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
6.3 Policy brief four


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:


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 overwhelming 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’. 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’. 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.

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.

---

BIBLIOGRAPHY

Articles, books, conference papers and reports
Aboriginal and Torres Strait Islander Social Justice Commissioner, Native Title Report (HREOC, 2005)

Aboriginal and Torres Strait Islander Social Justice Commissioner, Native Title Report (HREOC, 2008)

Aboriginal and Torres Strait Islander Social Justice Commissioner, Self-Determination and Effective Participation 'Within the Life of the Nation'? an Australian Perspective on Self-Determination (Australian Human Rights Commission, 2003)


ACIP, A Review of Enforcement of Plant Breeder’s Rights (Final report, ACIP, 2010)


ACIP, A review of enforcement of Plant Breeder’s Rights (Options paper, ACIP, 2008)

ACIP, Collaborations Between the Public and Private Sectors: The Role of Intellectual Property (ACIP, September 2012)

ACIPA, Intellectual Property and the Commercialisation of Research and Development (HAL, 2006)


ACIPA, The Potential Impact of Patents on Australian Horticulture Industries (HAL, 2009)


Alexander, Merle et al, The Role of Registers in the Protection of Traditional Knowledge: From Concept to Practice (UN University Institute of Advanced Studies, 2004)


ALRC, Essentially Yours: The Protection of Human Genetic Information in Australia (ALRC, 2003)

ALRC, For Your Information: Australian Privacy Law and Practice (ALRC, 2008)

ALRC, Genes and Ingenuity: Gene Patenting and Human Health (ALRC, 2004)

ALRC, Serious Invasions of Privacy in the Digital Era (ALRC, 2014)

Altman, Jon and David Martin (eds), Power, Culture, Mining: Indigenous Australians and Mining (CAEPR, 2009)

Altman, Jon and Libby Larson, 'Indigenous Protected Areas Programme Review' (submission, CAEPR, 2006)

Altman, Jon, The ‘National Emergency’ and Land Rights Reform: Separating Fact from Fiction (Oxfam Australia, 2007)


Anderson, Jane, Alternative Dispute Resolution for Disputes Related to Intellectual Property and Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources (WIPO, 2012)


Antons, Christoph, '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


Australian Government, *Closing the Gap: Prime Minister’s Report* (Commonwealth, 2014)


Australian Institute of Marine Science, Submission to the House of Representatives Standing Committee on Science and Innovation, *Inquiry into Pathways to Technological Innovation* (AIMS, 2005)
Australian Macadamia Society, Market report (AMS, 2014)

Australian National Audit Office, Developing and Managing Contracts (Australian Government, 2007)


Baruch, Brody, 'Traditional Knowledge and Intellectual Property' (2010) 20(3) Kennedy Institute of Ethics Journal 231


Bauman, Toni, Chris Haynes and Gabrielle Lauder, Pathways to the Co-Management of Protected Areas and Native Title in Australia (AIATSIS, 2013)


Berner, Maureen, M Justin, M Amos and R S Morse, 'What Constitutes Effective Citizen Participation in Local Government? Views from City Stakeholders' (2011) 35(1) Public Administration Quarterly 128

Biber-Klemm, Susette et al, The Current Law of Plant Genetic Resources and Traditional knowledge’ in Susette Biber-Klemm and Thomas Cottier (eds), Rights to Plant Genetic Resources and Traditional Knowledge (Swiss Agency for Development and Cooperation, 2006)


Blakeney, Michael, *Trends in Intellectual Property Rights Relating to Genetic Resources for Food and Agriculture* (Commission on Genetic Resources for Food and Agriculture, 2011)


Brascoupe, Simon and Karin Endemann, *Intellectual Property and Aboriginal People* (Department of Indian and Northern Affairs Canada, 1999)


Bryceson, K, *Value Chain Analysis of Bush Tomato and Wattle Seed Products* (DKCRC, 2008)

Butiu, C a and M Pascaru, 'Triangulation and Results Restitution in Social Service Needs Assessment' (2014) 46 *Revista De Cercetare Si Interventie Sociala* 273


Carino, Joji, 'Poverty and Wellbeing' in State of the World's Indigenous Peoples (UN, 2009)


Cherikoff, Vic, 'Marketing the Australian Native Food Industry' (RIRDC, 2000)


Chivian, E (Ed), Biodiversity: Its Importance to Human Health (Center for Health and the Global Environment, 2002)

Clark, Michael, Australian Native Food Industry Stocktake (RIRDC, 2012)

Clark, Michael, Native foods R&D Priorities and Strategies 2013-2018 (RIRDC, 2013)

Clarke, Philip, Aboriginal People and Their Plants (Rosenberg, 2007)

Cleary, Jen et al, Development of a value-driven bush foods industry chain that rewards Aboriginal people (Paper presented at the XXI International Grassland Congress and VIII International Rangeland Congress, Inner Mongolia, China, 29 June-5 July 2008)

Cleary, Jen, 'Business Exchanges in the Australian Desert: It’s About More than the Money' (2012) 7 Journal of Rural and Community Development 1
Cleary, Jen, *Perspectives on Developing New Cooperative Arrangements for Bush-Harvested Bush Tomatoes from Desert Australia* (DKCRC, 2009)


Craig, Donna 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


Cuquma, Savenaca, 'Plant Genetic Resources (PGR) and its Importance in Conservation, Management and Utilization' (2010) (3) Technical Bulletin 1


Das Gupta, a, 'Does Indigenous Knowledge have Anything to Do with Sustainable Development?' (2011) 7(1) Antrocom Online Journal of Anthropology 57


Davis, Michael, Biological Diversity and Indigenous Knowledge (Australian Government, 1998)


Davis, Michael, Undertaking Projects and Research in Central Australia: CLC Protocols and the Development of Protocols for Projects and Research in the CLC Region (CLC and DKCRC, 2005)
Deek, Oliver, *Environmental Policy Instruments for Conserving Biodiversity* (Springer, 2008)


Dudgeon, Pat et al, *Effective Strategies to Strengthen the Mental Health and Wellbeing of Aboriginal and Torres Strait Islander People* (Closing the Gap Clearinghouse, 2014)


Ellis, Stephen, 'Meaningful consideration? A review of Traditional Knowledge in Environmental Decision Making' (2005) 58(1) *Arctic* 66

Evans, Louis et al, 'Plants for People: Case Study Report' (DKCRC, 2010)


Evuleocha, Stevina, 'Managing Indigenous Relations: Corporate Social Responsibility in a New Age of Activism' (2005) 10(4) Corporate Communications 328


Ferguson, Graham, A Scoping Study of the Potential for Export of Australia Nursery Intellectual Property (HAL, 2005)


Geels, F W et al, 'The Feasibility of Systems Thinking in Sustainable Consumption and Production Policy' (Report, Department for Environment, Food and Rural Affairs, Brunel University, 2008)


Glowka, Lyle, *The Role of Law in Realising the Potential and Avoiding the Risks of Modern Biotechnology: Selected Issues of Relevance to Food and Agriculture* (Commission on Genetic Resources for Food and Agriculture, 2002)


Gratani, Monica Et Al, 'Is Validation of Indigenous Ecological Knowledge a Disrespectful Process? A Case Study of Traditional Fishing Poisons and Invasive Fish Management from the Wet Tropics, Australia' (2011) 16(3) Ecology and Society 25


Greene, Shane, 'Indigenous People Incorporated? Culture As Politics, Culture As Property in Pharmaceutical Bioprospecting' (2004) 45(2) Current Anthropology 211


Gupta, Anil, Study on the Role of Intellectual Property Rights in the Sharing of Benefits Arising from the Use of Biological Resources and Associated Traditional Knowledge (WIPO and UNEP, 2004)

Hansen, Stephen and Justin Van Fleet, 'Issues and Options for Traditional Knowledge Holders in Protecting their Intellectual Property' in Stephen Hansen and Justin Van Fleet (eds), Sharing the Art of IP Management (2007)

Hansen, Stephen and Justin VanFleet, Traditional knowledge and intellectual property: a handbook on issues and options for traditional knowledge holders in protecting their intellectual property and maintaining biological diversity (American Association for the Advancement of Science, 2003)


Hegarty, M, E Hegarty and R Wills, *Food Safety of Australian Plant Bushfoods* (RIRDC, 2001)


