



Department of
Primary Industries and
Regional Development

*We're working for
Western Australia.*

Protection of Indigenous Ecological Knowledge for **bushfood businesses**





Acknowledgment of Country

The Department of Primary Industries and Regional Development (DPIRD) acknowledges the Traditional Custodians of Country, the Aboriginal people of the many lands that we work on and their language groups throughout Western Australia and recognises their continuing connection to the land and waters. DPIRD respects the continuing culture of Aboriginal people and the contribution they make to the life of our regions and we pay our respects to Elders past, present and emerging.

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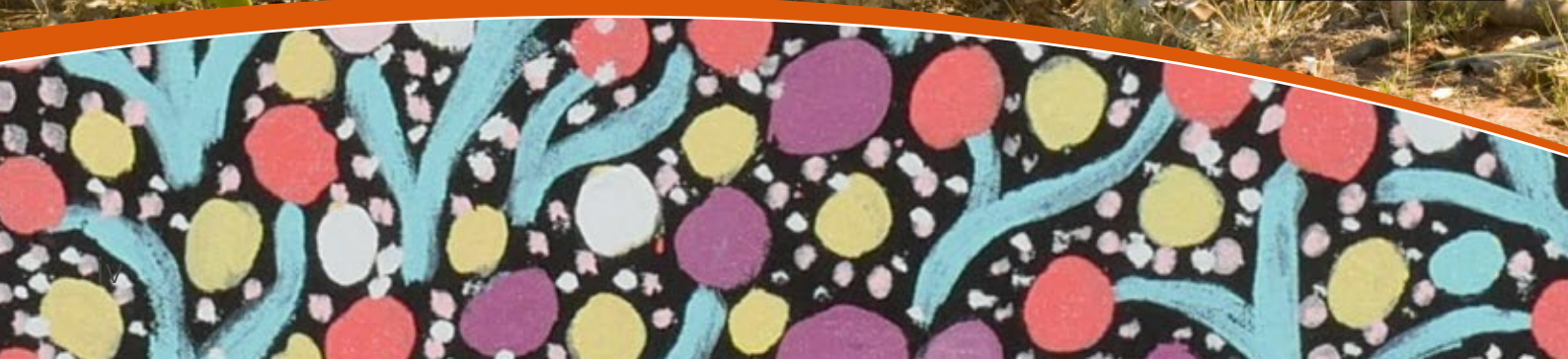
Front cover photo: Terry Hunter, Borrgoron Tours, image courtesy of Tourism Western Australia; cover artwork: Damper by Beryl Ponce, image courtesy of Spinifex Hill Studio

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Malaburra Gubinge



Protection of Indigenous Ecological Knowledge (IEK) for bushfood businesses

Australian Aboriginal and Torres Strait Islander people have maintained, used, protected, and passed down cultural practices, including hunting, fishing, gathering, farming and land and water management practices, for generations.¹ Their unique knowledge of traditional uses of native plants and animals has led to the establishment of national and global industries in bushfoods, medicines, and cosmetics.

Indigenous Cultural and Intellectual Property (ICIP) refers to the rights of Australian Aboriginal and Torres Strait Islander people to their cultural heritage.² Heritage comprises all objects, sites, languages, expressions and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and pertains to a particular Aboriginal or Torres Strait Islander group or its territory.

Indigenous Ecological Knowledge (IEK) is a key aspect of Indigenous Cultural and Intellectual Property and refers to Aboriginal and Torres Strait Islander peoples' knowledge of Country, including the native plants and animals that co-exist with them, and associated stories, songs, language, techniques and knowledge.

Indigenous Ecological Knowledge is invaluable given the rich, unique Australian ecosystem and Aboriginal and Torres Strait Islander peoples' connection to it, and is deeply rooted, with representations holding spiritual and customary value that contribute to Aboriginal and Torres Strait Islander ways of being. For example, native plants and animals may have totemic value and represent song lines. Indigenous Ecological Knowledge is inseparable from the identity of Aboriginal and Torres Strait Islander people.

