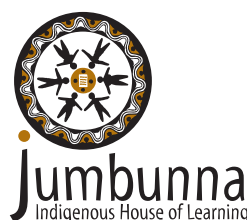




Maintain & Strengthen your Culture

**Handbook for Working
with Indigenous
Ecological Knowledge &
Intellectual Property**



Maintain & Strengthen your Culture



Handbook for Working with Indigenous Ecological Knowledge & Intellectual Property

A Report Commissioned by the
Natural Resources Management Board (NT)
Component 2 (of 3)

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Studies, ANU (Sarah Holcombe), and Terri Janke and Company Pty Ltd, Sydney

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What is This Handbook For?

This Handbook is a guide for people who are involved in natural resource management (NRM). It will help people work strongly with Indigenous Ecological knowledge (IEK) and Indigenous Cultural and Intellectual Property (ICIP).

The Handbook provides information, and creates awareness about working between IEK, NRM and ICIP. This can help to make sure Aboriginal peoples' cultural knowledge and practices are respected and protected. At the same time, it can also assist in land, heritage and environmental management and conservation.

This Handbook is a guide for Aboriginal people, to:

- > Understand how intellectual property can be used to benefit you;
- > Prevent other people wrongly using your culture and knowledge; and
- > Strengthen the use and practice of your knowledge on country.

Many Aboriginal people, communities and organisations throughout the Northern Territory are thinking about, or are **developing enterprises** that use bush products and cultural knowledge. They are seeking ways that this work can be supported.

Others may wish to find better ways to support the maintenance and protection of their cultural knowledge and **practices on country**. Support for on-country transfer of knowledge between older and young people is vitally important, and there needs to be more support for this. It is hoped that this Handbook will be a useful resource for all these and other activities.

Some words this handbook will be using

IEK	Indigenous Ecological Knowledge
NRM	National Resource Management
ICIP	Indigenous Cultural and Intellectual Property
IP	Intellectual Property



Akatyerr (desert raisin), fruit collected by *Anmatyerr* woman Janie Long.
Photo by Fiona Walsh (CSIRO, Desert Knowledge CRC).

1 KNOW YOUR RIGHTS

This Section has information about:

- > Know your Rights: Some First Principles
- > The United Nations Declaration on the Rights of Indigenous Peoples

Know Your Rights: Some First Principles

For people using this Handbook it is very important to start by setting out some principles about your rights as Aboriginal people. These rights should form the basis for all work relating to NRM, IEK and ICIP.

You have rights and entitlements which are the same as all Australian citizens. These citizenship rights are recognised and supported under the United Nations Charter of Human Rights.

You can also claim recognition of your rights based on your status as 'First Peoples'. These rights are not yet recognised in Australia's legal system, but they are important rights to aim for.

These rights are detailed in the United Nations Declaration on the Rights of Indigenous Peoples (see box). These rights include:

- > The right to culture and heritage
- > The right to equal participation
- > Rights to own, control, manage and make decisions about Indigenous cultural and intellectual property and cultural knowledge
- > Rights to look after country

The UN Declaration on the Rights of Indigenous Peoples

In October 2007 the United Nations General Assembly adopted the *Declaration on the Rights of Indigenous Peoples*. This Declaration took many years to develop through the various parts of the United Nations.

The Australian Government has agreed to endorse the Declaration. At the time of preparing this Handbook, the government has started this process.

Some international laws and treaties can help make changes to Australian laws for the benefit of Aboriginal peoples. For instance, the Declaration is strong for you and can help you speak up for your rights.

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.



The Declaration on the Rights of Indigenous Peoples includes the following important paragraphs

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

Article 31

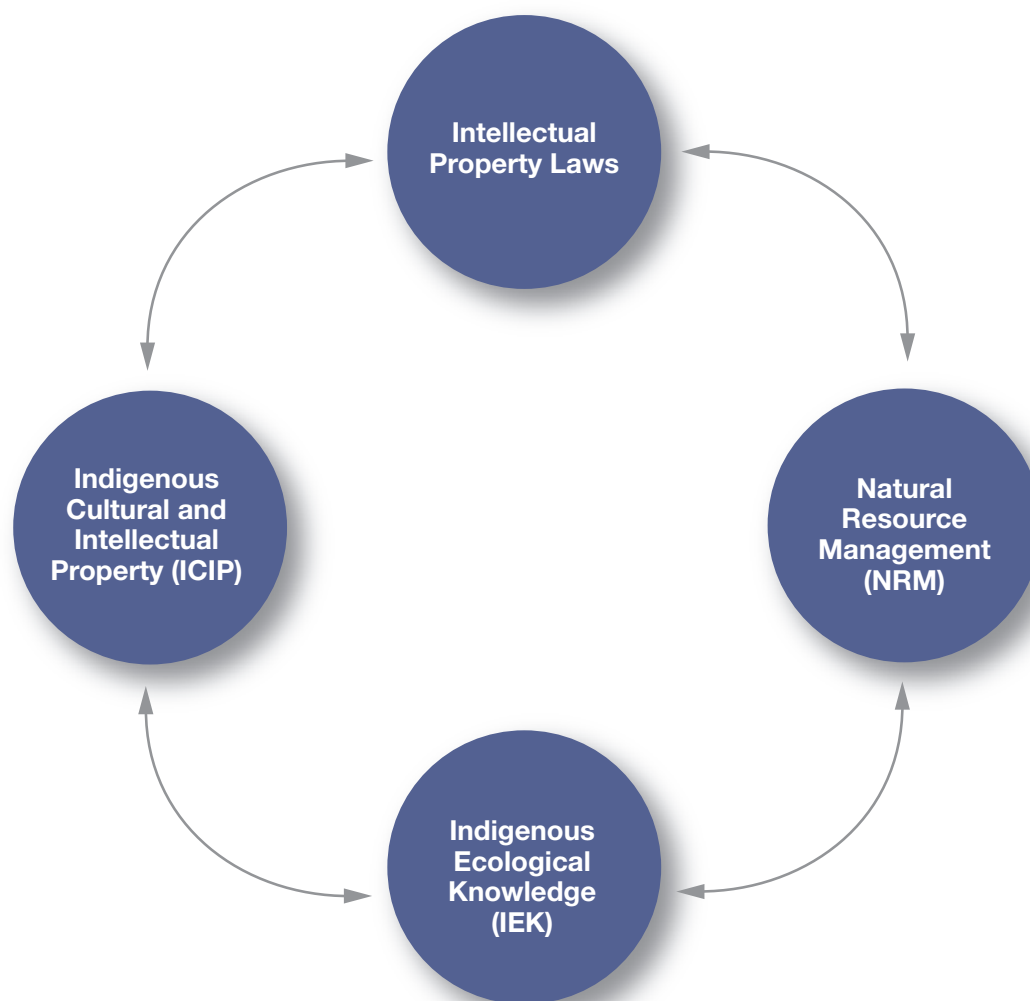
1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

2 GETTING TO BASICS

This Section has information about:

- > What is Indigenous Ecological Knowledge (IEK) and Natural Resource Management (NRM)?
- > Working Together for Country

2



What is Indigenous Ecological Knowledge (IEK) and Natural Resource Management (NRM)?

Indigenous Ecological Knowledge (IEK) has an important role in natural resource management (NRM). But it is important to know that there are also some differences between IEK and NRM.

What is a resource?

The term *Natural Resource* Management suggests that it is only concerned with *natural* resources. In using this term, sometimes people might not be giving enough emphasis to the important *cultural* aspects of resource management.

The term *resource* can also be a problem in the way people might think about it. Often, a resource is thought of as something to be used or exploited for something other than the inherent value of the thing itself. For example, some country may be valued by you as a good hunting area or simply as 'your country'. But for non-Aboriginal people it might be full of minerals, such as gold – so that is all they will see in it.

Use of this term *resource* might suggest to some people that the plants and animals and ecological systems with which NRM is concerned are resources whose sole purpose is for commercial gain.

Culture as resource

When you are active in looking after country, and harvest plants and animals from it, you are carrying out cultural practices that have had a long tradition. This tradition has been developed and refined over a very long time through innovation.

There is also a whole set of **cultural values** and motivations associated with the management of country. These include not only those that have to do with conservation of the species and the environment, but also complex issues connected with cultural obligations and requirements to look after key species and land generally.