Holcombe, Sarah, M Davis and T Janke, *Indigenous Ecological Knowledge and Natural Resources In the Northern Territory: Guidelines For Indigenous Ecological Knowledge Management (Including Archiving and Repatriation)* (NRMB, 2009)


Holmes, Brenton, *Citizens' engagement in policymaking and the design of public services* (Australian Government, 2011)

Holt, Sally, 'Native food industry set to expand' (May 2005) 160 *Farming Ahead* 1

Howden, Kristen, 'Indigenous Traditional Knowledge and Native Title' (2001) 24(1) *University of New South Wales Law Journal* 60


Hugo, Graeme, Helen Feist and George Tan, *Population Change in Regional Australia 2006-11* (Australian Population and Migration Research Centre, 2013)


Hunt, Janet, *Engagement with Indigenous Communities in Key Sectors* (Closing the Gap Clearinghouse, 2013)
Hunt, Janet, *Engaging with Indigenous Australia: Exploring the Conditions for Effective Relationships with Aboriginal and Torres Strait Islander Communities* (Closing the Gap Clearinghouse, 2013)

Hutchinson, Terry and Nigel Duncan, 'Defining and Describing What we Do: Doctrinal Legal Research' (2012) 17(1) *Deakin Law Review* 83


Janke, Terri, *Follow the Stars: Indigenous Culture, Knowledge and Intellectual Property Rights* (Paper Presented at the the Torres Strait Islands – a Celebration Conference, Brisbane, 3 July 2011)


Johnson, R Burke, Anthony Onwuegbuzie and Lisa a Turner, 'Toward a Definition of Mixed Methods Research' (2007) 1(2) *Journal of Mixed Methods Research* 112


Jonge, Bram De, 'What is Fair and Equitable Benefit-Sharing?' (2011) 24 *Journal of Agricultural and Environmental Ethics* 127

Joshi, Rajul and John Chelliah, 'Sharing the Benefits of Commercialisation of Traditional Knowledge: What Are the Key Success Factors?' (2013) (93) *Intellectual Property Forum* 60


Kate, Kerry Ten and Sarah a Laird, 'Bioprospecting Agreements and Benefit Sharing with Local Communities: Promoting Intellectual Property in Developing Countries' in J Michael Finger and Philip Schuler (eds), *Poor People's Knowledge* (World Bank and Oxford University Press, 2004)

Kate, Kerry Ten and Sarah Laird, 'Biodiversity and Business: Coming to Terms with the ‘Grand Bargain’" (2000) 76(1) *International Affairs* 241


Kukathas, Chandran, 'Cultural Privacy' (2008) 91(1) The Monist 68


Lane, Marcus, Cathy Robinson and Bruce Taylor, Contested Country: Local and Regional Natural Resources Management in Australia (CSIRO, 2009)


Lingard, Kylie, ‘Key Issues and Opportunities in Developing Laws to Support the Diverse Interests of Aboriginal and Torres Strait Islander Peoples in the Commercialisation of Traditional Plant Foods', International Journal of Sustainable Development and World Ecology (submitted, June 2015)

Lingard, Kylie, ‘Strategies to Support the Interests of Aboriginal and Torres Strait Islander Peoples in the Commercial Development of Gourmet Bush Food Products’ (2015), International Journal of Cultural Property (submitted, August 2015)

Lingard, Kylie, 'Legal Support for the Interests of Aboriginal and Torres Strait Islander Peoples in the Commercial Development of New Native Plant Varieties: Current Status and Future Options' *Australian Intellectual Property Journal* (submitted, March 2015)


Lovell, Ian, *Freight Improvement Toolkit: Getting Quality Healthy Food to Remote Indigenous Communities* (National Rural Health Alliance, 2007)

Low, Nicholas and Brendan Gleeson, ‘One Earth: Social and Environmental Justice’ (1999) (2) *TELA: Social & Environmental Justice*

Low, Tim, *Wild Food Plants of Australia* (Angus & Robertson, 1991)


Maiden, Joseph Henry, *The Useful Native Plants of Australia (Including Tasmania)* (Technological Museum of New South Wales, 1889)

Malik, Alex, 'Protecting Works by Australian Aborigines' (2007) 11(4) *Copyright & New Media Law Newsletter* 3


Martin, Paul and Donna Craig, 'Accelerating the Evolution of Environmental Law Through Continuous Learning from Applied Experience' in Paul Martin and Amanda Kennedy (eds), Implementing Environmental Law (Edward Elgar, Forthcoming)


Martin, Paul and Miriam Verbeek, Sustainability Strategy (Federation Press, 2006)

Martin, Paul et al, 'Asserting Cultural Interests Through the Law: Issues and Innovations' in Indigenous Knowledge (Lexisnexis, Forthcoming)

Martin, Paul, et al, Developing a Good Regulatory Practice Model for Environmental Regulations Impacting on Farmers (Australian Farm Institute, 2007)


Mason, Jennifer, 'Mixing Methods in a Qualitatively Driven Way' (2006) 6(1) Qualitative Research 9


McDonald, J K et al, The Effect of Post-Harvest Handling on Selected Native Food Plants (RIRDC, 2006)


McGregor, Murray and Craig James, 'Livelihoods in desert Australia' (2011) 33 *The Rangeland Journal*


Miers, Geoff, *Cultivation and Sustainable Wild Harvest of Bushfoods by Aboriginal Communities in Central Australia* (RIRDC, 2004)

MLDRIN, *Echuca Declaration* (MLDRIN and NBAN, 2010)

Moody, Helen, *Supporting and Advancing Australian Plant Breeding* (NGIA, 2009)


Morley, Sam, *Success factors for Indigenous entrepreneurs and community-based enterprises* (Closing the Gap Clearinghouse, 2014)


Morse, Jock, *Bush Resources: Opportunities for Aboriginal Enterprise in Central Australia* (DKCRC and CLC, 2005)
Muller, Manuel Ruiz, *Thinking Outside the Box: Innovative Options for an Operational Regime on Access and Benefit Sharing* (ICTSD, 2010)


Nemeskeri, Robert et al, *System Dynamics to Diagnose and Devise Patterns for Sustainable Consumption and Production* (SYSCONS, 2008)


Norchi, Charles, 'Indigenous knowledge as intellectual property' (2001) 33 *Policy Sciences* 387


O'Dea, Kerin Et Al, 'Traditional Diet and Food Preferences of Australian Aboriginal Hunter-Gatherers' (1991) 334(1270) *Philosophical Transactions: Biological Sciences* 233

OECD, *Competition Policy in Australia* (OECD, 2010)


Oguamanam, Chidi, 'Genetic Resources and Access and Benefit Sharing: Politics, Prospects and Opportunities for Canada after Nagoya' (2011) 22(2) *Journal of Environmental Law and Practice* 87

ORIC, The top 500 Aboriginal and Torres Strait Islander Corporations 2012-13 (ORIC, 2014)


Otoo, Samuel, Natalia Agapitova and Joy Behrens, The Capacity Development Results Framework: A Strategic and Results-Oriented Approach to Learning for Capacity Development (World Bank, 2009)

Parry, Glenn, Linda Newnes and Xiaoxi Huang, 'Goods, Products and Services' in M Macintyre, G Parry and J Angelis (eds), Service Design and Delivery (2011)


Peterson, Nicole, 'Excluding to Include: (Non)Participation in Mexican Natural Resource Management' (2011) 28(1) Agriculture and Human Values 99

Plomley, Brian and Mary Cameron, Plant Foods of the Tasmanian Aborigines (Queen Victoria Museum and Art Gallery, 1993)


Povah, Frank, 'No-One Listens to Us...: What Benefits May Be Gained from the Collection and Dissemination of Traditional Knowledge Held by the So-Called Urban Aborigines?' (1991) (13) Oral History Association of Australia Journal 91

Pricewaterhouse Coopers, A Guide to Directors’ Duties and Responsibilities for Non-Listed Public Companies and Proprietary Companies in Australia (PWC, 2011)

Prime Minister’s Science Engineering and Innovation Council, Biodiscovery (Australian Government, 2005)


Rea, Naomi and Anmatyerr Water Project Team, Provision for Cultural Values in Water Management: The Anmatyerr Story (Land and Water Australia, 2008)


Reed, Malcolm, Cultivating Australian Native Plants: Achieving Results with Small Research Grants (RIRDC, 1999)
Reed, Mark, 'Stakeholder Participation for Environmental Management: A Literature Review' (2008) 141 Biological Conservation 2417

