



NINTI ONE **CRU** **REMOTE ECONOMIC PARTICIPATION**

STRATEGIES TO SUPPORT ABORIGINAL AND TORRES STRAIT ISLANDER INTERESTS IN GOURMET BUSH FOOD PRODUCT DEVELOPMENT

POLICY BRIEFING KEY HIGHLIGHTS

- ▶ **Aboriginal and Torres Strait Islander peoples are key stakeholders in the development of gourmet bush food products.**
- ▶ **Few laws support the diverse interests of Aboriginal and Torres Strait Islander peoples in this commercial context, leaving them reliant on the goodwill of others to support their interests.**
- ▶ **A single legal or institutional reform is unlikely to address the complexity and diversity of interests.**
- ▶ **The Plant Business project takes a systemic look at key stages in the development of gourmet bush food products, and highlights some new possibilities to explore.**

Background

One aim of the Plant Business project is to identify how laws and institutions (public and private) can support the interests of Aboriginal and Torres Strait Islander peoples in the commercialisation of their traditional plant foods ('bush foods'). Bush food products include processed raw ingredients, gourmet sauces, jams and pies and new varieties of bush food plants.

This brief provides an overview of research findings in relation to the capacity of laws and institutions to support Aboriginal and Torres Strait Islander interests in the development of gourmet sauces, jams and chutneys.

The aim of the brief is to further discussion and investigation of options to strengthen the position of Aboriginal and Torres Strait Islander peoples in the development of their traditional foods.

Context of gourmet product development

Aboriginal and Torres Strait Islander knowledge has contributed to the commercial development of over 15 bush food species, including Kakadu Plums, quandongs, wattle seed and desert raisins.

The market value of all bush food products is unknown. Recent estimates put the sale of raw bush food materials at over \$A18 million a year (excluding macadamia), with the sale of products derived from these materials potentially increasing this figure by 500% (Clarke 2012). Macadamia sales account for a further \$A200 million (AMS).

Aboriginal and Torres Strait Islander peoples have diverse interests in this commercial context, including:

- the control of plants and knowledge according to customary law
- a fair share of the benefits from plant and knowledge use
- respect and compensation for their contributions to product development
- the development of bush food enterprises and partnerships
- the transfer and maintenance of knowledge to younger people.

This brief proposes some possible ways for governments to improve support for Aboriginal and Torres Strait Islander interests at key development stages.



Samples and supply

This stage may involve seeking samples to experiment with, securing raw ingredients to make products with ('supply'), and transporting samples or supply interstate to the place of manufacture.

Current possibilities

- Aboriginal and Torres Strait Islander peoples who control access to land can negotiate support for their interests in agreements with people wanting to harvest on their land.
- Aboriginal and Torres Strait Islander peoples who control access to land can harvest or grow bush foods on that land, subject to any law or agreement to the contrary.
- Traditional land custodians who do not control access to land can negotiate agreements with landowners that allow them to harvest or grow bush foods on the land.
- Any Aboriginal and Torres Strait Islander person can apply for permission to commercially harvest bush foods on public land.

Issues

- Land access agreements between non-Aboriginal and Torres Strait Islander harvesters and Aboriginal and Torres Strait Islander landowners are rare because a lot of lands are in remote areas and difficult to get to, and most popular ingredients are readily available from commercial growers.
- There is no legal requirement for commercial growers to consider the interests of Aboriginal and Torres Strait Islander peoples.
- The government can prohibit the commercial harvest of a species on the grounds that the species is threatened, without full consideration of Aboriginal and Torres Strait Islander interests.
- Aboriginal and Torres Strait Islander peoples who want to harvest and sell wild produce need things that may be difficult to secure, for example, access to land, government permission, transport to harvest areas, access to buyers, and reliable supplies of seasonal produce.
- Aboriginal and Torres Strait Islander peoples who want to grow and sell horticultural produce need things that may be difficult to secure, for example, access to land, money and training to adapt to non-traditional production methods.

Possible ways for government to improve the situation

- Create a national register of traditional land custodians, including as a starting point Aboriginal and Torres Strait Islander groups with freehold title over land, native title holders, registered native title claimants and traditional custodians party to land use agreements.



- Create specific laws to regulate the harvesting and growing of bush foods on public and private land and:
 - require non-Aboriginal and Torres Strait Islander harvesters to obtain consent from the relevant traditional custodians to harvest from public lands (similar to existing legal requirements for harvesters to obtain consent to access private land)
 - require commercial growers to pay the government a royalty on all produce sold, for distribution to traditional custodians with geographical links to species.
- Amend threatened species laws to require Aboriginal and Torres Strait Islander representation on committees that decide whether to list a species as threatened.
- Encourage regional Aboriginal and Torres Strait Islander land authorities (e.g. Land Councils) to coordinate wild harvest or horticultural supply by:
 - researching ways to improve wild harvest yields
 - providing horticultural production training
 - developing certification schemes and other marketing strategies to attract buyers
 - developing a register of culturally qualified harvesters
 - contracting approved harvesters to collect produce
 - providing harvesters with transport to and from growing locations
 - accessing markets and distributing produce.