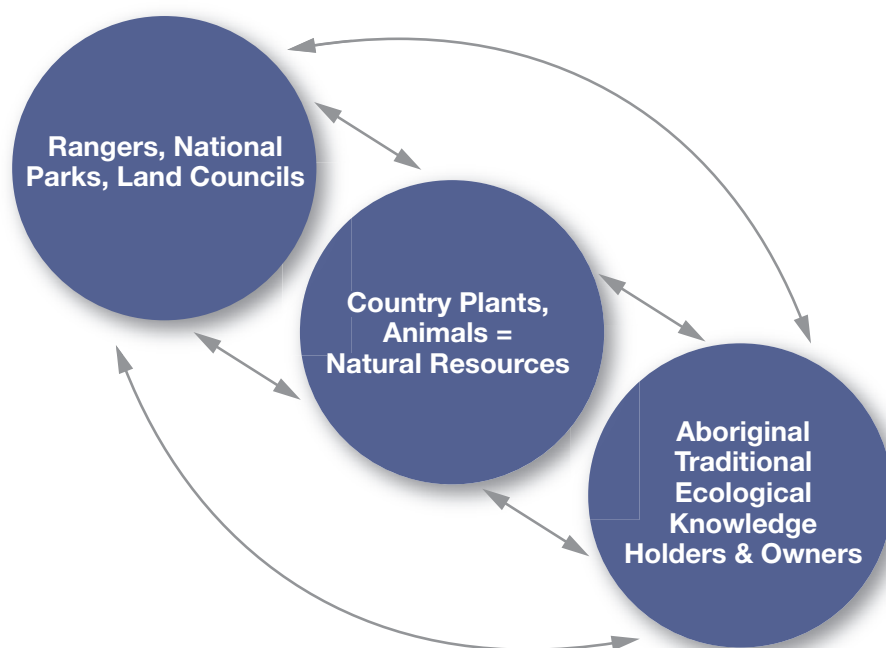
When non-Aboriginal NRM managers and agencies talk about NRM, their aims and goals are not always the same as yours. It might be the same area of land that you are all **working together** for, and there are likely to be many issues that you have in common in regard to NRM. But there will also be some important **differences**.

An **example** might be the use of fire to burn country. Your burning is likely to be done on the basis of cultural factors, such as the way you understand seasons and weather patterns, and the type of country, and whose country it is. There might also be places you are not allowed to burn or visit. Non-Aboriginal burning practices might only consider factors such as the weather, and environmental conservation from a mainly science point of view.

In many cases now, the two ways (Aboriginal and non-Aboriginal) are working well together (e.g. within Indigenous Protected Areas).

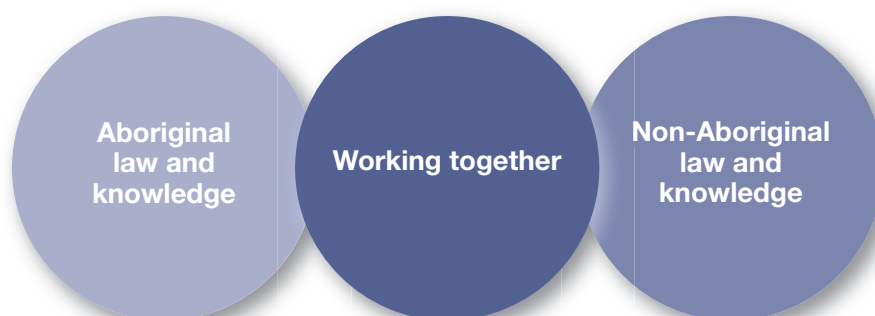
Burning country can be done using your Indigenous Ecological Knowledge together with western 'Scientific' knowledge.

Working Together For Country



Working Together: Two Ways

Aboriginal, and non-Aboriginal law and knowledge are different things. But they can work together – and that is what this Handbook looks at.



Owning Knowledge

Aboriginal people own Indigenous Ecological Knowledge and cultural heritage, as part of your culture, and according to customary ways.

It is important that when you work, or engage with non-Aboriginal people for research or other projects, you make sure they know that you own these things.



Next in this Handbook we talk about Intellectual Property, and how that can be helpful for ensuring you keep your knowledge.

And later we talk about Protocols and Contracts and how these can help.

3 INTELLECTUAL PROPERTY (IP)

This Section looks at:

Intellectual property (IP) laws and how some of them might help keep Indigenous Ecological Knowledge strong.

It presents some information about:

- > What is Intellectual Property (IP)?
- > Copyright
- > Patents

Its also talks about when these IP laws might **not** be useful.

Indigenous Ecological Knowledge and Intellectual Property (IP)

What is the relationship between Indigenous Ecological Knowledge (IEK), and Intellectual Property (IP)? Sometimes, these two are thought to be the same thing. However, there are some important differences.

Indigenous Ecological Knowledge (IEK) refers to the knowledge that you have about your country and its plant and animal life. It is also about the practices and techniques that belong to that knowledge. This knowledge is as much about your activities (such as hunting and fishing) as it is about the knowledge itself.

IEK is living heritage

It is very important to remember that IEK is not something that is just for 'protection' by laws and policies. It is a living, breathing body of knowledge and practice that is handed down from older people to younger people, and also passed on between and among different people within a group or community.

The survival of this knowledge depends on people being able to be on country, and maintaining their languages, traditions and customs.

Indigenous Cultural and Intellectual Property (ICIP)

Indigenous Cultural and Intellectual Property (ICIP) refers to all those parts of Aboriginal cultural heritage for which you want **recognition and protection**. It includes both the 'unseen' or 'intangible' aspects (such as stories, dance, songs, spoken word, and ideas about sacredness).

It also includes the physical or tangible aspects of culture such as a bark painting and other cultural objects. Often the two are closely connected. Your knowledge will often have a wide range of different forms. In other words, the same knowledge is likely to refer to several things at once, such as an object, a dance, song or story, or a practice (such as fishing or hunting or food preparation).

What is Intellectual Property (IP)?

Intellectual property (IP) refers to things or ideas that people hold, which they have made from their own minds or creative ideas. Some examples of intellectual property are original ideas that have been made into books, reports, film, or in sound recordings. IP is created and protected in Australia by a number of special laws called intellectual property laws. These include **copyright** law, **patent** law, **designs** and **trademark** laws.

Although IP laws cannot give protection to knowledge that only exists in people's heads, some of these laws can give **some protection** to the way that knowledge is produced or used, such as in works of art, or designs for bush food product labels.

The main Commonwealth laws that are used to create, and protect intellectual property are shown on the next page.

Copyright, designs and trademarks laws can also have some application (in limited ways) to help protect or recognise Indigenous Ecological Knowledge.

It is important to remember that patents and plant breeders rights laws can also be used by others (such as large companies) to exploit Aboriginal peoples' knowledge.

Australian Intellectual Property Laws

Copyright Act 1968

- > Protects things if they are written down or recorded
- > Can copyright books and reports that document IEK
- > Don't need to apply for it
- > Can get royalties from books

Designs Act 2003

- > Used to protect a particular design or image
- > Can be used to protect a design based on elements from IEK
- > Need to apply for it and costs money
- > You can sell copies of it (e.g on cups & t-shirts)

Patents Act 1990

- > Patents can be taken out for products (such as medicines) that use IEK
- > Patents have usually not been in Aboriginal peoples' interests
- > Used instead by big companies
- > Need to apply for it and can be expensive

Plant Breeders Rights Act 1994

- > Gives commercial rights to people (or organisations) who develop a new plant variety by special breeding techniques
- > This law is not suitable for protecting IEK

Trademarks Act 1995

- > This law is used to identify a person (or company) who is the maker of a product or service (like Toyota)
- > Trademarks can be used by Aboriginal people to promote a commercial product they have developed using IEK
- > Need to apply for it and can be expensive

Summary of Intellectual Property and Indigenous Cultural and Intellectual Property

Intellectual Property (IP) laws include copyrights, patents, plant breeders' rights, designs, and trademarks.

These laws can be used to make sure that people can protect and respect a person's or organisation's creations or innovations – i.e. the things that are made and produced that are original.