Richardson, Benjamin and Donna Craig, 'Indigenous Peoples, Law and the Environment' in Environmental law for sustainability (Hart Publishing, 2006)


Rimmer, Matthew, 'Blame it on Rio: Biodiscovery, Native Title, and Traditional Knowledge' (2003) 7 Southern Cross University Law Review 1


Robins, Juleigh, Wild Food: 100 Recipes Using Australian Ingredients (Penguin Australia, 2009)


Roughley, Alice and Susie Williams, *The Engagement of Indigenous Australians in Natural Resource Management: Key Findings and Outcomes from Land & Water Australia and the Broader Literature* (Land and Water Australia, November 2007)


Ryder, Maarten and Yvonne Latham, *Cultivation of Native Food Plants in Southeastern Australia* (RIRDC, 2005)

Ryder, Maarten, Yvonne Latham and Bruce Hawke, *Cultivation and Harvest Quality of Native Food Crops* (RIRDC, 2008)


Sapir, E, *Culture, Language and Personality* (University of California Press, 1956)

Sarah Holcombe, Michael Davis and Terri Janke, *Indigenous Ecological Knowledge and Natural Resources In the Northern Territory: Guidelines For Indigenous Ecological Knowledge Management (Including Archiving and Repatriation)* (NRMB, 2009)


Sedlackoa, Michal Et Al, 'Participatory Systems Mapping for Sustainable Consumption: Discussion of a Method Promoting Systemic Insights' (2014) 106 Ecological Economics 33


Shiva, Vandana, Protect or Plunder: Understanding Intellectual Property Rights (Zed Books, 2001)

Simpson, Bradley Et Al, 'Learning from Both Sides: Experiences and Opportunities in the Investigation of Australian Aboriginal Medicinal Plants' (2013) 16(2) Journal of Pharmacy and Pharmaceutical Sciences 259

Smallacombe, Sonia, Michael Davis and Robynne Quiggin, Scoping Project on Aboriginal Traditional Knowledge (DKCRC, 2007)

Smyth, Heather, Defining the Unique Flavours of Australian Native Foods (RIRDC, 2010)


Standing Committee on Aboriginal and Torres Strait Islander Affairs, 'Inquiry into Language Learning in Indigenous Communities' (Commonwealth, 2012)

Standing Committee on Aboriginal and Torres Strait Islander Affairs, Open for Business: Developing Indigenous Enterprises in Australia (Commonwealth, 2008)


Standing Committee on Legal and Constitutional Affairs, Cracking Down on Copycats: Enforcement of Copyright in Australia (Commonwealth, 2000)

Standing Committee on Science and Innovation, Inquiry into Pathways to Technological Innovation (Commonwealth, 2006)
Standing Committee on Science and Innovation, *Pathways to Technological Innovation* (Commonwealth, 2006)


Stevenson, Marc, 'Indigenous Knowledge in Environmental Assessment' (1996) 49(3) *Arctic* 278


Stolper, David, Nick Wyatt and Christine Mckenna, *Evaluating the Effectiveness of Reconciliation Action Plans* (Reconciliation Australia, 2012)


Tauri, Juan and Robert Webb, 'The Waitangi Tribunal and the Regulation of Maori Protest' (2011) 26 *New Zealand Sociology* 21


Ubels, Jan, Naa-Aku Acquaye-Baddoo and Alan Fowler (eds), *Capacity Development in Practice* (Earthscan, 2010)


West, Ida, 'Bush Food' (1985) 9(4) Aboriginal and Islander Health Worker Journal 20


Whitman, Darrell, 'Stakeholders and the Politics of Environmental Policymaking' in Jacob Park, Ken Conca and Matthias Finger (eds), *The Crisis of Global Environmental Governance: Towards a New Political Economy of Sustainability* (Routledge, 2008)


Williams, Alice and Tim Sides, *Wiradjuri Plant Use in the Murrumbidgee Catchment* (Murrumbidgee Catchment Management Authority, 2008)


Yeasmin, Sabina and Khan Ferdousour Rahman, 'Triangulation' Research Method As the Tool of Social Science Research' (2012) 1(1) *Bangladesh University of Professionals Journal* 154

Young, H Peyton, *Social norms* (University of Oxford, 2007)

Young, James, 'Cultures and Cultural Property' (2007) 24(2) *Journal of Applied Philosophy* 111

**Cases**

*Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia* [2013] HCA 33 (7 August 2013)

*Bulun Bulun, John and Anor v R and T Textiles Pty Ltd* [1998] FCA 1082

*Coco v A N Clark (Engineers) Ltd* [1969] RPC 41

*Foster v Mountford and Rigby Ltd* (1976) 14 ALR 71

*Mabo v Queensland* (No 2) (1992) 175 CLR 1

*Milpurrurruru and others v Indofurn Pty Ltd and others* (1993) 130 ALR 659

*Onus v Alcoa of Australia Ltd* (1981) 149 CLR 27

*Western Australia v Ward* (2002) 191 ALR 1

*Yumbulul v Reserve Bank of Australia Ltd* (1991) 21 IPR 482
Legislation

Aboriginal and Torres Strait Islander Land Holding Act 2013 (QLD)

Aboriginal Cultural Heritage Act 2003 (QLD)

Aboriginal Heritage Act 1988 (SA)

Aboriginal Heritage Act 2006 (Vic)

Aboriginal Heritage Act 2006 (Vic)

Aboriginal Land Act 1991 (QLD)

Aboriginal Land Rights (Northern Territory) Act 1976 (NT)

Aboriginal Land Rights Act 1983 (NSW)

Aboriginal Lands Act 1970 (Vic)

Aboriginal Lands Act 1995 (Tas)

Aboriginal Lands Trust Act 2013 (SA)

Aboriginal Relics Act 1975 (Tas)

Administrative Decisions (Judicial Review) Act 1977 (Cth)

Australia New Zealand Food Authority Standard 1.5.1 Novel Foods 2000 (Cth)

Australia New Zealand Food Authority Standard 3.2.1 Food safety programs 2000 (Cth)

Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989 (Cth)

Biodiscovery Act 2004 (Qld)

Biological Control Act 1986 (SA)

Biological Control Act 1986 (Tas)

Biological Control Act 1986 (Vic)

Biological Resources Act 2006 (NT)

Biosecurity and Agriculture Management Act 2007 (WA)

Botanic Gardens and State Herbarium Act 1978 (SA)

Competition and Consumer Act 2010 (Cth)
Copyright Act (Cth)
Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)
Designs Act 2003 (Cth)
Environment Protection and Biodiversity Conservation Act 1999 (Cth)
Environment Protection and Biodiversity Conservation Regulations 2000 (Cth)
Export Control (Orders) Regulations 1982 (Cth)
Export Control (Plants and Plant Products) Order 2011 (Cth)
Export Control (Processed Fruits and Vegetables) Orders 1987 (Cth)
Export Control Act 1982 (Cth)
Flora and Fauna Guarantee Act 1988 (Vic)
Food Act 2001 (ACT)
Food Act 2001 (SA)
Food Act 2003 (Tas)
Food Act 2004 (NT)
Food Act 2004 (NT)
Food Act 2006 (QLD)
Food Act 2008 (WA)
Food Regulation 2010 (NSW)
Food Standards Australia New Zealand Act 1991 (Cth)
Heritage Act 2011 (NT)
Land Administration Act 1997 (WA)
Motor Accidents Compensation Act 1999 (NSW)
National Parks and Wildlife Act 1972 (SA)
National Parks and Wildlife Act 1974 (NSW)
Native Title Act 1993 (Cth)
Nature Conservation Act 1992 (Qld)
Nature Conservation Act 2014 (ACT)

Patents Act 1990 (Cth)

Plant Breeder’s Right Act 1994 (Cth)

Primary Industries Research and Development Act 1989 (Cth)

Royal Botanic Gardens Act 1991 (Vic)

Royal Botanic Gardens and Domain Trust Act 1980 (NSW)

Science and Industry Research Act 1949 (Cth)

Territory Parks and Wildlife Conservation Act 2006 (NT)

Threatened Species Conservation Act 1995 (NSW)

Threatened Species Protection Act 1995 (Tas)

Trade Marks Act 1995 (Cth)

Wildlife Conservation Act 1950 (WA)

Workers' Compensation and Injury Management Act 1981 (WA)

