

**LEGAL AND INSTITUTIONAL STRATEGIES TO SUPPORT THE
INTERESTS OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES IN
BUSH FOOD COMMERCIALISATION**

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DECLARATION OF ORIGINALITY

I certify that the substance of this thesis has not already been submitted for any degree and is not currently being submitted for any other degree or qualification.

I certify that any help received in preparing this thesis and all sources used have been acknowledged in this thesis.

Kylie Lingard
15 August 2015

DEDICATION

To the Plant Business Advisory Group

(Rayleen Brown, Max Emery, Pat Torres, Juleigh Robins, Andrew Fielke, Jenni Lightowlers and Slade Lee)

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ABBREVIATIONS

ACIPA	Australian Centre for Intellectual Property in Agriculture
AIATSIS	Australia Institute of Aboriginal and Torres Strait Islander Studies
ACIP	Advisory Council on Intellectual Property
ALRC	Australian Law Reform Commission
ANBG	Australian National Botanic Gardens
ANFIL	Australian Native Food Industry Limited
ANH	Australian National Herbarium
CBD	Convention on Biological Diversity
CLC	Central land Council
CRC-REP	Cooperative Research Centre for Remote Economic Participation
CSIRO	Commonwealth Science and Industrial Research Organisation
DKCRC	Desert Knowledge Cooperative Research Centre
FAO	Food and Agriculture Organisation
HAL	Horticulture Australia Limited
HIA	Horticulture Innovation Australia
IAC	Indigenous Advisory Council
IBA	Indigenous Business Australia
NGIA	Nursery and Garden Industry Australia
NLC	Northern Land Council
NNTT	National Native Title Tribunal
PBR	Plant Breeder's Right
RAP	Reconciliation Action Plan
RIRDC	Rural Industries Research and Development Corporation
TRIPS	Agreement on Trade Related Aspects of Intellectual Property
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
WIPO	World Intellectual Property Organisation

ABSTRACT

Australia's Aboriginal and Torres Strait Islander peoples are an eclectic society with diverse needs and aspirations in relation to the commercialisation of their traditional plant foods (bush foods). Their interests reflect different worldviews, social structures, personal circumstances and development goals. There is very little legal support for the interests of Aboriginal and Torres Strait Islander peoples in bush food commercialisation. This thesis uses a combination of methods to develop an integrated framework of legal and institutional strategies to better support the diverse interests of Aboriginal and Torres Strait Islander peoples in this commercial context.

The research draws upon legal and systems-based analysis to identify pivotal transactions that occur along bush food commercialisation pathways and interventions that might better enable Aboriginal and Torres Strait Islander peoples to realise their goals. While a central focus of the research is legal arrangements, of necessity the proposals suggested in this thesis go beyond the conventional bounds of legal research. This is because useful applications or reforms of the law depend upon there being potential strategies that the law might enable. A large part of this research has been to identify potential strategies and then place possible legal arrangements within this context.

The integrated framework of possibilities outlined in this thesis combines innovative uses of existing arrangements with new interventions to support as many interests as possible. This differs to current academic approaches that tend to propose single-instrument solutions for specific problems, especially those related to the use of Aboriginal and Torres Strait Islander knowledge. Such narrowly focused solutions cannot comprehensively support the diverse set of interests identified in discussions with Aboriginal and Torres Strait Islander peoples throughout this research project.

The thesis fills a gap in knowledge on ways to improve the laws regulating bush food commercialisation to better support the interests of Aboriginal and Torres Strait Islander peoples. It makes several original contributions, including the further development of a systems-based legal research method and identification of strategies that may provide real-world benefits for Aboriginal and Torres Strait Islander peoples. Most exciting is the identification of new ways through which governments and Aboriginal and Torres Strait Islander peoples can work together to advance social

justice goals and wellbeing outcomes. It is not part of the scope of this research to evaluate the acceptability or feasibility of these proposals in practice. This is a further task being advanced by the Cooperative Research Centre for Remote Economic Participation and its managing entity Ninti One, the funding agency for this work. A series of briefing papers included in the thesis are the starting point for this dialogue and further investigation.