

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

Kylie Lingard, LLB (Hons)

A thesis submitted in fulfilment of the requirements for the degree of
Doctor of Philosophy

University of New England

15 August 2015

DECLARATION OF ORIGINALITY

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

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

Kylie Lingard
15 August 2015

DEDICATION

To the Plant Business Advisory Group

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

ACKNOWLEDGEMENTS

The single name on the cover of this thesis does not do justice to the people who have so warmly and expertly contributed to its production.

My deepest gratitude is to my principle supervisor and mentor, Professor Paul Martin, for keeping a sense of humour when I had none, for demanding simplicity – always – and for giving me the freedom to explore my own ideas, helping me question those ideas and offering me guidance when those ideas strayed from the path of common sense.

I am also indebted to my co-supervisors. Professor Donna Craig, thank you for so warmly sharing your expertise and contrary opinions and, above all, for reminding me to go gently in the pursuit of simplicity. Ms Lindy Andren, thank you for sharing your experience with me, and for questioning my many assumptions.

It is difficult to describe my appreciation for the Plant Business Advisory Group members: Rayleen Brown, Max Emery, Pat Torres, Juleigh Robins, Andrew Fielke, Jenni Lightowers and Slade Lee. Your willingness to talk openly with me over the years, share your experiences and expertise, and encourage, support and accept me has touched my soul and shaped the very essence of this thesis.

I am especially grateful to the funders of this research, the Cooperative Research Centre for Remote Economic Participation and Ninti One, and to the many individuals who make up these organisations. First and foremost, to Associate Professor Slade Lee: thank you for your unending faith, scientific expertise, patience and candid reviews. I hope to work with you again in the future. Special thanks to Associate Professor Kevin Williams, for your unwavering enthusiasm for the project and for making me feel like an important part of the team. Thanks also to Linda Cooper for mentoring me through policy writing – you make it look so easy – and to Alicia Gigante for the fantastic layout on the briefs.

I am eternally thankful to Miriam Verbeek for her editorial expertise, and to the editors at several journals who took the time to provide detailed feedback on my work. Without this feedback, this thesis would read very differently indeed. I hope one day to provide the same experience for others attempting a thesis-by-publication.

I could not have finished this PhD without the unending support of my wonderful friends and family – thank you for keeping me (relatively) sane, editing my work and

listening to my incessant thoughts. Biggest thanks to my son, Tomas Marsh – you're my motivation and inspiration. Particular thanks to Tanya Hopwood, the smartest and warmest best friend in the world. Thanks also to Lureen Kirkman, Laurelle Griffiths, Kelly Shankley-Price, Danielle Lingard, Nicole Lingard, Margaret Lingard and David Lingard.

The work reported in this thesis would not have been possible without the funding from the Australian Government Cooperative Research Centres Program through the Cooperative Research Centre for Remote Economic Participation (CRC-REP). The views expressed herein do not necessarily represent the views of the CRC REP or Ninti One Limited or its participants. Errors or omissions are my own.

CONTENTS

DECLARATION OF ORIGINALITY	II
DEDICATION	III
ACKNOWLEDGEMENTS	IV
TABLES	VIII
FIGURES	VIII
ABBREVIATIONS	IX
ABSTRACT	X
CHAPTER 1: INTRODUCTION	1
1.1 Problem statement	1
1.2 The meaning of ‘bush food commercialisation’	1
1.3 How this thesis came about	3
1.4 Research aim.....	5
1.5 Research problem and knowledge gap	6
1.6 Research questions	7
1.7 Social value of the research	8
1.8 Research challenges and assumptions	9
1.9 Thesis structure	10
1.9.1 Aim and purpose of each chapter	11
CHAPTER 2: RESEARCH METHODS AND ETHICAL FRAMEWORK	14
2.1 Research methods.....	14
2.1.1 Engaged scholarship	16
2.1.2 Desktop study	17
2.1.3 Transaction mapping.....	18
2.1.4 Doctrinal research and analysis	19
2.1.5 Peer review.....	20
2.1.6 Sharing research findings	21
2.2 Ethical framework.....	22
2.2.1 Ninti One Aboriginal and Torres Strait Islander engagement protocol	23
2.2.2 Ninti One protocol for Aboriginal and Torres Strait Islander knowledge... ..	24
2.3 Summary.....	25
CHAPTER 3: THE POTENTIAL OF LAW	27
3.1 What this Chapter does.....	27
3.2 Journal paper one	27
STATEMENT OF AUTHORS’ CONTRIBUTION	29
STATEMENT OF ORIGINALITY	30
3.3 Policy brief one	31
STATEMENT OF AUTHORS’ CONTRIBUTION	32
STATEMENT OF ORIGINALITY	33
CHAPTER 4: GOURMET BUSH FOOD PRODUCTS	34
4.1 What this Chapter does.....	34
4.2 Journal paper two	35
STATEMENT OF AUTHORS’ CONTRIBUTION	37
STATEMENT OF ORIGINALITY	38
4.3 Policy brief two.....	39
STATEMENT OF AUTHORS’ CONTRIBUTION	40
STATEMENT OF ORIGINALITY	41

CHAPTER 5: NEW NATIVE PLANT VARIETIES	42
5.1 What this chapter does.....	42
5.2 Journal paper three	42
STATEMENT OF AUTHORS' CONTRIBUTION	45
STATEMENT OF ORIGINALITY	46
5.3 Policy brief three.....	47
STATEMENT OF AUTHORS' CONTRIBUTION	48
STATEMENT OF ORIGINALITY	49
CHAPTER 6: GOVERNANCE.....	50
6.1 What this Chapter does.....	50
6.2 Journal paper 4.....	50
STATEMENT OF AUTHORS' CONTRIBUTION	52
STATEMENT OF ORIGINALITY	53
6.3 Policy brief four	54
STATEMENT OF AUTHORS' CONTRIBUTION	55
STATEMENT OF ORIGINALITY	56
CHAPTER 7: CONCLUSIONS	57
7.1 Key findings.....	57
7.1.1 Sub-question 1: Key findings	59
7.1.2 Sub-question 2: Key findings	60
7.1.3 Sub-question 3: Key findings	62
7.2 The significance of the work and its contributions to policy and knowledge	64
7.2.1 International policy development	64
7.2.2 Domestic policy development	65
7.2.3 Opportunities for Aboriginal and Torres Strait Islander peoples.....	65
7.2.4 Significance to legal scholarship	66
7.3 Areas of future research.....	66
7.4 Research limitations and a way forward.....	67
7.5 Concluding remarks	67
BIBLIOGRAPHY	69
APPENDICES.....	137
Appendix 1: Asserting cultural interests through the law.....	137
Appendix 2: Embracing diversity	138
Appendix 3: Human Research Ethics Committee (SC)(ECN-12-050)	163
Appendix 4: Human Research Ethics Committee (UNE)(HE14-018).....	164
Appendix 5: Human Research Ethics Committee (NT)(HREC-12-61)	164

TABLES

Chapter 1, Table 1: Outline of the content of each chapter	13
Chapter 4, Table 1: Summary of current and potential support for Aboriginal and Torres Strait Islander interests at key development stages.....	126
Chapter 5, Table 1: Summary of support for the interests of remote Aboriginal and Torres Strait Islander peoples at key commercial breeding stages	159
Chapter 6, Table 1: Governance arrangements of public actors in the bush food commercialisation system	189
Chapter 6, Table 2: Current and new public governance arrangements for the bush food commercialisation system	200

FIGURES

Chapter 2, Figure 1: Combination of research methods	15
Chapter 4, Figure 1: Simplified representation of the gourmet bush food product development system	97
Chapter 4, Figure 2: Simplified representation of the regulatory environment for gourmet bush food product development	99
Chapter 5, Figure 1: Simplified representation of the commercial plant breeding system	149
Chapter 6, Figure 1: Simplified representation of the bush food commercialisation system	188

ABBREVIATIONS

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

ABSTRACT

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

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

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

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

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

CHAPTER 1: INTRODUCTION

1.1 Problem statement

Australia's Aboriginal and Torres Strait Islander peoples are a heterogeneous society, with similarly diverse needs and aspirations in relation to the commercialisation of their traditional plant foods (bush foods).¹ Interests may reflect the worldviews, social structures or development aspirations of an Aboriginal and Torres Strait Islander group, or the cultural and economic aims of an Aboriginal and Torres Strait Islander individual.² These interests position Aboriginal and Torres Strait Islander peoples as key stakeholders in bush food commercialisation.

There are few laws to support the diverse interests of Aboriginal and Torres Strait Islander peoples in bush food commercialisation. Current legal research tends to focus on single-instrument solutions for specific problems, such as ways to control the use of secret bush food knowledge or promote cultural products. This thesis proposes a combination of methods to create a more comprehensive framework, using multiple legal and institutional interventions in different ways to allow for very diverse interests in bush food commercialisation. As such, its approach is strategic rather than doctrinal.

1.2 The meaning of 'bush food commercialisation'

Australia is home to at least 24 000 native plants species and 145 Aboriginal and Torres Strait Islander language groups.³ Aboriginal and Torres Strait Islander peoples have used some native plants as foods for millennia.⁴ Some species have a special spiritual status within a group, and are the subject of traditional songs, stories and

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 Enterprises* (DKCRC, 2011) 12, 17, 19, 20, 26.

² Michael Davis, *Bridging the gap or crossing a bridge? Indigenous knowledge and the language of law and policy*, in Reid W, Berkes F, Wilbanks T and Capistrano D (eds), *Bridging scales and knowledge systems* (Washington, Island Press, 2006) 145, 153; see also Veronica Dodson, *Ampernirrentye: relationships between bush foods, people, country and all things* (Video, Arrente People of Central Australia and DKCRC, 2009); Merne Altyerre-ipenhe, above n 1.

³ Royal Botanic Gardens and Domain Trust, *The Australian PlantBank* <http://www.rbgsyd.nsw.gov.au/annan/Australian_plantbank>; Jens Korff, *Aboriginal Languages Creative Spirits* <<http://www.creativespirits.info/aboriginalculture/language/#axzz3Zzo5MpGB>>.

⁴ Merne Altyerre-ipenhe, above n 1, 12.

ceremonies.⁵ Some Aboriginal and Torres Strait Islander group members have special rights and responsibilities in relation to a species, such as the right to make decisions about species use and the duty to conserve species knowledge in accordance with customary law.⁶

The wild harvest of bush foods for commercial purposes provides Aboriginal and Torres Strait Islander peoples with an opportunity to fulfil cultural responsibilities, socialise, exercise, earn money, connect with land and carry out environmental management activities.⁷ The harvest also provides a space for peoples to share and develop the knowledge necessary to sustain their traditional food systems;⁸ it is about far more than collecting and consuming food.

‘Bush food commercialisation’ is the transformation of bush foods into marketable products.⁹ This thesis uses the phrase ‘bush food commercialisation’ interchangeably with ‘commercial development’ and ‘development’. Popular commercial species include macadamia, lemon myrtle, wattle seed, bush tomato, Kakadu plum, muntries and quandong.¹⁰ Recent estimates place the sale of raw bush food materials at over A\$18 million annually (excluding macadamias),¹¹ with the sale of products derived from these materials potentially increasing this figure ‘by up to 500%’.¹² Macadamia sales add a further A\$200 million to this figure.¹³

Marketable, tangible bush food products include nursery seeds and seedlings, and food products like restaurant meals and gourmet sauces, jams and pies.¹⁴

⁵ Ibid 16.

⁶ Ibid 19-20.

⁷ A B Cunningham, S T Garnett and J Gorman, 'Policy Lessons from Practice: Australian Bush Products for Commercial Markets' (2009) 74 *GeoJournal* 429, 534.

⁸ Dodson, above n 2; Merne Altyerre-Ipenhe, above n 1, 13.

⁹ See generally Department of Industry and Resources, 'The Path to Commercialisation: A Guide for Planning an Early Stage Innovation Project' (Government of Western Australia, 2004); Standing Committee on Science and Innovation, 'Inquiry into Pathways to Technological Innovation' (Australian Government, 19 June 2006).

¹⁰ Michael Clarke, 'Australian Native Food Industry Stocktake' (RIRDC, 2012) 59-60.

¹¹ Ibid vii.

¹² Ibid.

¹³ Australia Macadamia Society, *The Macadamia Industry* <<http://www.australian-macadamias.org/industry/about-aussie-macadamias/the-macadamia-industry>>.

¹⁴ Clarke, above n 10, vii-viii; Jock Morse, 'Bush Resources: Opportunities for Aboriginal Enterprise in Central Australia' (DKCRC and CLC, 2005) 27; see eg, Outback Spirit, *Shop* <<http://outbackspirit.com.au/shop/>>; Outback Pride, *Retail Products* (2012) <http://www.outbackpride.com.au/retail-products>; Tuckeroo, *Food Service Products* <<http://www.andrewfielke.com/andrew-fielke-tuckeroo-food-service-products/tuckeroo-food-service-products/>>.

Intangible products include copyrights in cookbooks and rights to exclusively exploit artificially created plants for up to 25 years.¹⁵

The methods used in this thesis focus attention on commercialisation pathways. The methods identify pivotal transactions, and where changes to these transactions might help Aboriginal and Torres Strait Islander peoples obtain legal leverage to advance their interests. The path taken to make each type of product differs. For example, the path taken to transform raw bush food ingredients into gourmet food products differs to that taken to develop and exploit new bush food varieties. Each of these commercial paths involves a different set of transactions and, thus, different possible mechanisms to advance Aboriginal and Torres Strait Islander interests. The key contribution of this thesis is the exploration of these paths and proposals for legal and institutional changes to make them more conducive to Aboriginal and Torres Strait Islander interests.

1.3 How this thesis came about

In 2010, the Australian Government began funding the Cooperative Research Centre for Remote Economic Participation (CRC-REP) to develop practical responses to the economic challenges affecting remote Australia.¹⁶ The CRC-REP supports a range of projects to further this goal.¹⁷ One of these is Plant Business.¹⁸

The aim of Plant Business is to develop new bush tomato varieties from which Aboriginal and Torres Strait Islander peoples may obtain benefits.¹⁹ This is essentially a scientific process. A broader aim is to design a bush food commercialisation model acceptable to Aboriginal and Torres Strait Islander peoples.²⁰ The vision is of a model that encompasses scientific, cultural, commercial and legal aspects of commercialisation. To this end, Plant Business provided funding

¹⁵ See eg, IP Australia, *Hybrid Finger Lime (Citrus hybrid)* <<http://www.ipaustralia.gov.au/>>.

¹⁶ CRC-REP, *About us* <<http://crc-rep.com/about-us>>.

¹⁷ CRC-REP, *Research* <<http://crc-rep.com/research>>.

¹⁸ CRC-REP, *Plant business* (2014) Ninti One Ltd <<http://crc-rep.com/research/enterprise-development/plant-business>>.

¹⁹ CRC-REP, 'Conversations, Cups of Tea, Heat and Dirt: A Report on the Community Engagement and Plant Specimen Collection Activities for the CRC-REP Plant Business Project' (CRC-REP, 2015) 6.

²⁰ CRC-REP, above n 18; CRC-REP, 'Conversations', above n 19, 6.

for a PhD on strategies to support the interests of Aboriginal and Torres Strait Islander peoples in bush food commercialisation.²¹

Research for this PhD commenced in April 2012, with confirmation of candidature in November 2012. Between 2010 and April 2012, a series of conversations occurred between:

- Aboriginal and Torres Strait Islander elders and bush food developers;
- Non-Indigenous bush food developers;
- Associate Professor Slade Lee (Plant Business project leader and plant scientist based at Southern Cross University);
- Professor Paul Martin (Principle Supervisor of this thesis and Director of the Australian Centre for Agriculture and Law, University of New England).²²

In 2011, a group of central Australian women with cultural responsibilities for bush food published ethical guidelines to generate commercial support for their needs and aspirations in bush food development.²³ Between April 2012 and November 2012, conversations also occurred between the aforementioned people and the PhD researcher, along with the conduct of preliminary literature reviews.

These discussions, publications and reviews affirmed the diversity of needs and aspirations Aboriginal and Torres Strait Islander peoples have in relation to the commercialisation of their traditional plant foods. Interests may reflect different customary legal systems, relationships with local lands and resources, political and economic motivations, and personalities and capacities.²⁴ Possible interests include:

- control over the use of plants and knowledge;
- respect for Aboriginal and Torres Strait Islander knowledge, skills and practices;

²¹ CRC-REP, 'Conversations', above n 19, 9.

²² See generally *ibid.*

²³ Merne Altyerre-ipenhe, above n 1, 4.

²⁴ See generally *ibid.*; Sarah Holcombe, Peter Yates and Fiona Walsh, 'Reinforcing Alternative Economies: Self-Motivated Work by Central Anmatyerr People to Sell Katyerr (Desert Raisin, Bush Tomato) in Central Australia' (2011) 33 *The Rangeland Journal* 255; Morse, above n 14; J Cleary, 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); Louis Evans et al, 'Effective Intellectual Property Protection of Traditional Knowledge of Plants and their Uses: An Example from Australia' (2009) 74 *Geojournal* 391.

- acknowledgement of Aboriginal and Torres Strait Islander contributions to bush food development;
- fair compensation for these contributions;
- fair remuneration for the authorised uses of plants and knowledge;
- maintenance of cultural practices such as wild harvest;
- transmission of knowledge to Aboriginal and Torres Strait Islander youth;
- sharing of plant cultural stories with consumers;
- development of bush food enterprises and commercial partnerships; and
- meaningful involvement in bush food governance processes.²⁵

It is arguably patronising for any researcher to determine that any of these interests (such as traditional cultural interests) is more important or ‘valid’ than any other (such as the economic interests of a modern Aboriginal and Torres Strait Islander entrepreneur). The aim of this PhD thesis reflects the need to advance a diversity of interests rather than attempting to prioritise which interests of which people are most important.

1.4 Research aim

The aim of this thesis is as follows:

Identify possible legal and institutional strategies to support the diverse interests of Aboriginal and Torres Strait Islander peoples in bush food commercialisation.

In this thesis, legal arrangements refer to laws and regulations. Institutional arrangements refer to the policies, systems, and processes that public and private organisations use to plan and manage their activities.

²⁵ See generally Merne Altyerre-Ipenhe, above n 1; Jen Cleary, 'Business Exchanges in the Australian Desert: It's About More Than the Money' (2012) 7 *Journal of Rural and Community Development* 1; Holcombe, Yates and Walsh, above n 24; Sonia Smallacombe, Michael Davis and Robynne Quiggin, 'Scoping Project on Aboriginal Traditional Knowledge' (DKCRC, 2007); see also Terri Janke, 'Our Culture Our Future: A Report on Australian Indigenous Cultural and Intellectual Property Rights' (AIATSIS, 1998); Terri Janke, 'Indigenous Ecological Knowledge and Natural Resources in the Northern Territory: Report on the Current Status of Indigenous Intellectual Property' (NRMB, 2009).

1.5 Research problem and knowledge gap

The thesis aim acknowledges the diversity of Aboriginal and Torres Strait Islander interests. It differs to current approaches in the bush food research that focus on institutional solutions for specific problems.²⁶ For example, Cleary proposes regional cooperatives to help connect remote wild harvesters with urban buyers.²⁷ Miers considers the capacity of Aboriginal and Torres Strait Islander landowners to carry out horticulture.²⁸ Morse suggests a series of measures to support remote bush food enterprises.²⁹ While all such research contributes, this thesis aims for a more comprehensive approach that encompasses as many Aboriginal and Torres Strait Islander interests as possible.

As well as being atomistic in focus, there is very little research on how the laws relevant to bush food commercialisation may improve support in practice for Aboriginal and Torres Strait Islander interests. There is also no integration of law reform proposals with mechanisms for altering commercial outcomes. As the outcomes of legal arrangements depend on the context of their application, a piecemeal approach to solution finding is unlikely to accelerate effective improvement.

A primary concern from examining the broader literature is the lack of legal support for Aboriginal and Torres Strait Islander peoples to control and benefit from the use of their knowledge.³⁰ Authors recommend a range of single-instrument solutions to address this problem. The most popular of these is a new law that would grant Aboriginal and Torres Strait Islander peoples the right to consent to the use of

²⁶ See generally 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* (ANU e Press, 2012) 189; Dora Marinova and Margaret Raven, 'Indigenous Knowledge and Intellectual Property: A Sustainability Agenda' (2006) 20(4) *Journal of Economic Surveys* 587, 602.

²⁷ Jen Cleary, 'Perspectives on Developing New Cooperative Arrangements for Bush-Harvested Bush Tomatoes from Desert Australia' (DKCRC, 2009) 11-13.

²⁸ Geoff Miers, 'Cultivation and Sustainable Wild Harvest of Bushfoods by Aboriginal Communities in Central Australia' (RIRDC, 2004).

²⁹ Morse, above n 14.