Workers' Compensation and Rehabilitation Act 2003 (QLD)

International instruments


Berne Convention for the Protection of Literary and Artistic Works, 9 September 1886, last revised on 24 July 1971, 1161 UNTS 30


Convention on Biological Diversity, Conference of the Parties (COP), Decision VI/24 A (2002) (the 'Bonn Guidelines')


Madrid Agreement Concerning the International Registration of Marks, signed 14 April 1891, amended 28 September 1979

Nagoya protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization (ABS) to the Convention on Biological Diversity, opened for signature 2 February 2011 (entered into force 12 October 2014)

Paris Convention for the Protection of Industrial Property, 828 UNTS 303 (signed and entered into force 20 March 1883, last amended 28 September 1979)


Trademark Law Treaty, signed 27 October 1994, 2037 UNTS 35 (entered into force 1 August 1996)


Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948)

Other
AAP, 'Renaissance for Australia’s biotech industry' (Financial Review, 29 October 2013)


ABS, Aboriginal and Torres Strait Islander Australia revealed as 2011 Census data is released <http://www.abs.gov.au>

ABS, Counts of Aboriginal and Torres Strait Islander Australians 2011 <http://www.abs.gov.au >

Ad Hoc Open-Ended Inter-Sessional Working Group on Article 8(J) and Related Provisions of the Convention on Biological Diversity, ‘Considerations for
developing technical guidelines for recording and documenting traditional knowledge and the potential threat of such documentation’,
UNEP/CBD/WG8J/5/3/Add.2 (15-19 October 2007)


AIATSIS, *Accessing the AIATSIS collection*  

AIATSIS, *Ethical research*  
<http://aiatsis.gov.au/research/ethical-research>

AIATSIS, *Koori Mail online collection*  

AIATSIS, *Research publications*  

Alexis Wright, *Biodiversity and Indigenous culture* (Online video, Australian Museum, 2010)  
<http://www.youtube.com/watch?v=LCKyhI-faWw>

Alice Online, *Bush food’s new life in garden*  

Allens, *New regulations on bioprospecting in Commonwealth areas*  

Altman, John, ‘Brokering Aboriginal art: a critical perspective on marketing, institutions, and the state’ (Kenneth Myer Lecture, Deakin University, 2005)

Anangu Pitjantjatjara Yankunytjatjara, *Permits*  

ANBG, *Australian Cultivar Registration Authority*  

ANBG, *Australian national seed bank*  

ANBG, *Australia's Botanic Gardens*  
ANBG, *Conditions of loan and exchange*  

ANBG, *How to propagate Australian plants*  

ANBG, *Permits for release of specimens from the Botanic Gardens*  

ANBG, *The use of plants by Australian Aboriginals*  

ANFIL, *Australian Native Food Industry Limited*  


ANFIL, *Patricia Mamanyjun Torres*  

ANH, *Specimen loan and exchange services*  

ANH, *Traditional uses of Australian native plants*  


Arnold, Bruce, *Caslan analytics: intellectual property*  

Arts Law Centre of Australia, *Protecting your ideas*  

Atlas of Living Australia, 'ALA original NCRIS funding agreement: governance structure' (Funding agreement, 2010)

Atlas of Living Australia, *Atlas data*  
Atlas of Living Australia, Babel Island
<http://regions.ala.org.au/ipa_7aug13/Babel%20Island>

Atlas of Living Australia, Balanggarra
<http://regions.ala.org.au/ipa_7aug13/Balanggarra#to=1959>

AusBiotech, Corporate profile <https://www.ausbiotech.org/content.asp?pageid=2>

AusIndustry, Commercialisation Australia


Australia Macadamia Society, The macadamia industry <http://www.australian-macadamias.org/industry/about-aussie-macadamias/the-macadamia-industry>

Australian Association of National Advertisers, 'AANA code of ethics' (AANA, 2012)

Australian Consumer Law, Business and the ACL

Australian Consumer Law, Legislation

Australian Copyright Council, 'Recipes: legal protection' (Australian Copyright Council, 2012)

Australian Cultivar Registration Authority, How to construct a cultivar name

Australian Government, Do you need to obtain approval under the EPBC Act?

Australian Government, Enterprise connect

Australian Government, 'Funding Agreement between the Commonwealth of Australia as represented by the Australian Research Council and Administering
Organisation regarding funding for Linkage Projects to commence in 2015' (Australia Research Council, 2014)


Australian Government, Indigenous Australians caring for country

Australian Government, List of exempt native specimens

Australian Government, Model access and benefit sharing agreement (2012)


Australian Government, Threatened Species Scientific Committee

Australian Government, Traveller’s guide to Australian interstate quarantine

Australian Government, Working on Country: guide for applicants

Australian Human Rights Commission, Corporate responsibility: developing principles on resource development on Indigenous land


Australian Indigenous Chamber of Commerce, Founding principles
<http://www.indigenouschamber.org.au/about/founding-principles/>

Australian Indigenous Minority Supplier Office Ltd trading as Supply Nation, 'Certification rules for the Supply Nation Certified Label' (Supply Nation, 2009)
Australian Institute of Aboriginal and Torres Strait Islander Studies, 'Guidelines for ethical research in Australian Indigenous studies' (AIATSIS, 2011)

Australian Institute of Aboriginal and Torres Strait Islander Studies, Aboriginal Australia map <http://aiatsis.gov.au/explore/articles/aboriginal-australia-map>


Australian Institute of Marine Science, Submission to the House of Representatives Standing Committee on Science and Innovation, Inquiry into pathways to technological innovation (AIMS, 2005)

Australian Macadamia Society, 'Market report' (AMS, 2014)

Australian National Audit Office, 'Developing and managing contracts' (Australian Government, 2007)


Australian Securities Exchange, 'Corporate governance principles and recommendations with 2010 amendments' (ASX, 2007)

Australian Seed Bank Partnership, 'Safeguarding Australia’s flora through a national network of native plant seed banks' (Council of Heads of Australian Botanic Gardens, 2011)


Belspo, *Used types of research and evaluation* (2015)


Bhatti, Shakeel, *The first ten years of implementation* <http://www.planttreaty.org/content/planttreaty-news-leading-field-iii>


Brash, Stewart and Emma Sleath, 'A new acronym for Desert Knowledge CRC' (5 May 2010) *ABC Alice Springs* <http://www.abc.net.au/local/stories/2010/05/05/2891097.htm>


Calafati, Antonio, 'Traditional knowledge and local development trajectories' (Marche Polytechnic University, 2005)

<http://www.abc.net.au/radionational/programs/lawreport/bio-piracy/2982084>

CBD, Article 8(j): traditional knowledge, innovations and practices
<http://www.cbd.int/traditional/>

CBD, 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>

CBD, Clearing-house mechanism, <https://www.cbd.int/chm/>

CBD, Database on ABS measures <http://www.cbd.int/abs/measures/>

CBD, Existing instruments, guidelines, codes of conduct and tools addressing ABS <http://www.cbd.int/abs/instruments/>

CBD, List of parties <http://www.cbd.int/information/parties.shtml>

CBD, Model ABS agreements and contractual clauses <http://www.cbd.int/abs/resources/contracts.shtml>

CBD, Sustaining life on earth: how the Convention on Biological Diversity promotes nature and human well-being (CBD, 2000)

CBD, The Nagoya Protocol on access and benefit-sharing <http://www.cbd.int/abs/>

Centre for International Development Issues, Institutional arrangements
<http://www.ru.nl/cidin/research/research_programme/institutional/>

Champagne, Wendy, Meet the bush tucker woman (2012) Nature and Health

Clayton Utz, 'Doing business in Australia' (Clayton Utz, 2012)

CLC, Applying for a lease, licence or other interest in Aboriginal land

CLC, CLC Rangers <http://www.clc.org.au/articles/info/clc-rangers1>

CLC, Managing biodiversity: threatened species
CLC, *Preserving environments*  

CLC, *Special Purpose Permits*  

CLC, *What the Central Land Council does*  

Clean Grow, *Clean Grow*  

Cleary, J, R Grey-Gardner and P Josif, 'Hands across the desert: linking desert Aboriginal Australians to each other and to the bush foods industry' (DKCRC, 2009)