IP laws are limited in their capacity to protect and recognise Indigenous Cultural and Intellectual Property.

Indigenous Cultural and Intellectual Property (ICIP) refers to all the elements that make up Indigenous peoples' cultural heritage. It includes sacred sites, genetic materials, cultural objects, and languages, songs, ceremonies, photographs, sound recordings, films, and written reports (including archival and historical documents) as well as Indigenous knowledge systems.

Copyright ©

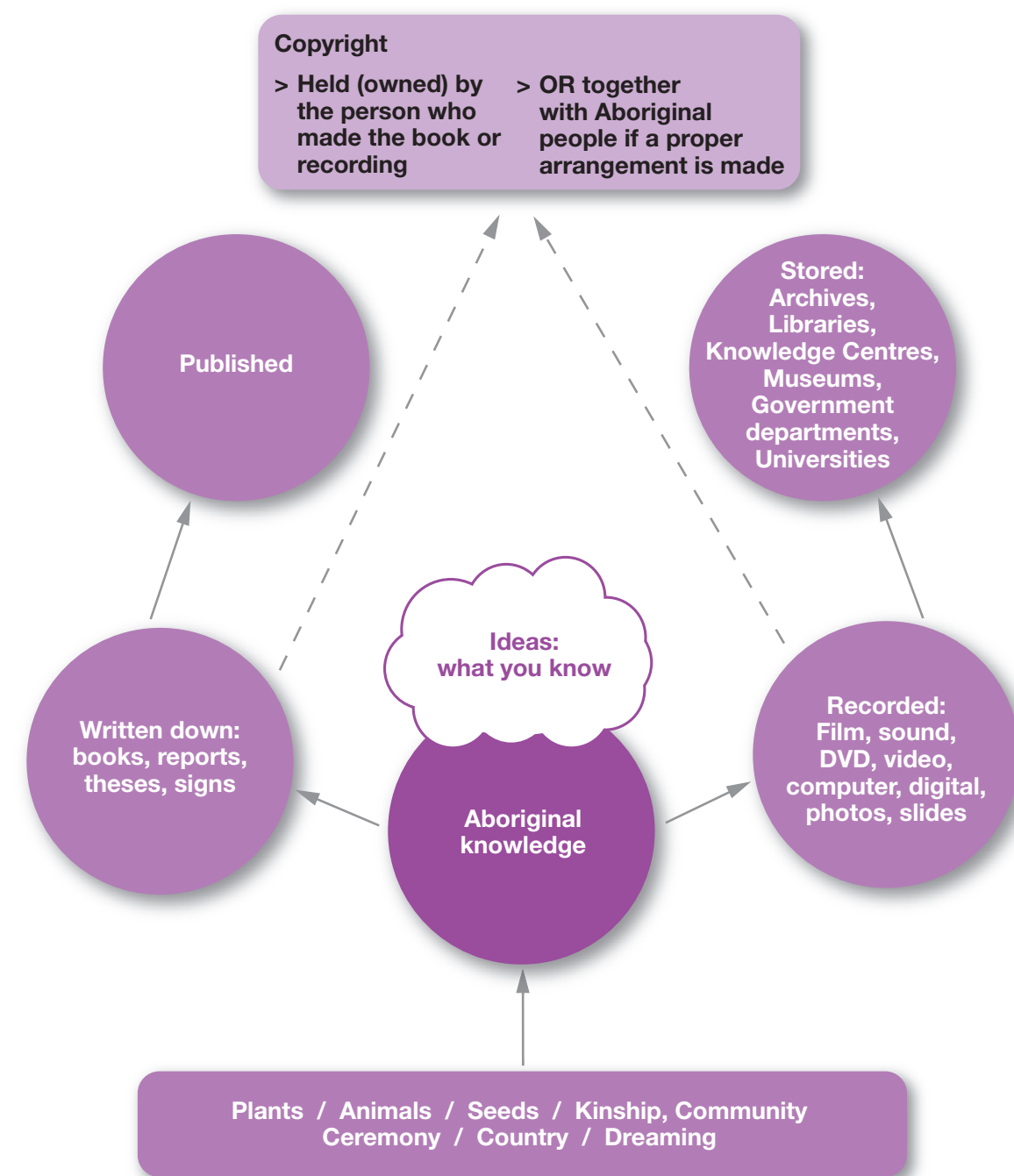
Copyright © is a part of Australian law that provides protection for ideas, knowledge and concepts that are written or recorded. It does not protect ideas or knowledge that just stays in peoples' minds. The Australian law is the *Copyright Act 1968*.

To get copyright you don't need to make a registration application. As soon as a work is created, copyright law comes into force. There are general rules that determine who owns copyright and how it can be passed on. It is up to the creator of the work to make sure that he or she claims copyright ownership. This includes an Aboriginal person, or a community whose language, song, story or dance or ceremony is written down or recorded.

Appeals may be made under copyright laws. If you think your ideas, your knowledge or your work (such as a painting) has been used wrongly – stolen and that there has been a **breach of copyright** in the work then you can make a formal appeal through the courts.

Can My Knowledge be Copyrighted?

No! Not just as it is. The ‘ideas’ that people hold in their heads and in their community as ‘Aboriginal Knowledge’ have to be written down or recorded before they can be copyrighted.



Who owns copyright?

- > You need to make sure your rights in ownership are included in any copyright agreement.
- > This can be done by SHARING copyright.
- > You hold rights in your culture and knowledge by custom and Aboriginal law.

When people give information, or IEK to another person in the form of a sound or video recording, or if it is written down by that other person, then under copyright laws, **the person who makes the recording or writes it down has copyright.**

The knowledge holder/owner has to make sure his or her rights as owner are properly recognised and stay with the knowledge in whatever form it takes, and wherever it ends up going (see **Tracking Your Knowledge**).

There have been two Federal court cases brought by Aboriginal artists regarding breach of copyright in their designs and images. The main outcome from those cases was that copyright is able to recognise the original skill and labour provided by Aboriginal people in their clan/group designs.

Requirements for Copyright Protection



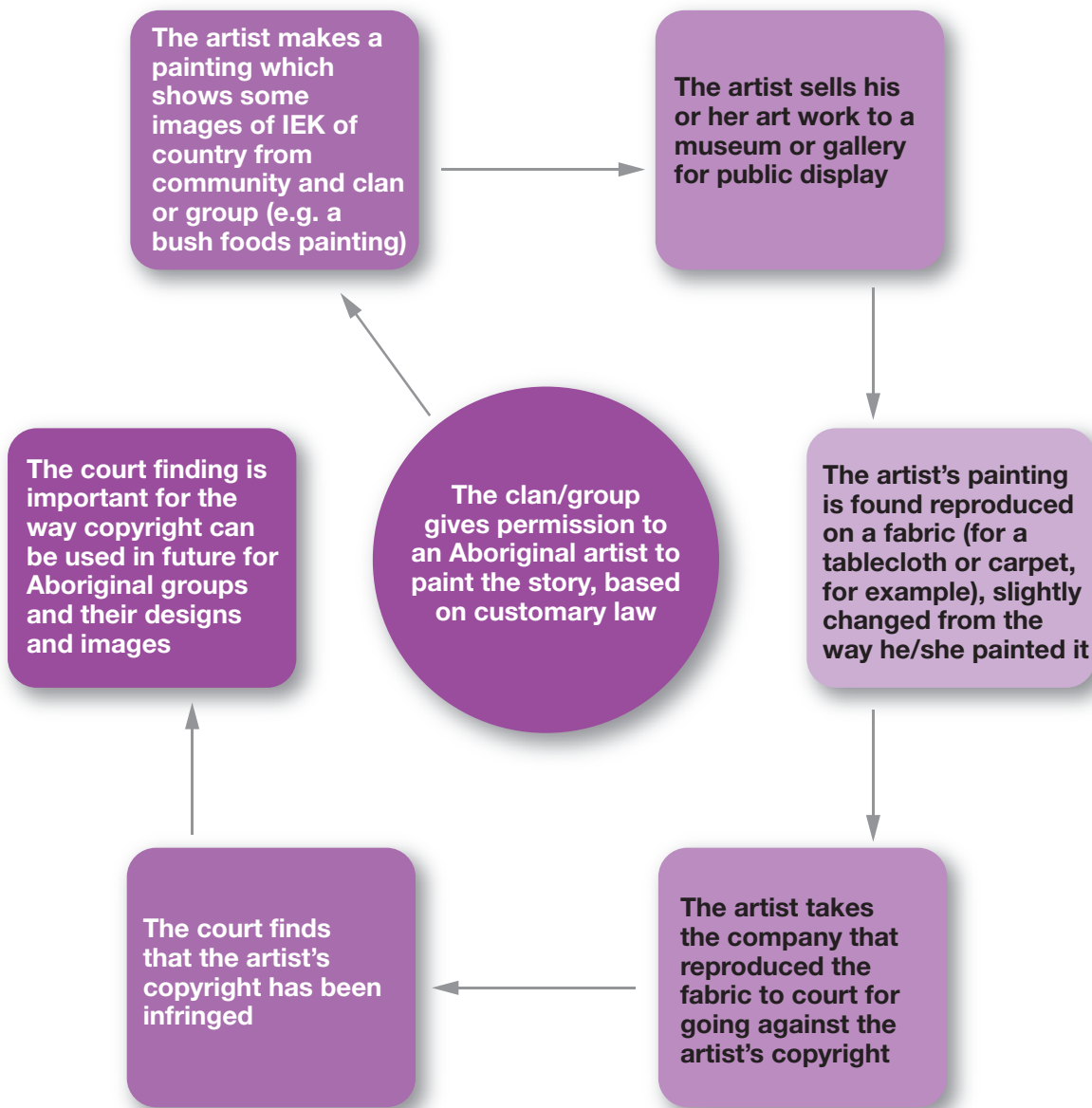
To protect using copyright, your ideas and knowledge must be:

- > Made in some material or physical form (such as a DVD, book, recording, etc),
- > Be 'original' (not written down/recorded before), and
- > Be created by an identifiable individual

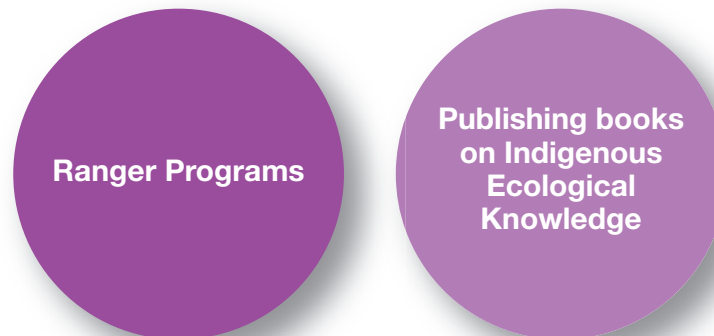
Using Copyright Law – An Example

Copyright in Art Works

A story about the Aboriginal artist, the law, and works of art that draw on clan based knowledge of country.



Some other examples in which copyright can be looked at are:



- > **Aboriginal Ranger Programs & Land and Sea Management Programs**
- > **Bushfire Management Programs**

These programs raise issues such as who owns copyright in materials produced (such as books, posters, etc). In many cases the government or agency that funds the program will own the copyright of work produced. For example, you might ask about what kind of agreement or contract there is between the funding agency (usually government), and the organisation managing the program?

- > **Copyright and Publication involving Indigenous Ecological Knowledge**

When Indigenous Ecological Knowledge (IEK) is recorded or written down, it may then be published. The person (e.g. researcher) who recorded the IEK should seek permission (consent) from the Aboriginal owners and custodians of the knowledge. That person usually holds the copyright. Because of this, it is important that there is discussion about the copyright at the beginning of the project. This is so that you can make sure that you keep hold of the copyright too, and maybe share it with the people who write it down and/or record.

There can be jointly held copyright

More than one person or group can hold copyright in something, as long as it is negotiated up front.

For example, there could be agreement to have joint copyright between the organisation (e.g. university or research institute) and yourselves as Aboriginal people who hold rights in Indigenous Ecological Knowledge.



Using a Traditional Custodians Notice

Some organisations, such as the Sydney based Arts Law Centre recommend that people put a **Traditional Custodians Notice** in a publication. This **Notice** tells the reader (non-Aboriginal) that they must respect any Indigenous Knowledge that is in an artwork used in the publication.

A **Traditional Custodians Notice** looks like this:

The images in this artwork embody traditional ritual knowledge of the [insert community's name]. It was created with the consent of the custodians of that community. Dealing with any part of the images for any purpose that has not been authorised by the custodian is a serious breach of the customary law of the [name] community, and may also breach the *Copyright Act 1968* (Cth). For enquiries about permitted reproduction of these images contact [insert community's name].

Patents

Patent laws

Patent laws enable people or companies to acquire rights and to gain income from their inventions, or new products or processes. The Australian law is the *Patent Act 1990*.

For Aboriginal people, the patent system has generally not been good for them. This is because for Aboriginal made products or processes (such as a product based on bush products and Indigenous Ecological Knowledge) to be able to be protected under patent laws, they must be what is called 'novel'.

The patent law says that there must have been what is called an 'inventive step' in making the product. This means that a product must have had some technical input into it to make it into something that can be patented.

Patent Laws Have Limited Use for Aboriginal People

But you have been using your knowledge and know-how to innovate and create new products (such as medicinal remedies, foods, and so on) for a very long time. The resulting products are the outcome of a long, slow, and often informal process in which knowledge has been passed down by word of mouth by Elders and others who hold the knowledge.

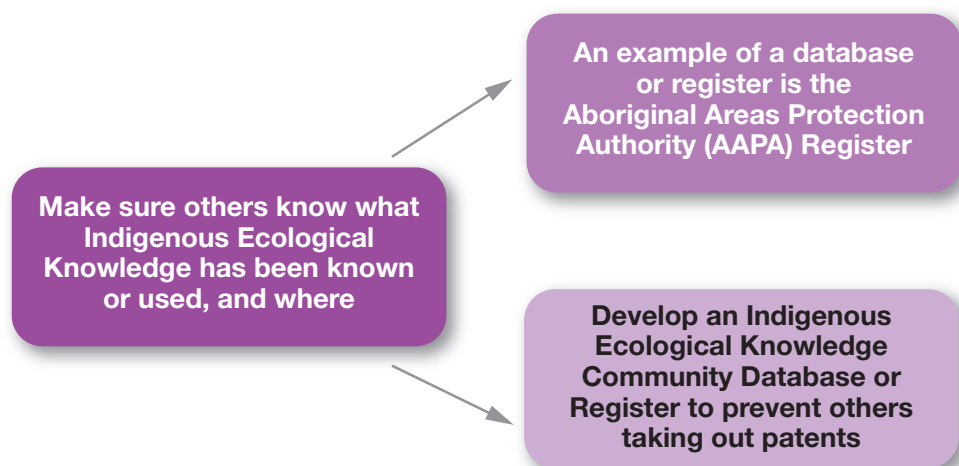
Another problem with the patent system for Aboriginal people is that your knowledge of biological resources (such as the medicinal properties of plants) has often been known for many generations. It might also have been documented and published by non-Aboriginal researchers, such as botanists a long time ago. For these reasons, IEK will not often be able to be patented.

Some Ways to Make Sure Your Indigenous Ecological Knowledge is not Wrongly Patented

You can consider some ways to help stop patents being taken out on products or processes using IEK by the wrong people or organisations. These might include:

- > Develop an Indigenous Knowledge Database or a Register – this can be **public** or **private**. Most databases or registers have parts that are public or open to the wider community, and parts that are only accessible for community use.

These Registers and Databases are different ways of storing or creating a record of Indigenous cultural heritage, including Indigenous Ecological Knowledge.