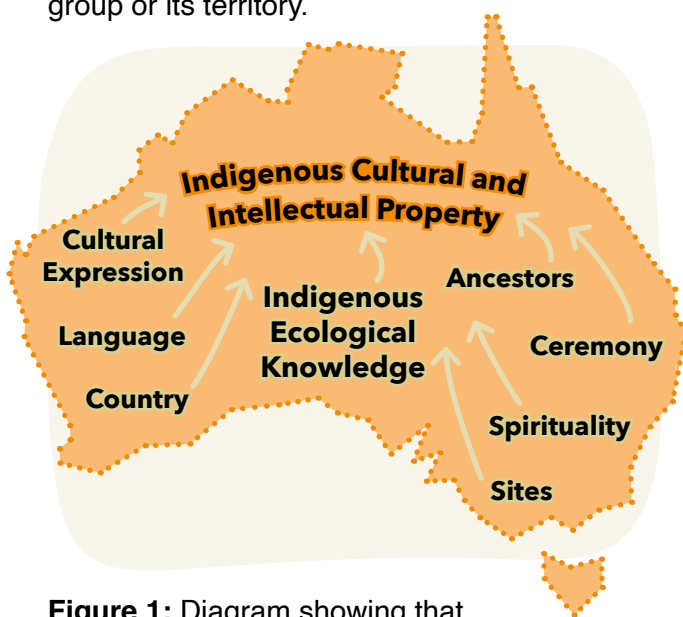


Figure 1: Diagram showing that IEK is a part of ICIP



Good to know!

The Kakadu plum (commonly known as Gubinge, in WA) contains the highest recorded level of vitamin C content globally and superior antioxidant qualities³, and has been used in skincare products developed by global cosmetic giants such as Mary Kay. However, there has never been recognition of the Indigenous Ecological Knowledge and related ICIP that led to the discoveries and resulting commercialisation.

¹ Davis, Michael, *Handbook for Working with Indigenous Ecological Knowledge & Intellectual Property: A Report Commissioned by the Natural Resources Management Board (NT) Component 2 (of 3)* (Natural Resource Management Board (NT), 2009). Available from: 4b0a135d-0afc-4211-ad92-391c5def66bb.filesusr.com/ugd/7bf9b4_424d34b63d654da18a7bdfb7d8d6407c.pdf

² Janke, Terri, *Our Culture: Our Future* (Michael Frankel & Company and Terri Janke, 1998). Available from: terrijanke.com.au/our-culture-our-future

³ Rural Industries Research and Development Corporation (now AgriFutures Australia), *Focus on Kakadu Plum*, (12 December 2014) Rural Industries Research and Development Corporation. Available from: agrifutures.com.au/wp-content/uploads/publications/14-115.pdf

Australia has a history of exploiting Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge by commercialising native plants and animals, and knowledge associated with those resources, without consent, attribution or benefit sharing with Indigenous people and communities.

The 2020 Australian native foods and botanicals market study estimated that the Australian native foods industry is worth \$21 million annually at the farmgate.⁴ However, it is estimated Aboriginal enterprises represent less than 15% of Australian native food producers.⁵

While the number of Aboriginal people engaged in wild harvesting of bushfoods on Country as part of the general native foods supply chain is high, only a small percentage of Aboriginal businesses are engaged in this million-dollar industry.

This highlights an opportunity for Aboriginal businesses to engage, lead and develop the Australian bushfoods industry further whilst ensuring that any future commercialisation of bushfoods and associated Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge is Aboriginal-led, culturally informed and sustainable.



Good to know!

There are over 6,500 native plants in Australia, yet less than 15 have been effectively developed as part of the growing bushfoods (native food and botanicals) industry in domestic and international markets.⁶



Cygnet Bay Pearl Farm, image courtesy of Tourism Western Australia

Opportunities for Aboriginal bushfood businesses

Build sustainable bushfood businesses

The Australian native foods industry is a niche area enjoying elevated levels of national and international interest and potential for growth, highlighting the unique, flavoursome, and healthy properties of Australian's bushfoods. For example, kangaroo meat has less than 2% fat, making it the healthiest red meat option and one of the most sustainable wild harvest operations in the world.

Aboriginal bushfood businesses are severely under-represented in the industry. With the continued growth and expansion of the industry, Aboriginal people and communities could:

- increase their representation in the industry
- lead the development of bushfoods and bushfood products
- control the use of native food sources and knowledge, stories, Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge by the wider industry
- build sustainable businesses on Country
- ensure employment, skills, and cultural knowledge transfer to community, and
- strengthen community connection to Country.

Highlight native plants and animals

Aboriginal bushfood businesses can increase their engagement with the native foods industry and highlight to consumers generations of nurtured bushfood knowledge and skill, including farming techniques, sustainable growing and harvesting practices, management processes for land and waters, and associated Indigenous Ecological Knowledge.

Control use of knowledge, language, and story (ICIP and IEK)

With greater representation of Aboriginal-owned and run bushfoods business in the native foods industry, Aboriginal people and communities can promote their knowledge, languages, stories, and connection to Country and bushfoods as a unique selling point for their products. They can also highlight the need for wider acknowledgement and respect of Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge rights in relation to the development, harvesting, manufacture, use and sale of bushfoods and related products.

Build social awareness around bushfoods

The more Australian native plants are available and consumed by the wider community and used in the Australian and international food and hospitality industries, the greater the social awareness about the nutritional and medicinal values of bushfoods, and their connection to Aboriginal people, Country, and culture. For example, it is a distinct promotional advantage for Aboriginal business to have cultural stories accompanying the sale of their bushfoods and products (where appropriate).