³⁰ See eg, ad hoc Open-Ended Intersessional Working Group on art 8(J) and Related Provisions of The Convention on Biological Diversity, 'Possible Elements of Sui Generis Systems for the Protection of Traditional Knowledge, Innovations and Practices of Indigenous and Local Communities' (Document No UNEP/CBD/WG8J/8/6/Add.1, 4 October 2013); Jane Anderson, 'The Politics of Indigenous Knowledge: Australia's Proposed Communal Moral Rights Bill' (2004) 27(3) *University of New South Wales Law Journal*, 1; Davis, above n 3, 145.

their secret knowledge and share in the benefits of that use.³¹ ‘Such a new approach is often termed a *sui generis*—literally: “of its own kind”’.³² In practice, these *sui generis* approaches are likely to have limited use in bush food commercialisation because a lot of Aboriginal and Torres Strait Islander knowledge is freely available.³³

This may partially 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.³⁴

It is also likely that an all-encompassing *sui generis* response to the challenges outlined in this thesis would take a very long time to create and negotiate, and that the political processes for its adoption would be challenging and perhaps lead to a compromised approach. That is not to say *sui generis* approaches have no role to play, just that it may be unduly optimistic to rely on this strategy alone to support diverse Aboriginal and Torres Strait Islander interests in this context within any reasonable timeframe. Similar difficulties affect other solutions proposed in the literature, leading to the expectation that they may fail to effectively address the overall set of needs and aspirations Aboriginal and Torres Strait Islander peoples may have in bush food commercialisation. This thesis aims to address that problem by proposing a ‘cocktail’ of interventions which provide alternative routes to a single goal: meeting the aspirations of Aboriginal and Torres Strait Islander peoples in the commercialisation of ‘their’ foods.

1.6 Research questions

The main question this thesis seeks to answer is as follows:

³¹ See eg, 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, 10; Smallacombe, Davis and Quiggin, above n 25, 42-43; Janke, above n 25, 161.

³² Smallacombe, Davis and Quiggin, above n 25, 29; Merne Altyerre-ipenhe, above n 1, 5-6, 14.

³³ See, eg, Merne Altyerre-ipenhe, above n1, 19; Louis Evans et al, 'Plants for People: Case Study Report' (DKCRC, 2010) 20; Sally Holt, 'Native Food Industry Set to Expand', *Farming Ahead* May 2005 <http://www.clw.csiro.au/publications/farming_ ahead/2005/7-9%20FA%20MAY%202005_160.pdf>7.

³⁴ Merne Altyerre-ipenhe, above n 1, 23.

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

Related sub-questions address these issues in an implicit hierarchy:

- (1) To what extent can current legal and institutional arrangements (not limited to government) support the diverse interests of Aboriginal and Torres Strait Islander peoples in bush food commercialisation?
- (2) What innovative uses of current legal and institutional arrangements may improve support for Aboriginal and Torres Strait Islander interests in bush food commercialisation?
- (3) 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?

1.7 Social value of the research

The non-binding *United Nations Declaration on the Rights of Indigenous Peoples* reflects more than 20 years of academic research and Indigenous advocacy.³⁵ Article 43 contends that the wellbeing of Indigenous peoples depends upon their capacity to control, maintain, and develop their traditional resources, knowledge, skills and practices, and their meaningful involvement in legislative and administrative measures likely to affect their interests. Australia's endorsement of the *Declaration* demonstrates acceptance of this proposition.³⁶

In 2009, the United Nations reported that Australians had the third highest standard of living in the world, but the standard of living of Aboriginal and Torres Strait Islander peoples ranked 103rd.³⁷ The inequity is startling. Since 2009, all Australian governments have committed to improving Aboriginal and Torres Strait

³⁵ Reconciliation Australia, 'United Nations Declaration on the Rights of Indigenous Peoples' (Reconciliation Australia, 2013).

³⁶ Jenny Macklin, 'Statement on the United Nations Declaration on the Rights of Indigenous Peoples' (Minister for Families, Housing, Community Services and Indigenous Affairs, 2009); see also Pat Dudgeon et al, 'Effective Strategies to Strengthen the Mental Health and Wellbeing of Aboriginal and Torres Strait Islander People' (Closing the Gap Clearinghouse, 2014) 3.

³⁷ Joji Carino, 'Poverty and wellbeing' in *State of the world's Indigenous peoples* (United Nations, 2009) 14, 23.

Islander wellbeing.³⁸ Although some recent programs have produced marginal improvements,³⁹ an acute wellbeing gap remains.⁴⁰ For instance:

Aboriginal and Torres Strait Islander males born between 2010 and 2012 can expect to live 69.1 years, 10.6 years less than non-Indigenous males. Aboriginal and Torres Strait Islander females can expect to live 73.7 years, 9.5 years less than non-Indigenous females.⁴¹

Similar gaps exist in education, employment, health and the criminal justice system.⁴²

This thesis follows the logic that people who can realise their own needs and aspirations generally have greater wellbeing.⁴³ Supporting Aboriginal and Torres Strait Islander peoples to realise their diverse interests in bush food commercialisation is one part of this picture. Supportive strategies may also help transform current policy approaches that are argued to promote government dependency to ones that empower Aboriginal and Torres Strait Islander peoples.

1.8 Research challenges and assumptions

The identification of possible strategies to support diverse Aboriginal and Torres Strait Islander interests must confront some grand challenges.⁴⁴ A particular challenge posed by the diversity of interests is that ‘each interest involves different issues, and recognition of some may come at a cost to others’.⁴⁵ It is also impossible to predict all the interests Aboriginal and Torres Strait Islander peoples may have.

Another challenge is the need to start somewhere in developing a set of comprehensive strategies to support Aboriginal and Torres Strait Islander interests in bush food commercialisation. While this thesis makes every effort to evaluate

³⁸ Council of Australian Governments (COAG), 'National Indigenous Reform Agreement (Closing the gap)' (Commonwealth of Australia, 2009).

³⁹ Australian Government, 'Closing the Gap: Prime Minister's Report' (Australian Government, 2015); Steering Committee for the Review of Government Service Provision, 'Overcoming Indigenous Disadvantage: Key Indicators 2014' (Productivity Commission, 2014).

⁴⁰ Australian Government (2015), above n 39.

⁴¹ Steering Committee for the Review of Government Service Provision, above n 39, 4.5-4.7

⁴² See generally *ibid* ch 4.

⁴³ See Robert Nemeskeri et al, 'System Dynamics to Diagnose and Devise Patterns for Sustainable Consumption and Production' (SYSCONS, 2008) 43-44.

⁴⁴ Paul Martin et al, 'Asserting Cultural Interests Through the Law: Issues and Innovations' in *Indigenous Knowledge* (LexisNexis, Forthcoming) (Appendix 1 of this thesis).

⁴⁵ *Ibid*.

possibilities ‘in terms of the success of their practical application’,⁴⁶ actual effectiveness will depend upon ‘the quality of implementation’.⁴⁷ This thesis starts the journey to implementation by developing policy concepts for Aboriginal and Torres Strait Islander peoples to consider further.

Existing power structures pose the ultimate challenge. For example:

‘Respect’ and ‘recognition’ at the deeper levels of culture involve challenges to the institutionalised power structures of the dominant culture. Coming to grips with this political contest requires far more than legal and institutional mechanisms that protect and allow Indigenous peoples to exploit cultural symbols such as art and ritual, or even arrangements which give legal force to traditional control over access to places and information.⁴⁸

In recognition of these challenges, this thesis proceeds upon three key assumptions. First, the work is conceptual. It aims to identify possibilities that Aboriginal and Torres Strait Islander peoples might choose to pursue.⁴⁹ It does not judge the legitimacy of different interests, or the conflicts that might arise between them. The second assumption and underlying logic of the thesis is that the best way of advancing Aboriginal and Torres Strait Islander interests in native biodiversity is by enabling them to pursue their own interests more effectively. This positions the plurality of interests as a reality we need to understand, not a problem we need to solve. The final point is that the analysis does not deal with past or potential future actors or roles. It proceeds on the assumption that current political, legal, commercial and cultural structures will largely exist in the future and, while change is inevitable, forecasting what change will occur is beyond the scope of this work.

1.9 Thesis structure

This is a ‘thesis-by-publication’ through the University of New England, Australia. Under the rules of the University, a thesis-by-publication is one where the substantive body comprises self-contained journal papers.⁵⁰ These need not have

⁴⁶ Dictionary.com, *Pragmatism* (2015) <<http://dictionary.reference.com/browse/pragmatism>>.

⁴⁷ Martin et al, above n 44.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ UNE, ‘Journal-Article-Format for PhD theses at UNE: guidelines’ (UNE, 2015).

been published, or submitted to any journal at the time of thesis examination.⁵¹ In this thesis, the papers are at varying stages of publication.

This thesis-by-publication does not contain a section designated as the 'literature review', as the relevant literature is reviewed within each journal paper and so a separate chapter would be redundant. There is also unavoidable repetition between papers because they stand alone, so some background is required for each paper. An introduction precedes each substantive chapter to help guide the reader through the thesis as efficiently as possible.

Chapters 3-6 contain the substantive body of this thesis. Each chapter has a journal paper under peer review at a reputed journal, and a policy brief summarising key points from the journal paper. The policy briefs have been prepared for the Cooperative Research Centre for Remote Economic Participation, for circulation to stakeholders and government bodies as part of the process of consultation about the implementation of new arrangements, based on this research. That consultation process has commenced and is ongoing.

1.9.1 Aim and purpose of each chapter

Chapter 2 outlines the combination of methods used to identify possible strategies to support the diverse interests of Aboriginal and Torres Strait Islander peoples in bush food commercialisation. It provides a reference point for people to critique or advance the possibilities outlined in this thesis.

The identification of strategies to support interests in a specific context must begin with an understanding of relevant interests, challenges and resources.⁵² The journal paper in Chapter 3 explores key Aboriginal and Torres Strait Islander interests in detail. The paper also highlights issues that may arise in developing strategies to support each interest, and existing laws that are relevant to possible strategies. The paper is supported by the co-authored book chapter in Appendix 1 that explores the challenges facing Aboriginal and Torres Strait Islander peoples in asserting their cultural interests.

⁵¹ Ibid.

⁵² Paul Martin 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).

In addition to understanding the interests at stake, it is necessary to understand the context in which these interests arise. The journal paper in Chapter 4 begins by exploring current research on Aboriginal and Torres Strait Islander interests in bush food commercialisation, and the relevance of international developments to these interests. It then outlines a method for understanding bush food commercialisation transactions.

The journal papers in Chapters 4, 5 and 6 assess the extent of legal support for Aboriginal and Torres Strait Islander interests in the development of gourmet food products and new bush food varieties, and the governance processes that shape bush food commercialisation. Each paper identifies the legal and institutional possibilities within these contexts. The findings together form an integrated framework of multiple interventions that together or separately may improve support for Aboriginal and Torres Strait Islander interests in bush food commercialisation.

Chapter 7 concludes the thesis by synthesising key research findings, the significance of the research, and areas of further research.

Table 1.1 provides an overview of the chapters.

Table 1.1: Outline of the content of each chapter

Chapter 1	Explains the background to the thesis Outlines the research aim, problem and questions Outlines thesis structure
Chapter 2	Outlines research methods and ethics
Chapter 3	<i>Journal Paper one (and Policy Brief one)</i> : ‘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’ (submitted to <i>International Journal of Sustainable Development and World Ecology</i>) <ul style="list-style-type: none">• Explores some Aboriginal and Torres Strait Islander interests in bush food commercialisation• Detects issues in developing strategies to support these interests• Considers the potential of law to support these interests
Chapter 4	<i>Journal Paper two (and Policy Brief two)</i> : ‘Strategies to Support the Interests of Aboriginal and Torres Strait Islander Peoples in the Development of Gourmet Bush Food Products’ (submitted to <i>International Journal of Cultural Property</i>) <ul style="list-style-type: none">• Reviews the relevance of current literature and international developments• Outlines a method for developing strategies• Assesses support for Aboriginal and Torres Strait Islander interests in the development of gourmet food products• Identifies possible strategies to improve support for these interests in this context
Chapter 5	<i>Journal Paper three (and Policy Brief three)</i> : ‘Strategies to support the Interests of Aboriginal and Torres Strait Islander Peoples in the Development of New Native Plant Varieties’ (submitted to <i>Australian Intellectual Property Journal</i>) <ul style="list-style-type: none">• Assesses support for Aboriginal and Torres Strait Islander interests in the development of new bush food varieties• Identifies possible strategies to improve support for these interests in this context
Chapter 6	<i>Journal Paper four (and Policy Brief four)</i> : ‘An Inclusive Governance Framework for Bush Food Commercialisation’ (submitted to <i>Journal of Australian Indigenous Issues</i>) <ul style="list-style-type: none">• Assesses support for Aboriginal and Torres Strait Islander involvement in bush food commercialisation governance processes• Identifies possible strategies to improve support for Aboriginal and Torres Strait Islander involvement in these processes
Chapter 7	Synthesises research findings Outlines areas of future research and a way forward from this research

CHAPTER 2: RESEARCH METHODS AND ETHICAL FRAMEWORK

This Chapter outlines the methods used to identify possible strategies to support diverse Aboriginal and Torres Strait Islander interests in bush food commercialisation, and the ethical framework in which the research occurred. The discussion provides a reference point for people to critique the possibilities outlined in this thesis.

2.1 Research methods

The methodology chosen for this research responds to the following project rationale:

To work with and for Aboriginal and Torres Strait Islander peoples in conceptualising feasible legal and institutional strategies to support their diverse interests in bush food commercialisation.

The dominant legal research method is legal analysis.⁵³ Its application typically leads to recommendations for law reform.⁵⁴ However, Martin and Craig contend that legal analysis alone cannot capture the complexities, values and practicalities inherent in a complex socio-economic system 'that places emphasis upon wealth'.⁵⁵ They support the use of multiple methods to produce environmental law scholarship of real-world value.⁵⁶ This is consistent with an applied policy methodological approach.

This thesis uses a combination of six methods to further this end. The methods are not used sequentially. They are iterative and revisited at different stages throughout the project to advance the research aim. They are as illustrated in Figure 2.1:

⁵³ Terry Hutchinson and Nigel Duncan, 'Defining and describing what we do: doctrinal legal research' (2012) 17(1) *Deakin Law Review* 83, 85.

⁵⁴ Martin and Craig, above n 52.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*; see also Jennifer Mason, 'Mixing methods in a qualitatively driven way' (2006) 6(1) *Qualitative Research* 9, 19.

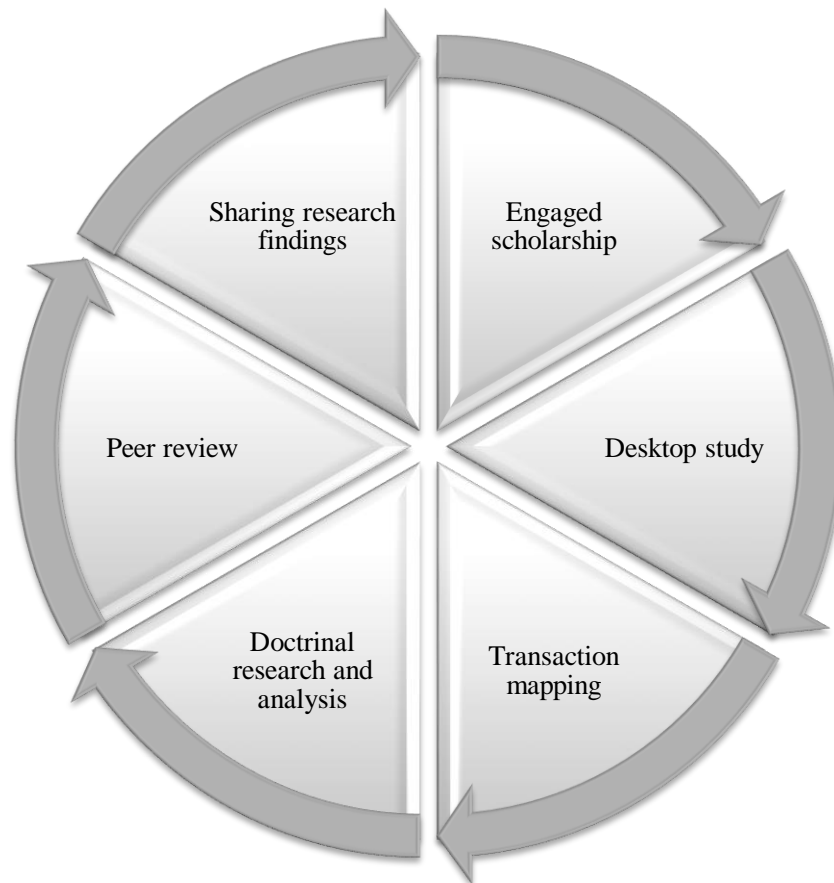


Figure 2.1: Combination of research methods

The combination reflects aspects of strategic decision-making and mixed methods approaches to problem-solving.⁵⁷ Mixed methods approaches provide ‘multiple viewpoints, perspectives, positions, and standpoints’ on a problem:⁵⁸

By combining multiple observers, theories, methods, and empirical materials, researchers can hope to overcome the weakness or intrinsic biases and the problems that come from single-method, single-observer, single-theory studies.⁵⁹

The rest of this chapter explains the role of each method in the research project.

⁵⁷ Martin and Craig, above n 52.

⁵⁸ R Burke Johnson, Anthony Onwuegbuzie and Lisa a Turner, 'Toward a Definition of Mixed Methods Research' (2007) 1(2) *Journal of Mixed Methods Research* 112, 113, 121; Mason, above n 56, 13.

⁵⁹ Sabina Yeasmin and Khan Ferdousour Rahman, 'Triangulation' Research Method as the Tool of Social Science Research' (2012) 1(1) *Bangladesh University of Professionals Journal* 154, 154; see generally Johnson, Onwuegbuzie and Turner, above n 58, 113; Geoff Payne, *Methodological Pluralism* <<http://srmo.sagepub.com/view/the-sage-dictionary-of-social-research-methods/n117.xml>>; Mason, above n 56, 10, 13.

2.1.1 Engaged scholarship

This thesis aims to identify possible legal and institutional strategies that align with the interests of Aboriginal and Torres Strait Islander peoples. This involves understanding what Aboriginal and Torres Strait Islander peoples want. The research uses an ‘engaged scholarship’ approach to inform this understanding.

Traditional academic research is the pursuit of knowledge ‘for its own sake’.⁶⁰ Engaged scholarship is ‘user inspired research, where the community defines the problem and in partnership with the researcher looks for a solution’.⁶¹ It is a two-part process involving the discovery of knowledge and its ‘integration’ into real life, with each part informed by the people affected by the problem.⁶² At the heart of the approach lies a philosophical commitment to work ‘with’ or ‘for’ rather than ‘on’ the Aboriginal and Torres Strait Islander researcher partners.

Engaged scholarship processes used in this thesis include observation, dialogue and field trips. The thesis topic, aim and problem reflect the results of pre-project talks with Aboriginal and Torres Strait Islander peoples and the Plant Business Advisory Group, convened in 2011 to provide overarching guidance to the Plant Business project.⁶³ Plant Business Advisory Group members include:

- Pat Torres: Aboriginal and Torres Strait Islander wild harvester and owner of Mayi Harvests, a bush food produce business;⁶⁴
- Rayleen Brown: Aboriginal and Torres Strait Islander owner and co-founder of Kungkas Can Cook, a bush food catering business;⁶⁵
- Max Emery: manager of Desert Garden Produce, an Aboriginal and Torres Strait Islander owned and operated bush food produce business;⁶⁶
- Juleigh Robins: author and director of Outback Sprit, a gourmet bush food manufacturing business;⁶⁷

⁶⁰ Sharon Paynter, 'Tackling Wicked Problems Through Engaged Scholarship' (2014) 7(1) *Journal of Community Engagement and Scholarship* 48, 48; see also Martin and Craig, above n 52.

⁶¹ Paynter, above n 60, 49.

⁶² Ibid.

⁶³ See generally CRC-REP, *Conversations, Cups of Tea ...*, above n 19, 6.

⁶⁴ See generally ANFIL, *Patricia Mamanyjun Torres* (2014) <<http://www.anfil.org.au/board-and-committees/patricia-mamanyjun-torres/>>.

⁶⁵ See generally Kate O'Toole and Miranda Tetlow, *Raylene Brown from Kungkas Can Cook* (2011) <<http://www.abc.net.au/local/audio/2011/10/27/3349877.htm>>.

⁶⁶ See generally Alice Online, *Bush Food's New Life in Garden* (2012) <<http://aliceonline.com.au/2012/01/16/bush-foods-new-life-in-garden/>>.

- Andrew Fielke: chef and proprietor of Tuckeroo, a bush food manufacturing and distribution business;⁶⁸
- Jenni Lightowers: lawyer with expertise in intellectual property and Cooperative Research Centres;⁶⁹ and
- Slade Lee: plant scientist and Plant Business project leader.⁷⁰

Important engagement opportunities throughout the research process included four Advisory Group meetings, continuous dialogue with Advisory Group members, a field trip to Rainbow Valley in the Northern Territory, and cultural immersion experiences in Ntaria (NT) and Iga Warta (SA). Each of these provided an opportunity for discussion, observation and information exchange. The researcher also brings an awareness of Aboriginal and Torres Strait Islander interests gained from detailed discussions with Aboriginal and Torres Strait Islander peoples on prior cultural heritage research. Together, the interactions have helped ensure the research remains sensitive to the needs of Aboriginal and Torres Strait Islander peoples and the problems and practicalities peculiar to bush food commercialisation.

2.1.2 Desktop study

A desktop study is ‘a preliminary investigation and report into something collating currently available relevant information’.⁷¹ It involves the gathering and evaluation of published information from a wide variety of sources.⁷² Desktop studies help identify earlier discoveries relevant to the topic, and gaps in current knowledge.⁷³ Desktop study processes involve searching, collating, reading and synthesising published information.

An early part of this thesis was a desktop study of information published by:

- Aboriginal and Torres Strait Islander peoples;

⁶⁷ See generally Outback Spirit, *About Us* <<http://outbackspirit.com.au/about-us/>>.