Research and development

This stage may involve collecting bush food knowledge and developing product prototypes and strategies to safeguard confidential commercial information.

Current possibilities

- The Aboriginal and Torres Strait Islander holders of non-public knowledge can negotiate agreements with people wanting to use the knowledge.
- The law allows a limited ability for people to sue for unfair use of commercial secrets and breach of agreement.

Issues

- A lot of bush food knowledge is publicly and freely available, for example, in cookbooks.
- Court proceedings to enforce agreements are expensive, risky and jurisdictionally limited, for example, a Queensland court can only prevent the publication of culturally sensitive knowledge in Queensland.



- Aboriginal and Torres Strait Islander peoples cannot stop bush food developers using their traditional foods in gourmet products.
- Aboriginal and Torres Strait Islander peoples are generally unable to exploit secret bush food ingredients without disclosing the nature of the ingredients.

Possible ways for government to improve the situation

- Amend all the laws regulating bush food development to prohibit the unauthorised use of culturally sensitive and non-public Aboriginal and Torres Strait Islander knowledge.
- Amend federal food standards to create a right for traditional custodians with geographical links to undeveloped species to exclusively exploit those species for a defined period or license that use during that period (namely, up to 10 years from first commercial use).
- Implement a central database support service to help Aboriginal and Torres Strait Islander groups develop knowledge databases that serve their interests. Support may include:
 - searching for and collating public knowledge
 - identifying what knowledge is available without disclosing the details of that knowledge
 - developing policies and model agreements to facilitate commercial partnership
 - negotiating database access arrangements with international intellectual property offices to prevent Plant Breeder's Rights or patents being granted for products derived from database knowledge.

Finances and business licensing

This stage may involve obtaining manufacturing or retail business licenses and securing private or public funds.

Current support

- Public sector researchers (e.g. those working at universities) must comply with ethical guidelines that may require the researcher to negotiate the project and its benefits with Aboriginal and Torres Strait Islander peoples (e.g. *Guidelines for Ethical Research in Australian Indigenous Studies 2012*).

Issues

- Most bush food developers are private enterprises not subject to research ethics conditions.
- There is no legal requirement for private sector food manufactures or retailers to consider the interests of Aboriginal and Torres Strait Islander peoples.



Possible ways for government to improve the situation

Amend all the laws regulating bush food development to require people holding government permits or licenses to comply with ethical development guidelines developed in partnership with Aboriginal and Torres Strait Islander peoples.

Manufacturing

Manufacturing of foods may involve the acquisition of land and premises, production of products according to standards, packaging and labelling of products for distribution and sale, and the negotiation of production services.

Current support

- Indigenous Business Australia has the legal power to help Aboriginal and Torres Strait Islander peoples establish and grow businesses.

Issues

- Indigenous Business Australia focuses mainly on helping established businesses grow rather than helping businesses start.
- There are few services to address the unique challenges facing Aboriginal and Torres Strait Islander peoples who wish to start a bush food business.

Possible ways for government to improve the situation

- Establish a bush food business support unit to help interested Aboriginal and Torres Strait Islander peoples develop viable food businesses.
- If feasible, the unit should be staffed with Aboriginal and Torres Strait Islander peoples experienced in the challenges of bush food business.
- Use skilled case managers to help Aboriginal and Torres Strait Islander entrepreneurs access land, ingredients, training, business expertise, permits, finance, technology, transport and markets.

Distribution and sales

This stage may involve negotiating distribution agreements, making domestic and international retail sales and securing permission to transport products interstate or overseas.

Current support

- Aboriginal and Torres Strait Islander developers may join Supply Nation to connect with people interested in buying Aboriginal and Torres Strait Islander products.



Issues

- There is no legal requirement for people distributing gourmet food products to interstate or overseas retailers to consider the interests of Aboriginal and Torres Strait Islander peoples.

Possible ways for government to improve the situation

- Amend interstate trade and exports laws to require people distributing gourmet bush food products to domestic or overseas retailers to disclose benefit-sharing arrangements with Aboriginal and Torres Strait Islander peoples.
- Encourage peak bush food industry bodies and their members to implement Reconciliation Action Plans that target partnerships with Aboriginal and Torres Strait Islander peoples.

Further information

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Research Partners of the CRC-REP Plant Business Project