4 GETTING THE BALANCE RIGHT

This Section looks at:

Keeping a balance between

> Ways You can Help Protect and Manage Your Indigenous Ecological Knowledge (IEK)

and

> Using and Sharing Knowledge or Protecting it

and

> Keeping Your Knowledge Strong on Country

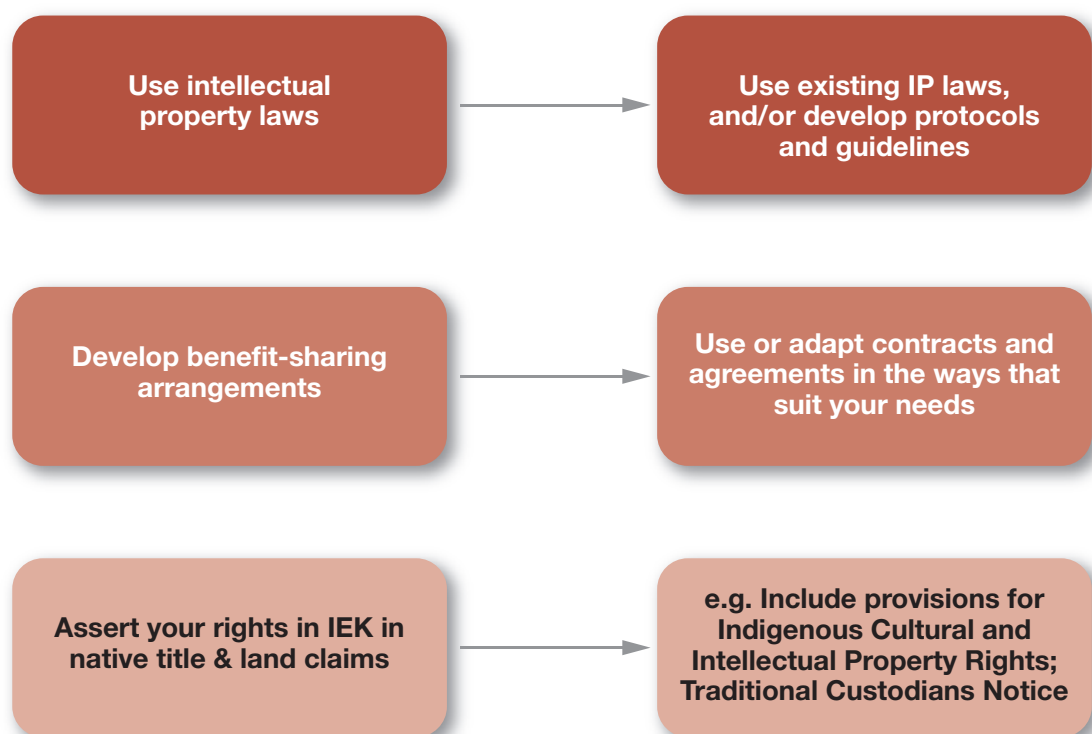
Ways You Can Help Protect and Manage Your Indigenous Ecological Knowledge (IEK)

You may wish to:

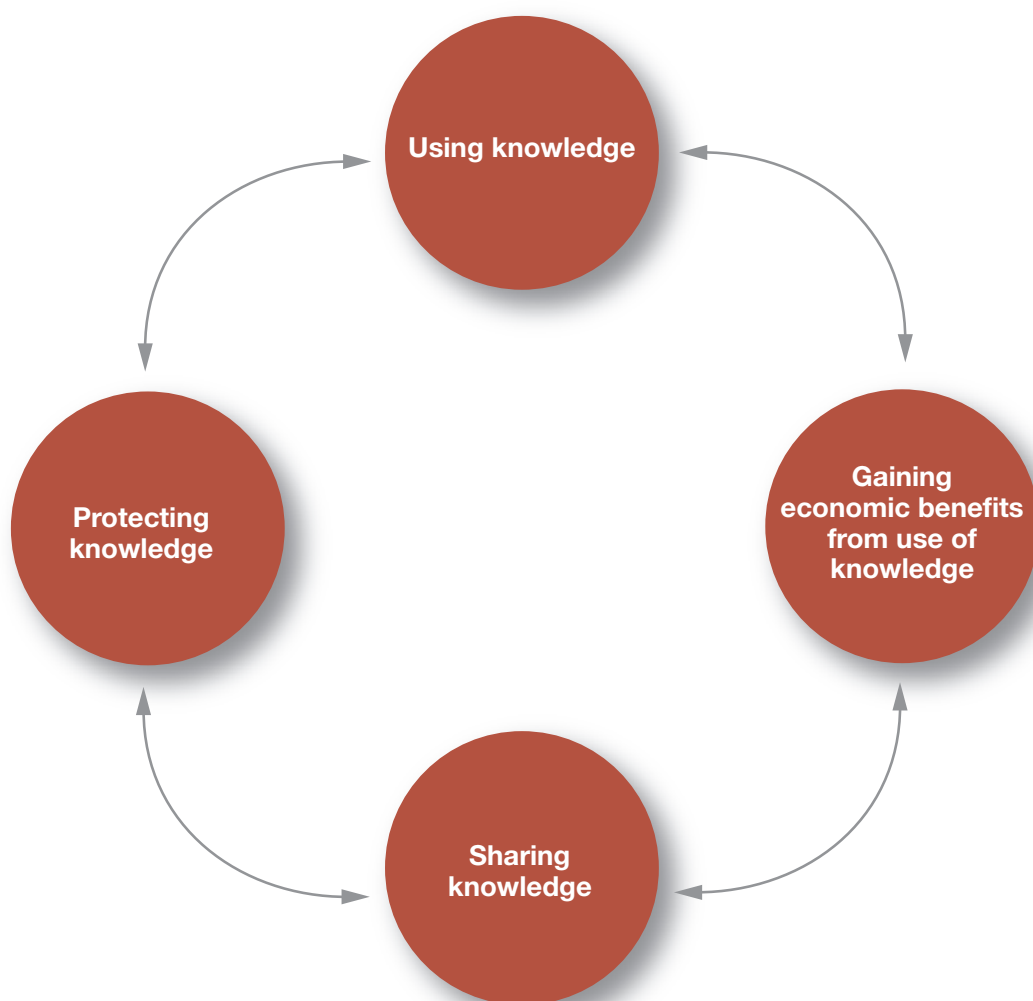
- > Obtain better protection for your Indigenous Ecological Knowledge,
- > Use it and share it with the wider (non-Aboriginal) community,
- > Make sure it is passed on properly to others as appropriate in the community, or
- > Develop it into products for commercial gain.

There are many things that you can think about to achieve these. The next page shows just some of these ideas.

You can look through this Handbook to see more information about all these things.



Using and Sharing Knowledge or Protecting it?



There is sometimes a need to find a balance between ‘protecting’ IEK by, and within the community, and developing ways in which it can be shared and used by non-Aboriginal people. This may often include your wish to have a product commercialised for the benefit of the community.

Sometimes the same Indigenous Ecological Knowledge can be partly protected and also partly used or shared at the same time.

Some examples of this include the making of products from species such as ‘Kakadu Plum’, and ‘Desert Raisin’ (bush tomato). See later in this Handbook.

You may want to protect your knowledge and stop others from wrongly using it. Or you might be keen to see your knowledge shared and used by the wider (non-Aboriginal) community. You may also want to gain income and other benefits from the wider use of this knowledge.

You can use a combination of intellectual property laws (such as copyright and designs laws for example – see **Intellectual Property**), with a range of other measures (such as **Benefit Sharing Arrangements**) designed to enable your knowledge to be shared and used more widely.

There are also ways in which you can develop income from the wider use of your knowledge. For example, in **bush products enterprises**.

Keeping Knowledge Strong on Country

Aboriginal peoples' knowledge is best maintained by keeping it 'strong' on country.