Aboriginal leadership in the Australian native foods industry

Given the insight that Aboriginal people have about bushfoods, their properties and uses, and their connection to Country, culture and community, Aboriginal people and businesses can demonstrate leadership and innovation in the Australian native foods industry. For example, Emama Nguda Aboriginal Corporation based in Derby, Western Australia, have completed a successful pilot program to commercialise the breeding of Cherabin, northern Australian giant freshwater prawns.

⁴ Laurie, S. (2020). Australian native foods and botanicals – 2019/2020 market study. ANFAB.

⁵ Industry findings identified by S. Laurie as part of the Australian native foods and botanicals 2019/20 market study.

⁶ PwC Indigenous Consulting, *Emerging Business Models for the Kakadu Plum Industry*. (AgriFutures Australia, 2018). Available from: agrifutures.com.au/product/emerging-business-models-for-the-kakadu-plum-industry/

Challenges for Aboriginal bushfood businesses

Aboriginal bushfood businesses face distinct challenges to entering and engaging in the Australian native foods industry, including the following:

Tension between commercialisation and preservation of Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge.

Aboriginal businesses feel an inherent tension between preserving and sustaining the cultural values and knowledge in relation to native plants and animals, while developing bushfoods, products and tailoring Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge to appeal to non-Indigenous people as a commodity and for commercial benefit.

Misappropriation and misuse of Indigenous Ecological Knowledge and Indigenous Cultural and Intellectual Property

There has been a long history of Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge being misappropriated and misused by non-Indigenous people and businesses in Australia and internationally. This fear of being exploited may prevent Aboriginal businesses from venturing into the bushfoods market.

Permits and regulatory requirements

Regulations and required permits and licenses in relation to harvesting, manufacture and sale of native foods can be a deterrent for Aboriginal

bushfoods businesses. Aboriginal businesses may not be aware of or feel equipped with the knowledge, networks or funds needed to navigate the regulatory requirements for starting and running a bushfoods business. Regulatory requirements may also contribute to many Aboriginal bushfoods businesses choosing to keep their target market small, rather than developing their policies and procedures to meet the required standards for manufacturing and food distribution on a national or international scale.

Lack of culturally appropriate training and resources

A lack of culturally appropriate training and resources in the Australian food and hospitality industries can be discouraging for Aboriginal bushfoods businesses. It can be challenging attempting to make business tools that do not incorporate cultural or community considerations that are applicable and relevant for Aboriginal bushfoods businesses.

Lack of involvement in emerging native food industries

There is a growing focus on research and development (R&D) in native food industries, such as research into kangaroo meat, tea tree oil, wattleseed, Kakadu plum, and other emerging industries. To date, there has been a lack of Aboriginal engagement in the emerging bushfoods industry. Historically, R&D projects concerning bushfoods use Aboriginal people as a knowledge source and information provider,

rather than collaborators and leaders of those projects, denying Aboriginal peoples and communities self-determination of Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge. Aboriginal engagement needs to be a priority for research institutions, government organisations and peak bodies engaging in native plant and animals and bushfoods projects.

Loss of control

Aboriginal people, communities and bushfood businesses that share their Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge in relation to native foods are at risk of losing control over the use of that knowledge and the resulting intellectual property (IP) generated from it if there are no contractual obligations on external parties to seek free, prior, informed consent for future use.

Limited access to finance

Aboriginal businesses may lack the financial capital to start-up a bushfoods business, particularly one to supply the national or international market. Funding opportunities may be available, but the financial risk is greater for Aboriginal business people who do not have intergenerational wealth and a backup plan should the business not be successful or continue to need funding support.

Decision-making is complex

Aboriginal organisations with representative boards, steering committees and/or cultural advisory groups can make the decision-making processes complex and less streamlined than non-Indigenous businesses. Getting approval to seek commercial opportunities can be a slow process that potentially hinders business innovation. A lack of business innovation can in turn prevent businesses being profitable and becoming sustainable. A key reason for this is that the structure of an Aboriginal organisation may not be designed for business development, but for social or cultural priorities, such as to represent the interests of an entire traditional owner group.

Bad governance can block progress

Governance structures of Aboriginal organisations can also impact the effectiveness and functionality of a business. If good governance procedures are not adopted or understood by those in charge, this could pose a challenge for Aboriginal businesses that want to enter and succeed in the Australian bushfoods industry.

Business development is not the only goal

Often, Aboriginal business people who want to enter the bushfoods industry have other cultural, community and family obligations that they must fulfil. This could mean that product and business plans or marketing and sales strategies stall while the Aboriginal business people progress other family or community priorities.



Dried Eucalyptus seed



Case study



National Indigenous Bushfood Symposium

In November 2019, First Hand Solutions delivered the inaugural National Indigenous Bushfood Symposium in collaboration with the University of Technology Sydney Business School, with funding from the Indigenous Land and Sea Corporation.