⁶⁸ See generally Andrew Fielke, *Biography* (2015) <<http://www.andrewfielke.com/andrew-fielke-tuckeroo-food-service-products/tuckeroo-food-service-products/>>.

⁶⁹ FAL Lawyers, *Jenni Lightowers* <<http://fal-lawyers.com.au/jenni-lightowers/>>.

⁷⁰ Southern Cross University, *Dr Slade Lee* <http://scu.edu.au/staffdirectory/person_detail.php?person=9537>.

⁷¹ Collins, *Desk Study* (2015) <<http://www.collinsdictionary.com/dictionary/english/desk-study>>.

⁷² Belspo, *Used Types of Research and Evaluation* (2015) <http://www.belspo.be/belspo/pubobs/meth_eval_res_en.stm>; Education and Training Unit for Democracy and Development, *Understanding Research* <<http://www.etu.org.za/toolbox/docs/development/research.html>>.

⁷³ Belspo, above n 72; Education and Training Unit for Democracy and Development, above n 72.

- academics;
- international agencies;
- domestic government agencies;
- Rural Industries Research and Development Corporation;
- Commonwealth Science and Industrial Research Organisation;
- botanical and herbarium collections; and
- bush food developers.

The results of this study underpin the Issues Paper presented at the PhD Confirmation of Candidature in November 2012 (see Appendix 2).

Desktop studies have also occurred at each research stage. The findings have shaped the choice of methods outlined in this chapter, the exploration of interests, issues and opportunities in Chapter 3, the literature review and transaction mapping method in Chapter 4, and the reviews of current and potential possibilities in Chapters 4, 5 and 6.

2.1.3 Transaction mapping

‘Systems change ... represents a new phase in the evolution of environmental policy approaches’.⁷⁴ It comes about from systems thinking. Systems thinking ‘recognises that the ... impact of a single product, process or practice can only be understood through an appreciation of the wider system of which it is part’.⁷⁵ For example, a law that works in one context may not work in another.⁷⁶ A holistic understanding of context can lead to the identification of workable solutions that respond to context-specific needs, goals, interactions and transactions.⁷⁷

‘In the area of natural resource management, research has incorporated notions of systems thinking since at least the early 1940s’.⁷⁸ Systems mapping involves

⁷⁴ F W Geels et al, 'The Feasibility of Systems Thinking in Sustainable Consumption and Production Policy: A Report for the Department for Environment, Food and Rural Affairs' (Brunel University, 2008) 6; see also Nemeskeri et al, above n 43, 24; Michal Sedlackoa et al, 'Participatory Systems Mapping for Sustainable Consumption: Discussion of a Method Promoting Systemic Insights' (2014) 106 *Ecological Economics* 33.

⁷⁵ Geels et al, above n 74, i.

⁷⁶ Martin and Craig, above n 52.

⁷⁷ Ibid.

⁷⁸ Sedlackoa et al, above n 74, 34.

‘visually mapping the system of interest’ and identifying parts to change.⁷⁹

Environmental law scholars have used systems mapping to understand complex policy problems and identify workable interventions in the area of sustainable consumption,⁸⁰ sustainable development,⁸¹ and biofuel production.⁸²

This thesis uses systems mapping to understand the transactions peculiar to the development of gourmet bush food products (Chapter 4) and new plant varieties (Chapter 5), and the governance processes that shape bush food commercialisation (Chapter 6). The logic is that by understanding these transactions, it is possible to objectively consider how to adjust the legal and institutional arrangements supporting them to better reflect the interests of Aboriginal and Torres Strait Islander peoples.⁸³ Application of the approach does not avoid implementation challenges arising from political will, social attitudes, commercial behaviour and community opposition, but it does help advance possibilities for further deliberation.⁸⁴

2.1.4 Doctrinal research and analysis

The use of multiple methods in legal research does not avoid the need to identify, analyse and synthesise the law. This process is referred to in law academia as doctrinal research and analysis, the traditional legal research method.⁸⁵

Doctrinal research, at its best, involves rigorous analysis and creative synthesis, the making of connections between seemingly disparate doctrinal strands, and the challenge of extracting general principles from an inchoate mass of primary materials.⁸⁶

Doctrinal processes include:

- identification of primary material (including legislation and case law);

⁷⁹ Andy Stamp and Julia Coffman, *Spotlight: System Mapping for Advocacy Planning and Evaluation* Innovation Network <http://www.innonet.org/index.php?section_id=6&content_id=744>.

⁸⁰ Sedlackoa et al, above n 74.

⁸¹ Chris Mcgrath, *Does Environmental Law Work? How to Evaluate the Effectiveness of an Environmental Legal System* (Lambert Academic Publishing, 2010); Paul Martin and Miriam Verbeek, *Sustainability Strategy* (Federation Press, 2006).

⁸² Paul Martin and Elodie Le Gal, 'Concepts for Industry Co-Regulation of Bio-Fuel Weeds' (2010) 1 *IUCN Academy of Environmental Law eJournal* 1.

⁸³ See Martin and Verbeek, above n 81; Martin and Gal, above n 82, 5-6.

⁸⁴ Martin and Gal, above n 82.

⁸⁵ Hutchinson and Duncan, above n 53, 85.

⁸⁶ *Ibid* 105.

- analysis of primary material content, effects and interrelationships; and
- synthesis of issues and making of tentative conclusions.⁸⁷

The processes are informed by studies of background material such as legal dictionaries, textbooks, policy papers and journal articles.⁸⁸

This thesis uses doctrinal analysis to evaluate current and future legal avenues of support for Aboriginal and Torres Strait Islander interests in gourmet food production, new plant variety development and bush food governance. In the spirit of engaged scholarship, and respecting recent calls to move beyond the use of single methods in legal research,⁸⁹ the doctrinal findings are informed by dialogue with Aboriginal and Torres Strait Islander peoples, observations, desktop studies of non-legal information and studies of bush food commercialisation transactions.

2.1.5 Peer review

Peer review was used to develop the written communication skills of the researcher and improve the quality of research results. Journal peer review involves independent experts evaluating the publication potential of a paper:⁹⁰

It is based on the concept that a larger and more diverse group of people will usually find more weaknesses and errors in a work ... and will be able to make a more impartial evaluation of it than will just the person or group responsible for creating the work.⁹¹

For journals, peer review is a filtering process used to protect journal integrity. For authors, the value of peer review is ‘tied to providing feedback so that a manuscript can be improved through revision’.⁹² This helps authors strengthen their

⁸⁷ Ibid 106.

⁸⁸ Ibid.

⁸⁹ See eg, Yeasmin and Rahman, above n 59, 154; Martin and Craig, above n 52.

⁹⁰ Nancy McCormack, 'Peer Review and Legal Publishing: What Law Librarians Need to Know About Open, Single-Blind, and Double-Blind Reviewing' (2009) 101(1) *Law Library Journal* 59, 63.

⁹¹ the Linux Information Project, *Peer Review Definition* (2005)
<http://www.linfo.org/peer_review.html>.

⁹² David Solomon, 'The Role of Peer Review for Scholarly Journals in the Information Age' (2007) 10(1) *Journal of Electronic Publishing*
<<http://quod.lib.umich.edu/j/jep/3336451.0010.107?view=text;rgn=main>>.

writing and communication skills,⁹³ the quality of which affects the dissemination of ideas.

The nature of humanity makes journal peer review imperfect. For instance, reviewers can be biased and subjective;⁹⁴ researchers can respond poorly to criticism and fail to extract salient points.⁹⁵ On the other hand:

At its best, the peer review system provides not only expert advice, but also a strong incentive for authors to heed the advice and to improve the paper.⁹⁶

This thesis mitigates some of the pitfalls of peer review by using it in combination with other methods. For instance, feedback on an early paper helped focus the legal research and analysis process on bush food commercialisation rather than all native plant commercialisation. The benefits of the peer review used in this thesis will last long after submission, through post-publication discussion and critique.⁹⁷

2.1.6 Sharing research findings

The rationale of this research project was to work with and for Aboriginal and Torres Strait Islander peoples in conceptualising strategies to support their interests. A logical corollary of this is the return of research findings to Aboriginal and Torres Strait Islander peoples for them to deliberate and act upon if they wish.⁹⁸ An additional consideration is the need to generate support for Aboriginal and Torres Strait Islander preferences amongst other bush food stakeholders. This twofold basis for sharing research findings reflects the notion of applied legal research, where the

⁹³ The Teaching Center, *Using Peer Review to Help Students Improve Writing* (2013) <<http://teachingcenter.wustl.edu/strategies/Pages/peer-review.aspx#.VX6XVfmqpBe>>.

⁹⁴ McCormack, above n 90, 64-67; Jamie Hale, *Understanding Research Methodology: Peer Review Process* (2011) <<http://psychcentral.com/blog/archives/2011/04/18/understanding-research-methodology-4-peer-review-process/>>; European Food Information Council, *In search of quality: The scientific peer review process* (2013) <<http://www.eufic.org/article/en/artid/the-scientific-peer-review-process/>>.

⁹⁵ The Teaching Center, above n 93.

⁹⁶ Nature, *Quality and Value: The True Purpose of Peer Review* (2006) <<http://www.nature.com/nature/peerreview/debate/nature05032.html>>; SAGE, *Purpose of Peer Review* (2015) <<http://www.sagepub.com/journalgateway/peerReview.htm>>.

⁹⁷ European Food Information Council, above n 94; SAGE, above n 96.

⁹⁸ C A Butiu and M Pascaru, 'Triangulation and results restitution in social service needs assessment' (2014) 46 *Revista de Cercetare si Interventie Sociala* 273, 278-79.

aim 'is not scientific (the pursuit of knowledge as an end) but pragmatic (the pursuit of knowledge for applied ends)'.⁹⁹

This research returned findings to Aboriginal and Torres Strait Islander field partners through presentations, emails and summary papers. This honours a benefit-sharing agreement reached at the outset of the Plant Business project between Aboriginal and Torres Strait Islander field partners and the CRC-REP.¹⁰⁰ Over the past three years, the managing entity of the CRC-REP (Ninti One) has been sharing these research findings with other bush food stakeholders to stimulate awareness of and support for Aboriginal and Torres Strait Islander interests in bush food commercialisation. This has created a pathway for the potential further development and adoption of the findings of this research. Relevant stakeholders include government departments, regional natural resource management boards, Aboriginal and Torres Strait Islander land councils and bush food developers. These discussions are ongoing, with Ninti One committed to helping Aboriginal and Torres Strait Islander peoples advance their preferred strategic options.

2.2 Ethical framework

This thesis has been conducted within the ethical framework of the CRC-REP and its managing entity, Ninti One. Ninti One is an independent, not-for-profit research institute based in Alice Springs.¹⁰¹ It is governed by a majority Aboriginal and Torres Strait Islander board who approve all research projects, including Plant Business.¹⁰² Ninti One has internal ethical policies with which researchers must comply.¹⁰³ The policies embody the best-practice research standards outlined in the Australian Institute of Aboriginal and Torres Strait Islander Studies *Guidelines for Ethical Research in Indigenous Studies 2012*.¹⁰⁴ This section outlines the measures taken by the Plant Business project and PhD researcher in compliance with Ninti One policies.

⁹⁹ Martin and Craig, above n 52.

¹⁰⁰ CRC-REP, *Conversations, Cups of Tea ...*, above n 19, 15.

¹⁰¹ Ninti One, *How we work* <<http://www.nintione.com.au/about-nintione/how-we-work>>.

¹⁰² Ninti One, *Our board* <<http://www.nintione.com.au/about-nintione/our-people/board>>.

¹⁰³ See eg, Ninti One *Protocol for Aboriginal and Torres Strait Islander Knowledge and Intellectual Property* (Ninti One, 2012); Ninti One, *Aboriginal and Torres Strait Islander Research Engagement Protocol* <http://www.nintione.com.au/resource/Aboriginal-Research-Engagement-Protocol_template-for-use.pdf>.

¹⁰⁴ See Australian Institute of Aboriginal and Torres Strait Islander Studies, *Guidelines for Ethical Research in Australian Indigenous Studies* (AIATSIS, 2012); Ninti One (2012), above n 103, 1.

2.2.1 Ninti One Aboriginal and Torres Strait Islander research engagement protocol

The Ninti One Aboriginal and Torres Strait Islander research engagement protocol provides a starting point for negotiations between Ninti One researchers and Aboriginal and Torres Strait Islander peoples. ‘It is ... an active document that is specific to each research project, within the framework of best practice outlined’.¹⁰⁵ Best practice processes for each project include:

- obtaining Aboriginal and Torres Strait Islander consent to carry out research;¹⁰⁶
- collaborating with Aboriginal and Torres Strait Islander peoples to design and deliver research aims;¹⁰⁷
- supporting the active participation, employment and training of Aboriginal and Torres Strait Islander peoples in all research stages;¹⁰⁸
- convening an Aboriginal and Torres Strait Islander advisory group;¹⁰⁹ and
- sharing research benefits with Aboriginal and Torres Strait Islander partners.¹¹⁰

One of the first actions taken by the Plant Business project leader was the convening of the Plant Business Advisory Group.¹¹¹ Another early action was the instigation of discussions with Western Aranda elders from Ntaria and Tjuwanpa Outstations in the Northern Territory.¹¹² The driving force behind approaching people from this area was their traditional connections with the bush tomato, the focus species of the scientific aspects of the Plant Business project. At the end of 2011, after more than six months of discussions and planning, the Ninti One board approved the Plant Business project proposal.¹¹³

The next stage of the Plant Business project was to formalise agreed benefit-sharing arrangements with Western Aranda peoples through their legal

¹⁰⁵ Ninti One (2012), above n 103, 1.

¹⁰⁶ Ibid 2.1.

¹⁰⁷ Ibid 2.2.

¹⁰⁸ Ibid 3.4.

¹⁰⁹ Ibid 2.3.

¹¹⁰ Ibid 4.2.

¹¹¹ See CRC-REP, *Conversations, Cups of Tea ...*, above n 19.

¹¹² Ibid.

¹¹³ Ibid 9.

representatives, the Central Land Council.¹¹⁴ These negotiations are ongoing. Alongside this process was the formalisation of an agreement with Western Aranda elders to collect plant samples from their land. Ninti Aboriginal Community Researchers and Tjuwanpa Women Rangers facilitated these negotiations.¹¹⁵ Negotiations with elders occurred in the local language (Western Aranda). ‘Those people decided what information we could collect, what information was restricted’, and the conditions of specimen collection such as appropriate training, payment and documentation.¹¹⁶

2.2.2 Ninti One protocol for Aboriginal and Torres Strait Islander knowledge and intellectual property

This Ninti One protocol for Aboriginal and Torres Strait Islander knowledge and intellectual property is consistent with the principles outlined in the *United Nations Declaration on the Rights of Indigenous Peoples*.¹¹⁷ The purpose of the protocol is ‘to guide researchers toward best practice in ethics, confidentiality, equitable benefit-sharing and in managing research information’ and Aboriginal and Torres Strait Islander knowledge ‘throughout the research process’.¹¹⁸ The protocol requires Ninti One researchers to:

- secure ethical clearances from university ethics committees;¹¹⁹
- adhere to the Australian Institute of Aboriginal and Torres Strait Islander Studies *Guidelines for Ethical Research in Indigenous Studies*;¹²⁰
- respect local Aboriginal and Torres Strait Islander protocols;¹²¹
- clarify when Aboriginal and Torres Strait Islander knowledge may be used and how, and ensure all uses accord with that agreement;¹²²
- start benefit-sharing negotiations on the assumption of a 50/50 share between Ninti One and Aboriginal and Torres Strait Islander knowledge providers;¹²³

¹¹⁴ Ibid 11.

¹¹⁵ Ibid 15.

¹¹⁶ Ibid.

¹¹⁷ Ninti One (2012), above n 103, 4.

¹¹⁸ Ibid 2.

¹¹⁹ Ibid 4.1.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid 5.1.

¹²³ Ibid 6.1.

- return research results to Aboriginal and Torres Strait Islander participants ‘in ways that are relevant, accessible and meaningful’;¹²⁴ and
- regularly report on compliance with Ninti One research protocols.¹²⁵

Ethical clearance from an Australian university is generally only required when Aboriginal and Torres Strait Islander peoples are the subject matter of the research.¹²⁶ Although the subject matter of Plant Business was native plants and the subject matter of this PhD was laws and institutions, both projects secured premium ethics clearance in the form of a National Ethical Application Form (NEAF) approval.¹²⁷ These approvals committed project researchers to the *Guidelines for Ethical Research in Indigenous Studies*. In addition, the Plant Business project leader secured government approval for the project from the Central Australian Human Research Ethics Committee.¹²⁸

Negotiations to collect plant samples were conducted in accordance with the engagement protocols of Western Aranda elders. The collection agreement covered when and how Aboriginal and Torres Strait Islander knowledge can be used, and how research results can be returned to Western Aranda peoples. Research results have been consistently returned to other Aboriginal and Torres Strait Islander field partners through project newsletters and presentations. Annual Ninti One reporting requirements ensure continued compliance with these practices. Equal benefit-sharing arrangements were agreed early in the project, and are now being formalised through the Central Land Council (on behalf of the Western Aranda elders).

2.3 Summary

This chapter has explained the rationale behind the research methodology, and described the role of each method in detail. It has also described the ethical framework from within which the research was conducted. The next chapter begins

¹²⁴ Ibid 5.3.

¹²⁵ Ibid.

¹²⁶ See eg, AIATSIS, *Ethical Research* <<http://aiatsis.gov.au/research/ethical-research>>.

¹²⁷ Human Research Ethics Committee (Southern Cross University, HREC Approval Number: ECN-12-050, 2012)(see Appendix 3); Human Research Ethics Committee, Final report (University of New England, HREC Approval Number: HE14-018, 2014) (see Appendix 4).

¹²⁸ Central Australian Human Research Ethics Committee (Northern Territory Government, Ethics Approval Number, HREC-12-61, 2012)(see Appendix 5).

the substantive journey towards the research aim by exploring major legal issues and opportunities that pertain to key Aboriginal and Torres Strait Islander interests.

CHAPTER 3: THE POTENTIAL OF LAW

3.1 What this Chapter does

The substance of this chapter is in the form of a journal paper: ‘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’ (provided in full in section 3.2). The paper reflects findings from a scoping study undertaken at the outset of the research, the objective of which was to explore the potential of Australian law to support the interests of Aboriginal and Torres Strait Islander peoples in bush food commercialisation. Key findings include the diversity of Aboriginal and Torres Strait Islander interests and the need to complement legal measures with institutional mechanisms to advance real-world outcomes. The findings underpin the choice of method outlined in Chapter 4, and the detailed investigations in Chapters 4, 5 and 6.

To honour the applied aims of the research, the journal paper has been reworked into a policy brief. The brief is basically a simplified document for wider dissemination to Aboriginal and Torres Strait Islander individuals, groups and representative bodies, non-Indigenous bush food developers and law, policy and decision makers. It is provided in section 3.3, and serves as the summary and conclusion section of the chapter.

3.2 Journal paper one

This article is subject to copyright. It is available at the following:

Lingard, K. 2015. The Potential of Current Legal Structures to Support Aboriginal and Torres Strait Islander Interests in the Australian Bush Food Industry. *International Journal of Sustainable Development and World Ecology*. 23: 174-185. DOI: 10.1080/13504509.2015.1111268.

The Potential of Current Legal Structures to Support Aboriginal and Torres Strait Islander Interests in the Australian Bush Food Industry

Kylie Lingard

Abstract

There are complex connections between Australia's native plants and first peoples, the Aboriginal and Torres Strait Islander peoples. The maintenance of these connections is central to Aboriginal and Torres Strait Islander culture and well-being and the tangible realisation of Australian policy commitments. Diverse cultural connections combine with other motivations to underpin an array of Aboriginal and Torres Strait Islander interests in the commercial development of traditional plant foods ('bush foods'). Despite nation-wide policy support for these interests, there is no national legal framework to support them. This fortifies the popular call for a new (*sui generis*) law that transforms the interests of Aboriginal and Torres Strait Islander peoples into enforceable legal rights. It is unclear the extent to which a single *sui generis* law might help Aboriginal and Torres Strait Islander peoples realise their diverse interests in the development of gourmet bush food products and new bush food varieties. It is also unlikely that Australia will implement such a law in the near future. This paper offers a preliminary study of the capacity of current legal structures to support some key Aboriginal and Torres Strait Islander interests that might arise in these two development contexts. The study can inform the future development of practical legal strategies to support the diverse interests of Aboriginal and Torres Strait Islander peoples in the bush food industry.

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF AUTHORS' CONTRIBUTION

We, the PhD candidate and the candidate's Principal Supervisor, certify that all co-authors have consented to their work being included in the thesis and they have accepted the candidate's contribution as indicated in the Statement of Originality.

	Author's Name	% of contribution
Candidate	Kylie Lingard	100
Other Authors		

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin



Candidate

15 August 2015



Principal Supervisor

15 August 2015

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF ORIGINALITY

We, the PhD candidate and the candidate's Principal Supervisor, certify that the text, figures and tables in the paper entitled:

The Potential of Current Legal Structures to Support Aboriginal and Torres Strait Islander Interests in the Australian Bush Food Industry

are the candidate's original work.