Collins, Sarah-Jane, *Medicine goes native* (25 March 2013) *The Age*  

Commercialisation Australia, *Early stage commercialisation*  
[http://www.commercialisationaustralia.gov.au/WhatWeOffer/EarlyStageCommercialisation/Pages/default.aspx](http://www.commercialisationaustralia.gov.au/WhatWeOffer/EarlyStageCommercialisation/Pages/default.aspx)


Corowa, Miriam, *The hidden truth* (15 August 2010) *Message Stick*  

Council of Heads of Australian Botanic Gardens, *Australian Seedbank Partnership*  
Council of Heads of Australian Herbaria, *Australian National Herbarium* 


CRC-REP, Submission to IP Australia, *Finding the way: a conversation with Aboriginal and Torres Strait Islander peoples* (11 April 2002)

Creative Spirits, *Meaning of First Nations’ Peoples: a poem by Zelda Quakawoot* 
<http://www.creativespirits.info/aboriginalculture/arts/meaning-of-first-nations-peoples-australia-day-thought>


CSIRO, 'Australian native foods' (CSIRO, 2006)

CSIRO, *Economic development: bush tucker dreaming* 


CSIRO, *Primary Industries Report Series* 

Daleys, *Finger lime* (*Microcitrus australasica*) 


Department of Aboriginal Affairs, 'Overcoming Indigenous disadvantage in Western Australia' (Government of Western Australia, 2005)


Department of Agriculture Fisheries and Forestry, 'Australian rural research and development priorities' (Australian Government, 2007)


Department of Environment and Conservation, 'Southern Cross resident strikes gold with new plant discovery' (Media release, Government of Western Australia, 24 February 2012)


Department of Environment and Heritage, 'Native plant material collection policy' (Government of South Australia, 2007)


Department of Industry and Resources, 'The path to commercialisation: a guide for planning an early stage innovation project' (Government of Western Australia, 2004)


Department of Industry, *One website: single business service*

Department of Industry, 'Overview of the early stage venture capital limited partnerships program' (Australian Government, 2012)

Department of Industry, 'Single business service programme summary' (Australian Government, 2014)


Department of Innovation Industry Science Research and Tertiary Education, 'Australian innovation system report' (Australian Government, 2011),


Department of Primary Industries, Parks, Water and Environment, 'Managing and monitoring threats to native plants and communities' (Tasmanian Government, 2014)

Department of Prime Minister and Cabinet, 'Head agreement for Indigenous grants' (Australian Government, 2014)


Department of Prime Minister and Cabinet, 'Indigenous Advancement Strategy guidelines' (Australian Government, 2014)


Department of Prime Minister and Cabinet, 'Indigenous capability and development programme guidelines' (Australian Government, 2014)
Department of Resources, 'Fisheries marine ranger training' (Northern Territory Government, 2010)


Department of Sustainability, Environment, Water, Population and Communities, *Explanatory guide: model benefit-sharing agreement*  

Department of Sustainability, Environment, Water, Population and Communities, *The Nagoya Protocol*  

Department of Sustainability, Environment, Water, Population and Communities, *Application for a permit to access biological resources in Commonwealth areas*  

Department of Sustainability, Environment, Water, Populations and Communities, 'Indigenous employment in environmental services' (Australian Government, 2013)

Department of the Environment, *About Indigenous Protected Areas*  

Department of the Environment, *Working on Country*  

Department of the Environment, *Working on Country funded projects*  

Dever, Andrew, *Systems and systems thinking: concept map*  
<http://studysoftwareengineering.wordpress.com/category/subjects/information-systems-in-organisations/>

Didjshop, *Exploitation of Aboriginal culture for economic purposes*  
<http://www.didjshop.com/AboriginalCulture_ExploitationForEconomicPurposes.html>

DKCRC, 'Aboriginal knowledge, western knowledge and intellectual property rights' (DKCRC, 2013)


DKCRC, 'Patents and plant breeders rights in Australian law' (DKCRC, 2014)

Dodson, Veronica, 'Arnpernirrentye: relationships between bush foods, people, country and all things' (Online video, Arrernte People of Central Australia and DKCRC, 2009) <http://www.youtube.com/watch?v=x0PKe9TYvRg>


Entrepreneurship, Commercialisation and Innovation Centre, Commercialisation <http://ecic.adelaide.edu.au/programs/commercialisation/>

European Commission, 'Toolkit for capacity development' (EC, 2009)


Executive Secretary of the Ad Hoc Open-Ended Working Group on Access and Benefit Sharing, ‘Compilation of submissions by parties on experiences in developing and implementing article 15 of the Convention at the national level and measures taken to support compliance with prior informed consent and mutually agreed terms’, UNEP/CBD/WG-ABS/5/INF/2 (20 July 2007)


Faragher, John, Michelle Parsons and Robert Premier, 'Food safety standards and labelling for native plant foods' (RIRDC, 2009)

Farmers' Rights Project, Farmers' rights: resource pages for decision-makers and practitioners <http://www.farmersrights.org/>
Fielke, Andrew, *Andrew to head bush in search of new Indigenous ingredients*  

Food Processing, *Australian Standard for organic and biodynamic products published*  

Fowler, Elizabeth, 'Local Aboriginal business takes over Dubbo Nursery' (Media release, Forestry Corporation, 9 July 2014)

FSANZ, 'Advisory Committee Novel Foods: terms of reference' (FSANZ, 2014)

FSANZ, *Australia New Zealand Food Standards Code*  

FSANZ, 'Guidance tool for determining whether a food is novel or not' (FSANZ, 2013)

FSANZ, *Regulation of novel foods*  

FSANZ, *What we do and don't do*  
<http://www.foodstandards.gov.au/about/whatwedo/Pages/default.aspx>

Fulton, Anne, 'Food safety of three species of native mint' (RIRDC, 2000)

Gardiner-Garden, John, *Closing the gap*  

Generation One, *The Dilly Bag bush tucker products and learning programs*  

Geoscience Australia, *Deserts*  

Gilligan, Brian, 'The Indigenous Protected Areas Programme evaluation' (Australian Government, 2006)

Glennie, Jonathan, ‘Capacity building: isn't that what development is all about?’ (16 December 2011) *The Guardian*  
<http://www.theguardian.com/global-
Gosford, Bob, *Airing the truth on NT permit changes* (19 July 2007) Crikey

Goyal, Jay, *Commercializing new technology profitably and quickly*  
<http://www.oracle.com/лад/industries/high-tech/022564.pdf>

Grant, Steven, 'Russell Ackoff, *Einstein of problem solving, has died* (1 November 2009) Huffington Post  
<http://www.huffingtonpost.com/steven-g-brant/russell-ackoff---the-eins_b_341349.html>

Griggs, Richard, *The cultural dimensions of environmental decision-making*  
<http://www.gdrc.org/decision/edm-culture.html>

HAL, *Investment of levies for Australian horticultural industries: roles and responsibilities*  

HAL, *What is commercialisation?*  

Hale, Jamie, *Understanding research methodology: peer review process*  
<http://psychcentral.com/blog/archives/2011/04/18/understanding-research-methodology-4-peer-review-process/>

Heiss, Anita, *Australian copyright vs Indigenous intellectual and cultural property*  


Hermann, Rachel Marusak, *Trading knowledge as a public good: a proposal for the WTO* (14 October 2011) IP Watch  

<http://www.abc.net.au/rural/telegraph/food/stories/s1167540.htm>

HIA, *Constitution* (2014)


Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *Consolidated Document Relating to Intellectual Property and Genetic Resources*, WIPO IGC, 28th sess, WIPO/GRTKF/IC/28/4, WIPO (2 June 2014)

Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *List and brief technical explanation of various forms in which Traditional knowledge may be found*, WIPO IGC, 17th sess, Doc WIPO/GRTKF/IC/17/INF/9 (6-10 December 2010)

Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *The protection of traditional cultural expressions: draft articles*, IGC, 28th session, WIPO/GRTKF/IC/28/6 (2 June 2014)
Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *The protection of traditional knowledge: draft articles*, IGC, 24th session, WIPO/GRTKF/IC/24/FACILITATORS DOCUMENT REV. 2 (14 May 2013)


Intergovernmental Committee on Intellectual Property and Genetic Resources Traditional Knowledge and Folklore, ‘Background brief no. 2’ (WIPO, 2012)


International Plant Exchange Network, 'An exchange system for botanic gardens for non-commercial purposes according to the CBD' (Botanic Gardens Conservation International, 2003)


