles, not relegated to “notes”.

7. frame compliance with CARE, ICIP and IDS principles as mandatory, as opposed to aspirational.
8. embed FPIC requirements within these principles.

We invite you to discuss this submission with us at your convenience.

Regards,



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Director



Jamie Lowe
Chief Executive Officer

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