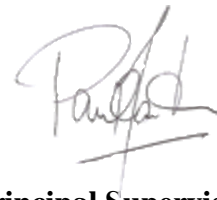
Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin

Kylie Lingard

Candidate

15 August 2015



Principal Supervisor

15 August 2015

3.3 Policy brief one

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

Lingard, K. 2015. The Potential of Law to Support Aboriginal and Torres Strait Islander Interests in Bush Food Commercialisation. Ninti One Ltd. Alice Springs.

http://www.nintione.com.au/resource/PB005_PolicyBriefing_PotentialOfLawSupportAboriginalTorresStraitIslanderInterestsBushFoodCommercialisation.pdf

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF AUTHORS' CONTRIBUTION

We, the PhD candidate and the candidate's Principal Supervisor, certify that all co-authors have consented to their work being included in the thesis and they have accepted the candidate's contribution as indicated in the Statement of Originality.

	Author's Name	% of contribution
Candidate	Kylie Lingard	100
Other Authors		

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin



Candidate

15 August 2015



Principal Supervisor

15 August 2015

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF ORIGINALITY

We, the PhD candidate and the candidate's Principal Supervisor, certify that the text figures and tables in the policy brief entitled:

*The Potential of Law to Support Aboriginal and Torres Strait Islander Interests
in Bush Food Commercialisation*

are the candidate's original work.

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin

Kylie Lingard

Candidate

15 August 2015



Principal Supervisor

15 August 2015

CHAPTER 4: GOURMET BUSH FOOD PRODUCTS

4.1 What this Chapter does

The previous chapter presented findings from a scoping study on the capacity of Australian law to support Aboriginal and Torres Strait Islander interests in bush food commercialisation. The findings inform the detailed examination in this chapter on strategies to support Aboriginal and Torres Strait Islander interests in the development of gourmet bush food products like sauces, jams and chutneys. The development process encompasses other bush food commercialisation pathways, including the commercial harvesting of wild plants, the commercial production of bush foods on private land and the processing of raw ingredients for sale to gourmet product developers. The other major type of bush food commercialisation in Australia is the development of new bush food plant varieties; the next chapter (Chapter 5) considers strategies to support Aboriginal and Torres Strait Islander interests in this commercial context.

The substance of this chapter is in the form of a journal paper: ‘Strategies to Support the Interests of Aboriginal and Torres Strait Islander Peoples in the Development of Gourmet Bush Food Products’ (provided in full in section 4.2). The paper has three objectives:

- explore current research and the relevance of international developments to bush food commercialisation in Australia;
- assess current avenues of support for Aboriginal and Torres Strait Islander interests in the development of gourmet bush food products; and
- identify possible strategies to support Aboriginal and Torres Strait Islander interests in gourmet bush food product development.

The introduction and parts of the paper repeat much of the information already provided in the paper reproduced in Chapter 3, a necessity to ensure that it is a stand-alone document for publication. The key findings are that:

- the incorporation of major international developments into Australian law is unlikely to support the diversity of Aboriginal and Torres Strait Islander interests in bush food commercialisation; and

- there is value in mapping commercialisation transactions to identify feasible legal and institutional interventions to support Aboriginal and Torres Strait Islander interests in bush food commercialisation.

The findings lend support to the adoption of a new approach to Aboriginal and Torres Strait Islander interests in bush food commercialisation.

As with Chapter 3, the findings explained in the journal paper inform a policy brief: ‘Strategies to Support Aboriginal and Torres Strait Islander Interests in the Development of Gourmet Bush Food Products’. The brief is reproduced in full in section 4.3.

4.2 Journal paper two

This paper is subject to copyright. It is available at the following:

Lingard, K. and Martin, P. 2016. Strategies to Support the Interests of Aboriginal and Torres Strait Islander Peoples in the Commercial Development of Gourmet Bush Food Products. *International Journal of Cultural Property*. 23(1): 33– 70.

DOI:10.1017/S0940739116000023

Strategies to Support the Interests of Aboriginal and Torres Strait Islander Peoples in the Commercial Development of Gourmet Bush Food Products

Kylie Lingard and Paul Martin

Abstract

Indigenous groups and individuals may have different needs and aspirations in relation to their local plant foods (“bush foods”). Interests may reflect totemic relationships, customary rights and duties, social positions, political and economic motivations, and personal capacities. This article uses a systems method to identify strategies to support the diverse interests of Australia’s Aboriginal and Torres Strait Islander peoples in the commercial development of gourmet bush food products. The aim is to identify possibilities for further consideration by Aboriginal and Torres Strait Islander peoples.

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF AUTHORS' CONTRIBUTION

We, the PhD candidate and the candidate's Principal Supervisor, certify that all co-authors have consented to their work being included in the thesis and they have accepted the candidate's contribution as indicated in the *Statement of Originality*.

	Author's Name	% of contribution
Candidate	Kylie Lingard	80
Other Authors	Paul Martin	20

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin



Candidate

15 August 2015



Principal Supervisor

15 August 2015

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF ORIGINALITY

We, the PhD candidate and the candidate's Principal Supervisor, certify that the text, figures and tables in the paper entitled:

Strategies to Support the Interests of Aboriginal and Torres Strait Islander Peoples in the Commercial Development of Gourmet Bush Food Products

are the candidate's original work.

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin

Kylie Lingard

Candidate

15 August 2015



Principal Supervisor

15 August 2015

4.3 Policy brief two

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

Lingard, K. 2015. Strategies to Support Aboriginal and Torres Strait Islander Interests in Gourmet Bush Food Product Development. Ninti One Ltd: Alice Springs.

http://www.nintione.com.au/resource/PB006_PolicyBriefing_StrategiesSupportAboriginalTorresStraitIslanderInterestsGourmetBushFoodProductDevelopment.pdf

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF AUTHORS' CONTRIBUTION

We, the PhD candidate and the candidate's Principal Supervisor, certify that all co-authors have consented to their work being included in the thesis and they have accepted the candidate's contribution as indicated in the *Statement of Originality*.

	Author's Name	% of contribution
Candidate	Kylie Lingard	100
Other Authors		

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin



Candidate

15 August 2015



Principal Supervisor

15 August 2015

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF ORIGINALITY

We, the PhD candidate and the candidate's Principal Supervisor, certify that the text figures and tables in the policy brief entitled:

Strategies to Support Aboriginal and Torres Strait Islander Interests in Gourmet Bush Food Product Development

are the candidate's original work.

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin

Kylie Lingard

Candidate

15 August 2015



Principal Supervisor

15 August 2015

CHAPTER 5: NEW NATIVE PLANT VARIETIES

5.1 What this chapter does

Chapter 4 discussed the possible legal and institutional strategies to support Aboriginal and Torres Strait Islander interests in the development of gourmet bush food products. This chapter examines the legal and institutional arrangements shaping another type of bush food commercialisation pathway: the development of new native plant varieties. Chapters 4 and 5 combined address most types of bush food development that occur in Australia at present.

The substance of the chapter is in the form of a journal paper: ‘Strategies to Support Aboriginal and Torres Strait Islander Interests in the Development of New Native Plant Varieties’ (provided in full in section 5.2). The paper has been accepted for publication in the Australia Intellectual Property Journal. The paper has two objectives:

- assess current avenues of support for Aboriginal and Torres Strait Islander interests in the development of new native plant varieties; and
- identify legal and institutional interventions that may improve support for Aboriginal and Torres Strait Islander interests in this commercial context.

The research discussed in this chapter reveals new uses of some of the strategies identified in Chapter 4. It also affirms the difference between strategies developed ‘in-context’ and those developed by examining specific legal instruments. This lends further support to the use of transaction mapping in developing strategies to support Aboriginal and Torres Strait Islander interests in bush food commercialisation.

As with the previous chapter, the paper informs a policy brief: ‘Strategies to Support Aboriginal and Torres Strait Islander Interests in the Development of New Native Plant Varieties’ (provided in full in section 5.3). The brief in this chapter introduces key findings from the journal paper and additional findings from later research.

5.2 Journal paper three

This paper is subject to copyright. It is available at the following:

Lingard, K. 2015. 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*. 26: 39-57.

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

Kylie Lingard

Abstract

Australia's Aboriginal and Torres Strait Islander peoples have many different needs and aspirations in relation to their traditional plants (herein "interests"). Aboriginal and Torres Strait Islander peoples face particular challenges in realising these interests in the commercial development of new native plant varieties. This article offers a set of legal and institutional options that may improve support for the diverse interests of Aboriginal and Torres Strait Islander peoples in this commercial context. The "transactions systems" approach applied in this article may be useful in other commercial contexts.

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF AUTHORS' CONTRIBUTION

We, the PhD candidate and the candidate's Principal Supervisor, certify that all co-authors have consented to their work being included in the thesis and they have accepted the candidate's contribution as indicated in the *Statement of Originality*.

	Author's Name	% of contribution
Candidate	Kylie Lingard	100
Other Authors		

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin



Candidate

15 August 2015



Principal Supervisor

15 August 2015

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF ORIGINALITY

We, the PhD candidate and the candidate's Principal Supervisor, certify that the text, figures and tables in the paper entitled:

*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*

are the candidate's original work.

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin

Kylie Lingard

Candidate

15 August 2015



Principal Supervisor

15 August 2015

5.3 Policy brief three

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

Lingard, K. 2015. Strategies to Support Aboriginal and Torres Strait Islander Interests in the Development of New Native Plant Varieties. Ninti One Ltd: Alice Springs.

http://www.nintione.com.au/resource/PB007_PolicyBriefing_StrategiesSupportAboriginalTorresStraitIslanderInterestsDevelopmentNewNativePlantVarieties.pdf

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF AUTHORS' CONTRIBUTION

We, the PhD candidate and the candidate's Principal Supervisor, certify that all co-authors have consented to their work being included in the thesis and they have accepted the candidate's contribution as indicated in the *Statement of Originality*.

	Author's Name	% of contribution
Candidate	Kylie Lingard	100
Other Authors		

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin



Candidate

15 August 2015



Principal Supervisor

15 August 2015

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF ORIGINALITY

We, the PhD candidate and the candidate's Principal Supervisor, certify that the text, figures and tables in the policy brief entitled:

Strategies to Support Aboriginal and Torres Strait Islander Interests in the Development of New Native Plant Varieties

are the candidate's original work.

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin

Kylie Lingard

Candidate

15 August 2015



Principal Supervisor

15 August 2015

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

Lingard, K. An Inclusive Governance Framework for Bush Food Commercialisation. *Journal of Australian Indigenous Issues*. (Submitted 2015).

An Inclusive Governance Framework for the Australian Bush Food Commercialisation System

Kylie Lingard

Abstract

This paper looks at public governance processes that shape the commercial development of Australian native plant foods ('bush foods'). Relevant processes include the making of administrative plans and decisions, and the setting of public research priorities. The aim is to identify legal and institutional strategies to support the equal participation of Aboriginal and Torres Strait Islander peoples in these governance processes. Such strategies may further multiple national policy goals and commitments, and provide an avenue for Aboriginal and Torres Strait Islander peoples to assert their diverse interests in this commercial context.

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF AUTHORS' CONTRIBUTION

We, the PhD candidate and the candidate's Principal Supervisor, certify that all co-authors have consented to their work being included in the thesis and they have accepted the candidate's contribution as indicated in the *Statement of Originality*.

	Author's Name	% of contribution
Candidate	Kylie Lingard	100
Other Authors		

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin



Candidate

15 August 2015



Principal Supervisor

15 August 2015

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF ORIGINALITY

We, the PhD candidate and the candidate's Principal Supervisor, certify that the text, figures and tables in the paper entitled:

An Inclusive Governance Framework for Bush Food Commercialisation

are the candidate's original work.

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin

Kylie Lingard

Candidate

15 August 2015



Principal Supervisor

15 August 2015

6.3 Policy brief four

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

Lingard, K. 2015. Policy briefing: An Inclusive Governance Framework for Bush Food Commercialisation. Ninti One Ltd: Alice Springs.

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

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF AUTHORS' CONTRIBUTION

We, the PhD candidate and the candidate's Principal Supervisor, certify that all co-authors have consented to their work being included in the thesis and they have accepted the candidate's contribution as indicated in the *Statement of Originality*.

	Author's Name	% of contribution
Candidate	Kylie Lingard	100
Other Authors		

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin



Candidate

15 August 2015



Principal Supervisor

15 August 2015

Journal-Article Format for PhD Theses at the University of New England

STATEMENT OF ORIGINALITY

We, the PhD candidate and the candidate's Principal Supervisor, certify that the text, figures and tables in the policy brief entitled:

An Inclusive Governance Framework for Bush Food Commercialisation

are the candidate's original work.

Name of Candidate: Kylie Lingard

Name/title of Principal Supervisor: Paul Martin

Kylie Lingard

Candidate

15 August 2015



Principal Supervisor

15 August 2015

CHAPTER 7: CONCLUSIONS

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

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

7.1 Key findings

The main question this thesis sought to answer is:

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

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

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

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

The finding underpins two conclusions:

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

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

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

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

7.1.1 Sub-question 1: Key findings

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

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

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

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

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

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

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

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

7.1.2 Sub-question 2: Key findings

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

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

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

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

7.1.3 Sub-question 3: Key findings

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

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

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

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

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

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

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

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

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

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

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

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

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

7.2.1 International policy development

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

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

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

7.2.2 Domestic policy development

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

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

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

7.2.3 Opportunities for Aboriginal and Torres Strait Islander peoples

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

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

7.2.4 Significance to legal scholarship

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

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

7.3 Areas of future research

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

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

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

7.4 Research limitations and a way forward

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

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

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

7.5 Concluding remarks

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

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

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

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

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

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

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

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)

Abrell, Elan et al, *Imagining a TK Commons: A Community Approach to Sharing Traditional Knowledge for Non-commercial Research* (International Development Law Organisation, 2009)

ACCC, *The Guide to the Horticulture Code for Growers and Wholesale Traders in the Horticulture Industry* (Commonwealth, 2011)

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

ACIP, *A Review of Enforcement of Plant Breeder's Rights* (Issues paper, ACIP, 2007)

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, *Plant Breeder's Rights: A Guide for Horticulture Industries* (HAL, 2008)

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

Ackoff, Russell, *Re-Creating the Corporation: A Design of Organizations for the 21st Century* (Oxford University Press, 1999)

Ackoff, Russell, 'Transforming the Systems Movement' (2004) 15(8) *The Systems Thinker*

Agriculture and Consumer Protection, 'The Cultural Environment' in *Global Agricultural Marketing Management* (FAO, 1997)

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)

Alexandra, Andrew, Jadran Lee and Frank Vanclay, *Innovation, Exclusion and Commodification of Plant Types: A Social and Philosophical Investigation of Plant Variety Rights in Australia* (Centre for Applied Philosophy and Public Ethics, 2002)

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)

Alyawarr speakers from Ampilatwatja, Fiona Walsh and Josie Douglas, *Angka Akatyerr-Akert: A Desert Raisin Report* (DKCRC, 2009)

Anaya, James, *Extractive Industries and Indigenous Peoples: Report of the Special Rapporteur on the Rights of Indigenous Peoples* (Human Rights Council, 2013)

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

Anderson, Jane, 'Developments in Intellectual Property and Traditional Knowledge Protection' (2009) 49(2) *Australian Journal of Adult Learning* 352

- Anderson, Jane, *Indigenous/Traditional Knowledge and Intellectual Property* (Center for the Study of the Public Domain, 2010)
- Anderson, Jane, 'On Resolution: Intellectual Property and Indigenous Knowledge Disputes' (2012) 2(1) *Landscapes of Violence* 1
- Anderson, Jane, 'The Making of Indigenous Knowledge in Intellectual Property Law in Australia' (2005) 12 *International Journal of Cultural Property* 347
- Anderson, Jane, 'The Politics of Indigenous Knowledge: Australia's Proposed Communal Moral Rights Bill' (2004) 27(3) *University of New South Wales Law Journal*, 1
- 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
- Arnstein, Sherry, 'A Ladder of Citizen Participation' (1969) 35(4) *Journal of the American Planning Association* 216
- Attorney-General's Department, *The Australian Consumer Law: A Guide to Provisions* (Australian Government, 2010)
- Australian Government, *Closing the Gap: Prime Minister's Report* (Commonwealth, 2014)
- Australian Government, *Closing the Gap: Prime Minister's Report* (Commonwealth, 2015)
- Australian Government, *Exporting Plants and Plant Products: A Step-by-Step Guide for Australian exporters* (Australian Government, 2015)
- Australian Government, *Mapping Australian Science and Innovation: Main Report* (Commonwealth, 2003)
- Australian Human Rights Commission, *Integrating Human Rights into Australian Business Practice* (Australian Human Rights Commission, 2009)
- 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 Organic, *Australian Certified Organic Standard 2013* (Australian Organic Ltd, 2013)

Bamba, John, *Indigenous Peoples Self-Determined Development and Lessons from Kalimantan Credit Union Movement* (Paper Presented at the International Expert Group Meeting, New York, 12-14 January 2010)

Bamba, John, 'Self-Determined Development' in Victoria Tauli-Corpuz et al (ed), *Towards an Alternative Development Paradigm: Indigenous People's Self-Determined Development* (Tebtebba, 2010)

Bandarian, Reza, 'Evaluation of Commercial Potential of a New Technology at the Early Stage of Development with Fuzzy Logic' (2007) 2(4) *Journal of Technology, Management and Innovation* 73

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

Battiste, M and James (Sa'ke'j) Youngblood Henderson, *Protecting Indigenous Knowledge and Heritage: A Global Challenge* (Purich Publishing Ltd, Saskatoon 2000)

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

Behrendt, Jason and Peter Thompson, *The Recognition and Protection of Aboriginal Interests in NSW Rivers* (Healthy Rivers Commission of NSW, 2003)

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)

Black, Leeora, and Charmine Härtel, *Towards a Typology of Corporate Social Responsibility Orientations* (Paper Presented at the Academy of Management Social Issues in Management Division, Denver, Colorado, 11-14 August 2002)

Blakeney, Michael, *Intellectual Property Rights and Food Security* (CABI, 2009)

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

Book Reviews, 'Creative Destruction - How Globalization is Changing the World's Cultures' (2004) 28 *Journal of Cultural Economics* 81

Book Reviews, 'Who Owns Native Culture?' (2004) 28 *Journal of Cultural Economics* 317

Brackertz, Nicola and Denise Meredyth, 'Community Consultation in Victorian Local Government: A Case of Mixing Metaphors?' (2009) 68(2) *Australian Journal of Public Administration* 152

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

Briggs, John, 'The Use of Indigenous Knowledge in Development: Problems and Challenges' (2005) 5 *Progress in Development Studies* 99

Brown, Kenneth, 'Customary Law in the Pacific: An Endangered Species?' (1999) 3(2) *Journal of South Pacific Law*

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

Calma, Tom, *The Integration of Customary Law into the Australian Legal System* (Paper Presented at the National Indigenous Legal Conference, Sydney, 2006)

Campbell, David, 'Application of an Integrated Multidisciplinary Economic Welfare Approach to Improved Wellbeing Through Aboriginal Caring for Country' (2011) 33 *the Rangeland Journal* 365

- Carino, Joji, 'Poverty and Wellbeing' in *State of the World's Indigenous Peoples* (UN, 2009)
- Carpenter, Megan, 'Intellectual Property Laws and Indigenous Peoples: Adapting Copyright Laws to the Needs of a Global Community' (2004) 7 *Yale Human Rights and Development Law Journal* 51
- Carter, Jennifer, 'Protocols, Particularities, and Problematising Indigenous 'Engagement' in Community-Based Environmental Management in Australia' (2010) 176 *the Geographical Journal* 199
- Chacko, Sunil and Henri-Philippe Sambuc, 'Blockbusters, Traditional Knowledge and Intellectual Property' (2003) 5(22) *Indigenous Law Bulletin* 12
- Cheney, George, Morgan Wilhelmsson and Theodore Zorn, '10 Strategies for Engaged Scholarship' (2002) 16(1) *Management Communication Quarterly* 92
- Cherikoff, Vic and Jennifer Isaacs, *The Bush Food Handbook: How to Gather, Grow, Process and Cook Australian Wild Foods* (Ti Tree Press, 1991)
- Cherikoff, Vic, 'Marketing the Australian Native Food Industry' (RIRDC, 2000)
- Chess, C and K Purcell, 'Public Participation and the Environment: Do we Know What Works?' (1999) 33(16) *Environmental Science & Technology* 2685
- 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)

Cooney, Rosie and Melanie Edwards, *Indigenous Wildlife Enterprise Development: The Regulation and Policy Context and Challenges* (NAILSMA, 2009)

Coordinator General for Remote Indigenous Services, *Six Monthly Report* (Office of the Coordinator General for Remote Indigenous Services, 2013)

Craig, Donna and Elizabeth Gachenga, 'The Recognition of Indigenous Customary Law in Water Resource Management' (2010) 20(5/6) *Water Law* 278

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

Craig, Donna, *An Agreement Approach that Recognises Customary Law in Water Management: Fact Sheet* (Land and Water Australia, 2008)

Craig, Donna, *Conservation and the Law: Land Rights, Enforcement, Intellectual Property* (Paper Presented at the Conserving Biodiversity in the Developing World: Lecture Series, Fordham University, 5 April 2005)

Craig, Donna, 'Implementing Sustainable Development in the Arctic: What Principles Should Guide Environmental Governance in Traditional Areas of Indigenous Peoples Facing the Impacts of Climate Change' (2008) *Polar Law Symposium* 307

Craig, Donna, 'Indigenous Property Rights to Water: Environmental Flows, Cultural Values and Tradeable Property Rights' in *Adapting Rules for Sustainable Resource Use* (CSIRO, 2006)

