

CHAPTER 6: GOVERNANCE

6.1 What this Chapter does

This chapter shifts the focus from specific commercialisation pathways to the public governance processes that shape these pathways. The substance of this chapter is in the form of a journal paper: ‘An Inclusive Governance Framework for Bush Food Commercialisation’ (provided in full in section 6.2). The paper responds to an understanding that emerged in the research process, that people who are meaningfully involved in bush food governance are more likely to have their interests supported in bush food development. The objective of the paper is to identify current and future avenues of support for the meaningful involvement of Aboriginal and Torres Strait Islander peoples in these processes.

A key finding of this research stage is the failure of current law to reflect the widespread policy support for the meaningful involvement of Aboriginal and Torres Strait Islander peoples in bush food governance. This may partially explain why Aboriginal and Torres Strait Islander peoples must currently rely on voluntary support for their interests from bush food developers and government officials. On a more positive note, the research reveals some legal and institutional measures that may improve the status quo.

As with the previous chapters, the possibilities revealed in the journal paper inform a policy brief: ‘An Inclusive Governance Framework for Bush Food Commercialisation’. The brief is provided in full in section 6.3.

6.2 Journal paper 4

Kylie Lingard, ‘An Inclusive Governance Framework for Bush Food Commercialisation’ (submitted, 2015) *Journal of Australian Indigenous Issues*.

6.3 Policy brief four

Kylie Lingard, 'An Inclusive Governance Framework for Bush Food Commercialisation' (Ninti One, 2015).

Consultation for this brief occurred between December 2015 and July 2015 with the author, Plant Business Advisory Group, CRC-REP, Ninti One and principle thesis Supervisor. The final version was agreed upon on 2 August 2015.

Please Note: This policy brief is subject to copyright. It is available at the following:

Lingard K. 2015. 'Policy briefing: An inclusive governance framework for bush food commercialisation'. Ninti One Ltd: Alice Springs.

http://www.nintione.com.au/resource/PB008_PolicyBriefing_InclusiveGovernanceFrameworkBushfoodCommercialisation.pdf

CHAPTER 7: CONCLUSIONS

This thesis aimed to identify possible legal and institutional strategies to support the diverse interests of Aboriginal and Torres Strait Islander peoples in bush food commercialisation. It uses a combination of methods to address three intertwined research questions. The goal is an integrated framework of interventions which may form the basis for a series of negotiations and reforms to advance Aboriginal and Torres Strait Islander interests, even if one or more of the preferred options is closed or delayed. The approach is designed to allow maximum flexibility to achieve a pragmatic outcome. The work is both ambitious and constrained: ambitious in attempting to develop a comprehensive suite of interconnected options that in combination could achieve systematic protection even in the absence of a *sui generis* solution; but constrained by the inability, within the time and economic parameters of a PhD, to fully develop all the details of the proposals.

This chapter begins by synthesising key research findings, many of which make an original contribution to knowledge on this topic. It then explores the significance of the research to Aboriginal and Torres Strait Islander peoples, policy and scholarship, before proposing some areas for future research. The chapter closes by outlining a process for translating the research into something of genuine benefit to Aboriginal and Torres Strait Islander peoples.

7.1 Key findings

The main question this thesis sought to answer is:

What legal and institutional strategies may improve support for the interests of Aboriginal and Torres Strait Islander peoples in bush food commercialisation?

This research is based on respect for the diversity of Aboriginal and Torres Strait Islander interests and commercialisation pathways, and recognition of the limited ability of existing proposed ‘solutions’ to systematically support the diversity of Aboriginal and Torres Strait Islander interests. To take the research beyond a critique of the limits of current research and into the realm of the possible and how to achieve it, this research adopted an innovative approach: the thesis addressed the

interests of Aboriginal and Torres Strait Islander by first mapping transactions that occur along common bush food commercialisation pathways and then interrogating the laws affecting those transactions. This approach was fruitful in generating innovative alternatives to existing proposals.

An unexpected discovery from the analysis of commercialisation transactions was the limited usefulness of genetic resource and intellectual property laws (Chapter 4 and 5). This is an important finding because many popularly advocated proposals assume that these laws are central to advancing Aboriginal and Torres Strait Islander interests in their traditional resources and knowledge. Intellectual property and scientific research rules, in practice, are probably of limited value compared to the many other rules largely ignored in prior investigations.

The finding underpins two conclusions:

- (1) Feasible interventions must respond strategically to the context in which the interests arise (rather than respond primarily to whatever instrumental options are immediately available within the law).
- (2) By carefully analysing the transactions involved in bush food commercialisation, it is possible to identify new ways in which the law might support Aboriginal and Torres Strait Islander interests.

While it has been possible to use transaction mapping coupled with law and policy research to identify strategies to support many Aboriginal and Torres Strait Islander interests, the approach highlighted some important interests that the law may struggle to address. This is especially so with regard to interests related to respect for Aboriginal and Torres Strait Islander elders, knowledge and stories.

The need for ‘respect’ is often expressed, particularly by Aboriginal and Torres Strait Islander elders, but the law is a weak tool for securing this in capitalist systems that predominantly value only the commodity that is sold. Some indirect measures, such as requirements to pay Aboriginal and Torres Strait Islander peoples for their advice and provide for their meaningful inclusion in governance processes, go a small way towards this – such measures are included in the options discussed (Chapter 6). However, the ‘solution’ to respect-related interests must lie in meaningful reconciliation within society. Legal approaches can only contribute one part of a much larger change program.

The rest of this section of the chapter discusses in more detail the findings for each of the sub-questions that derive from the main question.

7.1.1 Sub-question 1: Key findings

To what extent can current legal and institutional arrangements (not limited to government) support Aboriginal and Torres Strait Islander interests in bush food commercialisation?

The transaction mapping approach applied in this research made it possible to systematically identify where law and commercial activities intersect. An analysis of the legal and institutional arrangements regulating these points of intersection highlights the currently limited support available for Aboriginal and Torres Strait Islander interests in transactions not identified by prior research (Chapter 4, 5 and 6). These findings make an original contribution to this field of knowledge.

Superficially, there are two ways in which the law has the potential to support the interests of Aboriginal and Torres Strait Islander peoples who control access to land. First, Aboriginal and Torres Strait Islander peoples who control access to land can enter into agreements with people who want to take plants from that land. Second, Aboriginal and Torres Strait Islander peoples who control access to land can harvest, grow and sell produce from that land. The law also allows Aboriginal and Torres Strait Islander peoples to exploit their non-public bush food knowledge, or enter into agreements with others who want to exploit the knowledge. Additionally, the law allows Aboriginal and Torres Strait Islander peoples to object to the use of words and symbols in plant names and product trademarks that are deceptive about cultural association. However, this research finds that, in practice, these theoretical legal possibilities are of marginal relevance.

In sum, this research uncovered a number of alternative transactions, practical realities and capacity-related constraints that undermine any theoretical avenue of support. The main issues are as follows:

- Many native plant specimens are accessed from collections (eg, tissue culture labs) and, under current arrangements, Aboriginal and Torres Strait Islander peoples are not likely to be able to assert their interests in these transactions.

- Most developed species are available from non-Indigenous people who grow bush foods for commercial purposes on private lands, and Aboriginal and Torres Strait Islander peoples cannot assert their interests in these transactions.
- A lot of Aboriginal and Torres Strait Islander knowledge on developed bush food species is freely available, with no legal mechanism for Aboriginal and Torres Strait Islander peoples to control or benefit from the use of this knowledge.
- There are few services to help Aboriginal and Torres Strait Islander peoples access the resources needed to harvest, grow, make or sell bush food products.
- There are fundamental cultural challenges with the use of most legal instruments, such as difficulties in ascribing legal rights or knowledge to specific groups of Aboriginal and Torres Strait Islander peoples.

These problems probably can be overcome, but the challenge should not be underrated. Finding effective solutions will require not only legal innovation but also complex cultural negotiation.

Thus, the research on sub-question one finds that there is a lack of useful legal support for Aboriginal and Torres Strait Islander interests in bush food commercialisation, even if conventional legal protections are strengthened. Non-Indigenous developers are largely free to make and trade bush food products without regard for the interests of Aboriginal and Torres Strait Islander peoples. In terms of the aspirations of Aboriginal and Torres Strait Islander peoples, and the desire of Australians (expressed through their governments) for the social and economic advancement of Aboriginal and Torres Strait Islander peoples, this is an unsatisfactory state of affairs.

7.1.2 Sub-question 2: Key findings

What innovative uses of current legal and institutional arrangements may improve support for Aboriginal and Torres Strait Islander interests in bush food commercialisation?

There is some potential to make better, more innovative use of existing legal and institutional arrangements to increase support for Aboriginal and Torres Strait Islander interests in bush food commercialisation.

An important finding from this research concerns the link between cultural connections to bush foods and land ownership or management (Chapter 3). With appropriate legal and/or institutional reforms, it is possible to extend the existing legal rights of some traditional land custodians to public lands and specimen collections. These extensions, coupled with revisions to permit procedures and public funding agreements, could expand participation opportunities for traditional custodians in bush food commercialisation, and make it easier for developers to share commercialisation benefits. However, the link between legal rights to control access to land and traditional custodianship does not fully address the scope of cultural interests. Many Aboriginal and Torres Strait Islander peoples with cultural responsibilities for bush foods do not control access to land. How this can be addressed is a matter that needs further development in consultation with traditional custodians.

