



NINTI ONE CRC REMOTE ECONOMIC PARTICIPATION

AN INCLUSIVE GOVERNANCE FRAMEWORK FOR BUSH FOOD COMMERCIALISATION

POLICY BRIEFING KEY HIGHLIGHTS

- ▶ National policy supports the meaningful inclusion of Aboriginal and Torres Strait Islander peoples and their knowledge in the public governance process that shape the development of their traditional plant foods (bush foods).
- ▶ There is little legal support for this inclusion, with most relevant laws preferring general public consultation and formal scientific information.
- ▶ The Plant Business project offers some legal and institutional interventions that may better support the meaningful inclusion of Aboriginal and Torres Strait Islander peoples and their knowledge in these governance processes.

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').

This brief provides an overview of research findings in relation to the capacity of laws and institutions to provide for the meaningful involvement of Aboriginal and Torres Strait Islander peoples in the governance processes that shape bush food development.

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 bush food resource governance

Aboriginal and Torres Strait Islander knowledge has contributed to the commercial development of over 15 bush food species, including macadamias, desert raisins and Kakadu plums. Bush food products include nursery seedlings, new plant varieties and gourmet sauces and jams. These commercial pathways form part of a 'bush food commercialisation system'.

There is little legal support for Aboriginal and Torres Strait Islander interests in this multi-million dollar system. The meaningful involvement of Aboriginal and Torres Strait Islander peoples in the legislative and administrative processes that shape the system can provide an avenue for Aboriginal and Torres Strait Islander peoples to assert their diverse bush food interests.

While more inclusive governance pathways are likely to intrude upon commercial freedoms, they may also be necessary to ensure bush food development is fair for all stakeholders.

This brief proposes some possible ways for governments to better support the meaningful involvement of Aboriginal and Torres Strait Islander peoples in the governance processes of key bush food resource authorities.



Biosecurity and export authorities

Biosecurity authorities determine interstate trade rules for plants and plant products. Export authorities make decisions regarding the overseas transport of plants and plant products, including what plants and products to regulate, and the conditions of trade for regulated material.

Issues with current legal avenues for involvement

- Interstate trade and export rules do not specifically require the authorities to consult Aboriginal and Torres Strait Islander peoples on trade decisions.
- International law supports the issuing of international plant trade certificates to people that have agreements with Indigenous peoples who own or control access to plants under domestic law, or provide knowledge for use in plant genetic research, but Australian law does not make export dependent on these agreements.

Possible ways for government to improve involvement

- Amend interstate trade and export rules to encompass Aboriginal and Torres Strait Islander peoples and their interests in decisions regarding the trade of bush food plants and products.
- Restrict the interstate trade and export of bush food products to those harvested, grown or made in compliance with a legally valid species management plan, developed in partnership with Aboriginal and Torres Strait Islander peoples, with an appropriate certificate issued to this effect.

Environmental authorities

Among other things, environmental authorities administer laws related to the scientific and commercial use of wild native plants ('native plant laws'). Specific governance processes supported by these laws include deciding whether to list a species as threatened, and specifying the rules for taking, growing and selling native plants. Environmental authorities also issue permits to take, grow and sell bush foods in accordance with those rules.

Issues with current legal avenues for involvement

- Native plant laws allow any person to make a written submission on a draft species management plan, and impose no obligation on the authority to specifically consider the views or interests of Aboriginal and Torres Strait Islander peoples.
- Native plant laws do not require environmental authorities to consult Aboriginal and Torres Strait Islander peoples on decisions to permit the taking of native plants from the wild.
- Threatened species laws prioritise formal scientific information, and impose no obligation on the authority to specifically consider the knowledge, views or interests of Aboriginal and Torres Strait Islander peoples.



Possible ways for government to improve involvement

- Amend native plant laws to ensure Aboriginal and Torres Strait Islander peoples and their knowledge are formally part of the system for flora management and development.
- Amend native plant laws to ensure environmental authorities consider the knowledge and interests of Aboriginal and Torres Strait Islander peoples when making relevant plans and decisions.
- Amend native plant laws to ensure Aboriginal and Torres Strait Islander representation on relevant advisory boards, to strengthen their voice in planning and decision-making.
- Support environmental authorities to exercise their existing legal power to make species management plans in collaboration with:
 - Aboriginal and Torres Strait Islander peoples with cultural links to specific species
 - species commercialisers
 - food authorities responsible for issuing relevant licenses.
- Species management plans should include strategies that:
 - build respect for Aboriginal and Torres Strait Islander culture
 - engage Aboriginal and Torres Strait Islander peoples in decision-making
 - help Aboriginal and Torres Strait Islander peoples realise their aspirations.
- Amend native plant laws to require any person seeking a permit to take or grow bush foods, or make or sell a bush food product, to comply with the plans, and issue a certificate of compliance to facilitate trade.
- Resource the involvement of Aboriginal and Torres Strait Islander peoples in these governance processes, to support processes that address power imbalances e.g. resource the use of trained facilitators and translators, and the equitable payment of all participants.

