

Aboriginal and Torres Strait Islander Knowledge, Western Knowledge and Intellectual Property Rights

Briefing Paper No. 5

Plain language material

There are some important differences between Aboriginal and Torres Strait Islander knowledge and Western knowledge (sometimes called ‘Western science’).

Perhaps the main difference is that Aboriginal and Torres Strait Islander knowledge is based on oral tradition, and is passed down by word of mouth through the generations, and from the ancestors. Western knowledge, by contrast, is written down, made into books and reports, or is recorded on film, sound recording or in other kinds of media. The Internet and digital technology are also very important for the way in which we think about knowledge and information in today’s world.

Western science places a lot of importance on proof, evidence, and on the way knowledge is developed by means of technology.

Although it is important to be aware of the differences between Aboriginal and Torres Strait Islander and Western forms of knowledge, they are increasingly becoming similar in some ways. For example, Aboriginal and Torres Strait Islander people are becoming more involved now in using and developing technologies such as TV, film, video, DVD and the Internet for recording, managing and sharing their knowledge within and between their communities and organisations (see for example the work of Warlpiri Media and local Aboriginal Knowledge Centres, such as Ti Tree).

Nevertheless, an important feature of Aboriginal and Torres Strait Islander knowledge is that Aboriginal and Torres Strait Islander people don’t usually make their knowledge permanent, unless they write it down, record it or make it into a painting on canvas or other permanent media. The ‘oral culture’ of Aboriginal and Torres Strait Islander people means that their knowledge is mostly held by the respected elders of the community, and can only be transmitted in accordance with customary rules, laws and responsibilities. Aboriginal and Torres Strait Islander knowledge is part of cultural heritage, and is a system of protocols, values and beliefs. It includes knowledge of lands, and has both physical (often called ‘tangible’, or seen) aspects, and unseen, or ‘intangible’ aspects. This knowledge comes from the Ancestors and the Dreaming, and includes sacred and secret

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knowledge (which may be expressed in ceremony), as well as knowledge of plants and animals, bush fire management and so on.

Aboriginal and Torres Strait Islander knowledge provides the protocols that direct Aboriginal and Torres Strait Islander people in negotiating with outsiders. This detailed understanding of how people in the community are related and the roles and responsibilities they have within the community is an important way of linking Aboriginal and Torres Strait Islander and Western knowledge for collaborative research projects and land and resource management.

It is important for people working with Aboriginal and Torres Strait Islander people to understand that Aboriginal and Torres Strait Islander knowledge is complex, and is distributed and managed within, and between communities, and different Aboriginal and Torres Strait Islander groups in ways that are based on custom and tradition. For example, knowledge in an Aboriginal and Torres Strait Islander community is not usually held by any one individual. There are often different levels of expertise about various kinds of knowledge, and there are different people in communities who have different kinds of knowledge, or different rights and responsibilities in regard to the knowledge. This is especially important in regard to sacred knowledge. No one person has the sole right to 'give it away'.

All these details about Aboriginal and Torres Strait Islander knowledge and the ways in which it works in and among communities are extremely important when it comes to engaging with the wider community, and especially if there are intellectual property rights involved. The Western intellectual property rights system (as outlined in [Briefing Paper 1](#)), does not recognise or allow for the complex systems that govern Aboriginal and Torres Strait Islander knowledge, including the ways it is shared and distributed, managed collectively, transmitted between and among generations, and subject to strict customary rules regarding who can reveal certain types of knowledge, to whom, when, and in what circumstances. There have been some cases of breach of confidence law and of copyright law in which Aboriginal and Torres Strait Islander people's communal rights and obligations have played important roles.

Another difference between Aboriginal and Torres Strait Islander knowledge and Western knowledge is that Aboriginal and Torres Strait Islander knowledge is a system in which everything is connected, and is not made into separate 'boxes' or 'compartments'. This means that there is not separate knowledge about the environment, separate knowledge about health, family and so on. Aboriginal and Torres Strait Islander knowledge is often spoken of as 'holistic', in that all aspects of Aboriginal and Torres Strait Islander life relate to and influence each other. This might mean that the health of people is related to the health of the land and how the land is looked after, both through ceremony and by hunting over it and living on it.

Non-Aboriginal and Torres Strait Islander notions of intellectual property versus Aboriginal and Torres Strait Islander notions of cultural and intellectual property

Non-Aboriginal and Torres Strait Islander	Aboriginal and Torres Strait Islander
Written knowledge	Generally orally transmitted
Emphasis on economic rights (the economic value of knowledge)	Emphasis on preservation and maintenance of culture
Individually based – created by individuals	Socially based – created through the generations via the transmission process
Intellectual property rights are owned by individual creators or their employees and research companies	Communally owned but often custodians are authorised to use and disseminate
Intellectual property can be freely transmitted and assigned – usually for economic returns – for a set time, in any medium and in any territory	Generally not transferable, but transmission if allowed, is based on a series of cultural qualifications
Intellectual property rights holders can decide how or by whom the information can be transmitted, transferred or assigned	There are often restrictions on how transmission can occur, particularly in relation to sacred or secret material
Intellectual property rights are generally compartmentalised into categories such as tangible, intangible, arts and cultural expression	A holistic approach, by which all aspects of cultural heritage are interrelated

Adapted from Janke 1998:75

Customary Aboriginal and Torres Strait Islander knowledge is local and specific. That means that people have special attachments to a place or region, and their knowledge is often focused there. Because of this, an Aboriginal or Torres Strait Islander person will usually have the rights to speak for a particular place, site or area, and will not, without permission from the right people, have the authority or right to speak for a different place, site or area.

These specific, place-based rights, duties and responsibilities govern the workings of Aboriginal and Torres Strait Islander people's knowledge systems in accordance with their customary laws. This means that the Western intellectual property rights system – which is based on and is more relevant to Western knowledge – cannot properly recognise or protect Aboriginal and Torres Strait Islander knowledge.

Understanding the differences outlined in this Briefing Paper between Aboriginal and Torres Strait Islander knowledge and Western knowledge is important for Aboriginal and Torres Strait Islander people who are involved in working with the wider community in joint projects such as natural and cultural resource management, biodiversity conservation, bush tucker projects, ethno-botanical research, flora and fauna surveys, and so on.

Some select references

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