Craig, Donna, *Poverty Alleviation and Water Law: Australian Case Studies* (Paper Presented at the 6th Annual Colloquium of the IUCN Academy of Environmental Law: Poverty Alleviation and Environmental Protection, Mexico City, 10 - 15 November 2008)

Craig, Donna, 'Recognising Indigenous Rights Through Co-Management Regimes: Canadian and Australian Experiences' (2002) 9 *New Zealand Journal of Environmental Law* 199

CRC-REP, *Conversations, Cups of Tea, Heat and Dirt: a Report on the Community Engagement and Plant Specimen Collection Activities for the CRC-REP Plant Business Project* (CRC-REP, 2015)

Crouch, Colin and Henry Farrell, 'Breaking the Path of Institutional Development? Alternatives to the New Determinism' (2004) 16 *Rationality and Society* 5

Cunningham, A B, S T Garnett and J Gorman, 'Policy Lessons from Practice: Australian Bush Products for Commercial Markets' (2009) 74 *Geojournal* 429

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

Daes, Erica Irene, 'Intellectual Property and Indigenous Peoples' (2001) *American Society of International Law Proceedings of the Annual Meeting* 143

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

Davies, Jocelyn, 'Of Caribou and Kangaroos: Agreements About Wildlife' (1999) 4(21) *Indigenous Law Bulletin* 27

Davis, Megan, 'International Trade Rules and Indigenous Knowledge: A Basic Introduction' (2006) 6(20) *Indigenous Law Bulletin* 10

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

Davis, Michael, 'Bridging the Gap or Crossing a Bridge? Indigenous Knowledge and the Language of Law and Policy' in Walter Reid et al (eds), *Bridging Scales and Knowledge Systems* (Island Press, 2006)

Davis, Michael, *Indigenous Peoples and Intellectual Property Rights* (Australian Government, 1996)

Davis, Michael, Sarah Holcombe and Terri Janke, *Maintain & Strengthen Your Culture: Handbook for Working with Indigenous Ecological Knowledge & Intellectual Property* (NRMB, 2009)

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)
- Department of the Environment, *Assessment of the Social Outcomes of the Working on Country Program* (Australian Government, 2012)
- Department of the Environment, *Working on Country: Evaluation Report* (Australian Government, 2010)
- Dodson, Michael and Olivia Barr, 'Breaking the Deadlock: Developing an Indigenous Response to Protecting Indigenous Traditional Knowledge' (2007) 11(2) *Australian Indigenous Law Reporter* 19
- Dodson, Michael, *Report on Indigenous Traditional Knowledge* (Permanent Forum on Indigenous Issues, 2007)
- Dougherty, Terence, 'Group Rights to Cultural Survival: Intellectual Property Rights in Native American Cultural Symbols' (1997) 29 *Columbia Human Rights Law Review* 355
- Doyle, Gillian, 'Why Culture Attracts and Resists Economic Analysis' (2010) 3 *Journal of Cultural Economics* 245
- Drahos, Peter and Susy Frankel (eds), *Indigenous Peoples' Innovation: Intellectual Property Pathways to Development* (ANU E Press, 2012)
- Drahos, Peter, 'When Cosmology Meets Property: Indigenous People's Innovation and Intellectual Property' (2011) 29(3) *Prometheus* 233
- Dryzek, John S., 'Liberal Democracy and the Critical Alternative' in *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford University Press, 2000)
- 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)
- Edson, Robert, *Systems Thinking Applied: A Primer* (Applied Systems Thinking Institute, 8 October 2008)
- Ellis, Stephen, 'Meaningful consideration? A review of Traditional Knowledge in Environmental Decision Making' (2005) 58(1) *Arctic* 66

- Evans, Louis et al, 'Effective Intellectual Property Protection of Traditional Knowledge of Plants and their Uses: An Example from Australia' (2009) 74 *Geojournal* 391
- Evans, Louis et al, 'Plants for People: Case Study Report' (DKCRC, 2010)
- Evely, Anna Et Al, 'High Levels of Participation in Conservation Projects Enhance Learning' (2010) 2(2) *Conservation Letters* 116
- Everard, Pompey, *Punu: Yankunytjatjara Plant Use: Traditional Methods of Preparing Foods, Medicines, Utensils and Weapons from Native Plants* (IAD Press, 2002)
- Evuleocha, Stevina, 'Managing Indigenous Relations: Corporate Social Responsibility in a New Age of Activism' (2005) 10(4) *Corporate Communications* 328
- Expert Mechanism on the Rights of Indigenous Peoples, *Role of Languages and Culture in the Promotion and Protection of the Rights and Identity of Indigenous Peoples* (UN Human Rights Council, 2012)
- FAO, *The Benefit-Sharing Fund: Crop Diversity for Food Security* (FAO, 2012)
- Ferguson, Graham, *A Scoping Study of the Potential for Export of Australia Nursery Intellectual Property* (HAL, 2005)
- Fletcher, AC and PE Bourne, 'Ten Simple Rules to Commercialize Scientific Research' (27 September 2012) 8(9) *PLoS Computational Biology*
<<http://www.ploscompbiol.org/article/info%3Adoi%2F10.1371%2Fjournal.pcbi.1002712>>
- Forbes-Smith, M and J E Paton, *Innovative Products from Australian Native Foods* (RIRDC, 2002)
- 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* (ANU E Press, 2012)

- Francioni, Francesco, 'Beyond State Sovereignty: The Protection of Cultural Heritage As a Shared Interest of Humanity' (2004) 25(4) *Michigan Journal of International Law* 1209
- Fung, Archon, 'Varieties of Participation in Complex Governance' (2006) 66 *Public Administration Review* 66
- Garnett, Stephen and Bev Sithole, *Sustainable Northern Landscapes and the Nexus with Indigenous Health: Healthy Country, Healthy People* (Land and Water Australia, 2007)
- 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)
- Geus, Aart De, 'Don't Waste the Crisis: The Agenda for Public-Policy Reforms in a Turbulent World' in Evert Lindquist, Sam Vincent and John Wanna (eds), *Delivering Policy Reform: Anchoring Significant Reforms in Turbulent Times* (ANU E Press, 2011)
- Githaiga, Joseph, 'Intellectual Property Law and the Protection of Indigenous Folklore and Knowledge' (1998) 5(2) *Murdoch University Electronic Journal of Law* <http://www.murdoch.edu.au/elaw/issues/v5n2/githaiga52_body.html>
- 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)
- Godshall, Lauren, 'Making Space for Indigenous Intellectual Property Rights Under Current International' (2003) 15(3) *Georgetown International Environmental Law Review* 497
- Gorman, Julian, Anthony Griffiths and Peter Whitehead, 'An Analysis of the Use of Plant Products for Commerce in Remote Aboriginal Communities of Northern Australia' (2006) 60(4) *Economic Botany* 362
- Graber, Christoph and Jessica Lai, 'Indigenous Cultural Heritage and Fair Trade: Voluntary Certification Standards in the Light of WIPO and WTO Law and Policy-Making' in *Indigenous Peoples' Innovation: Intellectual Property Pathways to Development* (ANU E Press, 2012)

- 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
- Gray, Matthew and Jon Altman, 'The Economic Value of Harvesting Wild Resources to the Indigenous Community of the Wallis Lake Catchment, NSW' (2006) 75 *Family Matters* 24
- Greene, Shane, 'Indigenous People Incorporated? Culture As Politics, Culture As Property in Pharmaceutical Bioprospecting' (2004) 45(2) *Current Anthropology* 211
- Grievies, Vicki, 'Aboriginal Spirituality: A Baseline for Indigenous Knowledges Development in Australia' (2008) XXVIII(2) *Canadian Journal of Native Studies* 363
- 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)
- Harry, Debra, 'Biocolonialism and Indigenous Knowledge in United Nations Discourse' (2011) 20(3) *Griffith Law Review* 702
- Hart, Paul 'T, 'Rules for Reformers' in Evert Lindquist, Sam Vincent and John Wann (eds), *Delivering Policy Reform Anchoring Significant Reforms in Turbulent Times* (ANU E Press, 2011)
- Hassel, Craig, 'Learning to Bridge Different Ways of Knowing: The Dream of Wild Health American Indian Seed-Garden Project As Mentor' (2010) (Spring/Summer) *Cura Reporter* 11

- Hegarty, M, E Hegarty and R Wills, *Food Safety of Australian Plant Bushfoods* (RIRDC, 2001)
- Hilhorst, Thea and Irene Guijt, *Participatory Monitoring and Evaluation: A Process to Support Governance and Empowerment at the Local Level* (World Bank, 2006)
- Holcombe, Sarah and Terri Janke, 'Patenting the Kakadu Plum and the Marjarla Tree: Biodiscovery, Intellectual Property and Indigenous Knowledge' in Matthew Rimmer and Alison Mclennan (eds), *Intellectual Property and Emerging Technologies: The New Biology* (Edward Elgar Publishing, 2012)
- 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)
- Holcombe, Sarah, Peter Yates and Fiona Walsh, 'Reinforcing Alternative Economies: Self-Motivated Work by Central Anmatyerr People to Sell Katyerr (Desert Raisin, Bush Tomato) in Central Australia' (2011) 33 *Rangeland Journal* 255
- 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
- Hudson, Emily, *Cultural Institutions, Law and Indigenous Knowledge: A Legal Primer on the Management of Australian Indigenous Collections* (IPRIA, 2006)
- Hugo, Graeme, Helen Feist and George Tan, *Population Change in Regional Australia 2006-11* (Australian Population and Migration Research Centre, 2013)
- Human Rights Consultation Committee, *National Human Rights Consultation Report* (Commonwealth, 2009)
- Hunt, Janet et al, *Contested Governance: Culture, Power and Institutions in Indigenous Australia* (ANU E Press, 2008)
- 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

Innes, Graeme, *Human Rights and Corporate Social Responsibility* (Paper presented at the Everyday People, Everyday Rights Human Rights Conference, Melbourne, 16 March 2009)

Institute of Public Administration Australia, *Working Together: Integrated Governance* (IPAA, 2002)

Isaacs, Jennifer, *Bush Food: Aboriginal Food and Herbal Medicine* (Weldons, 1987)

Jackson, Sue and Jon Altman, 'Indigenous Rights and Water Policy: Perspectives from Tropical Northern Australia' (2009) 13(1) *Australia Australian Indigenous Law Review* 27

Janke, Terri, *Beyond Guarding Ground: A Vision for a National Indigenous Cultural Authority* (Terri Janke and Company, 2009)

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)

Janke, Terri, *Guarding Ground: A Vision for a National Indigenous Cultural Authority* (Paper Presented at the Wentworth Lecture 2008, Canberra, 22 August 2008)

Janke, Terri, *Indigenous Ecological Knowledge and Natural Resources in the Northern Territory: Report on the Current Status of Indigenous Intellectual Property* (NRMB, 2009)

Janke, Terri, *Minding culture: case studies on intellectual property and traditional Cultural Expressions* (WIPO, 2003)

Janke, Terri, *Our Culture Our Future: A Report on Australian Indigenous Cultural and Intellectual Property Rights* (AIATSIS, 1998)

- Janke, Terri, 'Respecting Indigenous Cultural and Intellectual Property Rights' (1999) 22(2) *University of New South Wales Law Journal* 632
- Janke, Terri, *Writing Up Indigenous Research: Authorship, Copyright and Indigenous Knowledge Systems* (Terri Janke and Company, 2009)
- 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
- Jonas, W, *Consultation with Aboriginal People About Aboriginal Heritage* (Australian Heritage Commission, 1991)
- Jones, Jill, 'Protecting Indigenous Heritage in the Face of Globalisation' (2004) 6(4) *Indigenous Law Bulletin* 4
- 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
- Kapuscinski, Cezary, *Indigenous Disadvantage in an Historical Perspective: The Evidence of the Last Thirty Years (Draft)* (Paper Presented at the Australian Conference of Economists, Perth, 2013)
- Karmel, Tom et al, *Improving Labour Market Outcomes Through Education and Training* (Closing the Gap Clearinghouse, 2014)
- 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
- Kavelin, Chris, 'Universities as the Gatekeepers of the Intellectual Property of Indigenous People's Medical Knowledge' (2008) 37 *Australian Journal of Indigenous Education* 34

- Kerr, David, 'Folklore, Cultural Property and Modernisation in Sub-Saharan Africa' (2006) 20(1) *Critical Arts: South-North Cultural and Media Studies* 144
- King, Steven, 'The Source of Our Cures: A New Pharmaceutical Company Wants to Provide Reciprocal Benefits and Recognize the Value of Indigenous' (1991) 15(3) *Cultural Survival Quarterly* 1
- Kukathas, Chandran, 'Cultural Privacy' (2008) 91(1) *The Monist* 68
- Kurin, Richard, 'Safeguarding Intangible Cultural Heritage: Key Factors in Implementing the 2003 Convention' (2007) 2 *International Journal of Intangible Heritage* 1
- Kuruk, Paul, 'Cultural Heritage, Traditional Knowledge and Indigenous Rights: An Analysis of the Convention for Safeguarding of Intangible Cultural Heritage' (2004) 1 *Macquarie Journal of International and Comparative Environmental Law* 111
- Kuruk, Paul, 'Role of Customary Law Under *sui generis* Frameworks of Intellectual Property Rights in Traditional and Indigenous Knowledge,' (2007) 17 *Indiana International and Comparative Law Review* 67
- Lane, Marcus, Cathy Robinson and Bruce Taylor, *Contested Country: Local and Regional Natural Resources Management in Australia* (CSIRO, 2009)
- Lee, Slade, 'Horticultural Development of Bush Food Plants and Rights of Indigenous Traditional Custodians: The Australian Bush Tomato (*Solanum Centrale*) Case Study' (2012) 34(4) *Rangeland Journal* 359
- 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, and Paul Martin 'An Inclusive Governance Framework for the Australian Bush Food Commercialisation System', *Journal of Australian Indigenous Issues* (submitted, May 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)
- Lingard, Kylie, 'The Impact of the Law on Consultation Practices and Purposes: A Case Study of Aboriginal Cultural Heritage Consultation in NSW' (2012) (Occasional Paper Series) *International Journal of Rural Law and Policy* 1
- Loulanski, Tolina, 'Revising the Concept for Cultural Heritage: The Argument for a Functional Approach' (2006) 13 *International Journal of Cultural Property* 207
- 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)
- Mackay, Erin, 'Regulating Rights: The Case of Indigenous Traditional Knowledge' (2010) 7(21) *Indigenous Law Bulletin* 12
- Maclean, Kirsten, 'Crossing Cultural Boundaries: Integrating Indigenous Water Knowledge into Water Governance Through Co-Research in the Queensland Wet Tropics' (2015) 59 *Geoforum* 142
- Maggiore, Pat, 'Analysis of Australian Aboriginal Bush Foods' (1993) 1 *Australian Aboriginal Studies* 55
- Mahjabeen, Zeenat, Krishna Shrestha and John Dee, 'Rethinking Community Participation in Urban Planning: The Role of Disadvantaged Groups in Sydney Metropolitan Strategy' (2009) 15(1) *Australasian Journal of Regional Studies* 45
- 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
- Margerum, Richard D, 'A Typology of Collaboration Efforts in Environmental Management' (2008) 41(4) *Environmental Management* 487

Marinova, Dora and Margaret Raven, 'Indigenous Knowledge and Intellectual Property: A Sustainability Agenda' (2006) 20(4) *Journal of Economic Surveys* 587

Markell, David L, 'Understanding Citizen Perspectives on Government Decision Making Processes As a Way to Improve the Administrative State' (2006) 36(3) *Environmental Law* 651

Martin, George and Saskia Vermeulen, 'Intellectual Property, Indigenous Knowledge, and Biodiversity' (2005) 16(3) *Capitalism, Nature, Socialism* 27

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 Elodie le Gal, 'Concepts for Industry Co-regulation of Bio-fuel Weeds' (2010) 1 *IUCN Academy of Environmental Law eJournal* 1

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

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)

Maru, Yiheyis and Jocelyn Davies, 'Supporting Cross-Cultural Brokers is Essential for Employment Among Aboriginal People in Remote Australia' (2011) 33(4) *The Rangeland Journal* 327

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

Mccormack, Nancy, 'Peer Review and Legal Publishing: What Law Librarians Need to Know About Open, Single-Blind, and Double-Blind Reviewing' (2009) 101(1) *Law Library Journal* 59

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

- Mcgrath, Chris, *Does Environmental Law Work? How to Evaluate the Effectiveness of an Environmental Legal System* (Lambert Academic Publishing, 2010)
- Mcgrath, Chris, *Synopsis of the Queensland Environmental Legal System* (Environmental Law Publishing, 2011)
- McGregor, Murray and Craig James, 'Livelihoods in desert Australia' (2011) 33 *The Rangeland Journal* i
- Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Josie Douglas and Fiona Walsh, *Aboriginal People, Bush Foods Knowledge and Products from Central Australia: Ethical Guidelines for Commercial Bush Food Research, Industry and Enterprises* (DKCRC, 2011)
- Mgbeoji, Ikechi, 'Patents and Traditional Knowledge of the Uses of Plants: Is a Communal Patent Regime Part of the Solution to the Scourge of Biopiracy?' (2001) 9 *Indiana Journal of Global Legal Studies* 163
- 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)
- Morgan, Monica, Lisa Strelein and Jessica Weir, *Indigenous rights to water in the Murray Darling Basin: in support of the Indigenous Living Murray Initiative* (AIATSIS, 2004)
- Morley, Sam, *Success factors for Indigenous entrepreneurs and community-based enterprises* (Closing the Gap Clearinghouse, 2014)
- Morse, Bradford, *The Intersection between Indigenous rights and the environment* (Paper presented at the Ecology Integrity Conference, Halifax, Canada, 23-27 June 2007)
- Morse, Jeremy, *Know Your Rights to Your Aboriginal Plant Knowledge: A Guide for Aboriginal Knowledge Holders on Recording and Commercialising Aboriginal Plant Knowledge* (Aboriginal Bush Traders, 2010)
- 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)

Munzer, Stephen and Kal Austiala, 'The Uneasy Case for Intellectual Property Rights in Traditional Knowledge' (2009) 27 *Cardozo Arts & Entertainment Law Journal* 37

Murray-Darling Basin Commission, *Murray-Darling Basin Indigenous Action Plan* (MDBC, 2004)

Myburgh, A F, 'Legal Developments in the Protection of Plant-Related Traditional Knowledge: An Intellectual Property Lawyer's Perspective of the International and South African Legal Framework' (2011) 77 *South African Journal of Botany* 844

Nash, Daphne, *Aboriginal Plant Use in South-Eastern Australia* (ANBG, 2004)

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

Nettheim, Garth, Donna Craig and Gary Meyers, *Indigenous Peoples and Governance Structures: A Comparative Analysis of Land and Resource Management Rights* (Aboriginal Studies Press, 2002)

NGIA, *Industry Advisory Committee Annual Report 2013/14* (HAL, 2014)

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

O'Bryan, Katie, 'The Appropriation of Indigenous Ecological Knowledge: Recent Australian Developments' (2004) 1 *Macquarie Journal of International and Comparative Environmental Law* 25

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)

Office of the Northern Territory Coordinator-General for Remote Services, *Report* (Northern Territory Government, 2012)

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

- Oguamanam, Chidi, 'Localizing Intellectual Property in the Globalization Epoch: The Integration of Indigenous Knowledge' (2004) 11(2) *Indiana Journal of Global Legal Studies* 135
- ORIC, *The top 500 Aboriginal and Torres Strait Islander Corporations 2012-13* (ORIC, 2014)
- Orr, M et al, *Aboriginal Knowledge and Intellectual Property Protocol: Community Guide* (DKCRC, 2009)
- Osborne, K, F Baum and L Brown, *What Works? A Review of Actions Addressing the Social and Economic Determinants of Indigenous Health* (Closing the Gap Clearinghouse, 2013)
- Oseitutu, J Janewa, 'A *sui generis* Regime for Traditional Knowledge: The Cultural Divide in Intellectual Property Law' (2011) 15(1) *Marquette Intellectual Property Law Review* 147
- 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)
- Paynter, Sharon, 'Tackling Wicked Problems Through Engaged Scholarship' (2014) 7(1) *Journal of Community Engagement and Scholarship* 48
- 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)
- Posey, Darrell and Graham Dutfield, *Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities* (International Development Research Centre, 1996)
- Potts, Jason et al, 'Social Network Markets: A New Definition of the Creative Industries' (2008) 32 *Journal of Cultural Economics* 167

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(3) *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)

Pritchard, Stephen, 'Cultural Belongings' (2009) 13(2) *Journal for Cultural Research* 115

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

Rae, CJ, 'The Role of Bush Foods in Contemporary Aboriginal Diets' (1982) 7 *Proceedings of the Nutrition Society of Australia* 45

Ramanna, Anitha, *India's Plant Variety and Farmer's Rights Legislation: Potential Impact on Stakeholder Access to Genetic Resources* (International Food Policy Research Institute, 2003)

Raorane, Meghana, 'Aiming Straight: The Use of Indigenous Customary Law to Protect Traditional Cultural Expressions' (2006) 15(3) *Pacific Rim Law and Policy Journal* 827

Rea, Kathie and Metta Young, *The Collaboration Project: Strategies Towards Engagement with Desert Aboriginal Communities and Organisations* (DKCRC, 2006)

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

Recht, Jo, 'Hearing Indigenous Voices, Protecting Indigenous Knowledge' (2009) 16(3) *International Journal of Cultural Property* 233