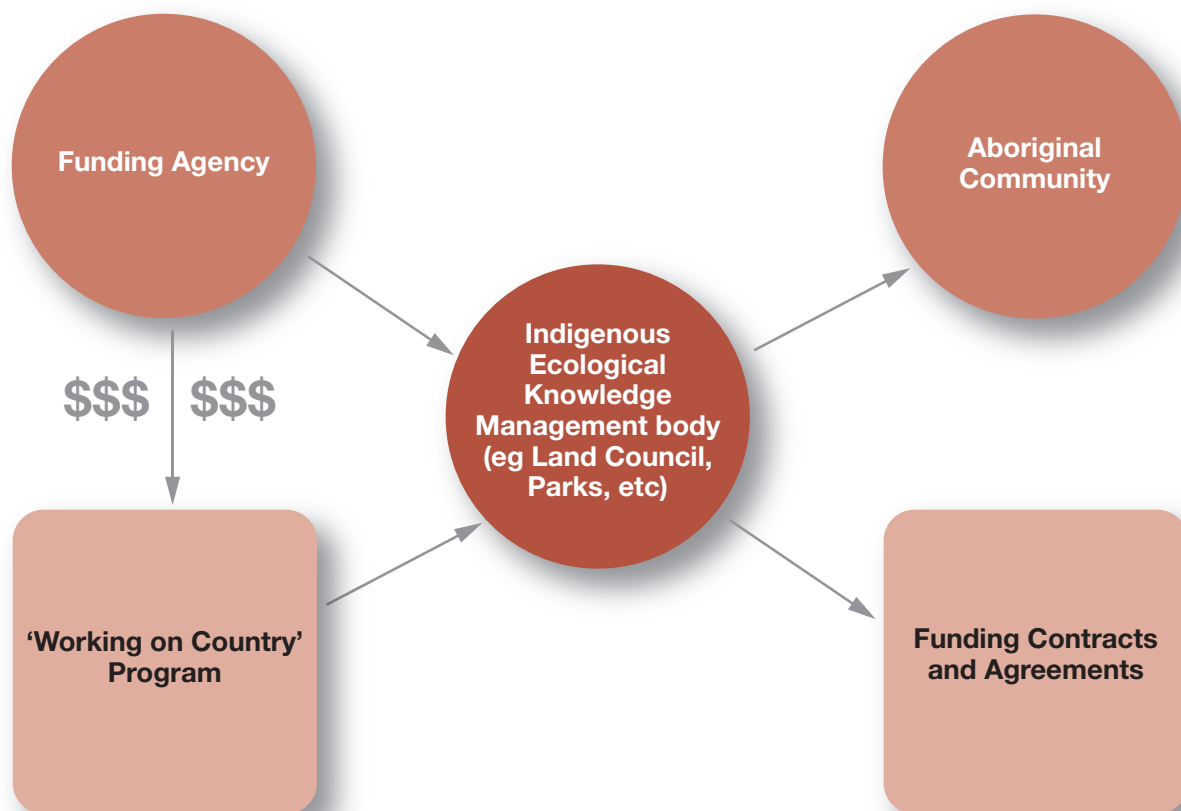
Programs and activities are needed that can support and strengthen the transfer of knowledge between and among people in communities, on country. These include youth and Elders programs, as well as language and culture programs.

One example of a Commonwealth Government Program that can assist in maintaining Indigenous Knowledge on country is the 'Caring for Our Country' Program.

If Indigenous Ecological Knowledge activities are funded and supported through this type of Government Program, it is important to be able to track the flow of funding, and to look closely at the Agreements that have been signed. This is important so that people understand the intellectual property issues involved.

Look at the example below ('Caring for Our Country' program) to see how this might work.

A Commonwealth Government Program: “Caring for Our Country”



Working on Country as Rangers

‘Working on Country’ is an important part of the Caring for our Country program. It will provide funding to a number of Aboriginal groups in the Northern Territory for environmental and natural resource management projects. Only legal entities and incorporated bodies such as land councils or corporations can apply for this funding.

Working on Country funding can go straight to an Aboriginal land management agency if it is incorporated. For example Dhimurru Land Management Aboriginal Corporation and Bawinanga Aboriginal Corporation both have current projects funded under the Working on Country program.

Land councils can also apply for Working on Country funding to help smaller unincorporated groups carry out projects. This funding stream supports smaller ranger groups, families and individuals.

Issues may arise when the organisation that receives the funding employs or engages Aboriginal individuals to write reports, management plans and other materials. It should carefully be explained to people engaged as employees and consultants that:

- > the organisation being funded will own the Intellectual Property (IP) created for the project (unless there is a part in the contract that allows for shared and third party IP)
- > IP ownership of pre-existing material will remain with the IP owner
- > the Commonwealth government can use any materials created or included in works created under the funding agreement for other purposes – if they funded the work.

There can be changes made to contracts so that these contracts refer only to material that are produced (or discovered) at the end of a project, and not to materials produced during the project (such as field notes and recordings).

The funded organisation should make sure they get written permission from participants to use the IP they create.

5 TRACKING YOUR KNOWLEDGE

In this Section there is information about:

- > Participating in Research: Making Sure People do the Right Thing
- > Storing and Getting Access to Knowledge
- > Returning Knowledge Back to the Community

Tracking Your Knowledge

Very often, Aboriginal people are asked to give information to others not in the community. These might be researchers, government people, university students, photographers, journalists or filmmakers.

Often too, you might be asked or requested to perform some part of your culture such as song, story, dance or language to outsiders.

In all of these situations, it is very important to understand how what is happening affects the ownership of Aboriginal knowledge.

When Indigenous Ecological Knowledge and other information is provided to a researcher and others, how do you know where it is going, and what it will be used for, how will it be used, and by whom?

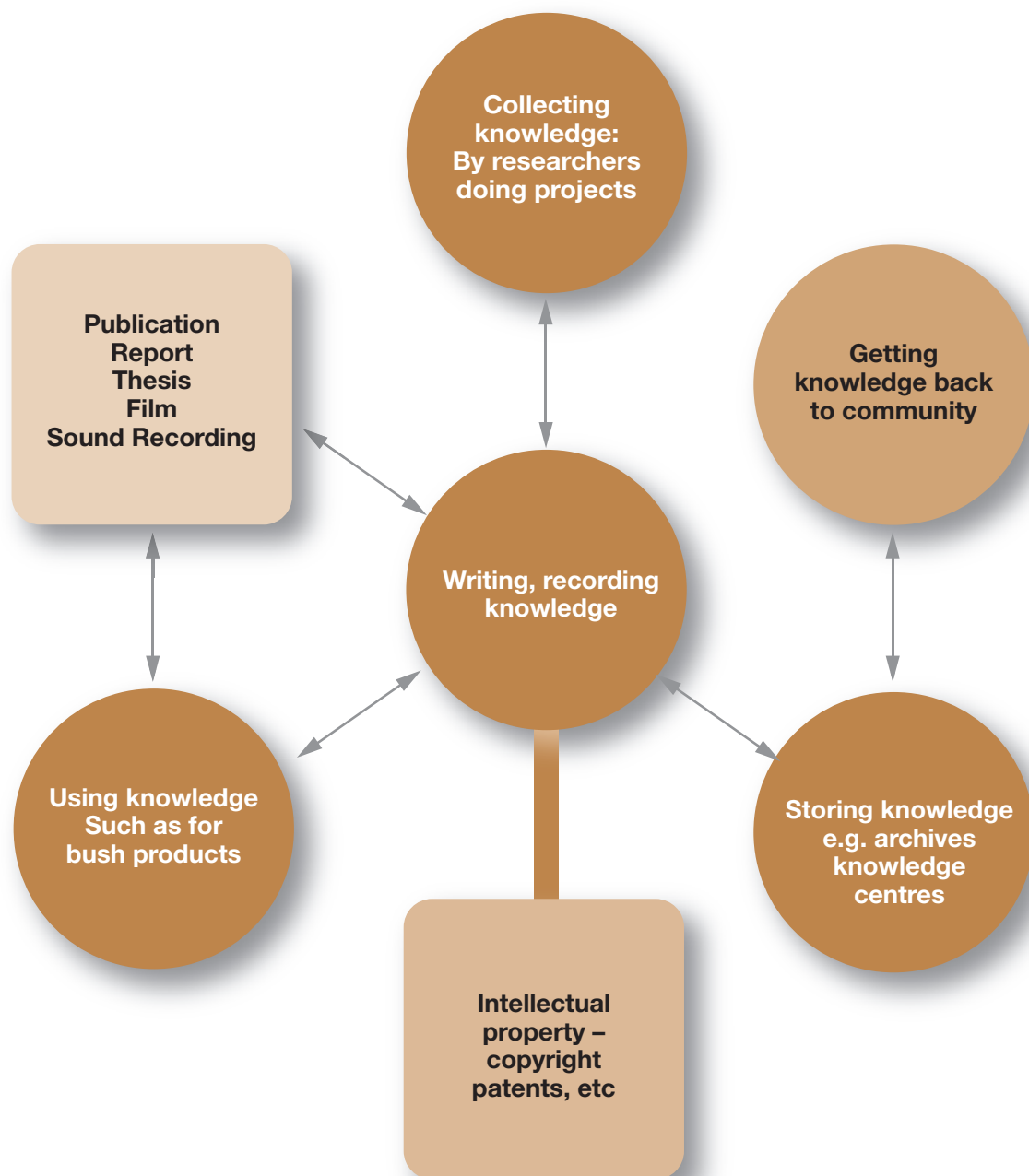
There are many questions you will want to ask about the processes involved when you are asked to give information, or are involved in projects using Indigenous Ecological Knowledge. These questions include:

- ✓ Who is collecting the knowledge?
- ✓ How is the information being collected?
- ✓ What is the purpose of collecting this knowledge?
- ✓ What means are being used to collect the knowledge?
- ✓ In what ways will the knowledge be recorded?
- ✓ Are you being filmed on (digital) camera or recorded on sound recording?
- ✓ Will you be photographed?
- ✓ Is a report being written – who will be the author of the report?
- ✓ Will you be paid for your contribution?
- ✓ Will you be acknowledged?
- ✓ What attribution will be given to you and your group?
- ✓ Are you authorised to enter this project and record this knowledge or should they (the researcher) be speaking with someone else?
- ✓ What protocols apply?

- ✓ Is ethics clearance required from a university or funding body?
- ✓ Does this project need a permit from the CLC, NLC, Parks Office, or other organisation?
- ✓ Where will the recorded materials be archived or stored? Who gets access?
- ✓ Will you get copies, or can there be some kept at a local keeping place – the knowledge centres being established by NT Libraries for instance?
- ✓ If the IEK is commercially used, for example, if there is a patent or plant breed rights, how will you share in the benefits?

Tracking Your Knowledge

This picture shows some of the ways in which Indigenous Ecological Knowledge travels from the moment you give information to an outside researcher.



It is important that you can keep a good track of where your Indigenous Ecological Knowledge goes, and how it travels, so that you can maintain control.

Participating in Research: Making Sure People Do the Right Thing

Have a look at this check list. It tells you just some of the things that both Aboriginal people, and non-Aboriginal people need to do, and to know about when working together on research projects.

There might be other things you can think of that should be included in this list.

For Community	For 'Outside' Researchers and Others
Know your rights – about protecting your knowledge, about access to land and about privacy and similar issues	Have you included Aboriginal input into the methodology? Are you the right person to conduct this research? What are the benefits/risks for the community?
Has the researcher provided all information about the planned project? Has the researcher approached the right people?	Have you sought Free Prior Informed Consent from the community?
Have you developed a Community Protocol?	Has your research recognised local Aboriginal protocols?
Have you discussed copyright ownership? What about IP?	Do you need consent to carry out research with people?
Have you discussed cultural issues relating to the wide use of this knowledge? If so, advise the researcher of these?	Do you need a permit etc?
What groups, communities, clans, families and/or individuals should be acknowledged? Advise research team of this. Have you discussed where the record will be held in the archives and who can access it in future?	If you are recording IEK in film or sound recording, are you using a release form? Have you discussed what the recording will be used for? where it will be archived after the project; whether copies available to group; and added condition that if commercial use, then negotiation of benefit sharing will take place.

Storing, and Getting Access to Knowledge

Aboriginal people give information, including, or relating to IEK to others doing research, or who are collecting it for many other purposes.

- ✓ What happens to this information?
- ✓ Where does it go?
- ✓ Who is now in charge of it?
- ✓ How can Aboriginal people get access to the information they've given, and/or to information created as a result of the information they've given?

A lot of information is obtained by government – local government, NT government and Commonwealth government.

Recording and Storing Information

Many places in the NT, for example the NT Government, and Charles Darwin University use a system for storing information that is called the *Tower Records and Information Management System* (TRIM).

Information management systems such as TRIM are generally available only within the organisation. This means that if Aboriginal people provide information to government, then that information is stored and managed only within the government system, and is not available any more to the person who provided the information.

Much of the information you give is likely to be of a culturally sensitive or special nature, and may include details relating to IEK, customary practices, and other confidential information.

This is a problem for Aboriginal people in communities and who are not in the government, and who wish to get access to, and to maintain control over your information.

There need to be safeguards over this kind of information, so that you can maintain your rights in it, and get access to it.

Even if the information is not sensitive (and most of it might not be), Government and University archives have been built up over many years.

Getting Access to Information

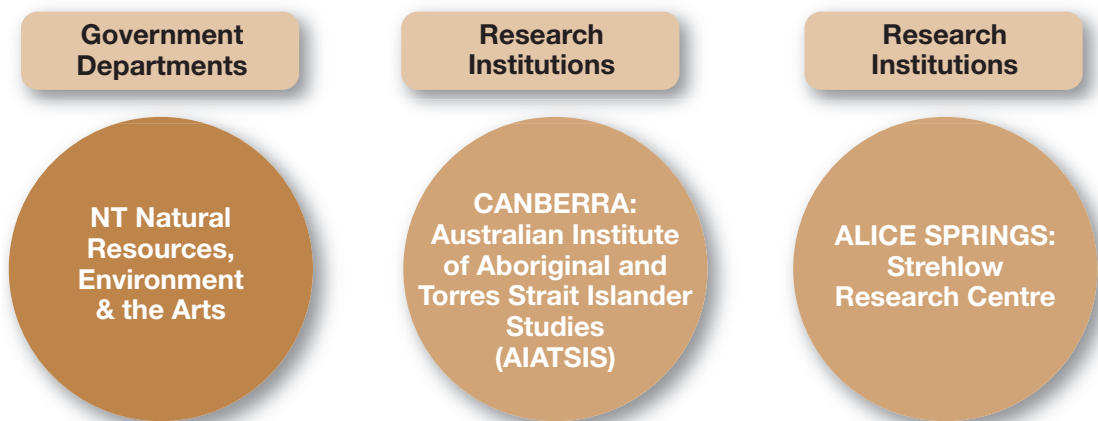
Getting access to information that contains IEK and other cultural knowledge and data can be a problem for Aboriginal people. Some organisations (such as research institutions and government departments) have restrictions on who is allowed to access information and records.

This can be a problem for Aboriginal people if you have provided information and wish to gain access to, and maintain your rights to that information.

Storage and Access: Some Problems and Suggestions

There are different kinds of places that keep knowledge and information relating to IEK and ICIP.

Some examples are:



You can approach those organisations to ask them the right questions, such as:

- ✓ What information do these places hold, and how did they get it?
- ✓ What processes do they have for making it available to Aboriginal people?
- ✓ Do they have protocols for Aboriginal rights in these materials?
(See if you can get a copy of those protocols)
- ✓ Do they have protocols for Aboriginal peoples' access to the materials they hold? (See if you can get a copy of those protocols).

Returning Knowledge Back to the Community

When Aboriginal people have been giving information to organisations – including government departments, universities, research organisations – can they then get it back to their community?

Getting information back to a community is called *repatriation*.

What are some of the ways repatriation can be done?

Use electronic
databases,
computers,
retrieval and
remote access
technology

Feedback and
community
workshops &
meetings

Knowledge
centres

Libraries &
archives
working with
Aboriginal
people

6 USING AND MANAGING YOUR KNOWLEDGE

This Section looks at:

Ways you can use your Indigenous Ecological Knowledge in the wider (including non Aboriginal) community.

