

## NSW Government Intellectual Property Framework 2020

The [NSW Government Intellectual Property Framework 2020](#) (2020 IP Framework) was released in March 2021. It provides best practice guidance to NSW Government agencies in dealing with, and managing, intellectual property (IP). The 2020 IP Framework is issued as non-binding policy under Department of Premier and Cabinet Circular C2021-11. It replaces the Intellectual Property Management Framework for the NSW Public Sector issued in 2005.

### KEY POINTS

The 2020 IP Framework:

- ▶ is based on an updated set of principles to guide agencies in managing and dealing with their IP assets
- ▶ provides an overview of IP as it applies to agencies, with reference to whole-of-Government licences and other relevant resources
- ▶ annexes the Crown Copyright Guidelines issued by the Department of Communities and Justice (DCJ) in April 2020.

### 2020 IP FRAMEWORK

The 2020 IP Framework provides updated guidance to agencies on the effective management of their IP assets. It is in three parts. Part 1 sets out twelve principles to support best practice in the areas of:

- (i) management and compliance – this includes considerations an agency should have regard to before using, licensing or procuring IP
- (ii) IP ownership and rights
- (iii) dealing with IP – sharing, licensing, assignment and commercialisation
- (iv) identification and recording of IP
- (v) protection of IP and agency branding.

Further explanation of these principles and information on how they may be applied in practice is given in Part 3.

Part 2 provides an overview of the various forms of IP and associated rights as they apply to agencies, including Crown copyright.

Summaries of the whole-of-Government copyright licences with collecting societies are also provided. Such licences may be available to authorise agency use of third-party IP in a range of circumstances.

Finally, the 2020 IP Framework references a range of other relevant policies and useful resources in relation to IP. Examples include:

- the NSW Open Data Policy which supports the open licensing of Government data
- the Guide to Aboriginal Protocols for NSW Government Sector events
- the NSW Government Brand Guidelines which regulate the use of NSW Government logos and the State Arms
- the NSW Procurement Board's standard ICT procurement contract templates as well as the Board's recommended commercial approach for IP in procurement contracts.

### CROWN COPYRIGHT

Copyright is a form of personal property. In Australia, copyright is regulated by the *Copyright Act 1968* (Cth). The *Copyright Act* specifies what types of material is protected by copyright, who is the first owner of the copyright in that material and what rights to control the use of that material are conferred on the copyright owner. Copyright protection arises automatically and there is no registration system for copyright in Australia.

Crown copyright refers to copyright material owned by the State of NSW. The State may take copyright ownership under a legally enforceable agreement or in some cases under relevant provisions of the Copyright Act, in particular, the Crown copyright provisions in Part VII.

In general, under Part VII, the State will own copyright in material made or first published by the State or under its direction or control. These rules can be modified by agreement between the State and the creator of the material concerned.

The Attorney General is responsible for the administration of Crown copyright on behalf of the State of NSW. The Crown Copyright Guidelines (see Appendix C to the 2020 IP Framework) are designed to streamline the routine administration of Crown copyright by agencies. In particular, the Guidelines clarify when an agency's proposal to licence or assign Crown copyright is required to be referred to the Attorney General (or the General Counsel of DCJ as the Attorney General's authorised representative to approve dealings with Crown copyright).

## CONTACT

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From time to time, assessing whether Crown copyright subsists in certain materials can be challenging. This is an important threshold issue as it has implications if an agency proposes dealing with its rights in such materials, including by way of licence or assignment.

Advice on Crown copyright is core legal work that must be referred by agencies to the Crown Solicitor in accordance with the [NSW Government Core Legal Work Guidelines](#). Examples of core legal work relating to Crown copyright include:

- legal advice on whether or not the State owns copyright in a work and/or the implications of such ownership
- the licensing or assignment of Crown copyright (except where the matter is incidental to the procurement of other goods and services)
- disputes concerning Crown copyright.