A second finding concerns the lack of expertise available to help Aboriginal and Torres Strait Islander peoples start and sustain bush food businesses and commercial partnerships (Chapters 4 and 5). This is not a legal issue but it is an important complement to ensure that the potential created by legal and institutional reforms are realised in practice. Some Aboriginal and Torres Strait Islander peoples have been operating bush food businesses for years and some developers have been working with Aboriginal and Torres Strait Islander peoples to foster new agricultural opportunities. However, many Aboriginal and Torres Strait Islander peoples lack access to the skills and resources needed to become bush food entrepreneurs. Filling this skills and resource gap in ways that span the total of the transactions involved is necessary if there are to be practical benefits for Aboriginal and Torres Strait Islander peoples. It will require a concrete strategy to advance Aboriginal and Torres Strait Islander bush food opportunities and investment on a sustained basis, as well as to achieve the social inclusion outcomes to which much public policy is oriented.

7.1.3 Sub-question 3: Key findings

What more radical measures, including new laws, might further improve support for Aboriginal and Torres Strait Islander interests in bush food commercialisation, by addressing issues beyond the scope of existing rules and institutional arrangements?

The key finding from researching this question is that law reforms developed from an understanding of commercialisation transactions (the methodology used in this research) are likely to differ substantially from those arising from a conventional doctrinal approach, such as the study of intellectual property law. The former approach emphasises reshaping transactions to suit the legal instrument, whereas the latter emphasises adjusting legal instruments to fit within the commercial context. The two types of approaches do not necessarily align to create systemic improvement in the situation for Aboriginal and Torres Strait Islander peoples.

The reform proposals most often advanced in the current literature include:

- the creation of a new intellectual property right to prohibit the unauthorised use of secret Aboriginal and Torres Strait Islander knowledge; and
- the wider implementation of biodiversity access and benefit-sharing rules to ensure researchers have consent to use secret Aboriginal and Torres Strait Islander knowledge, and agree to share the benefits of knowledge use with the knowledge providers.

While desirable in themselves, this research suggests that those proposals have limited potential to improve support for Aboriginal and Torres Strait Islander interests in bush food commercialisation. The reason is that much Aboriginal and Torres Strait Islander bush food knowledge is already freely available and genetic research on wild plants is rarely the basis of bush food development. This research shows that reform proposals that more precisely reflect the commercial context are more likely to support the interests of Aboriginal and Torres Strait Islander peoples than those developed from a primary focus on laws (see especially Chapters 4 and 5).

This research identifies several radical law reforms that may benefit Aboriginal and Torres Strait Islander peoples in bush food commercialisation. They include:

- creating a legal right for traditional owners to exclusively exploit commercially undeveloped species for up to 10 years;
- making international bush food trade dependent on traditional custodian consent, or compliance with species development plans;
- expanding the objectives of many laws that shape bush food commercialisation to directly support the interests of Aboriginal and Torres Strait Islander peoples; and
- requiring public authorities to provide for the meaningful inclusion of Aboriginal and Torres Strait Islander peoples in various governance processes.

These findings are quite different to those generated by an instrument-focused approach to the same issues. The question remains whether there is a realistic chance for this type of reform to succeed. Major reforms intended to empower Indigenous peoples usually challenge established beliefs and interests, and this is always likely to create institutional impediments to desired change. For example, changes to flora governance may encounter policy-maker and business aversions to government control over economic development; changes to food and biosecurity governance may challenge the narrow mandate of authorities whose role is currently only to protect public health and safety. There may also be (perhaps largely unspoken) aversions to increasing the power of Aboriginal and Torres Strait Islander peoples to ‘interfere’ with established government and commercial arrangements.

Along with this is the reality that making many of the possibilities feasible in practice will involve investment, negotiation and innovation in the design and implementation of efficient approaches. Whether this is something that is considered worthwhile depends largely on the degree to which it is considered important to advance the economic interests of Aboriginal and Torres Strait Islander peoples in their culture and knowledge, and whether it is considered likely that the results will justify the effort. However, there is another dimension to this, which is less concerned with economics and more concerned with issues of justice. This aspect, also, needs to be weighed in the balance when deciding what degree of innovation and investment is sensible to make in advancing the interests of Australia’s first peoples in their culture and knowledge.

7.2 The significance of the work and its contributions to policy and knowledge

Already noted are the several unique contributions that this research has made, including:

- Aboriginal and Torres Strait Islander peoples have diverse interests in bush food commercialisation, and no single ‘solution’ can support every interest;
- genuine support for Aboriginal and Torres Strait Islander interests requires an integrated mix of legal and administrative measures, and it may not be possible to develop legal ‘solutions’ for every interest;
- innovative uses of existing legal and institutional structures may increase support for some Aboriginal and Torres Strait Islander interests; and
- law reforms developed from an understanding of commercialisation transactions differ from those arising from a conventional doctrinal approach.

This section further discusses the contributions of this research to international and domestic policy development, Aboriginal and Torres Strait Island peoples and legal scholarship.

7.2.1 International policy development

An unintended benefit of this research is its contribution to international policy development. In 2007, the world overwhelmingly accepted the provisions of the *United Nations Declaration on the Rights of Indigenous Peoples* as the minimum standards necessary for the survival, dignity and wellbeing of Indigenous peoples. The acceptance was the result of decades of sustained research, activism and diplomacy, and a greater understanding of the impacts of industrialisation and colonialism on Indigenous peoples.

The Declaration contains 46 articles, many of which are relevant to the interests of Aboriginal and Torres Strait Islander peoples in their traditional plant foods. These include rights to maintain, control and develop traditional resources and knowledge, and rights to participate in legislative and administrative process using traditional procedures. This thesis provides policy makers in other countries with an Australian case study of alternative approaches to honouring these provisions as they relate to bush food commercialisation. The findings and the methods that were used can

contribute something new and important to international policy development intended to advance the provisions of the *Declaration*.

7.2.2 Domestic policy development

Australian governments support the *United Nations Declaration on the Rights of Indigenous Peoples* and the improvement of Aboriginal and Torres Strait Islander wellbeing. Current national policies link Aboriginal and Torres Strait Islander wellbeing to the valuing of Aboriginal and Torres Strait Islander culture, needs and aspirations. Unfortunately, a stark wellbeing gap persists between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians. This research presents Australian policy makers with a new avenue to advance social justice goals.

The possible avenues outlined in this thesis target bush food commercialisation, a relatively unexplored policy area. The possibilities embrace notions of self-determined development, compensation, respect and inclusion. These notions may sound idealistic in light of current government preferences for mainstream employment goals and passive information exchanges between government agencies and Aboriginal and Torres Strait Islander peoples. However, this research indicates the potential for bush food commercialisation to help Aboriginal and Torres Strait Islander peoples realise their own needs, aspirations and wellbeing.

The methods used in this research can, in themselves, also contribute to domestic policy development. Australia (like many other countries) has a history of unsatisfactory outcomes from well-intentioned Indigenous welfare policies. The transaction mapping method in this thesis uses a detailed analysis of the underlying transaction system to identify with specificity the transactions that need to be adjusted to achieve a desired policy outcome. Such a systematic approach should (at the bare minimum) provide a complementary approach that will help to ensure comprehensive interventions rather than merely instrumental and administrative change. Managing the total system would seem far more likely to be effective than managing only some parts of that system.

7.2.3 Opportunities for Aboriginal and Torres Strait Islander peoples

This research offers Aboriginal and Torres Strait Islander peoples a different perspective on opportunities for the law and policy to support some of their interests

in bush food commercialisation. The aim of this research was to provide options for Aboriginal and Torres Strait Islander peoples to explore. It is not expected that all will be relevant or appealing. Different strategies are likely to appeal to different peoples because of their unique interests and capacities. One group may wish to carry out feasibility assessments of three strategies proposed in this research; another may use the commercialisation scaffold to identify new strategies to explore. It is likely that further exploration will identify refined or completely new options that go beyond what this research has identified. What this thesis has done is identify that there are many more options than might have been immediately obvious, and that the lack of one pathway (such as *sui generis* laws) does not mean that there are not alternative options available.

7.2.4 Significance to legal scholarship

Most bush food researchers are social or applied scientists who use methods traditional to their discipline to explore the physical characteristics of plants or involvement of Aboriginal and Torres Strait Islander peoples in supply chains. Legal scholars typically use doctrinal methods to develop recommendations. Doctrinal approaches to Aboriginal and Torres Strait Islander interests tend to commence with a focus on reforms to existing legal instruments, or upon *sui generis* approaches.

This thesis contributes to law and policy scholarship by using a multi-method approach that combines applied and doctrinal research processes. The findings demonstrate the value of the methods. Similar combinations of engaged, theoretical, systems and evaluative methods may help other legal research projects that are focused on producing real-world value to the peoples affected by the subject matter.