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)
- Richardson, Benjamin, Shin Imai and Kent Mcneil, 'Indigenous Peoples and the Law: Historical, Comparative and Contextual Issues' in *Indigenous Peoples and the Law: Comparative and Critical Perspectives* (Hart Publishing, 2009)
- Rigby, Colleen, Jens Mueller and Andrew Baker, 'The Integration of Maori Indigenous Culture into Corporate Social Responsibility Strategies at Air New Zealand' (2011) 5(6) *Journal of Marketing Development and Competitiveness* 116
- Rimmer, Matthew, 'Blame it on Rio: Biodiscovery, Native Title, and Traditional Knowledge' (2003) 7 *Southern Cross University Law Review* 1
- Rimmer, Matthew, 'The Genographic Project: Traditional Knowledge and Population Genetics' (2007) 11(2) *Australian Indigenous Law Reporter* 33
- Robins, Juleigh, *Wild Food: 100 Recipes Using Australian Ingredients* (Penguin Australia, 2009)
- Robinson, Daniel, 'Biopiracy and the Innovations of Indigenous Peoples and Local Communities' in Peter Drahos and Susy Frankel (eds), *Indigenous Peoples' Innovation* (ANU E Press, 2012)
- Robinson, Daniel, 'Traditional Knowledge and Biological Product Derivative Patents: Benefit-Sharing and Patent Issues Relating to Camu Camu, Kakadu Plum and Açai Plant Extracts' 2010 [April] *Traditional Knowledge Bulletin*
- Rose, Deborah Bird, *Nourishing Terrains: Australian Aboriginal Views of Landscape and Wilderness* (Australian Heritage Commission, 1996)
- Ross, Helen, Marlene Buchy and Wendy Proctor, 'Laying Down the Ladder: A Typology of Public Participation in Australian Natural Resource Management' (2002) 9(4) *Australian Journal of Environmental Management* 205
- Rossi, A, S Rynne and A Nelson, 'Doing Whitefella Research in Blackfella Communities in Australia: Decolonizing Method in Sports Related Research' (2013) 65(1) *Quest* 116

Roughan, S, *It's Not Just About Sacred Sites: A Qualitative Analysis of the Community Consultation Process of the 2009 Review of the Aboriginal Heritage Act 1988* (Rural Solutions, 2010)

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)

Rushton, Michael, 'The Law and Economics of Artists' Inalienable Rights' (2001) 25(4) *Journal of Cultural Economics* 243

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)

Sackville, Justice Ronald, 'Legal Protection of Indigenous Culture in Australia' (2002) *Federal Judicial Scholarship* 1

Sand, Sabine, 'Sui Generis Laws for the Protection of Indigenous Expressions of Culture and Traditional Knowledge' (2003) 22(2) *University of Queensland Law Journal* 188

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)

Scafidi, Susan, 'Intellectual Property and Cultural Products' (2001) 81 *Boston University Law Review* 793

Schuler, Philip, 'Biopiracy and Commercialization of Ethnobotanical Knowledge' in J Michael Finger (ed), *Poor People's Knowledge* (World Bank and Oxford University Press, 2004)

Scott, Gary, *Audit of Indigenous knowledge databases in Northern Australia: Draft* (Charles Darwin University, 2004)

- Sedlackoa, Michal Et Al, 'Participatory Systems Mapping for Sustainable Consumption: Discussion of a Method Promoting Systemic Insights' (2014) 106 *Ecological Economics* 33
- Sherwood, Juanita, 'Community - What is it?' (1999) 4(19) *Indigenous Law Bulletin* 4
- 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)
- Solomon, David, 'The Role of Peer Review for Scholarly Journals in the Information Age' (2007) 10(1) *Journal of Electronic Publishing*
<<http://quod.lib.umich.edu/j/jep/3336451.0010.107?view=text;rgn=main>>
- Sousa-Majer, M J De et al, *Sustainable Bush Produce Systems: Post-Harvest Storage of Solanum Centrale and Impact on Produce Quality* (DKCRC, 2009)
- 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 Environment, Communications and the Arts, *Indigenous Art: Securing the Future Australia's Indigenous Visual Arts and Craft Sector* (Commonwealth, 2007)
- 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)

Standing Committee on Science and Innovation, *Powering Ideas: An Innovation Agenda for the 21st Century* (Commonwealth, 2009)

Standing, Susan, Craig Standing and Chad Lin, 'A Framework for Managing Knowledge in Strategic Alliances in the Biotechnology Sector' (2008) 25 *Systems Research and Behavioural Science* 783

Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2011* (Productivity Commission, 2011)

Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators 2014* (Productivity Commission, 2014)

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

Stewart, Kathy and Bob Percival, *Bush Foods of New South Wales: A Botanic Record and an Aboriginal Oral History* (Royal Botanic Gardens, 1997)

Stobbs, Nigel, 'What Can we Do You for? Naïve Conceptions of the Value of Indigenous Cultures and Communities' (2005) 6(10) *Indigenous Law Bulletin* 18

Stoianoff, Natalie, 'Navigating the Landscape of Indigenous Knowledge: A Legal Perspective' (2012) (90) *Intellectual Property Forum* 23

Stoianoff, Natalie, 'The Recognition of Traditional Knowledge Under Australian Biodiscovery Regimes: Why Bother with Intellectual Property Rights?' in Christoph Antons (ed), *Traditional Knowledge, Traditional Cultural Expressions and Intellectual Property Law in the Asia-Pacific Region* (Kluwer Law International, 2009)

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

Stoutjesdijk, Peter, *Plant Genetic Resources for Food and Agriculture Second National Report: Australia* (Australian Government, 2013)

Suminguit, Vel, *Indigenous Knowledge Systems and Intellectual Property Rights: An Enabling Tool for Development with Identity* (Paper Presented at the United Nations Workshop on Traditional Knowledge, Panama City, 21-23 September 2005)

Tauli-Corpuz, Victoria and Aqqaluk Lynge, *Impact of Climate Change Mitigation Measures on Indigenous Peoples and on their Territories and Lands* (UNESCO, 2008)

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

Throsby, David, 'Determining the Value of Cultural Goods: How Much (or How Little) Does Contingent Valuation Tell Us?' (2003) 27 *Journal of Cultural Economics* 275

Tobin, Brendan, 'Biodiversity Prospecting Contracts: The Search for Equitable Agreements' in Sarah a Laird (ed), *Biodiversity and Traditional Knowledge: Equitable Partnerships in Practice* (Earthscan, 2002)

Tobin, Brendan, 'The Role of Customary Law and Practice in International ABS and TK Governance ' (2004) 17 *SPC Traditional Marine Resource Management and Knowledge Information Bulletin*

<http://www.spc.int/digitalibrary/doc/FAME/infobull/TRAD/17/TRAD17_31_tobin.pdf>

Tuhiwai Smith, L, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed Books, 2nd ed, 2012)

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

UNDP, *Supporting Capacity Development: The UNDP Approach* (UNDP, 2008)

Verma, Surinder Kaur, 'Protecting Traditional Knowledge: Is a Sui Generis System an Answer?' (2004) 7(6) *The Journal of World Intellectual Property* 765

Voumard, John, *Access to Biological Resources in Commonwealth Areas* (Australian Government, 2000)

Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Waitangi Tribunal, 2011)

- 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 *Rangeland Journal* 395
- Wanggalili Aboriginal Corporation, *Wanggalili: Yindjibarndi and Ngarluma plants* (Juluwarlu Aboriginal Corporation, 2003)
- Ward, Tara, 'The Right to Free, Prior, and Informed Consent: Indigenous Peoples' Participation Rights Within International Law' (2011) 10(2) *Northwestern Journal of International Human Rights* 54
- West, Ida, 'Bush Food' (1985) 9(4) *Aboriginal and Islander Health Worker Journal* 20
- Whitehead, P J et al, *Feasibility of Small Scale Commercial Native Plant Harvests by Indigenous Communities* (RIRDC, 2006)
- 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)
- Wiessner, Siegfried, 'Intellectual Property and Indigenous Peoples' (2001) *American Society of International Law Proceedings of the Annual Meeting* 151
- Williams, Alice and Tim Sides, *Wiradjuri Plant Use in the Murrumbidgee Catchment* (Murrumbidgee Catchment Management Authority, 2008)
- Winfield, Cathy, *Bush Tucker: A Guide to, and Resources on, Traditional Aboriginal Foods of the North West of SA and Central Australia* (Wattle Park Teachers Centre, 1982)
- WIPO, *Intellectual Property Needs and Expectations of Traditional Knowledge Holders (WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge (1998-1999))* (WIPO, 2001)
- Wong, Mary, *Toward an Alternative Normative Framework for Copyright: From Private Property to Human Rights* (2008) <http://works.bepress.com/mary_wong/2>

World Bank, *Better Governance for Development in the Middle East and North Africa: Enhancing Inclusiveness and Accountability* (World Bank Publications, 2003)

World Bank, *Natural Resources Management* (World Bank, 2000)

Worthington, Andrew and Helen Higgs, 'A Note on Financial Risk, Return and Asset Pricing in Australian Modern and Contemporary Art' (2006) 30 *Journal of Cultural Economics* 73

Wreck Bay Community and Cath Renwick, *Geebungs and Snake Whistles: Koori People and Plants of Wreck Bay* (Aboriginal Studies Press, 2000)

Wright, Diana and Donella Meadows, *Thinking in Systems: A Primer* (Taylor and Francis, 2012)

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

Milpurrurru 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

Agreement on Trade-Related Aspects of Intellectual Property Rights (Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization), signed 15 April 1994, 1869 UNTS 299 (entered into force 1 January 1995)

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

Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No 169), adopted 27 June 1989, 28 ILM 1382 (entered into force 5 September 1991)

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

Convention on Biological Diversity, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 19 December 1993)

International Treaty on Plant Genetic Resources for Food and Agriculture, signed 3 November 2001, 2400 UNTS 303 (entered into force 29 June 2004)

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)

Patent Cooperation Treaty, signed 19 June 1970, 1160 UNTS 231 (entered into force 24 January 1978)

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

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

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)

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

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)

Ad Hoc Open-Ended Intersessional Working Group on Article 8(J) and Related Provisions of the Convention on Biological Diversity, ‘Possible elements of sui generis systems for the protection of traditional knowledge, innovations and practices of indigenous and local communities’, UNEP/CBD/WG8J/8/6/Add.1 (4 October 2013)

AIATSIS, *Accessing the AIATSIS collection*

<<http://www.aiatsis.gov.au/collections/access.html>>

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

AIATSIS, *Koori Mail online collection*

<<http://www.aiatsis.gov.au/koorimail/index.html>>

AIATSIS, *Research publications*

<<http://www.aiatsis.gov.au/research/publications.html>>

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*

<<http://aliceonline.com.au/2012/01/16/bush-foods-new-life-in-garden/>>

Allens, *New regulations on bioprospecting in Commonwealth areas*

<<http://www.allens.com.au/pubs/env/fobjan06.htm>>

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

Anangu Pitjantjatjara Yankunytjatjara, *Permits*

<<http://www.anangu.com.au/permits.html>>

ANBG, *Australian Cultivar Registration Authority* <<https://www.anbg.gov.au/acra/>>

ANBG, *Australian national seed bank*

<<http://www.anbg.gov.au/gardens/living/seedbank/>>

ANBG, *Australia's Botanic Gardens* <<https://anbg.gov.au/chabg/abg/index.html>>

ANBG, *Conditions of loan and exchange*
<<http://www.anbg.gov.au/cpbr/herbarium/loan-exchange-2003.html>>

ANBG, *How to propagate Australian plants*
<<http://www.anbg.gov.au/PROPGATE/plant01.htm>>

ANBG, *Permits for release of specimens from the Botanic Gardens*
<<http://www.anbg.gov.au/gardens/living/permits/index.html>>

ANBG, *The use of plants by Australian Aboriginals*
<<http://www.anbg.gov.au/gardens/plantinfo/Aboriginal-plant-use.html>>

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

ANFIL, 'Constitution' (2006)

ANFIL, *Constitution of Australian Native Food Industry Limited* (2006)

ANFIL, *Patricia Mamanyjun Torres* <<http://www.anfil.org.au/board-and-committees/patricia-mamanyjun-torres/>>

ANH, *Specimen loan and exchange services*
<<https://www.anbg.gov.au/cpbr/program/hc/hc-loans-exchange.html>>

ANH, *Traditional uses of Australian native plants*
<<https://www.anbg.gov.au/bibliography/bushfood.html>>

Anthill, *Who really benefits from the Rudd Government's new Commercialisation Australia program?* (22 October 2009) Anthill Magazine
<<http://anthillonline.com/who-really-benefits-from-the-rudd-governments-new-commercialisation-australia-program/>>

Arnold, Bruce, *Caslan analytics: intellectual property*
<<http://www.caslon.com.au/ipguide14.htm>>

Arts Law Centre of Australia, *Protecting your ideas*
<<http://www.artslaw.com.au/info-sheets/info-sheet/protecting-your-ideas/>>

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

Atlas of Living Australia, *Atlas data* <<http://www.ala.org.au/about-the-atlas/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*

<<http://www.ausindustry.gov.au/programs/innovation-rd/commercialisation-australia/Pages/default.aspx>>

Australia Centre for Corporate Social Responsibility, *Defining corporate social responsibility* <<http://www.accsr.com.au/html/definecsr.html>>

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*

<http://www.consumerlaw.gov.au/content/Content.aspx?doc=businesses_ACL.htm>

Australian Consumer Law, *Legislation*

<http://www.consumerlaw.gov.au/content/Content.aspx?doc=the_acl/legislation.htm>

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

Australian Cultivar Registration Authority, *How to construct a cultivar name*

<<https://www.anbg.gov.au/acra/naming-a-cultivar.html>>

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

<<http://www.environment.gov.au/epbc/do-you-need-approval>>

Australian Government, *Enterprise connect*

<<http://www.enterpriseconnect.gov.au/Pages/Home.aspx>>

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 Advancement Strategy* (2014)

Australian Government, *Indigenous Australians caring for country*
<<http://www.environment.gov.au/indigenous/>>

Australian Government, *List of exempt native specimens*
<<http://www.environment.gov.au/system/files/pages/f0aeea5f-ee27-46c7-88cd-4c340330e6e1/files/list-exempt-native-specimens-21-nov-14.pdf>>

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

Australian Government, *National Indigenous Forestry Strategy* (2005)

Australian Government, *Regional stream* <<http://www.nrm.gov.au/regional/>>

Australian Government, *Threatened Species Scientific Committee*
<<http://www.environment.gov.au/biodiversity/threatened/tssc>>

Australian Government, *Traveller's guide to Australian interstate quarantine*
<<http://www.quarantinedomestic.gov.au/>>

Australian Government, *Working on Country: guide for applicants*
<<http://www.environment.gov.au/indigenous/workingoncountry/about/pubs/woc-nt-applicant-guidelines.pdf>>

Australian Human Rights Commission, *Corporate responsibility: developing principles on resource development on Indigenous land*
<<https://www.humanrights.gov.au/publications/corporate-responsibility-developing-principles-resource-development-indigenous-land-3>>

Australian Human Rights Commission, *Corporate social responsibility and human rights* <<https://www.humanrights.gov.au/publications/corporate-social-responsibility-human-rights>>

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 Commercialisation, *What is commercialisation* <<http://www.ausicom.com/news-248-what-is-commercialisation>>

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 Organic, 'Australian Certified Organic Standard 2013' (Australian Organic Ltd, 2013)

Australian Population and Migration Research Centre, *Accessibility/Remoteness Index of Australia* <http://www.adelaide.edu.au/apmrc/research/projects/category/about_aria.html>

Australian Public Services Commission, 'Tackling wicked problems: a public policy perspective' (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)

Australian Tropical Herbarium, *Loans policy* <http://www.ath.org.au/JCUPRD_041985.html>

Australian Tropical Herbarium, *Public reference collection: conditions of use* <http://www.ath.org.au/JCUPRD_041996.html>

Australian Tropical Herbarium, *Requests for data* <http://www.ath.org.au/JCUPRD_042065.html>

Australian Tropical Herbarium, *Theme 3: plants for people*
<http://www.ath.org.au/JCU_083257.html>

Averskog, Christian, *Human activity system* <<http://www.perflensburg.net/cp-web/capchasy.htm>>

Barbushco, *Australian Bush Food Grower* <<http://barbushco.com.au/>>

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

Bergmann, Wayne, *COAG investigation into Indigenous land administration and use*
<<http://aiatsis.gov.au/publications/presentations/coag-investigation-indigenous-land-administration-and-use>>

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

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

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>>

Burge, Stuart, 'Affinity diagram' (2011) *The Systems Thinking Tool Box*
<<http://www.burgehugheswalsh.co.uk/uploaded/documents/AF-Tool-Box-V1.0.pdf>>

Burge, Stuart, 'Stakeholder influence map' (2005) *The Systems Engineering Tool Box*
<<http://www.burgehugheswalsh.co.uk/uploaded/documents/SIM-Tool-Box-V1.0.pdf>>

Burgess, Kerryn, 'Kylie Kwong on bush tucker', September 2012
<<http://www.gourmettraveller.com.au/kylie-kwong-on-indigenous-ingredients.htm>>

Burrone, Esteban, *New product launch: evaluating your freedom to operate*
<http://www.wipo.int/sme/en/documents/freedom_to_operate_fulltext.html>

BushBlitz, *BushBlitz* <<http://www.bushblitz.org.au/>>

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

Capacity Development Group, 'Capacity assessment methodology: user's guide' (UNDP, 2008)

Carrick, Damien, 'Bio-piracy' (2014) *Law Report*
<<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*
<<http://www.natureandhealth.com.au/news/meet-the-bush-tucker-woman>>

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

CLC, *Applying for a lease, licence or other interest in Aboriginal land*
<<http://www.clc.org.au/articles/info/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*
<<http://www.clc.org.au/articles/info/managing-biodiversity-threatened-species/>>

CLC, *Preserving environments*

<http://www.clc.org.au/files/pdf/CLC_BtB_Magazine_Single_Pages.pdf>

CLC, *Special Purpose Permits* <<http://www.clc.org.au/articles/cat/special-purpose-permits/>>

CLC, *What the Central Land Council does* <<http://www.clc.org.au/articles/cat/what-we-do/>>

Clean Grow, *Clean Grow* <<http://cleangrow.com.au/>>

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)

CoAG, *Heads of agreement on Commonwealth and State roles and responsibilities for the Environment* (1997)

CoAG, *Intergovernmental Agreement on Biosecurity* (2012)

CoAG, *Intergovernmental Agreement on the Environment* (1992)

CoAG, *National Indigenous Reform Agreement (Closing the gap)* (2009)

CoAG, *National Strategy for Ecologically Sustainable Development* (1992)

Collins, *Desk study* (2015)

<<http://www.collinsdictionary.com/dictionary/english/desk-study>>.