International Treaty on Plant Genetic Resources for Food and Agriculture, *AUS* <http://www.planttreaty.org/content/aus>

International Treaty on Plant Genetic Resources for Food and Agriculture, *The benefit sharing fund* <http://www.planttreaty.org/content/benefit-sharing-fund>


IP Australia, 'Application for Plant Breeders Right'  


IP Australia, Commercialising in-house or with a partner  


IP Australia, 'Consultation paper: review of the Plant Breeder’s Rights Advisory Committee' (Australian Government, 2014)

IP Australia, 'Finding the way: a conversation with Aboriginal and Torres Strait Islander People' (Australian Government, 2012)

IP Australia, Have your say on Indigenous Knowledge  

IP Australia, Hybrid Finger Lime (Citrus hybrid) <http://www.ipaustralia.gov.au/>


Janke, Terri and Robynne Quiggin, 'Indigenous cultural and intellectual property and customary law' (Law Reform Commission WA, 2002)


Kimberley Page, ‘Jarlmadangah: scientific vegetation survey: Mangala-Nyikina Rangers are conducting scientific vegetation surveys along the Fitzroy River’ (Media Release, 16 June 2013)

Korff, Jens, *Aboriginal languages*  
[http://www.creativespirits.info/aboriginalculture/language/#axzz3Zzo5MpGB]  

Krattiger, Anatole, *Freedom to operate, public sector research, and product-development partnerships: strategies and risk-management options*  
[http://www.iphandbook.org/handbook/ch14/p01/]  

Kurrajong Australia Native Foods, *Bush tucker shop*  
[http://www.bushtuckershop.com/]  


Larissa Behrendt, *Environmental sustainability: what we can learn from Aboriginal culture* (Online video, 2009)  
[http://www.youtube.com/watch?v=38V6JDmrXU]  

Learning Network on Capacity Development, *Capacity development*  
[http://www.lencd.org/learning/core-capacity-development]  

Lee, L S, *Plant Business project: July 2012*  


Lee, L S, *Project update: December 2013*  
[http://us5.campaign-archive1.com/?u=db0c44a0a4db4cce9a3dceec0&id=a0eb94e7ec&e=76f710e084]  

Lee, Slade, *Project update: June 2014*  
[http://us5.campaign-archive1.com/?u=db0c44a0a4db4cce9a3dceec0&id=54c262ac9a&e=0bd522bfe4]  

Legg, Michael, *Court costs erode right to justice*  


Lom, Helen, *Branding: how to use intellectual property to create value for your business?*  
Macklin J, ‘Indigenous Knowledge Centre study underway' (Media release, 4 February 2010)


McCoy, Andrew, Commercialization model <https://sites.google.com/site/commercializationofinnovation/commercialization-model>

Mellor, Doreen and Terri Janke, Valuing art, respecting culture: protocols for working with the Australian Indigenous visual arts and craft sector <http://www.visualarts.net.au/advicecentre/valuing-art-respecting-culture>


National Association for Sustainable Agriculture, 'NASAA Organic Standard' (NASAA, 2012)

National Health and Medical Research, Australian Research Council and Universities Australia, 'Australian Code for the Responsible Conduct of Research' (Australian Government, 2007)


Natural Resource Management Ministerial Council, 'Nationally consistent approach for access to and the utilisation of Australia's native genetic and biochemical resources' (Commonwealth, 2002)

Natural Resources, *Native plants*  

Nature, *Quality and value: the true purpose of peer review*  
<http://www.nature.com/nature/peerreview/debate/nature05032.html>

NGIA, *About NGIA*  

NGIA, 'National plant labelling guidelines' (NGIA, 2013)

NGIA, *NGIA Board*  


NGIA, 'Nursery Industry 2010 - 2015: the strategic plan for Australia’s greenlife industry, including its nursery, garden, landscaping and related sectors' (NGIA, 2010)

NGIA, 'Plant intellectual property' (Nursery paper, NGIA, 2007)

NGIA, *What is the nursery industry levy?*  

Ninti One, *Aboriginal and Torres Strait Islander Research Engagement Protocol*  


Ninti One, *Protocol for Aboriginal and Torres Strait Islander knowledge and intellectual property* (2012)


NNTT, 'About Indigenous Land Use Agreements (ILUAs)' (NNTT, 2014)

NNTT, *About Indigenous Land Use Agreements (ILUAs)*

NNTT, 'About the National Native Title Tribunal’s registers' (NNTT, 2009)

NNTT, *Determination of native title*

NNTT, *Determinations of native title and claimant applications*

NNTT, 'Making an Area Agreement and applying for registration' (NNTT, 2014)

NNTT, *Native title: an overview*

NNTT, *Registered Indigenous Land Use Agreements*

Northern Land Council, *Research Permits*
<http://www.nlc.org.au/articles/info/research-permit>

NSW Government, ‘Consultation policy’ (Better Regulation Office, 2009)


NSW Government, *Licences*

O’Faircheallaigh, Ciaran, 'Use and management of revenues from Indigenous mining company agreements: theoretical perspectives' (Agreements, Treaties and Negotiated Settlements Project, 2011)

Office of Environment and Heritage, *Indigenous land use agreements*  

Office of the Public Sector, *Improving industry development models for the agriculture, food, and wine sectors*  

OLLIP, *Intellectual property rights for SMEs in the pharmaceutical industry*  


ORIC, *About the Registrar*  

ORIC, *CATSI FAQ*  
<http://www.oric.gov.au/catsi-act/catsi-faq#1A>

ORIC, *Dispute resolution*  

ORIC, *Free services through ORIC*  

O'Toole, Kate and Miranda Tetlow, *Raylene Brown from Kungkas Can Cook*  

*Our generation* (Video, Directed by Sinem Saban, produced by Damien Curtis, 2010)

Outback Chef, *Bush food*  

Outback Pride, *About*  

Outback Pride, *Communities*  


Quarantine Domestic, 'Australian interstate quarantine: a traveller's guide' (Australian Government, 2014)
Queensland Government, *AusPGRIS*  


Reconciliation Australia, 'Impact measurement report 2012' (RA, 2012)

Reconciliation Australia, *Indigenous governance toolkit*  


Reconciliation Australia, 'United Nations Declaration on the Rights of Indigenous Peoples' (RA, 2013)

Reconciliation Australia, *What is the RAP program?*  
<http://www.reconciliation.org.au/raphub/about/>


RIRDC, ‘Corporate plan 2012-2017’ (RIRDC, 2012)

RIRDC, ‘Focus on native foods’ (RIRDC, 2014)


RIRDC, *Health benefits of Australian native foods*  

RIRDC, 'Native foods R&D priorities and strategies' (RIRDC, 2008)

RIRDC, 'The new crop industries handbook: native foods' (RIRDC, 2009)


Rudd, Kevin, 'Apology to Australia's Indigenous peoples' (Parliament of Australia, 13 February 2008)


SAGE, *Purpose of Peer Review* <http://www.sagepub.com/journalgateway/peerReview.htm>

Sanderson, Jay and Kathryn Adams, 'Plant intellectual property' (Nursery papers, NGIA, 2007)


Schnierer, Stephan, Adam Faulkner and Chris Fisher, 'Aboriginal cultural values of the native vegetation of NSW' (Native Vegetation Advisory Council, 2001)

Scullion, N and Melissa Price, ‘Funding to strengthen Indigenous heritage in Durack’ (Media release, Minister for Indigenous Affairs, 8 May 2014)

Secretariat for the Third Intersessional Working Group, 'WIPO technical study on disclosure requirements concerning genetic resources and traditional knowledge', WIPO/GRTKF/IWG/3/14 (2011)

Secretariat of the Convention on Biological Diversity, 'Access and benefit sharing (ABS)' (CBD, 2012)

Secretariat of the Convention on Biological Diversity, 'Introduction to access and benefit-sharing' (CBD, 2010)


Secretariat of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, 'The protection of traditional knowledge: draft gap analysis', WIPO/GRTKF/IC/13/5(b) Rev (2008)


Secretariat of the UN Permanent Forum on Indigenous Issues, 'Engaging Indigenous peoples in governance processes: international legal and policy frameworks for engagement ' (UN, 2005)


Social Ventures Australia, *Our work: Indigenous*  

Song, Yiching and Jingsong Li, 'The role of biodiversity, traditional knowledge and participatory plant breeding in climate change adaptation in karst mountain areas in SW China' (Center for Chinese Agricultural Policy, 2011)