7.3 Areas of future research

This thesis gives rise to future research opportunities, each substantial enough to form the basis of another thesis. Future research areas include:

- further development of the options identified in this thesis, in consultations with Aboriginal and Torres Strait Islander peoples;
- an exploration of implementation requirements and feasibility from an Aboriginal and Torres Strait Islander perspective as well as from the viewpoint of other stakeholders;

- use of transaction mapping to extend legal support for the interests of Aboriginal and Torres Strait Islander peoples in other native plant commercialisation contexts, potentially including the development of medicinal, cosmetic and essential oil products (and potentially expanding the approach to non-plant cultural products such as art); and
- extension of the transaction mapping approach to other law and policy questions.

7.4 Research limitations and a way forward

Limitations of time and resources, and a commitment to the belief that whatever strategies were to be advanced should be extensively investigated in consultation with Aboriginal and Torres Strait Islander peoples, limited the development of detailed implementation strategies. The research is a conscious first step in the journey towards implementation of an integrated framework of interventions to support the diverse interests of Aboriginal and Torres Strait Islander peoples in bush food commercialisation.

The next step is to find out which options Aboriginal and Torres Strait Islander peoples wish to develop further. This is being pursued through Ninti One, the funder of this research, through dissemination of the policy briefs and discussions with Aboriginal and Torres Strait Islander peoples.

The hardest task is likely to come after the next stage of assessment, in securing government and/or commercial support for change. To this end, Ninti One is also exploring the concepts in this thesis with government officials, developers and scientists to stimulate reconsideration of Aboriginal and Torres Strait Islander interests in bush food development. The research presented in this thesis may help convince governments and developers that their support could transform abstract social justice goals into tangible outcomes that show genuine respect for the world's oldest living culture and for the people to whom that culture belongs.

7.5 Concluding remarks

Successive speeches by Australian Prime Ministers indicate political support for finding new solutions to the persistent wellbeing gap between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians. For instance, Paul Keating

declared in 1992 that it was time to ‘forge a new partnership’.¹²⁹ Kevin Rudd declared the 13 February 2008 as the day ‘we embrace the possibility of new solutions to enduring problems where old approaches have failed’.¹³⁰ Most recently, on 12 February 2014, Tony Abbott acknowledged the bi-partisan political support for turning ‘good intentions into better outcomes’:

There is probably no aspect of public policy on which there is more unity of purpose and readiness to give others the benefit of the doubt. On this subject, at least, our parliament is at its best. Our duty is to make the most of this precious moment.¹³¹

This thesis offers some ways to transform this political commitment into practical change, helping Aboriginal and Torres Strait Islander peoples implement their preferred legal and institutional options in bush food commercialisation. Such support may help forge a new partnership between Aboriginal and Torres Strait Islander peoples and government; one based on the principles of respect, gratitude and empowerment.

¹²⁹ Paul Keating, ‘Redfern speech’ (Redfern Park, 10 December 1992).

¹³⁰ Kevin Rudd, ‘Apology to Australia’s Indigenous peoples’ (Parliament of Australia, 13 February 2008).

¹³¹ Tony Abbot, ‘Statement to the House of Representatives: closing the gap’ (Parliament of Australia, 12 February 2014).

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Appendix 2: Embracing diversity

EMBRACING DIVERSITY

AN INVESTIGATION INTO THE LEGAL AND INSTITUTIONAL ARRANGEMENTS THAT BEST ENSURE PATHWAYS TO BUSH FOOD COMMERCIALISATION HELP ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE ACHIEVE THEIR NEEDS AND ASPIRATIONS IN RELATION TO BUSH FOOD KNOWLEDGE

PHD THESIS ISSUES PAPER

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Introduction

The context of this Issues Paper

This Issues Paper is the first step in a broader research project that aims to identify legal and institutional arrangements that best ensure pathways to bush food commercialisation help Aboriginal and Torres Strait Islander people achieve their needs and aspirations in relation to bush food knowledge. The exciting challenge that lies at the heart of this research project is the identification of arrangements that embrace diverse interests. The project looks at the legal and institutional arrangements invoked along various pathways to commercialisation, and the extent that these arrangements help Aboriginal and Torres Strait Islander people achieve their needs and aspirations in relation to bush food knowledge. The analysis of current arrangements will help shape a conversation on reforms that may ensure various pathways to commercialisation help Aboriginal and Torres Strait Islander people achieve the most possible needs and aspirations. The project will lead to the compilation of a suite of legal and institutional models and a set of tools that Aboriginal and Torres Strait Islander people may pick up to pursue diverse interests in a variety of ways.

This Issues Paper reviews the knowledge-related issues and ideas raised in the current literature on the bush food industry. Bush food authors have illuminated many Aboriginal and Torres Strait Islander needs and aspirations in relation to bush food knowledge, and suggested a variety of institutional arrangements that may support certain needs and aspirations.¹ The review of knowledge-related issues and ideas is enriched by recourse to key papers in the national literature on Aboriginal and Torres Strait Islander knowledge. The national literature has helped clarify the extent that current and reformed legal and institutional arrangements can protect Aboriginal and Torres Strait Islander knowledge from unauthorised or unremunerated use.² The following review is ultimately intended to help identify various legal and institutional arrangements that merit further investigation in the broader research project.

¹ See, e.g., Louis Evans et al, 'Effective intellectual property protection of traditional knowledge of plants and their uses: an example from Australia' (2009) 74 *GeoJournal* 391; Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Josie Douglas and Fiona Walsh, 'Aboriginal people, bush foods knowledge and products from central Australia: ethical guidelines for commercial bush food research, industry and enterprises' (71, Report No 71, Desert Knowledge Cooperative Research Centre, 2011) <http://www.nintione.com.au/resource/NintiOneResearchReport_71_BushFoodGuidelines.pdf>.

² See, e.g., Sonia Smallacombe, Michael Davis and Robynne Quiggin, 'Scoping project on Aboriginal traditional knowledge' (Report, Desert Knowledge CRC, 2007) <<http://www.desertknowledgecrc.com.au/resource/DKCRC-Report-22-Traditional-Knowledge.pdf>>; Terri Janke, 'Indigenous ecological knowledge and natural resources in the Northern Territory: report on the current status of Indigenous intellectual property' (Report, Natural Resources Management Board, 2009) <http://www.terrijanke.com.au/img/publications/pdf/7.NTIEK_Janke_ICIP_report_7April09_FINAL.pdf>.

Aboriginal and Torres Strait Islander bush food knowledge

There is much debate in the broader literature over what to call Indigenous people's knowledge.³ This is because the choice of term can affect the types of knowledge considered.⁴ For example:

- use of the term 'Indigenous knowledge' may homogenise Aboriginal and Torres Strait Islander people's needs and aspirations in relation to bush food knowledge⁵
- use of the term 'Traditional Knowledge' may limit consideration to ancient knowledge or knowledge held by people living 'traditional' lifestyles⁶
- use of the term 'Indigenous Ecological Knowledge' may exclude non-environmental types of knowledge⁷

To avoid ambiguity, this paper adopts a term similar to that used in the title of a recent Aboriginal-authored report on the bush food industry in central Australia - Aboriginal and Torres Strait Islander bush food knowledge.⁸ The phrase 'Aboriginal and Torres Strait Islander' is understood as referring to descendants of the original inhabitants of Australia.⁹ The term 'bush food' describes plants

³ See, e.g., Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 6; see generally Jane Anderson, 'Indigenous/Traditional Knowledge and intellectual property' (Issues Paper, Center for the Study of the Public Domain, 2010) <http://www.law.duke.edu/cspd/pdf/ip_indigenous-traditionalknowledge.pdf> 5; Smallacombe, Davis and Quiggin, above n 2, 8-10, 26, 42-43; Dora Marinova and Margaret Raven, 'Indigenous knowledge and intellectual property: a sustainability agenda' (2006) 20(4) *Journal of Economic Surveys* 587, 590-591; Christoph Antons, 'Sui generis protection for plant varieties and traditional knowledge in biodiversity and agriculture: the international framework and national approaches in the Philippines and India' (2010) 6 *Indian Journal of Law and Technology* 89, 98-99; Benjamin Richardson, Shin Imai and Kent McNeil, 'Indigenous peoples and the law—historical, comparative and contextual issues' in *Indigenous peoples and the law: comparative and critical perspectives* (Hart Publishing, 2009) 14.

⁴ Anderson, above n 3, 5.

⁵ See Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 19.

⁶ Smallacombe, Davis and Quiggin, above n 2, 8-10, 18; J Janewa OseiTutu, 'A sui generis regime for traditional knowledge: the cultural divide in intellectual property law' (2011) 15(1) *Marquette Intellectual Property Law Review* 147, 163; Antons, above n 3, 98-99; Marinova and Raven, above n 3, 590; but see World Intellectual Property Organisation, *Intellectual property and genetic resources, traditional knowledge, and folklore* <http://www.wipo.int/about-ip/en/studies/publications/genetic_resources.htm>.

⁷ Smallacombe, Davis and Quiggin, above n 2, 8.

⁸ Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1.