The Symposium, held in Sydney, aimed to increase Indigenous participation in the Australian bushfood industry and identify barriers to Indigenous involvement. Over 120 Indigenous people from across Australia attended the Symposium and developed a National Indigenous Bushfood Statement. Key actions items of the Statement asserted the rights of Indigenous people to participate and engage in the native foods industry and to protect Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge.⁷⁸

Following the Symposium, the First Nations Bushfood and Botanical Alliance Australia was established to represent Indigenous people and businesses in the native foods industry, and advocate for increased representation and leadership, and Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge rights of First Nations people in the native



foods industry, and offer a directory of Indigenous-owned bushfood businesses. For more information, visit fnbbaa.com.au/

⁷ Visit firstnationsbushfoods.org.au/bushfood-symposium-statement-firstn



Boab tree nuts



Bungarra Mullewa



International context

How can Indigenous Ecological Knowledge and Indigenous Cultural and Intellectual Property be protected in the bushfood industry to ensure the rights of Aboriginal people to their cultural heritage are enforced?

Unfortunately, there are no specific laws to effectively protect Indigenous Cultural and Intellectual Property or Indigenous Ecological Knowledge in Australia. The existing legal

framework must be creatively used and relied upon to gain as much legal protection as possible.

At the international level, Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge rights of Indigenous people, including in relation to genetic resources such as plants and animals, are directly addressed by the following instruments:

1. United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) is the most comprehensive international instrument on the rights of Indigenous people to their cultural heritage, traditional knowledge, and traditional cultural expressions (their Indigenous Cultural and Intellectual Property).⁹

Article 31 of the Declaration states:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts...

Indigenous peoples also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

Australia has signed but is yet to ratify the terms of the Declaration into law, however the Declaration provides a strong precedent for Aboriginal people to have their Indigenous Cultural and Intellectual Property rights recognised and realised.

To comply with Article 31 of the Declaration, Aboriginal people must have the right to maintain, control, protect and develop their Indigenous Cultural and Intellectual Property. The establishment and promotion of Aboriginal bushfoods businesses can be interpreted as a manifestation of Aboriginal people asserting their Indigenous Cultural and Intellectual Property rights.

2. Convention on Biological Diversity

The United Nations Convention on Biological Diversity is an international convention dedicated to promoting sustainable development, which Australia has committed to implement since 1993.¹⁰

The three objectives of the Convention on Biological Diversity are:

- conservation of biodiversity
- sustainable use of its component; and
- fair and equitable sharing of the benefits arising from the use of genetic resources.

⁹ United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/2915 (entered into force 13 September 2007). Available from: un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

¹⁰ United Nations Convention on Biological Diversity 1992, (entered into force 29 December 1993). Available from: cbd.int/convention/text/

Convention on Biological Diversity objectives provide for ethical standards and access, and benefit sharing obligations, when government agencies, research institutions, resource and pharmaceutical organisations, and the wider public want to engage with Australian

genetic resources. These include accessing and collecting native plants from Country. The Australian Government, and the state, territory and local governments, are operating under Australia's Strategy for Nature 2019-2030 to integrate Australia's natural resources.¹¹

3. Nagoya Protocol

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits (**Nagoya Protocol**) was developed as a supplementary protocol to implement fair and equitable sharing requirements for use of genetic resources (including native plants) provided for in the Convention on Biological Diversity.¹²

Australia signed the Nagoya Protocol in 2012 but is yet to ratify its guidelines on access to genetic resources, mutually agreed terms, and compliance with the free, prior, and informed consent of Indigenous peoples.

The Nagoya Protocol provides guidance for Aboriginal bushfood businesses wanting to use Indigenous Ecological Knowledge and native resources as part of their products. The Nagoya Protocol also encourages non-Indigenous businesses and organisations to enter into fair and equitable Access and Benefit Sharing Agreements with Indigenous people for the use of genetic resources and their associated Indigenous Ecological Knowledge. It recognises Indigenous people as Traditional Custodians of Indigenous Ecological Knowledge and respects the intrinsic connection they have with Country.



Good to know!

Innovative communication, education and public awareness initiatives around Access and Benefit Sharing Agreements is important in fulfilling the Convention on Biological Diversity and Nagoya Protocol obligations. A communication, education and public awareness toolkit has been developed that includes considerations for Access and Benefit Sharing Agreements. The Toolkit is a living document that people can request to add to and is accessible via: absch.cbd.int/database/resource/16B113CB-CC86-0008-4D4B-4B29E846B83C



Australian Access and Benefit Sharing Agreement legislation

Commonwealth legislation

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) is the Australian national legal framework for the protection and management of heritage places, flora, fauna, ecological communities, and other matters of national environmental significance.¹³

All projects that take place on Commonwealth land or which have national environmental significance must develop Access and Benefit Sharing Agreements with the Aboriginal community or communities whose land or waters is impacted. Access and Benefit Sharing Agreements form the foundation for good faith negotiations between Aboriginal people and external parties wishing to engage with them, their Country or their Indigenous Ecological Knowledge.