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

<<http://www.theage.com.au/national/health/medicine-goes-native-20130322-2gkog.html>>

Commercialisation Australia, *Early stage commercialisation*

<<http://www.commercialisationaustralia.gov.au/WhatWeOffer/EarlyStageCommercialisation/Pages/default.aspx>>

Commonwealth, 'Guidelines for Indigenous participation in NRM: Indigenous knowledge' (Commonwealth, 2004)

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

<<http://www.abc.net.au/tv/messagestick/stories/s2983831.htm>>

Council of Heads of Australian Botanic Gardens, *Australian Seedbank Partnership*

<<http://www.seedpartnership.org.au/>>

Council of Heads of Australian Herbaria, *Australian National Herbarium*
<<http://www.cpbr.gov.au/chah/resources/herbaria/canb.html>>

CRC-REP, *Plant business* (2014) Ninti One Ltd <<http://crc-rep.com/research/enterprise-development/plant-business>>

CRC-REP, *Research* <<http://crc-rep.com/research>>

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, 'Annual report 2013–14' (CSIRO, 2014)

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

CSIRO, *Economic development: bush tucker dreaming*
<<http://www.csiro.au/files/files/p5e8.pdf>>

CSIRO, *Indigenous Engagement Strategy* (2007)

CSIRO, *Indigenous Research Engagement Interim Protocol* (2009)

CSIRO, *Native plants and forestry* <<http://www.csiro.au/Outcomes/Food-and-Agriculture/Native-plants-and-forestry/Forestry-research.aspx>>

CSIRO, *New CSIRO lime varieties* <<http://www.csiro.au/Outcomes/Food-and-Agriculture/New-Native-Limes.aspx>>

CSIRO, *Primary Industries Report Series*
<<http://www.publish.csiro.au/nid/22/sid/11.htm>>

Daleys, *Finger lime (Microcitrus australasica)*
<<http://www.daleysfruit.com.au/bushfood/fingerlime.htm>>

Daniels, Linda, *South Africa Hopes New Bill Brings Traditional Knowledge Protection* (5 May 2012) IPWatch <<http://www.ip-watch.org/2012/05/17/south-africa-hopes-new-bill-brings-traditional-knowledge-protection/>>

Dean, Owen, *A new South Africa Traditional Knowledge Bill: sui generis protection for TK* (18 March 2012) IP Watch <<http://www.ip-watch.org/2012/03/18/a-new-south-africa-traditional-knowledge-bill-%E2%80%93-sui-generis-protection-for-tk/>>

Dean, Owen, *Golden oldies? South African High Court looks at what is “traditional”* (29 May 2012) IP Watch <<http://www.ip-watch.org/2012/05/29/golden-oldies-south-african-high-court-looks-at-what-is-%E2%80%9Ctraditional%E2%80%9D/>>

Dean, Owen, *Synopsis of the Protection of Traditional Knowledge Bill* (20 March 2012) IPWatch <<http://www.ip-watch.org/weblog/wp-content/uploads/2012/03/2OD2012.pdf>>

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

Department of Agriculture and Food, *Seed certification for crops and pastures* <<https://www.agric.wa.gov.au/breeding-varieties/seed-certification-crops-and-pastures>>

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

Department of Agriculture, 'Exporting plants and plant products: a step-by-step guide for Australian exporters' (Australian Government, 2013)

Department of Agriculture, Fisheries and Forestry, *How AQIS helps exporters* <<http://www.daff.gov.au/aqis/export/aqis-helps>>

Department of Agriculture, *Information sheet* <http://www.agriculture.gov.au/agriculture-food/levies/categories/horticulture/nursery_products/information_sheet>

Department of Agriculture, *Plants and plant products* <<http://www.daff.gov.au/biosecurity/export/plants-plant-products>>

Department of Economic Development and Tourism, 'BioVision Tasmania 2007-2015: Tasmania's biotechnology strategy' (Tasmanian Government, 2007)

Department of Employment, *Indigenous Cadetship Support* <<https://www.ics.deewr.gov.au/>>

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 Protection, *Threatened species*
<<http://www.ehp.qld.gov.au/wildlife/threatened-species/index.html>>

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

Department of Environment Water Heritage and Arts, *Application form and guidelines for approval of an artificial propagation program*
<<https://ablis.business.gov.au/ag/Resource/AP725.pdf>>

Department of Environment, *Importing or exporting wildlife for research purposes*
<<http://www.environment.gov.au/topics/biodiversity/wildlife-trade/trading-and-out-australia/non-commercial-trade/research>>

Department of Environment, *National Competent Authorities*
<<http://www.environment.gov.au/topics/science-and-research/australias-biological-resources/nagoya-protocol-convention-biological-0>>

Department of Environment, *Wildlife trade and the law*
<<http://www.environment.gov.au/topics/biodiversity/wildlife-trade/wildlife-trade-and-law>>

Department of Health and Aging, *Food Regulation Secretariat*
<<http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-system1.htm>>

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, *Biotechnology*
<<http://www.industry.gov.au/industry/biotechnology/Pages/default.aspx>>

Department of Industry, *Early stage venture capital limited partnerships*
<<http://www.business.gov.au/grants-and-assistance/venture-capital/esvclp/Pages/default.aspx>>

Department of Industry, Innovation, Science, Research and Tertiary Education, 'The national survey of research commercialisation 2010-2011' (Australian Government, 2012)

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

<<http://www.business.gov.au/about-businessgovau/Pages/One-Website.aspx>>

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 Infrastructure and Regional Development, *Remote air services*

subsidy scheme <<http://www.infrastructure.gov.au/aviation/regional/rass.aspx>>

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

Department of Innovation Industry Science Research and Tertiary Education,

Innovation <<http://www.innovation.gov.au/Innovation/Pages/default.aspx>>

Department of Parks and Wildlife, *Flora licensing information sheet: whole plants*

<http://www.dpaw.wa.gov.au/images/documents/plants-animals/licences-permits/Flora/infosheets/Information_Sheet_-_Whole_Plants.pdf>

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*

<http://www.dpmc.gov.au/indigenous_affairs/ias/index.cfm>

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

Department of Prime Minister and Cabinet, *Indigenous Affairs Budget 2014-15*

<http://www.dpmc.gov.au/accountability/budget/2014-15/IA_budget.cfm>

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 Social Services, 'National Partnership on Remote Indigenous Housing: progress review 2008-2013' (Australian Government, 2013)

Department of Sustainability, Environment, Water, Population and Communities, *Explanatory guide: model benefit-sharing agreement*
<<http://www.environment.gov.au/biodiversity/science/access/permits/pubs/benefit-sharing-guide.pdf>>

Department of Sustainability, Environment, Water, Population and Communities, *The Nagoya Protocol*
<<http://www.environment.gov.au/biodiversity/science/access/biological-diversity.html>>

Department of Sustainability, Environment, Water, Population and Communities, *Application for a permit to access biological resources in Commonwealth areas*
<<http://www.environment.gov.au/system/files/pages/e3584028-d083-4aec-acdd-c0aa635a529f/files/application.pdf>>

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

Department of the Environment, *About Indigenous Protected Areas*
<<http://www.environment.gov.au/indigenous/ipa/background.html>>

Department of the Environment, *Working on Country*
<<http://www.environment.gov.au/indigenous/workingoncountry/>>

Department of the Environment, *Working on Country funded projects*
<<http://www.environment.gov.au/indigenous/workingoncountry/projects/qld/>>

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>

Director of National Parks, 'Nagoya Protocol: a win for the environment and business' (Press release, Australian Government, 25 January 2012)

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

DKCRC, *Desert Knowledge CRC protocol for aboriginal knowledge and intellectual property* <<http://www.desertknowledgecrc.com.au/resource/DKCRC-Aboriginal-Intellectual-Property-Protocol.pdf>>

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

Dodson, Veronica, '*Arnperrirrentye: 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>>

Education and Training Unit for Democracy and Development, *Understanding research* <<http://www.etu.org.za/toolbox/docs/development/research.html>>

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

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

European Food Information Council, *In search of quality: the scientific peer review process* <<http://www.eufic.org/article/en/artid/the-scientific-peer-review-process/>>

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)

FAL Lawyers, *Jenni Lightowers* <<http://fal-lawyers.com.au/jenni-lightowers/>>

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*
<<http://www.andrewfielke.com/2013/05/andrew-to-head-bush-in-search-of-new-indigenous-ingredients/>>

Food Processing, *Australian Standard for organic and biodynamic products published* <<http://www.foodprocessing.com.au/news/36135-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*
<<http://www.foodstandards.gov.au/foodstandards/foodstandardscode.cfm>>

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

FSANZ, *Regulation of novel foods*
<<http://www.foodstandards.gov.au/industry/novel/Pages/default.aspx>>

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*
<http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/ClosingGap>

Generation One, *The Dilly Bag bush tucker products and learning programs*
<<http://generationone.org.au/job-seeker/real-stories/dale-chapman>>

Geoscience Australia, *Deserts* <<http://www.ga.gov.au/scientific-topics/geographic-information/landforms/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->

development/poverty-matters/2011/dec/16/capacity-building-development-aid-dependence>

Gosford, Bob, *Airing the truth on NT permit changes* (19 July 2007) Crikey <<http://www.crikey.com.au/2007/07/19/airing-the-truth-on-nt-permit-changes/>>

Goyal, Jay, *Commercializing new technology profitably and quickly* <<http://www.oracle.com/lad/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* <http://www.horticulture.com.au/librarymanager/libs/142/Investment_of_levies_For_Australian_horticulture.pdf>

HAL, *What is commercialisation?* <http://www.horticulture.com.au/areas_of_Investment/Intellectual%20Property%20and%20Commercialisation/commercialisation.asp?src=side>

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* <http://www.asauthors.org/lib/ASA_Papers/ASA_Australian_Copyright_vs_Indigenous_Intellectual.pdf>

Helfer, Laurence, 'Intellectual property rights in plant varieties: International legal regimes and policy options for national governments' (FAO, 2004)

Hermann, Rachel Marusak, *Trading knowledge as a public good: a proposal for the WTO* (14 October 2011) IP Watch <<http://www.ip-watch.org/2011/10/14/trading-knowledge-as-a-public-good-a-proposal-for-the-wto/>>

Herron, Sophie, *Ethnobiologist Glenn Wightman talking indigenous foods* (30 July 2004) Bush Telegraph

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

HIA, *Constitution* (2014)

HIA, *Horticulture Innovation Australia: overview* (2015)

Hulse, Nik, *Plant Breeders Rights: overview with an Australian native plant perspective* <<http://anpsa.org.au/APOL26/jun02-2.html>>

Hunt, Janet, 'Learning from success: a response to the draft Indigenous Economic Development Strategy' (CAEPR, 2011)

IAC, Submission to Dr Allan Hawke, *Independent review of the Environment Protection and Biodiversity Conservation Act 1999* (May, 2009)

IBA, *Business Ownership* <<http://www.iba.gov.au/business-ownership/>>

Indigenous People's Council on Biocolonialism, 'Collective Statement of Indigenous Peoples on the Protection of Indigenous Knowledge: Agenda Item 4(e) Culture' (2004)

Indigenous Peoples Council on Biocolonialism, 'Joint Statement of the Indigenous Peoples Council on Biocolonialism, Call of the Earth/Llamado de la Tierra & International Indian Treaty Council ' (2006)

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, *Elements of a sui generis system for the protection of traditional knowledge*, WIPO/GRTKF/IC/3/8 (March 2002)

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

International Chamber of Commerce Commission on Intellectual Property, 'Traditional knowledge associated with genetic resources' (ICC, 2009)

International Fund for Agricultural Development, *Sustainable smallholder agriculture: deeding the world, protecting the planet* <<http://www.ifad.org/>>

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

International Society for Horticultural Science, *International Code of Nomenclature for Cultivated Plants* (2009)

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>>

International Union for the Protection of New Varieties of Plants, *The UPOV system of plant variety protection* <http://www.upov.int/about/en/upov_system.html>

International Union for the Protection of New Varieties of Plants, *Why do farmers and growers need new plant varieties?* <<http://www.upov.int/overview/en/improvement.html>>

IP Australia, *About PBR* <<http://www.ipaustralia.gov.au/get-the-right-ip/plant-breeders-rights/about-pbr/>>

IP Australia, *About us* <<http://www.ipaustralia.gov.au/about-us/>>

IP Australia, 'Application for Plant Breeders Right'
<<http://forms.business.gov.au/eForms03/getForm?formName=ipaaustralia.gov.au-pbr-application-for-plant-breeder%27s-right-Part1-PBR00001.pdf>>

IP Australia, *AusPat* <<http://www.ipaustralia.gov.au/auspat/index.htm>>

IP Australia, *Certification rules* <<http://www.ipaustralia.gov.au/get-the-right-ip/trade-marks/types-of-trade-marks/certification-trade-mark/certification-rules/>>

IP Australia, *Commercialise your IP* <<http://www.ipaustralia.gov.au/understanding-intellectual-property/commercialise-your-ip/>>

IP Australia, *Commercialising in-house or with a partner*
<<http://www.ipaustralia.gov.au/understanding-intellectual-property/commercialise-your-ip/who-to-commercialise-with/>>

IP Australia, *Confidentiality/trade secrets* <<http://www.ipaustralia.gov.au/get-the-right-ip/other-types-of-IP/confidentiality-trade-secrets/>>

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*
<<http://www.ipaustralia.gov.au/about-us/public-consultations/indigenous-knowledge-consultation/have-your-say/>>

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

IP Australia, *PBRAC members* <<http://www.ipaustralia.gov.au/about-us/contact-us/regulatory-and-advisory-bodies/pbrac/pbrac-members/>>

IP Australia, *Plant breeders rights* <<http://www.ipaustralia.gov.au/get-the-right-ip/plant-breeders-rights/>>

IP Australia, *Search for a PBR* <<http://www.ipaustralia.gov.au/get-the-right-ip/plant-breeders-rights/search-for-a-pbr/>>

IP Australia, *Search for a trade mark* <<http://www.ipaustralia.gov.au/get-the-right-ip/trade-marks/search-for-a-trade-mark/>>

IP Australia, *Standard patent* <<http://www.ipaustralia.gov.au/get-the-right-ip/patents/types-of-patents/standard-patent/>>

IP Australia, *Types of licences* <<http://www.ipaustralia.gov.au/understanding-intellectual-property/commercialise-your-ip/licensing/types-of-licences/>>

IP Australia, *Types of searches* <<http://www.ipaustralia.gov.au/get-the-right-ip/patents/search-for-a-patent/types-of-searches/>>

IP Australia, *What we do* <<http://www.ipaustralia.gov.au/about-us/what-we-do/>>

IP Iustitia, *Can you own a recipe? When food meets intellectual property law* <<http://www.ipiustitia.com/2014/09/can-you-own-recipe-when-food-meets.html>>

ISX, *Supporting people with dreams* <<http://www.isx.org.au/about>>

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

Janke, Terri, *Code of practice for galleries and retailers of Indigenous Art* <<http://www.melbourne.vic.gov.au/AboutMelbourne/ArtsandEvents/Indigenousarts/Pages/Codeofpractice.aspx>>

Kamenev, Marina, *Top 10 Aboriginal bush medicines* (8 February 2011) Australian Geographic <<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/none/source-our-cures-new-pharmaceutical-company-wants-prov>>

Keating, Paul, 'Redfern speech' (Redfern Park, 10 December 1992).

Keycare, *Technology Commercialization Model* <<http://www.keycare.ca/techComModel.asp>>

Kimberley Land Council, *Intellectual Property and Traditional Knowledge Policy* (2011)

Kimberly Page, 'Jarlmdangah: scientific vegetation survey: Mangala-Nyikina Rangers are conducting scientific vegetation surveys along the Fitzroy River' (Media Release, 16 June 2013)

Kissel, Anthea, *NLC sees hope in more land lease agreements* (29 May 2012) ABC <<http://www.abc.net.au/news/2012-05-29/nlc-on-land-lease-agreements-kim-hill/4039380/?site=indigenous&topic=latest>>

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/>>

Kwong, Kylie, *Kylie Kwong on bush tucker* (2012) Gourmet Traveller

<<http://www.gourmettraveller.com.au/restaurants/restaurant-news-features/2012/8/kylie-kwong-on-bush-tucker/>>

Laird, Sarah and Rachel Wynberg, 'Access and benefit-sharing in practice: trends in partnerships across sectors' (CBD, 2009)

Larissa Behrendt, *Environmental sustainability: what we can learn from Aboriginal culture* (Online video, 2009) <<http://www.youtube.com/watch?v=38V6JDMrxXU>>

Learning Network on Capacity Development, *Capacity development*

<<http://www.lencd.org/learning/core-capacity-development>>

Lee, L S, *Plant Business project: July 2012* <[http://crc-](http://crc-rep.com/sites/default/files/upload/ps_plantbusinesslh.pdf)

[rep.com/sites/default/files/upload/ps_plantbusinesslh.pdf](http://crc-rep.com/sites/default/files/upload/ps_plantbusinesslh.pdf)>

Lee, L S, 'Plant Business Project: project summary' (CRC-REP, 2011)

Lee, L S, *Project update: December 2013* <[http://us5.campaign-](http://us5.campaign-archive1.com/?u=db0c44a0a4db4cce9a3dccec0&id=a0eb94e7ec&e=76f710e084)

[archive1.com/?u=db0c44a0a4db4cce9a3dccec0&id=a0eb94e7ec&e=76f710e084](http://us5.campaign-archive1.com/?u=db0c44a0a4db4cce9a3dccec0&id=54c262ac9a&e=0bd522bfe4)>

Lee, Slade, *Project update: June 2014* <[http://us5.campaign-](http://us5.campaign-archive1.com/?u=db0c44a0a4db4cce9a3dccec0&id=54c262ac9a&e=0bd522bfe4)

[archive1.com/?u=db0c44a0a4db4cce9a3dccec0&id=54c262ac9a&e=0bd522bfe4](http://us5.campaign-archive1.com/?u=db0c44a0a4db4cce9a3dccec0&id=54c262ac9a&e=0bd522bfe4)>

Legg, Michael, *Court costs erode right to justice*
<<http://www.law.unsw.edu.au/news/2013/02/court-costs-erode-right-justice>>

Llewellyn, Donna, *The integration of customary law and formal laws of Vanuatu to enhance environmental protection* (Masters Thesis, University of the South Pacific, 2006)

Lom, Helen, *Branding: how to use intellectual property to create value for your business?* <http://www.wipo.int/sme/en/documents/branding_fulltext.html>

Macklin J, 'Indigenous Knowledge Centre study underway' (Media release, 4 February 2010)

Macklin, J, 'Statement on the United Nations Declaration on the Rights of Indigenous Peoples' (Australian Government, 2009)

Manne, Robert, *Name ten: the journalism of Andrew Bolt* (17 October 2011) The Monthly <<http://www.themonthly.com.au/blog-name-ten-journalism-andrew-bolt-robert-manne-4088>>

Mayall, Jude, *2013 ANFIL meeting* <<http://www.anfil.org.au/2013-anfil-meeting/>>

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>>

Muru Mittigar, *Provenance Nursery* <<http://murumittigar.com.au/provenance-nursery.php>>

NAILSMA, *Indigenous knowledge* <<http://www.nailsma.org.au/hub/programs/indigenous-knowledge>>

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)

National Indigenous Times <<http://www.nit.com.au/>>

Natural Resource Management Ministerial Council, *Australia's biodiversity conservation strategy 2010 –2030* (Commonwealth, 2010)

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 Advisory Council NSW, *Aboriginal natural resource agreements kit* (NSW Government, 2007)

Natural Resources, *Native plants*

<<http://www.naturalresources.sa.gov.au/northernandyorke/plants-and-animals/native-plants-and-animals/native-plants>>

Nature, *Quality and value: the true purpose of peer review*

<<http://www.nature.com/nature/peerreview/debate/nature05032.html>>

NGIA, *About NGIA*

<https://www.ngia.com.au/Category?Action=View&Category_id=731>

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

NGIA, *NGIA Board*

<http://www.ngia.com.au/Category?Action=View&Category_id=302>

NGIA, 'Nursery and Garden Industry strategic investment plan 2012 – 2016' (HAL, 2012)

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?*

<http://www.ngia.com.au/Category?Action=View&Category_id=326>

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

<http://www.nintione.com.au/resource/Aboriginal-Research-Engagement-Protocol_template-for-use.pdf>

Ninti One, *How we work* <<http://www.nintione.com.au/about-nintione/how-we-work>>

Ninti One, *Our board* <<http://www.nintione.com.au/about-nintione/our-people/board>>

Ninti One, *Our work* <<http://www.nintione.com.au/our-work>>

Ninti One, *Plant Business project* <http://crc-rep.com/sites/default/files/upload/ps_plantbusinesslh.pdf>

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

Ninti One, *Vision, mission and values* <<http://www.nintione.com.au/about-nintione/vision-mission-and-values>>

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

NNTT, *About Indigenous Land Use Agreements (ILUAs)*
<<http://www.nntt.gov.au/ILUAs/Pages/default.aspx>>

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

NNTT, *Determination of native title*
<http://www.nntt.gov.au/Maps/Determinations_map.pdf>

NNTT, *Determinations of native title and claimant applications*
<http://www.nntt.gov.au/Maps/Schedule_and_Determinations_map.pdf>

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

NNTT, *Native title: an overview*
<[http://www.dmp.wa.gov.au/documents/NATIVE_TITLE_AN_OVERVIEW\(5\).pdf](http://www.dmp.wa.gov.au/documents/NATIVE_TITLE_AN_OVERVIEW(5).pdf)>
>

NNTT, *Registered Indigenous Land Use Agreements*
<http://www.nntt.gov.au/Maps/ILUAs_map.pdf>

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

NSW Government, 'Consultation policy' (Better Regulation Office, 2009)

NSW Government, 'Aboriginal engagement strategies' (NSW Government, 2011)

NSW Government, *Indigenous Fisheries Strategy and Implementation Plan* (2002)

NSW Government, *Licences*
<<http://www.environment.nsw.gov.au/threatenedspecies/licences.htm>>

NSW Government, *Protected and threatened plants in the cut-flower industry: Sustainable management plan 2012-2017* (2012)

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*

<<http://www.environment.nsw.gov.au/jointmanagement/indigenouslanduseagreements.htm>>

Office of the Public Sector, *Improving industry development models for the agriculture, food, and wine sectors* <<http://change.sa.gov.au/projects/improving-industry-development-models-for-the-agriculture-food-and-wine-sectors/>>

OLLIP, *Intellectual property rights for SMEs in the pharmaceutical industry* <<http://www.ollip.com/article/intellectual-property-rights-for-smes-in-the-pharmaceutical-industry>>

Organic Industry Standards and Certification Committee, 'National standard for organic and biodynamic produce' (Australian Government, 2013)

Organisation for Economic Co-operation and Development, 'The challenge of capacity development: working towards good practice' (OECD, 2006)

ORIC, *About the Registrar* <<http://www.oric.gov.au/about-us/about-registrar>>

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

ORIC, *Dispute resolution* <<http://www.oric.gov.au/run-corporation/dispute-resolution>>

ORIC, *Free services through ORIC* <<http://www.oric.gov.au/run-corporation/free-services-through-oric>>

O'Toole, Kate and Miranda Tetlow, *Raylene Brown from Kungkas Can Cook* <<http://www.abc.net.au/local/audio/2011/10/27/3349877.htm>>

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

Outback Chef, *Bush food* <<http://www.outbackchef.com.au/shopping/bush-food/4/1>>

Outback Pride, *About* <<http://www.outbackpride.com.au/about>>

Outback Pride, *Communities* <<http://www.outbackpride.com.au/communities>>

Outback Pride, *Frozen and fresh food* <<http://www.outbackpride.com.au/food-service/frozen-and-fresh-food>>

Outback Pride, *Retail products* <<http://www.outbackpride.com.au/retail-products>>

Outback Spirit, *About us* <<http://outbackspirit.com.au/about-us/>>

Outback Spirit, *Outback Spirit Foundation* (2013) <<http://outbackspirit.com.au/>>

Outback Spirit, *Shop* <<http://outbackspirit.com.au/shop/>>

Oxfam Australia, *Aboriginal and Torres Strait Islander cultural protocols* <<http://resources.oxfam.org.au/pages/view.php?ref=223&k=>>>