⁹ See generally Australian Law Reform Commission, 'Essentially yours: the protection of human genetic information in Australia' (Report No 96, Australian Government, 2003) <<http://www.alrc.gov.au/publications/report-96>> 914-921; see also Creative Spirits, *Aboriginal identity: who is 'Aboriginal'?* <<http://www.creativespirits.info/aboriginalculture/people/aboriginal-identity-who-is-aboriginal>>; *Aboriginal, Torres Strait Islander, Indigenous* (Brudlerlin Maclean publishing Services) <<http://www.brumac.com.au/aust-ed-atsi.html>>.

traditionally eaten by Aboriginal and Torres Strait Islander people.¹⁰ 'Knowledge' is recognised as meaning facts, information and skills gained through experience or education.¹¹ Aboriginal and Torres Strait Islander bush food knowledge, or bush food knowledge for short, thus refers to bush food related facts, information and skills held by descendants of the original inhabitants of Australia.

The bush food industry

Bush food includes plants such as lemon myrtle, bush tomato, quandong, desert lime, Davidson plum and riberry.¹² In the 1980s, bush food moved from being an Aboriginal source of food and trade to a commercial product featuring on catering, restaurant and supermarket menus.¹³ Increased demand means that Aboriginal and Torres Strait Islander bush harvesters now compete with specialist growers to supply raw bush food material to traders, processors and restaurants.¹⁴ Today, the annual retail value of the bush food industry is estimated at between 5–20 million dollars.¹⁵ The upward trend experienced since the 1980s is likely to continue as people develop new bush food related products like high-end gourmet condiments, new plant variety seedlings and mechanical harvesters.¹⁶

¹⁰ Dictionary.com, *Bush tucker* (2012) <<http://dictionary.reference.com/browse/bush+tucker>>; see also Rural Industries Research and Development Corporation, 'Native foods R&D priorities and strategies' (Publication No 08/02, Rural Industries Research and Development Corporation, February 2008) <<https://rirdc.infoservices.com.au/downloads/08-022.pdf>> 5; Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 12.

¹¹ Oxford Dictionaries, *Knowledge* <<http://oxforddictionaries.com/definition/english/knowledge>>.

¹² ANFIL, *Australian Native Food Industry Limited* (2012) <<http://www.anfil.org.au/>>.

¹³ Jock Morse, 'Bush resources: opportunities for Aboriginal enterprise in central Australia' (Report No 2, Desert Knowledge Cooperative Research Centre and the Central Land Council, October 2005)

<<http://www.desertknowledgecrc.com.au/resource/DKCRC-Report-02-Bush-Foods.pdf>> 28-29, 34; Ange Vincent, 'Bush tomato handbook' (Ninti One Limited, August 2010) <<http://www.desertknowledgecrc.com.au/resource/dkrc-bush-tomato-handbook.pdf>> 1; Jenny Cleary, 'Perspectives on developing new cooperative arrangements for bush-harvested bush tomatoes from desert Australia' (Working Paper No 48, Desert Knowledge CRC, 2009)

<http://www.desertknowledgecrc.com.au/resource/DKCRC-Working-Paper-48_Perspectives-of-cooperative-arrangements-for-bush-harvested-bush-tomatoes.pdf> 1, 4; Louis Evans et al, 'Plants for People: case study report' (Report No 55, Desert Knowledge Cooperative Research Centre, 2010) <<http://www.desertknowledgecrc.com.au/resource/DKCRC-Report-55-Plants-for-People-Case-study-report.pdf>> 20; Geoff Miers, 'Cultivation and sustainable wild harvest of bushfoods by Aboriginal Communities in Central Australia' (Report, Rural Industries Research and Development Corporation, July 2004) <<https://rirdc.infoservices.com.au/items/03-124>> 32; Rural Industries Research and Development Corporation, above n 10.

¹⁴ Morse, above n 13, 28.

¹⁵ Ibid 25; Cleary, above n 13, 1.

¹⁶ See generally Cleary, above n 13, 1, 4; Morse, above n 13, 28-29; ANFIL, above n 12; see, e.g., Rural Industries Research and Development Corporation, above n 10; Cooperative Research Centre for Remote Economic Participation, *Plant business* (2012) <<http://crc-rep.com/research/enterprise-development/plant-business>>.

The theme of diversity

The exciting challenge that lies at the heart of this research problem is the identification of legal and institutional arrangements that embrace diverse interests. Diverse interests are inherent in pathways to commercialisation and in Aboriginal and Torres Strait Islander needs and aspirations. A pathway to commercialisation is the route taken to transform an idea into a market product.¹⁷ The route is shaped by choices made throughout the transformation process.¹⁸ Each choice may invoke a different set of legal and institutional arrangements. For example, an individual may choose to privately finance research into a new gourmet bush food product with the intent of taking the new product to market.¹⁹ This pathway may invoke different laws and institutions to those governing a not-for-profit research institution that receives government funding to develop a new plant variety that will be taken to market by someone else.²⁰ Similarly, Aboriginal and Torres Strait Islander individuals and groups may have a range of unique, shared or competing knowledge-related goals. For example, one Aboriginal person may want to share bush food knowledge with young Aboriginal people, while another may want to use that knowledge to foster commercial partnerships. Further, different Aboriginal and Torres Strait Islander aspirations may invoke different needs. For example, a group that aspires to enter into a knowledge-related agreement may have different cross-cultural communication requirements than another group that shares the same goal.

It is not possible to investigate infinite pathways, needs and aspirations. It is possible to identify the legal and institutional arrangements that bear on a range of pathways to bush food commercialisation, and the extent that these arrangements help Aboriginal and Torres Strait Islander people achieve diverse needs and aspirations. The purpose of the following discussion is to identify legal and institutional arrangements that may help Aboriginal and Torres Strait Islander people achieve different needs and aspirations in relation to bush food knowledge.

¹⁷ Department of Industry and Resources, 'The path to commercialisation: a guide for planning an early stage innovation project' (Western Australian Government, 2004) <<http://www.innovation.wa.gov.au/Our-services/Path-to-commercialisation.aspx>>.

¹⁸ See generally Standing Committee on Science and Innovation, 'Inquiry into pathways to technological innovation' (Australian Government, 19 June 2006) <http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=scin/pathways/report/prelims.htm>; Australian Innovation, *Research commercialisation stimulates debate at the Queensland 2010 Australian Innovation Festival launch* <<http://www.ausinnovation.org/articles/research-commercialisation-stimulates-debate-at-the-queensland-2010-australian-innovation-festival-launch.html>>; Australian Institute of Marine Science, Submission to the House of Representatives Standing Committee on Science and Innovation, *Inquiry into pathways to technological innovation*, 4 May 2005, 3-5.

¹⁹ See, e.g., Outback Spirit, *About us* (2012) <<http://outbackspirit.com.au/about-us/>>.

²⁰ See, e.g., Cooperative Research Centre for Remote Economic Participation, above n 16; see generally Australian Institute of Commercialisation, *What is commercialisation* (March 2010) <<http://www.ausicom.com/news-248-what-is-commercialisation>>.

Issues, recommendations and areas to investigate

Aboriginal and Torres Strait Islander authors, and others, have identified an array of Aboriginal and Torres Strait Islander needs and aspirations in relation to bush food knowledge. Aspirations include the transmission of bush food knowledge to future generations,²¹ the recognition and reward of bush food knowledge that has contributed to the development of the bush food industry,²² the ability to control bush food knowledge according to customary protocols,²³ respect for bush food knowledge holders,²⁴ and increased involvement in the bush food industry.²⁵ Indigenous-drafted international instruments may also reflect knowledge-related aspirations that Aboriginal and Torres Strait Islander people share with the global Indigenous community.²⁶ For example, the Declaration on the Rights of Indigenous People evinces an Indigenous aspiration to ‘maintain, control, protect and develop...traditional knowledge’.²⁷

Bush food authors, and Aboriginal and Torres Strait Islander authors in the national literature, have illuminated the link between Aboriginal and Torres Strait Islander aspirations and needs. For example, an Aboriginal group who wishes to enter into a commercial agreement with a product developer may require the provision of commercial information in the first language of the group.²⁸ An Aboriginal person who wishes to represent knowledge-related interests in the bush food industry may require participatory mechanisms that accommodate cultural timeframes for consultation.²⁹ An Aboriginal person who wishes to pass on skills to younger people may require support for the conservation of the cultural practices associated with those skills.³⁰

²¹ See, e.g., Evans et al, above n 1; Sarah Holcombe, Peter Yates and Fiona Walsh, 'Reinforcing alternative economies: self-motivated work by central Anmatyerr people to sell Katyerr (Desert raisin, Bush tomato) in central Australia' (2011) 33 *The Rangeland Journal* 255.

²² See, e.g., Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ See Michael Davis, 'Biological diversity and Indigenous Knowledge' (Research Paper No 17, Australian Government, 29 June 1998)

<http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9798/98rp17#PRO>.

²⁷ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007) art 31.

²⁸ See Janke, above n 2, 81.

²⁹ See Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Native Title Report' (Report, Australian Government, 2009) <http://www.hreoc.gov.au/social_justice/nt_report/ntreport09/appendix3.html> 203.