Access and Benefit Sharing Agreements should be in the form of a written agreement with the relevant Aboriginal community or group and require the sharing of financial and non-financial benefits that result from access and use of genetic resources. See the *Access and Benefit Sharing Agreements* section below.



Tip!

The Access and Benefit Sharing obligations in the EPBC Act are limited to access where genetic resources (native plants and animals) are used commercially. This means that the non-commercial use of bushfoods does not require Access and Benefit Sharing Agreements to be developed under the EPBC Act.



Good to know!

In 2020, the EPBC Act underwent independent review, with Indigenous heritage and culture, including consultation and decision making, highlighted as priorities in the final report.¹⁴ A Senate inquiry was held and a further report on recommendations released in June 2021.¹⁵ The Government has since delayed the timetable for implementing the reforms until 2024.¹⁶

¹¹ Australia's Nature Hub. *Australia's Strategy for Nature 2019-2030*. Available from: australiasnaturehub.gov.au/national-strategy

¹² *United Nations Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity 2010*, (entered into force 12 October 2014). Available from: cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf

¹³ *Environment Protection and Biodiversity Conservation Act 1999* (Cth). Available from: legislation.gov.au/Details/C2019C00275

¹⁴ For more information, visit epbcactreview.environment.gov.au/

¹⁵ For more information, visit aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Protectionandbiocon

¹⁶ To see the proposed timeline for EPBC Act reforms, visit environment.gov.au/system/files/resources/c81b8f11-0abe-45c3-b600-ccf28082ae6d/files/proposed-timeline-epbc-act-reforms.pdf

Boab trees on Nyikina Mangala Country in Western Australia



Native seed propagation



Tip!

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State and territory legislation

Since Australia signed the Convention on Biological Diversity and Nagoya Protocol, there have been fragmented approaches to implement their principles, and Access and Benefit Sharing Agreements at the state and territory level.

For example, in Western Australia, the WA *Biodiscovery Bill* is being developed to provide for an accreditation or certification regime under the Nagoya Protocol to ensure that Traditional Custodians are asked to give consent for biodiscovery activities, on negotiated terms.¹⁷ This will also ensure compliance with the biodiversity-related obligations under Articles 24 and 26 of the *United Nations Declaration on the Rights of Indigenous Peoples*.

In Queensland, the *Biodiscovery Act 2004* (Qld)¹⁸ and *Guideline for preparing a benefit sharing agreement* can be used to stipulate Access and Benefit Sharing Agreements and

ensure Aboriginal people and communities are recognised and benefit from projects to do with native Australian plants and animals.

The *Biological Resources Act 2006*¹⁹ in the Northern Territory ensures that bio-prospectors enter into benefit sharing agreements and seek free, prior, and informed consent for their activities from Aboriginal landowners or representative bodies, prior to collecting resources on Country under a permit.

The Northern Territory Government has developed Benefit Sharing Deed Templates for use prior to seeking a permit for collecting plant and animal materials for scientific research and bioprospecting. These are available from: nt.gov.au/environment/native-plants/collecting-plant-and-animal-materials-for-scientific-research

¹⁷ For more information, see Yamatji Marpa Aboriginal Corporation resource available at: ymac.org.au/wp-content/uploads/2019/10/Info-sheet-for-PBCs-and-NTRBs_Biodiscovery-Bill.pdf

¹⁸ *Biodiscovery Act 2004* (Qld). Available: legislation.qld.gov.au/view/pdf/inforce/2016-07-01/act-2004-019

¹⁹ *Biological Resources Act 2006* (NT). Available: legislation.nt.gov.au/en/Legislation/BIOLOGICAL-RESOURCES-ACT-2006



Cultural Tour with Bolo,
Kooljaman at Cape Leveque

Access and Benefit Sharing Agreements

Aboriginal and non-Indigenous bushfoods businesses should use Access and Benefit Sharing Agreements with First Nations groups to specify the access requirements on Country, how native plants, animals and associated Indigenous Ecological Knowledge can be collected, stored, and used, and to ensure specific benefits from use and development of the collected resources will benefit Aboriginal people and communities.

For example, in 2013, the University of Western Australia (UWA) was awarded funding by AgriFutures Australia to undertake research on development of the Kakadu plum industry. UWA sought to obtain the free, prior, and informed consent of Aboriginal communities in Western Australia and the Northern Territory by negotiating Access and Benefit Sharing Agreements that were developed in collaboration with the communities and drafted with the assistance of Terri Janke and Company.²⁰

The Commonwealth Department of the Environment has provided two template agreements for commercial access to biological resources under the EPBC Act. These agreements recognise the Convention on Biological Diversity and contain clauses that bind accessing parties to enter into benefit sharing Agreements with Aboriginal people where Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge are used. See the *Resources* section below for links.