Ozbreed, *Ozbreed* <<http://www.ozbreed.com.au/>>

Parks Canada, *An approach to Aboriginal cultural landscapes* <http://www.pc.gc.ca/docs/r/pca-acl/sec1/index_e.asp>

Payne, Geoff, *Methodological pluralism* <<http://srmo.sagepub.com/view/the-sage-dictionary-of-social-research-methods/n117.xml>>

Plant Breeding Institute, *Breeding of herbaceous ornamentals* <http://sydney.edu.au/agriculture/plant_breeding_institute/key_work_results/orna_horticulture.shtml>

Plant Breeding Institute, *Horticultural activities* <http://sydney.edu.au/agriculture/plant_breeding_institute/horticulture/activities.shtml>

Pownall, Mark, *JV strategy puts major contracts in reach* (22 August 2013) Business News <<http://www.businessnews.com.au/article/JV-strategy-puts-major-contracts-in-reach>>

Prescribed Bodies Corporate, *Native Title Corporations* <<http://www.nativetitle.org.au/>>

Provincial Plants and Landscapes, *Who are our customers* <http://plantsandlandscapes.com.au/prov_site/projects>

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

Queensland Government, *AusPGRIS*
<<http://www2.dpi.qld.gov.au/extra/asp/AusPGRIS/>>

Queensland Government, *Management plan for protected plants in Queensland 2014–19* (2014)

Queensland Government, *Protected plants* <<http://www.ehp.qld.gov.au/licences-permits/plants-animals/protected-plants/>>

Queensland Government, *Queensland biotechnology code of ethics* (2006)

Radke, Peter and Ann Radke, *Commercial Bushtucker Production: a North Queensland perspective* <<http://www.yuruga.com.au/archives/commercial-bushtucker-production-a-north-queensland-perspective/>>

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

Reconciliation Australia, *Indigenous governance toolkit*
<<http://www.reconciliation.org.au/governance/>>

Reconciliation Australia, 'Reconciliation Action Plan: impact measurement report 2012' (RA, 2013)

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/>>

Rentschler, Ruth, *Marketing Aboriginal art: an intellectual property fiction?*
<<http://dro.deakin.edu.au/eserv/DU:30005943/rentschler-marketingaboriginalart-2006.pdf>>

Richard Stephens ed, 'Managing and marketing new plants' (2002) 15 *Nursery Papers*

RIRDC, 'Corporate plan 2012-2017' (RIRDC, 2012)

RIRDC, 'Focus on native foods' (RIRDC, 2014)

RIRDC, *About RIRDC* <<http://www.rirdc.gov.au/about-rirdc>>

RIRDC, *Health benefits of Australian native foods*
<http://www.rirdc.gov.au/research-project-details/custr10_NPP/PRJ-002330>

RIRDC, *Native foods compositional data for FSANZ nutritional panel calculator* <http://www.rirdc.gov.au/research-project-details/custr10_NPP/PRJ-006736>

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

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

Robb, Peter, *A journey through north-western NSW with filmmaker Ivan Sen* (November 2011) *The Monthly* <<http://www.themonthly.com.au/journey-through-north-western-nsw-filmmaker-ivan-sen-dreamland-peter-robb-4159>>

Royal Botanic Gardens and Domain Trust, *The Australian PlantBank* <http://www.rbgsyd.nsw.gov.au/annan/Australian_plantbank>

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

Saez, Catherine, *Frustrations show at slow progress on protection of traditional knowledge at WIPO* (21 April 2012) *IP Watch* <<http://www.ip-watch.org/2012/04/21/frustrations-show-at-slow-progress-on-protection-of-traditional-knowledge-at-wipo/>>

Saez, Catherine, *WIPO members work through differences in genetic resources document* (19 February 2012) *IP Watch* <<http://www.ip-watch.org/2012/02/19/wipo-members-work-through-differences-in-genetic-resources-document/>>

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

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

Santagata, Walter, 'Cultural districts, property rights and sustainable economic growth' (International Centre for Research on the Economics of Culture, Institutions and Creativity, 2002)

SARDI, *Australian Pastures Genebank* <http://www.sardi.sa.gov.au/pastures/australian_pastures_genebank>

Sauter, Vicki, *Systems theory* (20 October 2008) University of Missouri-St Louis <<http://www.umsl.edu/~sauterv/analysis/intro/system.htm>>

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 Council for Trade-Related Aspects of Intellectual Property Rights, 'The relationship between the TRIPS Agreement and the Convention on Biological Diversity', P/C/W/368/Rev 1, WTO (8 February 2006)

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)

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

Small Business Development Corporation, *Aboriginal Business Unit*
<<http://www.smallbusiness.wa.gov.au/aboriginal-business-unit/>>

Smith, M, 'Australian deserts, deserts past: the archaeology and environmental history of the Australian deserts' (ABS, 2006)

Smyth, Dermot, 'Indigenous land and sea management: a case study' (State of the Environment Committee, 2011)

Social Ventures Australia, *Our work: Indigenous*

<<http://socialventures.com.au/work/#filter=.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*

<http://scu.edu.au/staffdirectory/person_detail.php?person=9537>.

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>>

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

Company <<http://www.smartcompany.com.au/politics/051740-commercialisation-australia-chief-confirms-new-grants-on-hold-amid-unheard-of-government-review-of-grants.html>>

Stamp, Andy and Julia Coffman, *Spotlight: system mapping for advocacy planning and evaluation* <http://www.innonet.org/index.php?section_id=6&content_id=744>

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/>>

Stanley, Warwick, *Native Title Tribunal stops mining lease* (28 May 2009) Sydney Morning Herald <<http://news.smh.com.au/breaking-news-national/native-title-tribunal-stops-mining-lease-20090528-bowc.html>>

Supply Nation, *About us* <http://supplynation.org.au/about_us>

Supply Nation, *Certification overview*

<http://www.supplynation.org.au/indigenous_businesses/Certification>

Supply Nation, *FAQS* <<http://www.supplynation.org.au/resources/FAQs>>

Supply Nation, *Get involved with Supply Nation*

<<http://www.supplynation.org.au/membership>>

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>>

Technology Strategy Board, 'Concept to commercialisation: a strategy for business innovation 2011-2015' (UK Government, 2011)

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* <<http://www.communicationscouncil.org.au/public/content/ViewCategory.aspx?id=619>>

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

The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples from the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples (1993)

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)

Tuckeroo, *Food service products* <<http://www.andrewfielke.com/andrew-fielke-tuckeroo-food-service-products/tuckeroo-food-service-products/>>

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*

<<http://social.un.org/index/IndigenousPeoples/ThematicIssues/Culture.aspx>>

UN, 'Guiding principles on business and human rights: implementing the United Nations "Protect, Respect and Remedy" framework' (UN, 2011)

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, 'Capacity development: practice note' (UNDP, 2008)

UNDP, *Institutional arrangements*

<http://www.undp.org/content/undp/en/home/ourwork/capacitybuilding/drivers_of_change/institut_arrangemt/>

UNDP, *International Human Development Indicators*

<<http://hdr.undp.org/en/countries>>

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 Conference on Trade and Development, 'The Convention on Biological Diversity and the Nagoya Protocol: intellectual property implications' (UN, 2014)

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*

<<http://undesadspd.org/IndigenousPeoples/DeclarationontheRightsofIndigenousPeoples.aspx>>

United States National Arboretum, *What is a native plant?*

<<http://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*

<http://sydney.edu.au/cdip/documents/Confidentiality_Agreement.pdf>

University of Twente, *System theory*

<http://www.utwente.nl/cw/theorieenoverzicht/Theory%20clusters/Communication%20Processes/System_Theory.doc/>

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*

<<http://www.justice.govt.nz/tribunals/waitangi-tribunal/news/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*
<<http://www.wengaconsulting.com/programs/commercialisation-australia.html>>

Wenga Consulting, *Enterprise connect*
<<http://www.wengaconsulting.com/programs/enterprise-connect.html>>

Wenga Consulting, *Jobs assist* <<http://www.wengaconsulting.com/programs/jobs-assist.html>>

Westfarmers, *Sustainability report 2012* <http://media.corporate-ir.net/media_files/IROL/14/144042/wesfarmers_sr/wesfarmers/coles.html>

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

Wilcock, Deirdre, 'Examining 'inclusiveness' in adaptive natural resource management' (Paper presented at the Australian Stream Management Conference, New South Wales, 2007)

Wild Harvest, *Aboriginal economic development and the Kakadu Plum*
<<http://www.kakaduplum.com.au/index.php/indigenous-economic-development>>

Wilden, Necia, *Barefoot botanist* (8 February 2005) The Age
<<http://www.theage.com.au/news/Epicure/Barefoot-botanist/2005/02/07/1107625102374.html>>

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

WIPO, *Inside WIPO* <<http://www.wipo.int/about-wipo/en/index.html>>

WIPO, *Intellectual property and genetic resources, traditional knowledge, and folklore* <http://www.wipo.int/about-ip/en/studies/publications/genetic_resources.htm>

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

WIPO, *Publications, studies and documents*
<<http://www.wipo.int/tk/en/resources/publications.html>>

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

WIPO, *Traditional knowledge, genetic resources and traditional cultural expressions/folklore* <<http://www.wipo.int/tk/en/>>

WIPO, *What is a trade secret?*
<http://www.wipo.int/sme/en/ip_business/trade_secrets/trade_secrets.htm>

WIPO, *What is intellectual property* <<http://www.wipo.int/about-ip/en/>>

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

Wright, Warwick, *Aboriginal cooking techniques*
<<http://www.anbg.gov.au/gardens/education/programs/pdfs/aboriginal-cooking-techniques-2006.pdf>>

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/intell_e.htm>

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

APPENDICES

Appendix 1: Asserting cultural interests through the law

Martin, P., Lingard, K., McLaughlin, C., Aseron, J., Williams, J. and Greymorning, N. *Asserting Cultural Interests through the Law: Issues and Innovations*. LexisNexis: Sydney. (Book chapter, accepted 2015).

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	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
ENABLING 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.

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

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

Aboriginal and Torres Strait Islander bush food knowledge

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

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

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

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

⁴ Anderson, above n 3, 5.

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

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

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

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

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

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

The bush food industry

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

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

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

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

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

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

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

¹⁴ Morse, above n 13, 28.

¹⁵ Ibid 25; Cleary, above n 13, 1.

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

The theme of diversity

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

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

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

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

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

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

Issues, recommendations and areas to investigate

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

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

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

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

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

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

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

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

²⁸ See Janke, above n 2, 81.

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

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

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

Transmitting, practicing, developing and maintaining bush food knowledge

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

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

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

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

³³ Merne Altyerre-ipenhe (Food from the Creation time) Reference Group, Douglas and Walsh, above n 1, 16-17; *Arnpemirrentye: relationships between bush foods, people, country and all things* (Arrente People of Central Australia and Desert Knowledge Cooperative Research Centre, 2009) <http://desertknowledgecsrcmedia.com.au/media/anpemirrentye_12_min.html>; Cunningham, Garnett and Gorman, above n 30, 431; Holcombe, Yates and Walsh, above n 21, 261; see also Morse, above n 13, 10.

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

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

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

³⁴ Morse, above n 13, 28.

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

³⁶ Ibid.

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

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

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

⁴⁰ Craig and Davis, above n 31, 22.

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

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

⁴³ See Janke, above n 2, 133.

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

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

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

Enabling recognition and remuneration for bush food knowledge

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

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

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

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

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

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

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

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

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

⁵³ Morse, above n 13, 17.

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

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

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

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

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

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

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

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

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

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

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

⁵⁹ Janke, above n 2, 73.

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

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

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

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

Ensuring knowledge use is authorised and remunerated

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁸³ Ibid.

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

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

⁸⁶ Morse, above n 54, 20.

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

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

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

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

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

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

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

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

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

⁹¹ Forsyth, above n 44, 207.

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

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

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

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

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

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

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

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

As Jane Anderson succinctly notes:

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

Participation and representation in industry development and governance

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

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

⁹⁷ Martin and Jeffery, above n 46, 1.

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

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

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

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

Conclusion

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

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

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

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

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

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

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

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

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

Select bibliography

Articles, books, reports

Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Native title report' (Report, Australian Government, 2008) <http://www.hreoc.gov.au/social_justice/nt_report/ntreport08/>

Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Native title report' (Report, Australian Government, 2009) <http://www.hreoc.gov.au/social_justice/nt_report/ntreport09/>

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

Cunningham, AB, ST Garnett and J Gorman, 'Policy lessons from practice: Australian bush products for commercial markets' (2009) 74 *GeoJournal* 429

Dodson, Michael and Olivia Barr, 'Breaking the deadlock: developing an Indigenous response to protecting Indigenous traditional knowledge' (2007) 11(2) *Australian Indigenous Law Reporter* 19

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

Evans, Louis et al, 'Plants for People: case study report' (Report No 55, Desert Knowledge Cooperative Research Centre, 2010) <<http://www.desertknowledgecrc.com.au/resource/DKCRC-Report-55-Plants-for-People-Case-study-report.pdf>>

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

Intellectual Property Organization and the United Nations Environment Programme 2004)

<http://www.wipo.int/tk/en/publications/769e_unep_tk.pdf>

Holcombe, Sarah, Peter Yates and Fiona Walsh, 'Reinforcing alternative economies: self-motivated work by central Anmatyerr people to sell Katyerr (Desert raisin, Bush tomato) in central Australia' (2011) 33 *The Rangeland Journal* 255

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)

<http://www.terrijanke.com.au/img/publications/pdf/7.NTIEK_Janke_ICIP_report_7April09_FINAL.pdf>

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)

<<http://www.frankellawyers.com.au/media/report/culture.pdf>>

Kuruk, Paul, 'Cultural heritage, traditional knowledge and Indigenous rights: an analysis of the Convention for Safeguarding of Intangible cultural heritage' (2004) 1 *Macquarie Journal of International and Comparative Environmental Law* 111

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

Marinova, Dora and Margaret Raven, 'Indigenous knowledge and intellectual property: a sustainability agenda' (2006) 20(4) *Journal of Economic Surveys* 587

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

<http://www.nintione.com.au/resource/NintiOneResearchReport_71_BushFoodGuidelines.pdf>

- Miers, Geoff, 'Cultivation and sustainable wild harvest of bushfoods by Aboriginal Communities in Central Australia' (Report, Rural Industries Research and Development Corporation, July 2004)
<<https://rirdc.infoservices.com.au/items/03-124>>
- Morse, Jock, 'Bush resources: opportunities for Aboriginal enterprise in central Australia ' (Report No 2, Desert Knowledge Cooperative Research Centre and the Central Land Council, October 2005)
<<http://www.desertknowledgecrc.com.au/resource/DKCRC-Report-02-Bush-Foods.pdf>>
- Munzer, Stephen and Kal Austiala, 'The uneasy case for intellectual property rights in traditional knowledge' (2009) 27 *Cardozo Arts & Entertainment Law Journal* 37
- OseiTutu, J Janewa, 'A sui generis regime for traditional knowledge: the cultural divide in intellectual property law' (2011) 15(1) *Marquette Intellectual Property Law Review* 147
- 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
- Richardson, Benjamin, Shin Imai and Kent McNeil, 'Indigenous peoples and the law—historical, comparative and contextual issues' in *Indigenous peoples and the law: comparative and critical perspectives* (Hart Publishing, 2009)
- Sherwood, Juanita, 'Community - what is it?' (1999) 4(19) *Indigenous Law Bulletin* 4
<<http://www.austlii.edu.au/au/journals/ILB/1999/21.html>>
- Smallacombe, Sonia, Michael Davis and Robynne Quiggin, 'Scoping project on Aboriginal traditional knowledge' (Report, Desert Knowledge CRC, 2007)
<<http://www.desertknowledgecrc.com.au/resource/DKCRC-Report-22-Traditional-Knowledge.pdf>>
- Standing Committee on Science and Innovation, 'Inquiry into pathways to technological innovation' (Report, Australian Government, 19 June 2006)
<http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=scin/pathways/report/prelims.htm>
- 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

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

Convention on Biological Diversity, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).

Other

Alyawarr speakers from Ampilatwatja, Fiona Walsh and Josie Douglas, 'Angka Akatyerr-akert: a desert raison report' (Report, Desert Knowledge CRC, 2009)

<http://www.desertknowledgescrc.com.au/resource/DKCRC_Angka-Akatyerr-akert_A-Desert-raisin-report.pdf>

Anderson, Jane, 'Indigenous/Traditional Knowledge and intellectual property' (Issues Paper, Centre for the Study of the Public Domain, 2010) <http://www.law.duke.edu/cspd/pdf/ip_indigenous-traditionalknowledge.pdf>

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

Arnperrirrentye: relationships between bush foods, people, country and all things (Arrernte People of Central Australia and Desert Knowledge Cooperative Research Centre, 2009)

<http://desertknowledgescrcmedia.com.au/media/anperrirrentye_12_min.html>

Australian Centre for Intellectual Property in Agriculture, *Intellectual property: understanding plant breeders rights* ACIPA <http://www.acipa.edu.au/PBR/1_0_contents.html>

Australian Government, *Model access and benefit sharing agreement* (12 April 2012)

<<http://www.environment.gov.au/biodiversity/science/access/permits/pubs/benefit-sharing-model.pdf>>

Australian Institute of Commercialisation, *What is commercialisation* (March 2010)

<<http://www.ausicom.com/news-248-what-is-commercialisation>>

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>>

Cleary, Jenny, 'Perspectives on developing new cooperative arrangements for bush-harvested bush tomatoes from desert Australia' (Working Paper No 48, Desert Knowledge CRC, 2009) <http://www.desertknowledgecrc.com.au/resource/DKCRC-Working-Paper-48_Perspectives-of-cooperative-arrangements-for-bush-harvested-bush-tomatoes.pdf>

Drahos, Peter, 'When cosmology meets property: Indigenous people's innovation and intellectual property' (Research Paper No 90, Queen Mary School of Law, 2011) <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1946119>

Commercialisation Australia, *Early stage commercialisation* (December 2011) <<http://www.commercialisationaustralia.gov.au/WhatWeOffer/EarlyStageCommercialisation/Pages/default.aspx>>

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

Cooperative Research Centre for Remote Economic Participation, *Plant business* (2012) <<http://crc-rep.com/research/enterprise-development/plant-business>>

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

CSIRO, *Economic development: bush tucker dreaming* <<http://www.csiro.au/files/files/p5e8.pdf>>

Davis, Michael, 'Biological diversity and Indigenous knowledge' (Research Paper No 17, Australian Government, 29 June 1998) <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9798/98rp17#PRO>

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

Desert Knowledge Cooperative Research Centre, 'Desert Knowledge CRC protocol for Aboriginal knowledge and intellectual property' (Protocol, DKCRC), <<http://www.desertknowledgecrc.com.au/resource/DKCRC-Aboriginal-Intellectual-Property-Protocol.pdf>>

Desert Knowledge Cooperative Research Centre, 'Patents and plant breeders rights in Australian law' (Briefing Paper No 4, DKCRC), <<http://www.desertknowledgecrc.com.au/resource/DKCRC-SS-BP4-Patents-and-plant-breeders-rights-in-Australian-Law.pdf>>

Dictionary.com, *Bush tucker* (2012) <<http://dictionary.reference.com/browse/bush+tucker>>

Farmers' Rights Project, *Farmers' rights: resource pages for decision-makers and practitioners* (11 June 2012) <<http://www.farmersrights.org/>>

Holt, Sally, 'Native food industry set to expand', *Farming Ahead* May 2005 <http://www.clw.csiro.au/publications/farming_ahead/2005/7-9%20FA%20MAY%202005_160.pdf>

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

Janke, Terri 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>>

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

Morse, Jeremy, 'Know your rights to your Aboriginal plant knowledge: a guide for Aboriginal knowledge holders on recording and commercialising Aboriginal plant knowledge' (2010) <http://www.terrijanke.com.au/documents/Know_your_rights_may2010.pdf>

Plant business (2012) Community Research Centre for Remote Economic Participation <<http://crc-rep.com/research/enterprise-development/plant-business>>

Rural Industries Research and Development Corporation, 'Native foods R&D priorities and strategies' (Publication No 08/02, Rural Industries Research and Development Corporation, February 2008) <<https://rirdc.infoservices.com.au/downloads/08-022.pdf>>

Rural Industries Research and Development Corporation, 'The new crop industries handbook' (2004) <http://www.rirdc.gov.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=4A24C975-9911-6D8C-9661-F1AC8BA1E15F&siteName=RIRDC>

The Free Dictionary, *Capital* <<http://www.thefreedictionary.com/capital>>

The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples from the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples, 1993

Vincent, Ange, 'Bush tomato handbook' (Ninti One Limited, August 2010)
<<http://www.desertknowledgecrc.com.au/resource/dkrc-bush-tomato-handbook.pdf>>

Wikipedia, *Knowledge capital* <http://en.wikipedia.org/wiki/Knowledge_capital>

Wikipedia, *Resource* <<http://en.wikipedia.org/wiki/Resource>>

World Intellectual Property Organisation, *Intellectual property and genetic resources, traditional knowledge, and folklore* <http://www.wipo.int/about-ip/en/studies/publications/genetic_resources.htm>

World Intellectual Property Organisation, *The Protection of Traditional Knowledge: Draft Articles 2012*
<http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_21/wipo_grtkf_ic_21_ref_facilitators_text.pdf>

World Intellectual Property Organisation, *Traditional knowledge* <<http://www.wipo.int/tk/en/>>

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

Confidential

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

Confidential

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

Confidential