³⁰ See generally Holcombe, Yates and Walsh, above n 21, 255-256, 260-263; Sally Holt, 'Native food industry set to expand', *Farming Ahead* May 2005 <http://www.clw.csiro.au/publications/farming_ahead/2005/7-

The predominant concern in the bush food literature, and the national literature on Aboriginal and Torres Strait Islander knowledge, is that existing legal and institutional arrangements do little to help Aboriginal and Torres Strait Islander people achieve their knowledge-related needs and aspirations.³¹ Authors have put forward several recommendations intended to improve the current situation. The following conversation brings together the discourse on Aboriginal and Torres Strait Islander needs and aspirations in relation to bush food knowledge, the issues that may bear on these needs and aspirations, and the recommendations intended to better support these needs and aspirations. The discussion helps identify some legal and institutional arrangements to investigate further in the broader research project.

Transmitting, practicing, developing and maintaining bush food knowledge

One of the biggest concerns of bush food authors is the potential for commercial values to negatively impact cultural values. Where 'most non-Aboriginal people view bush foods simply as commodities that can be traded on weight basis with a dollar value in a profit-driven market place',³² Aboriginal and Torres Strait Islander people view bush food as an important food source, totem and subject of cultural expressions like song, story, dance and ceremony.³³ Increased commercial demand for bush

9%20FA%20MAY%202005_160.pdf> 7; Miers, above n 13, iii; Morse, above n 13, 2, 4, 9-10, 51, 83, 90-93; Fiona Walsh and Josie Douglas, 'No bush foods without people: the essential human dimension to the sustainability of trade in native plant products from desert Australia' (2011) 33 *The Rangeland Journal* 395, 410; AB Cunningham, ST Garnett and J Gorman, 'Policy lessons from practice: Australian bush products for commercial markets' (2009) 74 *GeoJournal* 429, 430-431, 434; Cleary, above n 13, 4-6; Smallacombe, Davis and Quiggin, above n 2, 17-18.

³¹ See, e.g., Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 4-6; Anderson, above n 3, i; see, e.g., Michael Dodson and Olivia Barr, 'Breaking the deadlock: developing an Indigenous response to protecting Indigenous traditional knowledge' (2007) 11(2) *Australian Indigenous Law Reporter* 19, 20; Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Native title report' (Report, Australian Human Rights Commission, 2008) <http://www.hreoc.gov.au/social_justice/nt_report/ntreport08/> 215-216; Donna Craig and Michael Davis, 'Ethical relationships for biodiversity research and benefit - sharing with Indigenous peoples' (2005) 2 *Macquarie Journal of International and Comparative Environmental Law* 1, 13-14, 19-20; Terri Janke, 'Our culture our future: a report on Australian Indigenous cultural and intellectual property rights' (Report, Aboriginal and Torres Strait Islander Commission and Australian Institute of Aboriginal and Torres Strait Islander Studies, 1998) <<http://www.frankellawyers.com.au/media/report/culture.pdf>> ; Janke, above n 2; Smallacombe, Davis and Quiggin, above n 2, 13-14; Paul Kuruk, 'Cultural heritage, traditional knowledge and Indigenous rights: an analysis of the Convention for Safeguarding of Intangible cultural heritage' (2004) 1 *Macquarie Journal of International and Comparative Environmental Law* 111, 128-129.

³² Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1; see also *ibid* 7-8, 12; Walsh and Douglas, above n 30, 413; Cunningham, Garnett and Gorman, above n 30, 430.

³³ Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 16-17; *Arnpemirrentye: relationships between bush foods, people, country and all things* (Arremte People of Central Australia and Desert Knowledge Cooperative Research Centre, 2009) <http://desertknowledgecsrcmedia.com.au/media/anperimrentye_12_min.html>; Cunningham, Garnett and Gorman, above n 30, 431; Holcombe, Yates and Walsh, above n 21, 261; see also Morse, above n 13, 10.

food means that bush harvesters now compete with specialist growers to supply raw bush food material to traders, processors and restaurants.³⁴ Reduced demand for bush harvested produce may threaten the fulfilment of aspirations that occur as a matter of course in the bush harvest.³⁵ These aspirations include the transmission, application, development and maintenance of bush food knowledge.³⁶

Some authors suggest that these aspirations may be alternatively enabled by the recording of knowledge in a register or database.³⁷ The aspirations supported by these institutional measures depend on whether access to the recording is private or public.³⁸ For example, recording knowledge in a private database may help Aboriginal and Torres Strait Islander people transmit, maintain and disseminate the knowledge according to customary protocols.³⁹ While recording knowledge in a publically available register may help establish a legal claim to the knowledge,⁴⁰ it may make it harder for Aboriginal and Torres Strait Islander people to maintain the knowledge according to customary protocols.⁴¹ In general, recording knowledge in a register or database may not suit communities that have limited access to technology, or who aspire to transmit, maintain, apply and develop knowledge through cultural practice or oral tradition.⁴² It may also feed the perception that Aboriginal and Torres Strait Islander knowledge is static rather than dynamic.⁴³ This may have a negative impact on aspirations related to respect for bush food knowledge as an innovative science.

There is some recent literature that considers whether it is possible to reconcile commercial and cultural values.⁴⁴ This does not preclude consideration of combined or reformed arrangements that can enable diverse aspirations while satisfying commercial demand.⁴⁵ For example, a combination of institutional arrangements, equitable principles and the laws of trusts may help ensure that publically

³⁴ Morse, above n 13, 28.

³⁵ Walsh and Douglas, above n 30, 410; Cleary, above n 13, 4-6; Smallacombe, Davis and Quiggin, above n 2, 17-18.

³⁶ Ibid.

³⁷ Evans et al, above n 1; Janke, above n 2, 133; Smallacombe, Davis and Quiggin, above n 2, 16-17.

³⁸ See Craig and Davis, above n 31, 22; Smallacombe, Davis and Quiggin, above n 2, 59.

³⁹ Smallacombe, Davis and Quiggin, above n 2, 16-17.

⁴⁰ Craig and Davis, above n 31, 22.

⁴¹ Smallacombe, Davis and Quiggin, above n 2, 16-17, 59, 133.

⁴² See, e.g., Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 19.

⁴³ See Janke, above n 2, 133.

⁴⁴ See Walsh and Douglas, above n 30, 395; Miranda Forsyth, 'Do you want it gift wrapped? Protecting traditional knowledge in the Pacific Island countries' in Peter Drahos and Susy Frankel (eds), *Indigenous people's innovation: intellectual property pathways to development* (Australian National University E Press, 2012) 191.

⁴⁵ Walsh and Douglas, above n 30, 395; see generally *ibid* 411; Morse, above n 13, 10; Miers, above n 13, iii; Cunningham, Garnett and Gorman, above n 32, 435; Cleary, above n 13, 2.

available knowledge is maintained according to customary protocols.⁴⁶ Needs and aspirations connected to the bush harvest practice might be enabled by a bush food industry policy that requires stakeholders to consider the social, environmental, economic and cultural impact of choices made along the pathway to bush food commercialisation.⁴⁷

Enabling recognition and remuneration for bush food knowledge

Another major concern raised in the bush food literature is that despite wide-spread acceptance that the bush food industry is 'overwhelmingly reliant' on Aboriginal and Torres Strait Islander bush food knowledge,⁴⁸ there is no formal requirement for industry stakeholders to recognise or remunerate this contribution.⁴⁹ The knowledge accepted as underpinning the industry is twofold. It is the knowledge 'developed and refined over thousands of years'⁵⁰ that has enabled the conservation of the resource and the identification of edible plants, plant locations, growing conditions, nutritional benefits and harvest, storage, preparation, processing and delivery methods.⁵¹ The absence of a formal requirement to recognise and remunerate this contribution means that bush food research institutions can move from ethical policies based on recognition and remuneration for direct contributions to policies based on the recognition of contributions that enhance the collective knowledge database.⁵²

The main challenge in devising arrangements that support recognition and remuneration is the uncertain commercial value of the contribution, particularly when 'the potential value of the resource is independent of [Aboriginal and Torres Strait Islander] knowledge'.⁵³ Legally, authors support contracts as a vehicle to 'regulate access to resources and knowledge, and benefit-sharing in any outcomes of the project or process'.⁵⁴ Knowledge-based contracts can avoid the challenge of valuing

⁴⁶ See Paul Martin and Michael Jeffrey, 'Using a legally enforceable knowledge trust doctrine to fulfil the moral obligation to protect indigenous secrets' (2007) 11 *New Zealand Journal of Environmental Law* 1.

⁴⁷ See, e.g., Marinova and Raven, above n 3; Morse, above n 13, 2, 10, 86; Holcombe, Yates and Walsh, above n 21, 258.

⁴⁸ Morse, above n 13, 3; see also Miers, above n 13, iii; Cunningham, Garnett and Gorman, above n 32, 432; Vincent, above n 13, 1; Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 14.

⁴⁹ See, e.g., Morse, above n 13, 3, 7, 13, 27, 79; Miers, above n 13, iii; Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 6; CSIRO, *Economic development: bush tucker dreaming* <<http://www.csiro.au/files/files/p5e8.pdf>>; Cunningham, Garnett and Gorman, above n 32, 432; Cleary, above n 13, 1; Evans et al, above n 13, 20.