In addition to Access and Benefit Sharing Agreements, Material Transfer Agreements can be used to set the terms for transfer of genetic resources (e.g., plant samples) from an Aboriginal community to a third party (e.g., laboratory), primarily for research purposes. It is common for Access and Benefit Sharing Agreements and Material Transfer Agreements to be complementary in research projects relating to genetic resources.

²⁰ Janke, T and Sentina, M, *Indigenous Knowledge: Issues for protection and management Discussion Paper*, Terri Janke and Company, commissioned by IP Australia & the Department of Industry, Innovation and Science, 2018, p 97. Available from: ipaaustralia.gov.au/sites/default/files/ipaust_ikdiscussionpaper_28march2018.pdf



Muntries berries at Roelands Village
image courtesy of Tourism Western Australia



Checklist

Access and Benefit Sharing Agreement

Standard terms that should be addressed in any Access and Benefit Sharing Agreement are:

- Research project details
- Community involved
- Details about community consultation and participation
- Free, prior, and informed consent of the community
- Benefits to Aboriginal community – monetary and non-monetary
- Land or sea to be accessed
- Permits required
- Applicable customary laws and protocols to be followed
- Who can access Country, when, and with whom?
- Ownership of photos, film, recordings, samples, field notes or other data and information collected on Country, or as part of the project
- Use, maintenance, and disposal of recordings and samples taken off-Country
- Reporting to Aboriginal community
- Community approvals process
- Attribution of Aboriginal community
- Rules concerning commercialisation opportunities and publicity.



Tip!

Material Transfer Agreements may be relevant where Aboriginal bushfoods businesses engage a laboratory or university to test bushfood samples or contribute to R&D projects. Consider the point of commercialisation and how any registered intellectual property rights may be managed.



Resources

- An Explanatory guide for the EPBC ABS agreement. Available here: environment.gov.au/system/files/pages/e3584028-d083-4aec-acdd-c0aa635a529f/files/benefit-sharing-guide.pdf; and
- Department of Environment, Access and Benefit Sharing Agreement between a non-government access provider (e.g., traditional owner group) and a party that wants to access biological resources. Available here: wipo.int/tk/en/databases/contracts/texts/australiamodel.html
- See also the World Intellectual Property Organization's [A Guide to Intellectual Property issues in Access and Benefit Sharing Agreements](#).

Boodja Gin, image courtesy of Frances Andrijich

Best practice protocols

Access and Benefit Sharing Agreements and other contracts, such as research agreements and licence agreements, Intellectual Property (IP) laws including copyright, trade marks, patents and Plant Breeder's Rights can be used to protect bushfoods and associated Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge. For more information about IP laws and how they can be used to protect Aboriginal businesses, see the accompanying *Setting up for Success: Bushfoods* guide.