Southern Cross University, *Dr Slade Lee*  

Spencer, Michael and Jocelyn Hardie, 'Indigenous Fair Trade in Australia: scoping study' (RIRDC, January 2011)

Sprint Horticulture, *Horticultural plant sales, licensing and distribution worldwide*  
[http://sprinthorticulture.com/about-us.htm](http://sprinthorticulture.com/about-us.htm)

Stafford, Patrick, *Commercialisation Australia chief confirms new grants on hold amid "unheard of" government review of grants* (11 September 2012) SmartCompany  

Stamp, Andy and Julia Coffman, *Spotlight: system mapping for advocacy planning and evaluation*  

Standing Committee on Primary Industries and Regional Services, 'Bioprospecting: Discoveries changing the future' (Commonwealth, 2001)

*Standing on sacred ground* (Directed by Christopher McLeod, Sacred Land Film Project, 2012)  
[http://www.sacredland.org/](http://www.sacredland.org/)

Stanley, Warwick, *Native Title Tribunal stops mining lease* (28 May 2009) Sydney Morning Herald  

Supply Nation, *About us*  

Supply Nation, *Certification overview*  

Supply Nation, *FAQS*  

Supply Nation, *Get involved with Supply Nation*  
Sutton, Peter, 'Kinds of rights in country: recognising customary rights as incidents of native title' (NNTT, 2001)

Tauli-Corpuz, Victoria, TRIPS and its potential impacts on Indigenous peoples
<http://www.wcc-coe.org/wcc/what/jpc/trips2.html>


Terri Janke and Peter Dawson, 'New tracks: Indigenous knowledge and cultural expression and the Australian intellectual property system', Submission to IP Australia, Finding the Way: a conversation with Aboriginal and Torres Strait Islander peoples (31 May 2012)

The Communications Council, Advertising codes and regulations

The Linux Information Project, Peer review definition
<http://www.linfo.org/peer_review.html>


The Teaching Center, Using peer review to help students improve writing
<http://teachingcenter.wustl.edu/strategies/Pages/peer-review.aspx#.VX6XVfmqpBe>

The World Bank Group, What is Indigenous Knowledge?
<http://www.worldbank.org/afr/ik/basic.htm>

Tobin, Brendan, 'The role of customary law and practice in international ABS and TK governance' (Paper presented at Townsville, 29 March - 2 April 2004)


Twisted Tucker, The twisted tuck shop
<http://twistedtucker.com.au/?post_type=product>
UC Berkeley, *A quick guide to material transfer agreements at UC Berkeley*  
<http://www.spo.berkeley.edu/guide/mtaquick.html>

UN, *Culture*  


UN, 'Indigenous forum discusses implementation of Fourth Session’s recommendations: possible study on proper protection of traditional knowledge'  
(Press Release, 23 May 2007)

UNDP, 'Capacity development: a UNDP primer' (UNDP, 2009)


UNDP, *Institutional arrangements*  

UNDP, *International Human Development Indicators*  

UNDP, *Roster of experts*  
<http://www.undp.org/content/undp/en/home/ourwork/capacitybuilding/roster/>

UNDP, 'UNDP and Indigenous peoples: a policy of engagement ' (UN, 2001)

UNEP, 'Common policy guidelines for participating institutions: principles on access to genetic resources and benefit sharing', UNEP/CBD/WG-ABS/1/INF/1 (November 2000)


United Nations Global Compact, *The ten principles*  
<http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>

United Nations Permanent Forum on Indigenous Issues, *Declaration on the Rights of Indigenous Peoples*
United States National Aboretum, *What is a native plant?*  
[https://www.usna.usda.gov/Gardens/faqs/nativefaq2.html]

University of Alberta, *First Nation cultural heritage in Canada*  
[http://www.law.ualberta.ca/research/aboriginalculturalheritage/]

University of Leeds, *Involved*  
[http://homepages.see.leeds.ac.uk/~lecmsr/involved/index.htm]

University of Sydney, *One-way confidentiality agreement*  

University of Twente, *System theory*  

US Legal, *Research and development: law and legal definition*  
[http://definitions.uslegal.com/r/research-and-development/]

Vincent, Ange, 'Bush tomato handbook' (Ninti One, 2010)

Vivas-Eugui, David, 'Bridging the gap on intellectual property and genetic resources in WIPO’s Intergovernmental Committee (IGC)' (International Centre for Trade and Sustainable Development, 2012)

Wade, Ruth and Lisa Lombardi, 'Indigenous Land Use Agreements: their role and scope' (Paper presented at the Native Title Forum, Brisbane, 2001)

Waitangi Tribunal, *Muriwhenua remedies*  

Waitangi Tribunal, 'The Waitangi Tribunal and the settlement of historical treaty claims' (Waitangi Tribunal, 2005)

Waitangi Tribunal, 'Wai 262: Ko Aotearoa Tēnei: report on the Wai 262 claim released' (Waitangi Tribunal, 2011)

Warren, Rosemary and Maarten Ryder, 'Soil biological constraints and benefits to quandong and other native food production' (RIRDC, 2003)
Wenga Consulting, *Commercialisation Australia*  

Wenga Consulting, *Enterprise connect*  


WHO, *TRIPS, CBD and traditional medicines: concepts and questions*  
<http://apps.who.int/medicinedocs/en/d/Jh2996e/3.html>


Wild Harvest, *Aboriginal economic development and the Kakadu Plum*  


WIPO, 'Draft intellectual property guidelines for access to genetic resources and equitable sharing of the benefits arising from their utilization' (WIPO, 2013)


WIPO, 'Intellectual property handbook' (WIPO, 2004)

WIPO, *Publications, studies and documents*  

WIPO, 'The World Intellectual Property Organization traditional knowledge documentation toolkit (draft)' (WIPO, 2012)

WIPO, *What is a trade secret?*  


Wonnarua Nation Aboriginal Corporation, 'CEO Report' (WNAC, 2013)

Wright, Warwick, *Aboriginal cooking techniques*  

WTO, *Intellectual property: protection and enforcement*  
<http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm>

WTO, *The Doha Declaration explained* (2012)  
<http://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm>

WTO, *The Doha round* (2012)  
<http://www.wto.org/english/tratop_e/dda_e/dda_e.htm>

WTO, *What are intellectual property rights?*  
<http://www.wto.org/english/tratop_e/trips_e/intel1_e.htm>

Wurm, P A et al, 'Australian native rice: a new sustainable wild food enterprise'  
(RIRDC, 2012)
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

Kylie Lingard

October 2012

COOPERATIVE RESEARCH CENTRE FOR REMOTE ECONOMIC PARTICIPATION

UNIVERSITY OF NEW ENGLAND
# Table of contents

## TABLE OF CONTENTS

- INTRODUCTION .......................................................... 3
  - THE CONTEXT OF THIS ISSUES PAPER ............................ 3
  - ABORIGINAL AND TORRES STRAIT ISLANDER BUSH FOOD KNOWLEDGE .................................................. 4
  - THE BUSH FOOD INDUSTRY ........................................ 5
  - THE THEME OF DIVERSITY .......................................... 6

## ISSUES, RECOMMENDATIONS AND AREAS TO INVESTIGATE ......... 7

- TRANSMITTING, PRACTICING, DEVELOPING AND MAINTAINING BUSH FOOD KNOWLEDGE ............................... 8
- ENSURING RECOGNITION AND REMUNERATION FOR BUSH FOOD KNOWLEDGE ........................................... 10
- ENSURING KNOWLEDGE USE IS AUTHORISED AND REMUNERATED .......................................................... 12
- PARTICIPATION AND REPRESENTATION IN INDUSTRY DEVELOPMENT AND GOVERNANCE ...................... 16

## CONCLUSION .............................................................. 17

## SELECT BIBLIOGRAPHY .................................................... 19

- ARTICLES, BOOKS, REPORTS ........................................ 19
- LEGISLATION .......................................................... 22
- TREATIES ............................................................... 22
- OTHER ................................................................. 22

TABLE OF CONTENTS ...................................................... 2

INTRODUCTION .......................................................... 3

THE CONTEXT OF THIS ISSUES PAPER ................................ 3

ABORIGINAL AND TORRES STRAIT ISLANDER BUSH FOOD KNOWLEDGE .................................................. 4

THE BUSH FOOD INDUSTRY ........................................ 5

THE THEME OF DIVERSITY .......................................... 6

ISSUES, RECOMMENDATIONS AND AREAS TO INVESTIGATE ......... 7

TRANSMITTING, PRACTICING, DEVELOPING AND MAINTAINING BUSH FOOD KNOWLEDGE ............................... 8

ENSURING RECOGNITION AND REMUNERATION FOR BUSH FOOD KNOWLEDGE ........................................... 10

ENSURING KNOWLEDGE USE IS AUTHORISED AND REMUNERATED .......................................................... 12

PARTICIPATION AND REPRESENTATION IN INDUSTRY DEVELOPMENT AND GOVERNANCE ...................... 16

CONCLUSION .............................................................. 17

SELECT BIBLIOGRAPHY .................................................... 19

ARTICLES, BOOKS, REPORTS ........................................ 19

LEGISLATION .......................................................... 22

TREATIES ............................................................... 22

OTHER ................................................................. 22
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.