⁵⁰ Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 19.

⁵¹ See, e.g., *ibid* 8, 12-16, 19-20; Morse, above n 13, 10, 39, 79, 83; Holcombe, Yates and Walsh, above n 21, 255, 260-261; Walsh and Douglas, above n 30, 395, 410, 413; Miers, above n 13, 34; Cunningham, Garnett and Gorman, above n 32, 430-431; Cleary, above n 13, 4-6; Smallacombe, Davis and Quiggin, above n 3, 17-18.

⁵² Morse, above n 14; Rural Industries Research and Development Corporation, above n 10, 4.

⁵³ Morse, above n 13, 17.

⁵⁴ Smallacombe, Davis and Quiggin, above n 2, 51; see also *ibid* 53-54; Janke, above n 2, 64, Terri Janke and Robynne Quiggin, 'Indigenous cultural and intellectual property and customary law' (Background Paper 12, Law Reform Commission WA, 2002) <<http://www.terrijanke.com.au/img/publications/pdf/21.BP-12.pdf>> 483; Evans et al, above n 1, 393; Jeremy

knowledge by stipulating an annual fee or percentage of profits to be paid to Aboriginal and Torres Strait Islander parties to the agreement.⁵⁵ However, authors recognise that contractual arrangements are limited by voluntariness, scope and disparate bargaining power.⁵⁶ These factors may explain why:

*In Australia there are currently few examples of ethical and equitable intellectual property negotiations in relation to IEK [Indigenous Ecological Knowledge] of plants used in the food, biopharmaceutical or biomedical industries. There are even fewer, if any, examples of substantive payments or other benefit-sharing returns to Aboriginal and Torres Strait Islander groups.*⁵⁷

This suggests it is timely to investigate how previously unexplored laws might, in isolation or in combination, help Aboriginal and Torres Strait Islander people achieve respect and reward for bush food knowledge. For example, an examination of environmental law, contract law, tort law, corporate law and administrative law might reveal new contractual opportunities and mechanisms that enable fair and equitable outcomes.

Various institutional recommendations may also enhance the potential of contracts to help Aboriginal and Torres Strait Islander people achieve recognition and remuneration for their knowledge. These recommendations include community knowledge protocols to outline how prior informed consent should be sought, how power imbalances might be addressed and what benefits communities want 'from use of their knowledge';⁵⁸ a model agreement to guide the making of knowledge-related contracts;⁵⁹ and a national bush food industry code of conduct to help Aboriginal and Torres Strait Islander people move beyond reliance on 'sympathetic partnerships' for a share of the profits from knowledge-based products.⁶⁰ The call for a national bush food industry code of conduct is premised on the view that existing codes are inadequate 'to guide ethical engagement with Aboriginal people in the bush foods industry and to appropriately value and reward Aboriginal people's knowledge'⁶¹

Morse, 'Know your rights to your Aboriginal plant knowledge: a guide for Aboriginal knowledge holders on recording and commercialising Aboriginal plant knowledge' (2010)

<http://www.terrijanke.com.au/documents/Know_your_rights_may2010.pdf> 22; Morse, above n 13, 79; Holcombe, Yates and Walsh, above n 21, 259.

⁵⁵ See, e.g. Marinova and Raven, above n 3; Australian Government, *Model access and benefit sharing agreement* (12 April 2012) <<http://www.environment.gov.au/biodiversity/science/access/permits/pubs/benefit-sharing-model.pdf>>.

⁵⁶ See, e.g., Janke, above n 2, 64-65; Smallacombe, Davis and Quiggin, above n 2, 51-54; Morse, above n 13, 10, 27; Marinova and Raven, above n 3; Craig and Davis, above n 31, 13-14; Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 14.

⁵⁷ Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 23; see also Janke, above n 31, xix.

⁵⁸ Janke, above n 2, 81; see also Anderson, above n 3, 7.

⁵⁹ Janke, above n 2, 73.

⁶⁰ Morse, above n 13, 15; see also Smallacombe, Davis and Quiggin, above n 2, 40.

⁶¹ Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1. 7.

because they only apply to certain people⁶² and do not specifically relate to the commercialisation of bush food.⁶³ Some authors also consider that a national code might be preferable to legislative reform because codes can respond to a variety of values, situations and subject matter, and can be altered and implemented without undue bureaucracy.⁶⁴

The above institutional recommendations merit further investigation, particularly with regards to the mechanisms necessary to ensure their effective implementation. For example, what mechanisms might be contained in a community protocol to help resolve issues that arise when knowledge is shared across several communities? What mechanisms might be contained in a model agreement to help determine fair remuneration? What mechanisms might be contained in a national industry code of conduct to help ensure that contracts are negotiated within an ethical framework? It is also necessary to consider the potential scope of any protocol, agreement or code.⁶⁵ For example, should compliance be voluntary or mandatory? Consideration of scope and effective implementation mechanisms might be assisted by an evaluation of existing codes and benefit-sharing initiatives.⁶⁶

Ensuring knowledge use is authorised and remunerated

Perhaps the greatest concern of all authors is the lack of legal protection for Aboriginal and Torres Strait Islander knowledge from unauthorised and unremunerated use.⁶⁷ The concern is largely premised on the classification of Aboriginal and Torres Strait Islander knowledge as a form of intellectual property⁶⁸ and the subsequent finding that intellectual property laws are ill-designed to

⁶² See, e.g., Convention on Biological Diversity, *Capacity-building for the early entry into force of the Nagoya Protocol on Access and Benefit-sharing* <<http://www.cbd.int/abs/capacity-building.shtml>>; Australian Institute of Aboriginal and Torres Strait Islander Studies, 'Guidelines for ethical research in Australian Indigenous studies' (2011) <<http://www.aiatsis.gov.au/research/docs/ethics.pdf>>.

⁶³ See generally Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 7-8; see, e.g., Morse, above n 54, 21; Smallacombe, Davis and Quiggin, above n 2, 14-15; Janke, above n 2, 110-111; Convention on Biological Diversity, *Existing instruments, guidelines, codes of conduct and tools addressing ABS* <<http://www.cbd.int/abs/instruments/>>.

⁶⁴ Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 24; see also Darrell Posey and Graham Dutfield, *Beyond intellectual property: toward traditional resource rights for Indigenous peoples and local communities* (International Development Research Centre, 1996) 103; Anderson, above n 3, 28-29.

⁶⁵ See generally Books and Arts Daily, 'Should the Indigenous Art Code be mandatory?', *ABC Radio National* 3 October 2012 <<http://www.abc.net.au/radionational/programs/booksandartsdaily/should-the-indigenous-art-code-be-mandatory3f/4290852>>

⁶⁶ Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 10; see, e.g., Marinova and Raven, above n 3.

⁶⁷ See generally Morse, above n 13, 7, 13; Smallacombe, Davis and Quiggin, above n 2, 29; Janke, above n 2.

⁶⁸ See, e.g., World Intellectual Property Organisation, *What is intellectual property* <<http://www.wipo.int/about-ip/en/>>.

protect this knowledge.⁶⁹ Intellectual property laws grant an individual or company the exclusive, time-limited right to exploit an original creation of the mind that has been reduced to material form.⁷⁰ Conversely, authors note that Aboriginal and Torres Strait Islander knowledge is:

- held and disseminated by ‘owners and their descendants in perpetuity’ and in accordance with customary protocols⁷¹
- shared among community members or already in the public domain⁷²
- developed over many generations from the skills and experience of clans, families or other socio-political groups⁷³
- generally in oral form⁷⁴

Further, intellectual property protection may require a financial investment beyond the resources of most people.⁷⁵

Aboriginal and Torres Strait Islander knowledge that is not protected by law can be freely used by others to develop products that are amenable to intellectual property protection.⁷⁶ Authors recommend several mechanisms to prevent this unauthorised and unremunerated use of knowledge. For example, there is some recent literature that calls for an integration of western and traditional knowledge systems.⁷⁷ The challenge here lies in the identification of practical methods for achieving

⁶⁹ See, e.g., Morse, above n 13, 7, 39; World Intellectual Property Organisation, *Traditional knowledge* <<http://www.wipo.int/tk/en/>>.

⁷⁰ See generally IP Australia, Australian Government <<http://www.ipaustralia.gov.au/>>.

⁷¹ Smallacombe, Davis and Quiggin, above n 2, 42-43.

⁷² Morse, above n 13, 7, 13, 39, 80-81; Cunningham, Garnett and Gorman, above n 32, 432; Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 19; Stephen Munzer and Kal Austiala, 'The uneasy case for intellectual property rights in traditional knowledge' (2009) 27 *Cardozo Arts & Entertainment Law Journal* 37, 53.

⁷³ Smallacombe, Davis and Quiggin, above n 2, 42-43; Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 19; Morse, above n 13, 7.

⁷⁴ Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 19.

⁷⁵ Smallacombe, Davis and Quiggin, above n 2, 25, 42-46; Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 19-20; Janke, above n 31, xxii, 68; Australian Centre for Intellectual Property in Agriculture, *Intellectual property: understanding plant breeders rights ACIPA* <http://www.acipa.edu.au/PBR/1_0_contents.html>; Desert Knowledge Cooperative Research Centre, 'Patents and plant breeders rights in Australian law' (Briefing Paper No 4, DKCRC), <<http://www.desertknowledgecrc.com.au/resource/DKCRC-SS-BP4-Patents-and-plant-breeders-rights-in-Australian-Law.pdf>>; Morse, above n 54, 22.