Food authorities

Food authorities determine permissible ingredients for food products, product label requirements and food business licensing conditions. They also issue licenses to food businesses. The Australian government classifies bush foods as 'novel food' ingredients, and regulates their development under *Standard 1.5.1: Novel Foods* in the Food Standards Code.

Issues with current legal avenues for involvement

- *Standard 1.5.1: Novel Foods* makes no special provision for the knowledge or interests of Aboriginal and Torres Strait Islander peoples in the development of bush food products.
- The terms of reference for the Novel Food Advisory Board require a social scientist to advise on traditional food uses, with no special



provision for the knowledge or voices of Aboriginal and Torres Strait Islander peoples.

Possible ways for government to improve involvement

- Amend *Standard 1.5.1: Novel Foods* to require food authorities to obtain advice on novel food regulations and traditional food uses from Aboriginal and Torres Strait Islander peoples, and ensure Aboriginal and Torres Strait Islander cultural experts enjoy the same conditions as other experts.
- Revise the terms of reference for the Novel Food Advisory Board to provide for Aboriginal and Torres Strait Islander representation, and resource meetings processes that minimise power imbalances e.g. resource the use of trained facilitators and translators, and the equitable payment of all participants.

Intellectual property authorities

Australia's intellectual property authority (IP Australia) administers applications for patents, Plant Breeder's Rights, trademarks and industrial designs. This involves publishing intellectual property applications, considering objections to applications and maintaining intellectual property registers.

Issues with current legal avenues for involvement

- Although the law requires one person to represent Aboriginal and Torres Strait Islander peoples on the Plant Breeder's Rights Advisory Committee:
 - the position has been vacant since 2012
 - there are moves to abolish the Committee.
- Although IP Australia must advertise intellectual property applications in intellectual property journals, and maintain intellectual property registers:
 - IP Australia has no process to inform Aboriginal and Torres Strait Islander peoples of applications regarding native plants
 - IP Australia is not required to consider cultural views in determining objections to intellectual property applications.

Possible ways for government to improve involvement

- Revise intellectual property application requirements to ensure all applications related to native plants are clearly designated, and subject to arrangements to ensure that Aboriginal and Torres Strait Islander interests are identified and considered e.g. through the registration and notification of traditional custodians with geographical links to the species.
- Assist Aboriginal and Torres Strait Islander peoples to object to intellectual property application, possibly through the establishment of an Aboriginal and Torres Strait Islander expert panel.



- Ensure all panel participants are fairly remunerated and treated as technical experts.

Research and collection management authorities

Research and collection authorities include the Rural Industries Research and Development Corporation, other rural research organisations, and public herbariums and seed banks. These authorities set relevant research agendas, fund and conduct research, maintain specimen collections and information databases, and determine access conditions for collections and databases.

Issues with current legal avenues for involvement

- There is no legal requirement to include Aboriginal and Torres Strait Islander peoples in the deliberations of these authorities.
- Aboriginal and Torres Strait Islander peoples can attach conditions to specimens collected from their land, but specimens can and have been collected before the introduction of Aboriginal and Torres Strait Islander land rights.

Possible ways for government to improve involvement

- Amend the legal instruments (e.g. laws and funding agreements) underpinning these authorities to require:
 - at least one Aboriginal and Torres Strait Islander person to be included in the deliberations of these authorities when they consider issues which have the potential to involve Aboriginal and Torres Strait Islander interests
 - specimen access decisions to reflect specific consultation with the traditional custodians of the land from where the specimen was collected
 - consultation with Aboriginal and Torres Strait Islander peoples in the development of research plans and collection management policies that potentially relate to native plants.
- Resource the involvement of Aboriginal and Torres Strait Islander peoples in these governance processes, to support processes that address power imbalances e.g. resource the use of trained facilitators and translators, and the equitable payment of all participants.

Industry authorities

Industry authorities include Australian Native Food Industry Limited, Nursery and Garden Industry Australia, Horticulture Innovation Australia and Australian Macadamia Society. These authorities have the power to influence bush food research priorities and set industry codes of conduct.



● Issues with current legal avenues for involvement

- No relevant industry authority constitution requires Aboriginal and Torres Strait Islander representation in the deliberations of industry authorities.
- Only the Constitution of the Australian Native Food Industry Limited requires board members to consider Aboriginal and Torres Strait Islander interests.

● Possible ways for government to improve involvement

- Encourage industry authorities to amend their Constitutions to require:
 - Aboriginal and Torres Strait Islander peoples to be represented on governing boards
 - consultation with Aboriginal and Torres Strait Islander peoples in the setting of industry research priorities
 - the development of industry codes of conduct in partnership with Aboriginal and Torres Strait Islander peoples.
- Help industry authorities to resource the involvement of Aboriginal and Torres Strait Islander peoples in these governance processes, to support processes that address power imbalances.

● Further information

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Research Partners of the CRC-REP Plant Business Project