---


319
Aboriginal and Torres Strait Islander bush food knowledge

There is much debate in the broader literature over what to call Indigenous people’s knowledge. This is because the choice of term can affect the types of knowledge considered. 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 knowledge.
- use of the term 'Traditional Knowledge' may limit consideration to ancient knowledge or knowledge held by people living 'traditional' lifestyles.
- use of the term 'Indigenous Ecological Knowledge' may exclude non-environmental types of knowledge.

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. The phrase ‘Aboriginal and Torres Strait Islander’ is understood as referring to descendants of the original inhabitants of Australia. The term ‘bush food’ describes plants

---


4 Anderson, above n 3, 5.

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


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

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

traditionally eaten by Aboriginal and Torres Strait Islander people. ‘Knowledge’ is recognised as meaning facts, information and skills gained through experience or education. 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. 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. 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. Today, the annual retail value of the bush food industry is estimated at between 5–20 million dollars. 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.

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. The route is shaped by choices made throughout the transformation process. 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. 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. 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.

---


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, the recognition and reward of bush food knowledge that has contributed to the development of the bush food industry, the ability to control bush food knowledge according to customary protocols, respect for bush food knowledge holders, and increased involvement in the bush food industry. Indigenous-drafted international instruments may also reflect knowledge-related aspirations that Aboriginal and Torres Strait Islander people share with the global Indigenous community. For example, the Declaration on the Rights of Indigenous People evinces an Indigenous aspiration to ‘maintain, control, protect and develop…traditional knowledge’.

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. 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. 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.

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.
28 See Janke, above n 2, 81.
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. 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’, 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. Increased commercial demand for bush


32 Merne Altyerre-ipenne (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-ipenne (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 16-17; *Arnpernirrentye: relationships between bush foods, people, country and all things* (Arternre People of Central Australia and Desert Knowledge Cooperative Research Centre, 2009) <http://desertknowledgecrcmedia.com.au/media/arnpernirrentye_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. Reduced demand for bush harvested produce may threaten the fulfilment of aspirations that occur as a matter of course in the bush harvest. These aspirations include the transmission, application, development and maintenance of bush food knowledge.

Some authors suggest that these aspirations may be alternatively enabled by the recording of knowledge in a register or database. The aspirations supported by these institutional measures depend on whether access to the recording is private or public. 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. While recording knowledge in a publically available register may help establish a legal claim to the knowledge, it may make it harder for Aboriginal and Torres Strait Islander people to maintain the knowledge according to customary protocols. 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. It may also feed the perception that Aboriginal and Torres Strait Islander knowledge is static rather than dynamic. 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. This does not preclude consideration of combined or reformed arrangements that can enable diverse aspirations while satisfying commercial demand. 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-ipehen (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.\textsuperscript{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.\textsuperscript{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,\textsuperscript{48} there is no formal requirement for industry stakeholders to recognise or remunerate this contribution.\textsuperscript{49} The knowledge accepted as underpinning the industry is twofold. It is the knowledge ‘developed and refined over thousands of years’\textsuperscript{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.\textsuperscript{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.\textsuperscript{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’.\textsuperscript{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’.\textsuperscript{54} Knowledge-based contracts can avoid the challenge of valuing...


\textsuperscript{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.

\textsuperscript{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.

\textsuperscript{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.

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

\textsuperscript{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.

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

\textsuperscript{53} Morse, above n 13, 17.

\textsuperscript{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. However, authors recognise that contractual arrangements are limited by voluntariness, scope and disparate bargaining power. 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.*

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’; a model agreement to guide the making of knowledge-related contracts; 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. 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’.


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, 12-14; 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 people and do not specifically relate to the commercialisation of bush food. 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.

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. 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.

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. The concern is largely premised on the classification of Aboriginal and Torres Strait Islander knowledge as a form of intellectual property and the subsequent finding that intellectual property laws are ill-designed to

---


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; Smallacome, 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.


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; Smallacome, Davis and Quiggin, above n 2, 29; Janke, above n 2.

protect this knowledge. 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. 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 protocols
- shared among community members or already in the public domain
- developed over many generations from the skills and experience of clans, families or other socio-political groups
- generally in oral form

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

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. 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. 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/wipolearn/>.
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.
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

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 Austlala, 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)
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
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._

Sui generis regimes generally involve the creation of a new intellectual property right based on the principles of informed consent and equitable benefit sharing. 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, the limited international reach of domestic legislation, 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._

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

---

88 Smallacombe, Davis and Quiggin, above n 2, 29; Merne Alyyerre-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.
91 Forsyth, above n 44, 207.
92 ibid 202-203; see generally Merne Alyyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 19-20.
95 See Merne Alyyerre-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

---

97 Martin and Jeffrey, above n 46, 1.
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. Authors agree that unless Aboriginal and Torres Strait Islander people become more involved in the industry, their ‘interests…will be sidelined and left behind’. As such, authors recommend Aboriginal and Torres Strait Islander people increase involvement through commercial enterprises and land management services. However, Aboriginal and Torres Strait Islander people might also seek to represent knowledge-related needs and aspirations through industry governance roles. Consideration of arrangements that enable this aspiration requires consideration of legal and institutional participatory mechanisms that embrace diverse cross-cultural communication needs.

**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 Dufield, above n 64; Sherwood, above n 98; see Smallacombe, Davis and Quiggin, above n 2, 13-14, 21; Kuruk, above n 31, 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.
Select bibliography

Articles, books, reports


Antons, Christoph, '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

Craig, Donna 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


Evans, Louis et al, 'Effective intellectual property protection of traditional knowledge of plants and their uses: an example from Australia' (2009) 74 GeoJournal 391


Forsyth, Miranda, '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)

Greene, Shane, 'Indigenous people incorporated? Culture as politics, culture as property in pharmaceutical bioprospecting' (2004) 45(2) Current Anthropology 211

Gupta, Anil, 'WIPO-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

Janke, Terri, '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)

Janke, Terri, '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)


Martin, Paul 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

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 enterpises' (Report No 71, Desert Knowledge Cooperative Research Centre, 2011)


Posey, Darrell and Graham Dutfield, Beyond intellectual property: toward traditional resource rights for Indigenous peoples and local communities (International Development Research Centre, 1996)

Prober, Suzanne, 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


Walsh, Fiona 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
Legislation

Environment Protection and Biodiversity Conservation Act 1999 (Cth)

Environment Protection and Biodiversity Conservation Regulations 2000 (Cth)

Treaties


Other


Blakeney, Michael, 'Trends in intellectual property rights relating to genetic resources for food and agriculture' (Background Study Paper No 58, Commission on Genetic Resources for Food and Agriculture, July 2011) <http://www.fao.org/docrep/meeting/022/mb684e.pdf>

Central Land Council <http://www.clc.org.au>


Convention on Biological Diversity <http://www.cbd.int/>


Creative Spirits <http://www.creativespirits.com.au>


Lee, Slade, 'Horticultural development of bush food plants and rights of Indigenous traditional custodians - the Australian Bush Tomato (Solanum centrale) case study' (2012)


Vincent, Ange, 'Bush tomato handbook' (NInti One Limited, August 2010)


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

7 March 2012

Associate Professor Slade Lee
Cooperative Research Centre for Remote Economic Participation
Clr of 1 Susannah Place
Ormiston GLD 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,

[Signature]

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

P: (02) 6620 3589
E: willam.boyd@scu.edu.au

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: Nill. 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:


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

12/03/2014
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