⁷⁶ See Miers, above n 13, 10; IP Australia, *Plant breeders rights* (1 June 2012) <<http://www.ipaustralia.gov.au/get-the-right-ip/plant-breeders-rights/>>; Morse, above n 54, 22; Australian Centre for Intellectual Property in Agriculture, above n 75.

⁷⁷ See generally Anderson, above n 3, 5; see, e.g., Suzanne Prober, Michael O'Connor and Fiona Walsh, 'Australian Aboriginal peoples' seasonal knowledge: a potential basis for shared understanding in environmental management' (2011) 16(2) *Ecology and Society* 12; Posey and Dutfield, above n 64, 17; Smallacombe, Davis and Quiggin, above n 2, 6; Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 16; Anil Gupta, 'WIPO-

inclusiveness when the two systems use different techniques and methods to validate findings, and different media to communicate results.⁷⁸ Another recommendation is that Aboriginal and Torres Strait Islander people record their knowledge in a register or database so they can object to intellectual property applications for products based on that knowledge.⁷⁹ What needs to be considered here is how Aboriginal and Torres Strait Islander people might be made aware of intellectual property applications, and how defensive protection might be exerted without sacrificing the knowledge to the public domain.⁸⁰ This is especially so in light of the evidence that suggests a great deal of bush food knowledge is not publically known.⁸¹

There is emerging research on how Aboriginal and Torres Strait Islander people can use geographical indicators and certification marks to distinguish products developed by Aboriginal and Torres Strait Islander people from products developed by others.⁸² This is because geographical indicators certification marks allow for perpetual and collective ownership.⁸³ However, the protection that comes with these marks currently only extends to products⁸⁴ and may require significant financial resources to maintain and enforce.⁸⁵ Also, Aboriginal and Torres Strait Islander people might have to incorporate before they can apply for a mark.⁸⁶ It is worthwhile considering how the laws governing geographical indicators and certification marks might be arranged to protect the knowledge behind the product. Further, more reflection is needed on the impacts of incorporation on Aboriginal and Torres Strait Islander people and communities.⁸⁷

UNEP study on the role of intellectual property rights in the sharing of benefits arising from the use of biological resources and associated traditional knowledge' (Report, World Intellectual Property Organization and the United Nations Environment Programme 2004) <http://www.wipo.int/tk/en/publications/769e_unep_tk.pdf> 32-33.

⁷⁸ Prober, O'Connor and Walsh, above n 77; see also Posey and Dutfield, above n 64, 17.

⁷⁹ See, e.g., Janke, above n 2, 42-44, 132; Smallacombe, Davis and Quiggin, above n 2, 16, 59; Evans et al, above n 1, 391; Desert Knowledge Cooperative Research Centre, above n 75.

⁸⁰ See generally Smallacombe, Davis and Quiggin, above n 2, 9, 16.

⁸¹ See, e.g., Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 19; Evans et al, above n 13, 20; Holt, above n 7; Rural Industries Research and Development Corporation, above n 10, 11.

⁸² See, e.g., Munzer and Austiala, above n 72, 55; Peter Drahos, 'When cosmology meets property: Indigenous people's innovation and intellectual property' (Research Paper No 90, Queen Mary School of Law, 2011) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1946119> 248.

⁸³ Ibid.

⁸⁴ See, e.g., Morse, above n 54, 19, 22; Smallacombe, Davis and Quiggin, above n 2, 48; Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 23.

⁸⁵ Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 24.

⁸⁶ Morse, above n 54, 20.

⁸⁷ See, e.g., *ibid* 7; Shane Greene, 'Indigenous people incorporated? Culture as politics, culture as property in pharmaceutical bioprospecting' (2004) 45(2) *Current Anthropology* 211.

The concern over the lack of legal protection for Aboriginal and Torres Strait Islander knowledge from unauthorised or unremunerated use has led many authors to recommend a new approach:

*Such a new approach is often termed a sui generis—literally: ‘of its own kind’. A sui generis approach usually comprises a specially formulated legislative regime that takes into account the unique elements of Indigenous collective rights in Traditional Knowledge.*⁸⁸

Sui generis regimes generally involve the creation of a new intellectual property right based on the principles of informed consent and equitable benefit sharing.⁸⁹ The capacity of sui generis regimes to help Aboriginal and Torres Strait Islander people achieve their knowledge-related needs and aspirations must be considered in light of the emerging negative evaluations of foreign sui generis regimes,⁹⁰ the limited international reach of domestic legislation,⁹¹ and the impacts of creating a new class of ownership rights. As Miranda Forsyth recently noted in regard to the long-commended Pacific Traditional Knowledge (TK) Model Law:

*By introducing the concept of ‘ownership’ of TK by a finite group of people whose rights are backed by the state, the Model Law is therefore introducing a new and almost certainly troublesome concept into the regulation of TK in the region. The fact that it recognises that there may be communal or individual ownership does not avoid the difficulties that are likely to arise in determining the membership of the ownership group.*⁹²

There is growing support for a national cultural authority to resolve these issues.⁹³ Consideration of institutional arrangements like this must take into account the difficulties faced by similar bodies in resolving ownership issues in cultural heritage,⁹⁴ and the potential impacts of additional bureaucracy and external determinations of rights on Aboriginal and Torres Strait Islander needs and aspirations.⁹⁵

⁸⁸ Smallacombe, Davis and Quiggin, above n 2, 29; Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 5-6, 14.

⁸⁹ Forsyth, above n 44, 202-203; Smallacombe, Davis and Quiggin, above n 2, 11; see also OseiTutu, above n 6, 186.

⁹⁰ See, e.g., Antons, above n 3; Forsyth, above n 44; Owen Dean, *A new South Africa Traditional Knowledge Bill – sui generis protection for TK* (18 March 2012) Intellectual Property Watch <<http://www.ip-watch.org/2012/03/18/a-new-south-africa-traditional-knowledge-bill-%E2%80%93-sui-generis-protection-for-tk/>>.

⁹¹ Forsyth, above n 44, 207.

⁹² *ibid* 202-203; see generally Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 19-20.

⁹³ See, e.g., Terri Janke, 'Guarding ground: a vision for a National Indigenous Cultural Authority' (Paper presented at the Wentworth Lecture 2008, Canberra, 22 August 2008 <http://www.aiatsis.gov.au/events/wentworth/docs/Janke_21Aug08.pdf>

⁹⁴ See, e.g., Kylie Lingard, 'The impact of the law on consultation practices and purposes: a case study of Aboriginal cultural heritage consultation in NSW' (2012) (Occasional Paper Series) *International Journal of Rural Law and Policy* 1, 19.

⁹⁵ See Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 19; Antons, above n 3; see also Forsyth, above n 44, 210.

Ultimately, the ability of a sui generis regime to help Aboriginal and Torres Strait Islander people achieve diverse needs and aspirations merits more examination. Such an examination would be complemented by an analysis of the legal and institutional arrangements that pertain to knowledge that is classified as a resource or capital rather than a form of intellectual property.⁹⁶ Existing arrangements outside the purview of intellectual property may very well contain innovative tools to help Aboriginal and Torres Strait Islander people achieve their diverse needs and aspirations. For example, as Martin and Jeffery found:

*...the combination of four existing areas of law: confidential information, equitable estoppel, statutory prohibitions against misleading or deceptive conduct, and unjust enrichment may in effect provide a comprehensive protection to Indigenous peoples against the misuse of knowledge...*⁹⁷

Of most importance is the development of participatory mechanisms that ensure any new arrangement develops on the basis of information supplied by Aboriginal and Torres Strait Islander resource custodians and communities. Such information might include, but is not limited to:

- Aspirations and needs in relation to Aboriginal and Torres Strait Islander knowledge
- measures to help existing customary institutions meet these aspirations and needs
- mechanisms that support commercialisation 'while retaining key cultural principles'⁹⁸

As Jane Anderson succinctly notes:

*The more that Indigenous peoples are consulted about what the problems being experienced are, and what options are available to deal with the problems when they emerge, the more likely it is that appropriate policy and legal strategies will be developed that address the vast range of interests in accessing Indigenous knowledge.*⁹⁹

Participation and representation in industry development and governance

Bush food authors are increasingly concerned that Aboriginal and Torres Strait Islander involvement in the bush food industry is limited to the supply of raw produce.¹⁰⁰ Potential barriers to increased

⁹⁶ See, e.g., Wikipedia, *Resource* <<http://en.wikipedia.org/wiki/Resource>>; Wikipedia, *Knowledge capital* <http://en.wikipedia.org/wiki/Knowledge_capital>; see also The Free Dictionary, *Capital* <<http://www.thefreedictionary.com/capital>>.

⁹⁷ Martin and Jeffery, above n 46, 1.