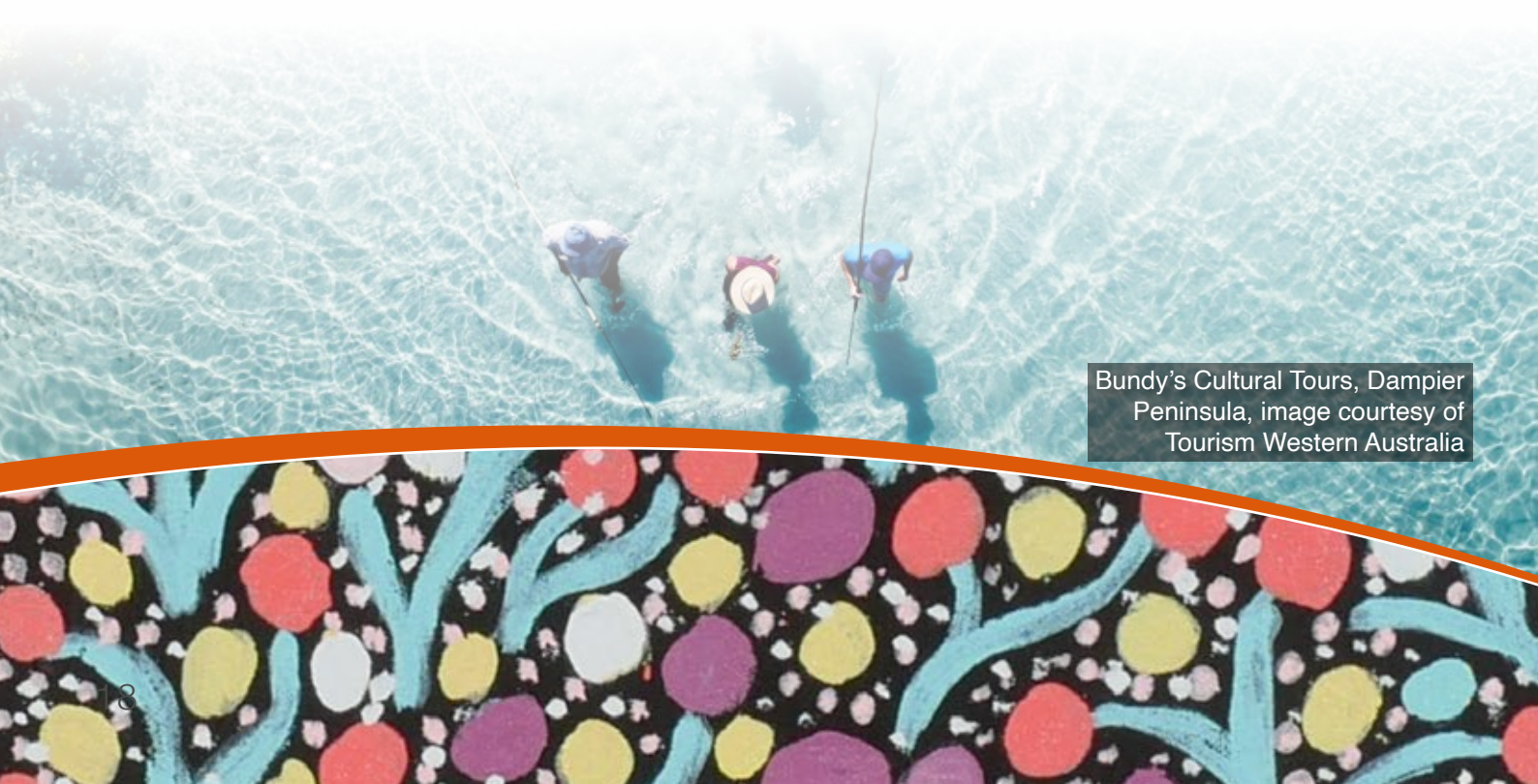
In addition, best practice protocols are becoming widely used as guidelines for industry, government, and organisations to engage respectfully with Aboriginal people, communities and their Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge.

Best practice protocols can be developed by Aboriginal bushfood businesses to ensure the people and organisations they work with, such as researchers, universities, industry bodies, funders and partners:

- show respect for Aboriginal people and their Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge.
- promote Aboriginal self-determination, leadership, and design in projects.

- are transparent about the project aims, objectives, and anticipated outcomes.
- understand their obligations in engaging with Aboriginal people, community, and businesses.
- understand their obligations for the collection and use of bushfood, Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge in relation to the project.
- identify Intellectual Property ownership arrangements.
- identify community approvals processes, including in relation to commercial uses.
- comply with best practice principles of engagement, including respect, self-determination, consultation, free, prior informed consent, attribution, and benefit sharing, and
- ensure the protection of Aboriginal people and their Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge in any future use.

Compliance with best practice protocols can be incorporated into Access and Benefit Sharing Agreements and other contracts to ensure that they are legally binding obligations.



Bundy's Cultural Tours, Dampier Peninsula, image courtesy of Tourism Western Australia



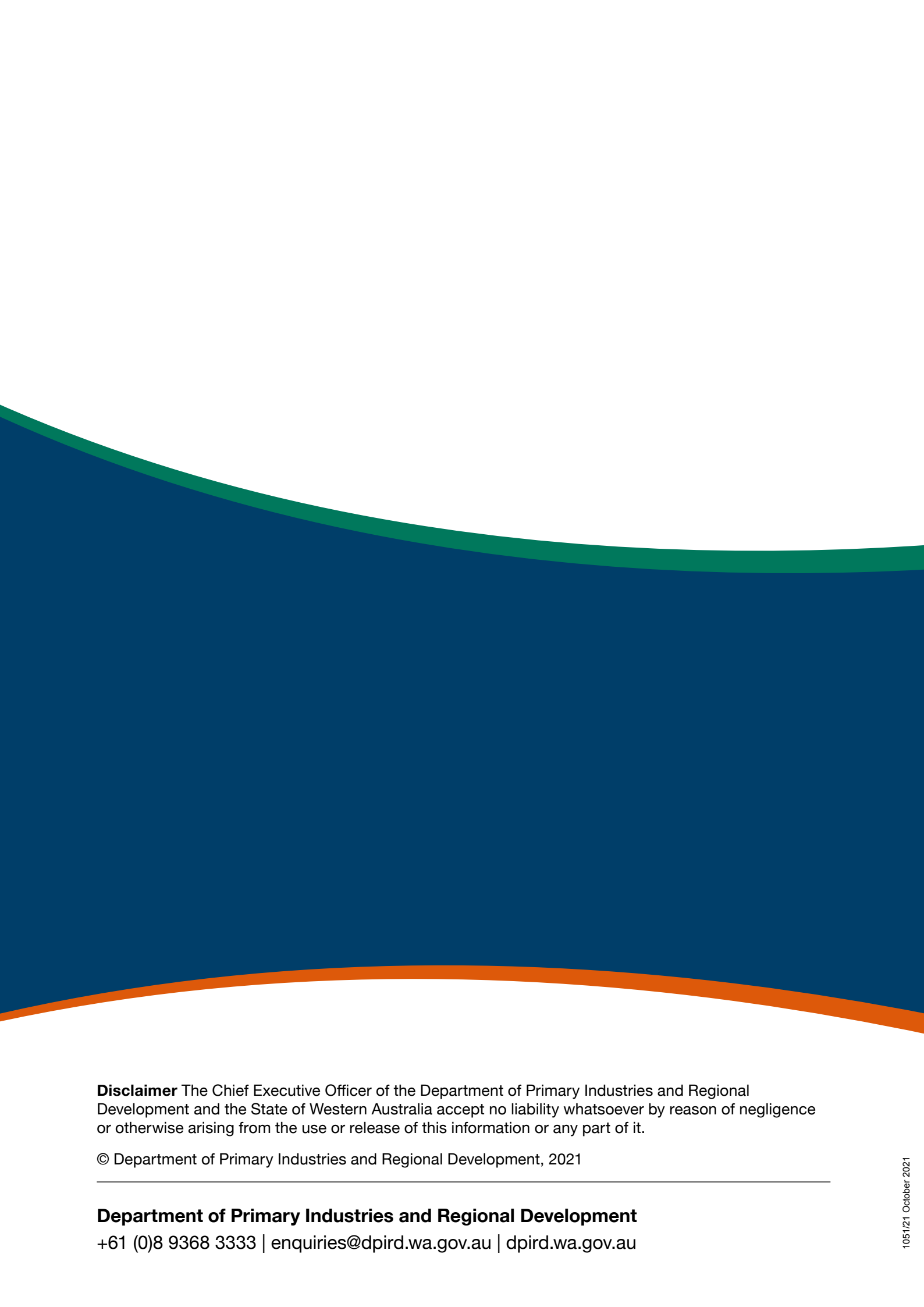
Resources

Industry best practice protocols and further information concerning the protection of Aboriginal peoples' Indigenous Cultural and Intellectual Property and Indigenous Ecological Knowledge rights can be found here:

- World Intellectual Property Organization (WIPO), *A Guide to Intellectual Property issues in Access and Benefit-sharing Agreements*, WIPO Geneva, 2018. Available from: wipo.int/edocs/pubdocs/en/wipo_pub_1052.pdf
- AIATSIS' *Code of Ethics for Aboriginal and Torres Strait Islander Research* provides best practice protocols for engaging with Indigenous people and communities when undertaking research on Country. All universities and researchers should comply with these guidelines. There is also an accompanying *Guide to Applying the Code of Ethics*.
- CSIRO recently published *Our Knowledge Our Way in caring for Country Guidelines*.
- Aboriginal Bush Traders, *Know your rights to your Aboriginal plant knowledge*.
- Ninti One's *Aboriginal people, bush foods knowledge and products from central Australia: Ethical guidelines for commercial bush food research, industry and enterprises*.
- Kylie Lingard, *Strategies to Support Aboriginal and Torres Strait Islander Interests in Gourmet Bush Food Product Development* (20 June 2015), Ninti One: CRC Remote Economic Participation. Available from: nintione.com.au/resource/PB006_PolicyBriefing_StrategiesSupportAboriginalTorresStraitIslanderInterestsGourmetBushFoodProductDevelopment.pdf
- Terri Janke and Company offers workshops and resources on IP and ICIP rights, best practice protocols and use of contracts to ensure protection. Available from: terrijanke.com.au/resources
- See also IEK management resources developed for the National Resources Management Board (NT) by Terri Janke and Company, National Centre of Indigenous Studies, Australian National University and the Jumbunna Institute for Indigenous Education and Research. Available from: terrijanke.com.au/iek-management

This *Protection of Indigenous Ecological Knowledge for bushfood businesses* guide was developed by the Department of Primary Industries and Regional Development, WA's Aboriginal Economic Development (AED) unit. See the accompanying 'how-to' *Setting up for Success: Bushfoods* guide for Aboriginal businesses that want to enter, or increase their participation in, the growing Australian bushfoods industry.

If you require specific business or legal advice, it is recommended that you seek further assistance. Contact the DPIRD Aboriginal Economic Development unit by emailing aed@dpiird.wa.gov.au or calling +61 (0)459 867 908.



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