⁹⁸ See Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 19-20, 6; Forsyth, above n 44, 211; see also Smallacombe, Davis and Quiggin, above n 2, 61-62; Craig and Davis, above n 31, 13-14; but see Juanita Sherwood, 'Community - what is it?' (1999) 4(19) *Indigenous Law Bulletin* 4 <<http://www.austlii.edu.au/au/journals/ILB/1999/21.html>>.

⁹⁹ Anderson, above n 3, 7; see also Drahos, above n 83, 238-239.

¹⁰⁰ Vincent, above n 13, 2; Cleary, above n 13, 1.

involvement include distance from markets, technology and information.¹⁰¹ Authors agree that unless Aboriginal and Torres Strait Islander people become more involved in the industry, their 'interests...will be sidelined and left behind'.¹⁰² As such, authors recommend Aboriginal and Torres Strait Islander people increase involvement through commercial enterprises and land management services.¹⁰³ However, Aboriginal and Torres Strait Islander people might also seek to represent knowledge-related needs and aspirations through industry governance roles.¹⁰⁴ Consideration of arrangements that enable this aspiration requires consideration of legal and institutional participatory mechanisms that embrace diverse cross-cultural communication needs.¹⁰⁵

Conclusion

To date, bush food authors have identified a range of Aboriginal and Torres Strait Islander needs and aspirations in relation to bush food knowledge. Many authors have examined and proposed a number of legal and institutional arrangements that may enable these needs and aspirations. In regard to legal arrangements, the literature reveals how contracts and intellectual property laws can help and hinder aspirations related to respect, authorisation and reward. There are several laws that await exploration. These include contract law, tort law, partnership law, corporate law, administrative law, commercial law and the various laws invoked by different classifications of Aboriginal and Torres Strait Islander knowledge. Also meriting further investigation is the potential of geographical indicators and certification marks to apply to Aboriginal and Torres Strait Islander knowledge, and how various laws might combine to help Aboriginal and Torres Strait Islander people achieve more needs and aspirations in relation to bush food knowledge.

In regard to institutional arrangements, authors have illuminated the advantages and disadvantages of registers, databases and codes. The literature reveals the important supporting role that institutional arrangements may play in the implementation of legal arrangements, and the importance of

¹⁰¹ Morse, above n 13, 3, 27; Cunningham, Garnett and Gorman, above n 32, 430; Cleary, above n 13, 4-6; Walsh and Douglas, above n 30, 410.

¹⁰² Morse, above n 13, 13; see also Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 6.

¹⁰³ See, e.g., Morse, above n 13, 3, 83, 86; Miers, above n 13, x; Morse, above n 75; Walsh and Douglas, above n 30; Holcombe, Yates and Walsh, above n 21, 263; Cunningham, Garnett and Gorman, above n 32, 430-431; see generally Smallacombe, Davis and Quiggin, above n 2, 21; Slade Lee, 'Horticultural development of bush food plants and rights of Indigenous traditional custodians - the Australian Bush Tomato (*Solanum centrale*) case study' (2012)

¹⁰⁴ Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 6.

¹⁰⁵ See, e.g. ANFIL, above n 12; Janke, above n 31; Posey and Dutfield, above n 64; Sherwood, above n 98; see Smallacombe, Davis and Quiggin, above n 2, 13-14, 21; Kuruk, above n 31, 123, 128-129; Janke and Quiggin, above n 54, 492-493; Anderson, above n 3, 5; Craig and Davis, above n 31, 13-14; Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 14; Cleary, above n 13, 6; Anderson, above n 3, 5-6.

institutional values to equitable engagement. An evaluation of existing international, national and institutional instruments might help reveal effective mechanisms for resolving issues invoked by competing values, complex ownership rules and uncertain economic value. Also awaiting identification and examination are the institutions that bear on various pathways to bush food commercialisation. An exploration of the governance and policy instruments of these institutions may lead to the development of innovative institutional arrangements that ensure Aboriginal and Torres Strait Islander people achieve as many of their knowledge-related needs and aspirations as possible.

This Issues Paper has helped highlight various legal and institutional arrangements that may help Aboriginal and Torres Strait Islander people achieve certain needs and aspirations. The next step is to identify the legal and institutional arrangements invoked by different choices along the pathway to bush food commercialisation. Those arrangements will then be examined to determine the extent they facilitate diverse needs and aspirations, and the extent that combined or reformed arrangements may facilitate more needs and aspirations. The analysis of legal and institutional arrangements will help shape the development of a suite of legal and institutional models that ensure pathways to bush food commercialisation help Aboriginal and Torres Strait Islander people achieve the most possible needs and aspirations in relation to bush food knowledge, and a set of tools that Aboriginal and Torres Strait Islander people may pick up to pursue diverse interests in a variety of ways.

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**Appendix 3: Human Research Ethics Committee (Southern Cross University,
HREC Approval Number: ECN-12-050, 2012)**



DIVISION OF RESEARCH

7 March 2012

Associate Professor Slade Lee
Cooperative Research Centre for Remote Economic Participation
C/- of 1 Susannah Place
Ormiston QLD 4160

E. slade.lee@scu.edu.au

Project: Plant Business

Human Research Ethics Committee
Southern Cross University
Approval Number: ECN-12-050

Your comprehensive and informative ethics application was considered by the HREC at the meeting on the 5th March. The HREC would like to thank you for attending the meeting and answering the specific enquiries from the Committee. The HREC has approved this research project.

Please keep the HREC informed of your progress and submit any changes of protocol to the ethics office as and when required.

The approval is subject to the usual standard conditions of approval which have been forwarded to you by email.

Yours sincerely



per Professor Bill Boyd
Chair, Human Research Ethics Committee (HREC)
Southern Cross University
PO Box 157
Lismore NSW 2480

P: (02) 6620 3569
E. william.boyd@scu.edu.au

Appendix 4: Human Research Ethics Committee, Final report (University of New England, HREC Approval Number: HE14-018, 2014)



Ethics Office
Research Development & Integrity
Research Division
Armidale NSW 2351
Australia
Phone 02 6773 3449
Fax 02 6773 3543
jo-ann.sozou@une.edu.au
www.une.edu.au/research-services

HUMAN RESEARCH ETHICS COMMITTEE

MEMORANDUM TO: Prof Paul Martin, Ms Kylie Lingard, Prof Donna Craig & Ms Lindy Andren

School of Law

This is to advise you that the Human Research Ethics Committee has approved the following:

PROJECT TITLE: Legal and institutional strategies to support the inclusion of Aboriginal and Torres Strait Islander people's interests in the commercialization of native plants

APPROVAL No.: HE14-018

COMMENCEMENT DATE: 12 March, 2014

APPROVAL VALID TO: 12 March, 2015

COMMENTS: Nil. Conditions met in full

The Human Research Ethics Committee may grant approval for up to a maximum of three years. For approval periods greater than 12 months, researchers are required to submit an application for renewal at each twelve-month period. All researchers are required to submit a Final Report at the completion of their project. The Progress/Final Report Form is available at the following web address:
<http://www.une.edu.au/research-services/researchdevelopmentintegrity/ethics/human-ethics/hrecforms.php>

The NHMRC National Statement on Ethical Conduct in Research Involving Humans requires that researchers must report immediately to the Human Research Ethics Committee anything that might affect ethical acceptance of the protocol. This includes adverse reactions of participants, proposed changes in the protocol, and any other unforeseen events that might affect the continued ethical acceptability of the project.

In issuing this approval number, it is required that all data and consent forms are stored in a secure location for a minimum period of five years. These documents may be required for compliance audit processes during that time. If the location at which data and documentation are retained is changed within that five year period, the Research Ethics Officer should be advised of the new location.



Jo-Ann Sozou
Secretary/Research Ethics Officer

Appendix 5: Central Australian Human Research Ethics Committee (Northern Territory Government, Ethics Approval Number: HREC-12-61, 2012)

CENTRAL AUSTRALIAN HUMAN RESEARCH ETHICS COMMITTEE

Centre for Remote Health

PO Box 4066 Alice Springs NT 0871
Ph: (08) 8951 4700 Fax: (08) 8951 4777
Email: cahrec@flinders.edu.au

Associate Professor Slade Lee
Southern Cross University
PO Box 157
Lismore NSW 2480

21st August 2012

Our Ref: HREC-12-61

Dear Associate Professor Lee

RE: Ethics Application – Approval

The Central Australian Human Research Ethics Committee (CAHREC) Chair considered your response to the changes requested for the research project '**Plant Business**'.

The Chair decided that this project now meets the requirements of the National Statement on Ethical Conduct in Human Research.

The Chair decided to **grant approval** for your project to proceed.

The period for which approval has been given is from the date of this letter until the **30th June 2017**. If you do not complete the research within the projected time please request an extension from CAHREC.

Ethics Approval is contingent upon the submission of an annual Progress Report and a Final Report upon completion of the project.

It is your responsibility to ensure you provide these reports. Please make a note of the following dates as failure to submit reports in a timely manner will result in your Ethics Approval lapsing.

Your report(s) is/are due on:

31st August 2013

31st August 2014

31st August 2015

31st August 2016

30th June 2017

Copies of the report form can be downloaded from the CAHREC website.

All the best with your research project.

Yours sincerely

Chris Schwarz
Secretariat Support
Central Australian Human Research Ethics Committee