It has information about:

- > Indigenous Ecological Knowledge in the Wider Community
- > Prior Informed Consentx
- > Benefit-Sharing
- > Collecting Bush Plants, Animals and Seeds
- > Developing Enterprises from Bush Products
- > Making a Plant and Animal Book
- > Guidelines and Protocols

Indigenous Ecological Knowledge in the Wider Community

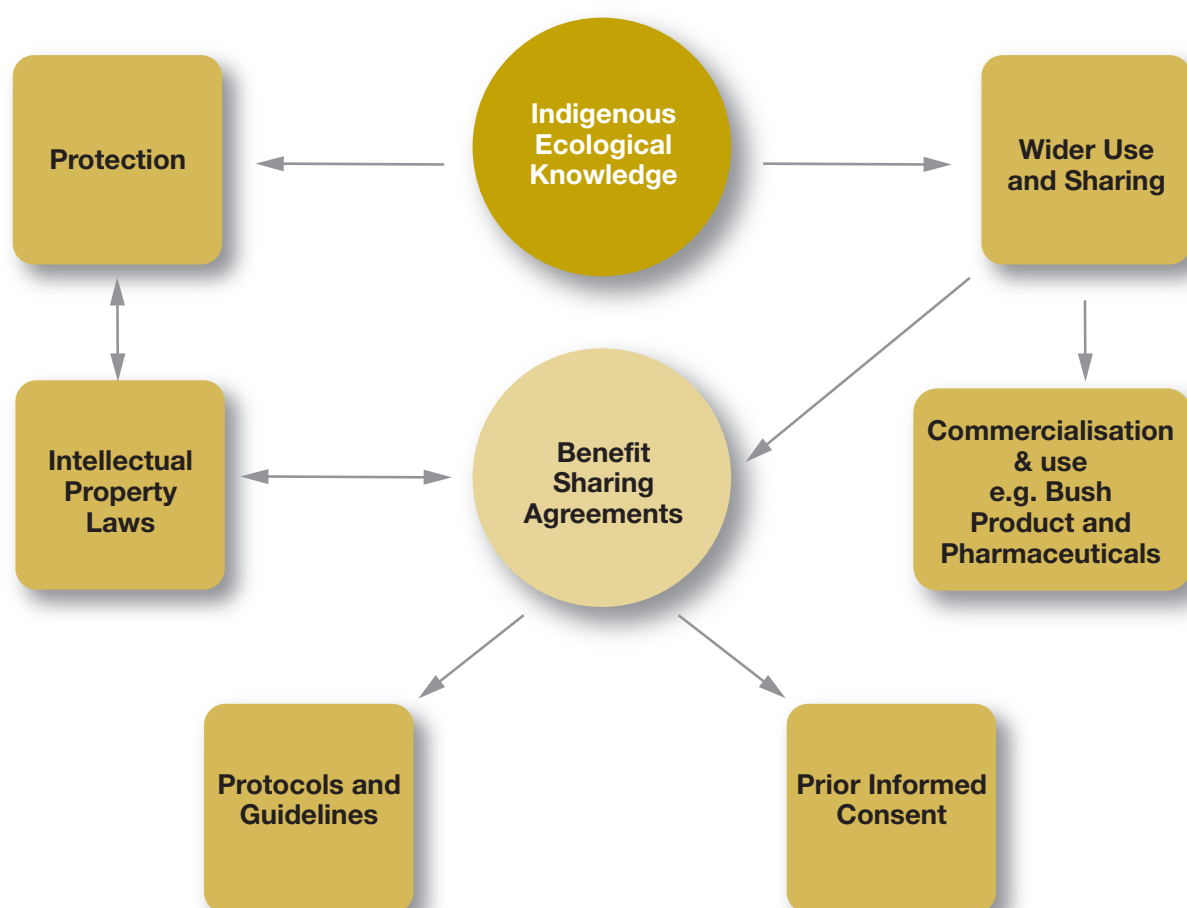
Intellectual property law is only one way to protecting and using Indigenous Ecological Knowledge.

Natural resource managers, rangers, and all those working in this area can also think about alternatives to intellectual property laws.

These alternatives could include developing benefit-sharing agreements, commercialisation contracts, and protocols and guidelines. Or they could involve a combination of all these methods.

In all these cases, when you want to consider different ways of protecting and managing your Indigenous Ecological Knowledge, it is essential that you consider things such as **prior informed consent**, and ways of working with others in research and other projects.

For example, have the researchers done the right thing in seeking prior informed consent from your community, group or organisation? Do they have the proper ethics clearance from their research organisation?



Prior Informed Consent

What is Prior Informed Consent?

Before any project begins – whether it is research, collecting information (and/or plants, seeds, cultural objects), or similar – the right Aboriginal people must be able to give their written permission, or *consent* to the activity.

Under both Commonwealth and Northern Territory laws relating to the management of ‘biological resources’, there is a requirement that prior informed consent **must** be obtained from the owners and custodians of the resources and associated knowledge.

The requirement of prior informed consent means Aboriginal people who are being asked to give access to their lands and knowledge must be properly informed as well as consulted before you allow access to biological resources and use of their knowledge for commercial purposes on your lands and in your communities.

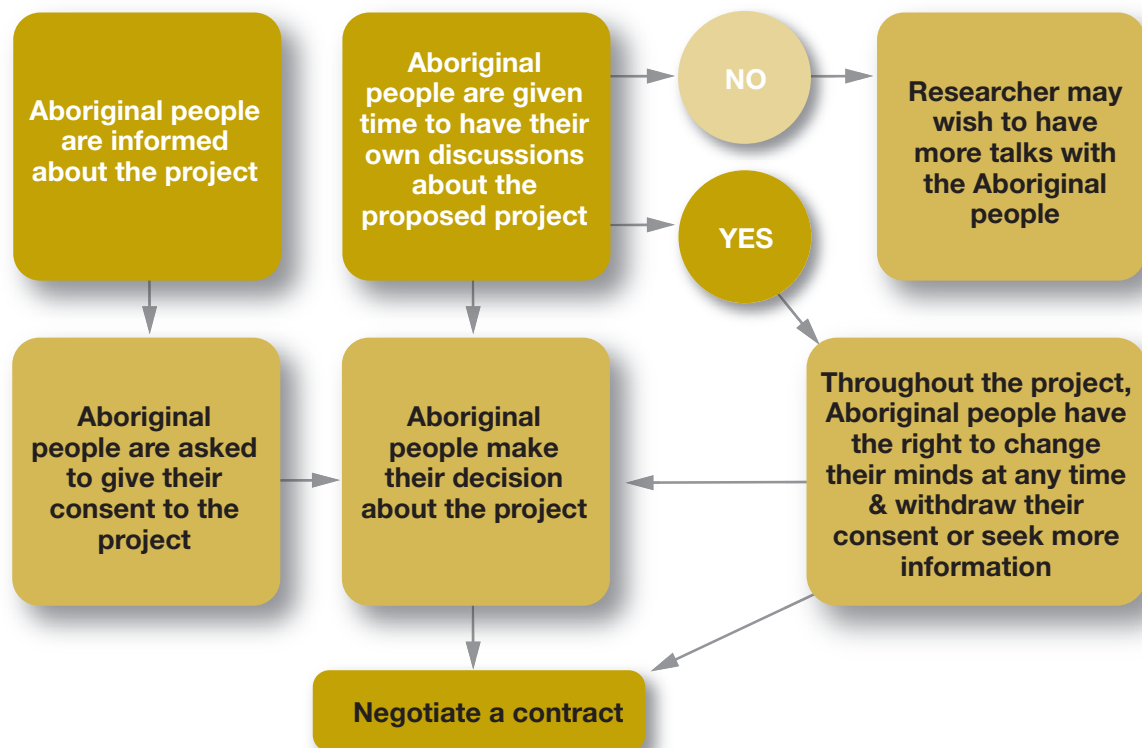
Prior informed consent aims to make sure Aboriginal people are fully informed about any proposals for research or information collection in order for you to be able to agree to it or say ‘no’.

It is important to understand that prior informed consent is an ongoing process, not just a ‘one-off’. This means that you have the right at any stage to seek more information about a project, or even to withdraw your permission during the course of the research project.

Some Steps Towards Prior Informed Consent

Prior informed consent is an ongoing PROCESS. The diagram below shows the process to be followed in seeking, and obtaining prior informed consent for a project.

(Adapted from an illustration by Fiona Walsh – with acknowledgement to Fiona Walsh)



Benefit-Sharing

When Aboriginal people who are the holders, owners and custodians of Indigenous Ecological Knowledge wish to consider how your knowledge might be shared with the wider community, you can look to developing and entering into a Benefit Sharing arrangement.

This kind of arrangement usually takes the form of an Agreement between those who own or hold the knowledge, and those who are interested in using the knowledge for making products or processes such as pharmaceuticals, or for industry or scientific purposes.

The important issues for Aboriginal people in these kinds of arrangements are to make sure that you obtain real benefits, compensation and royalties, and have an equal say in any Benefit Sharing Agreement.

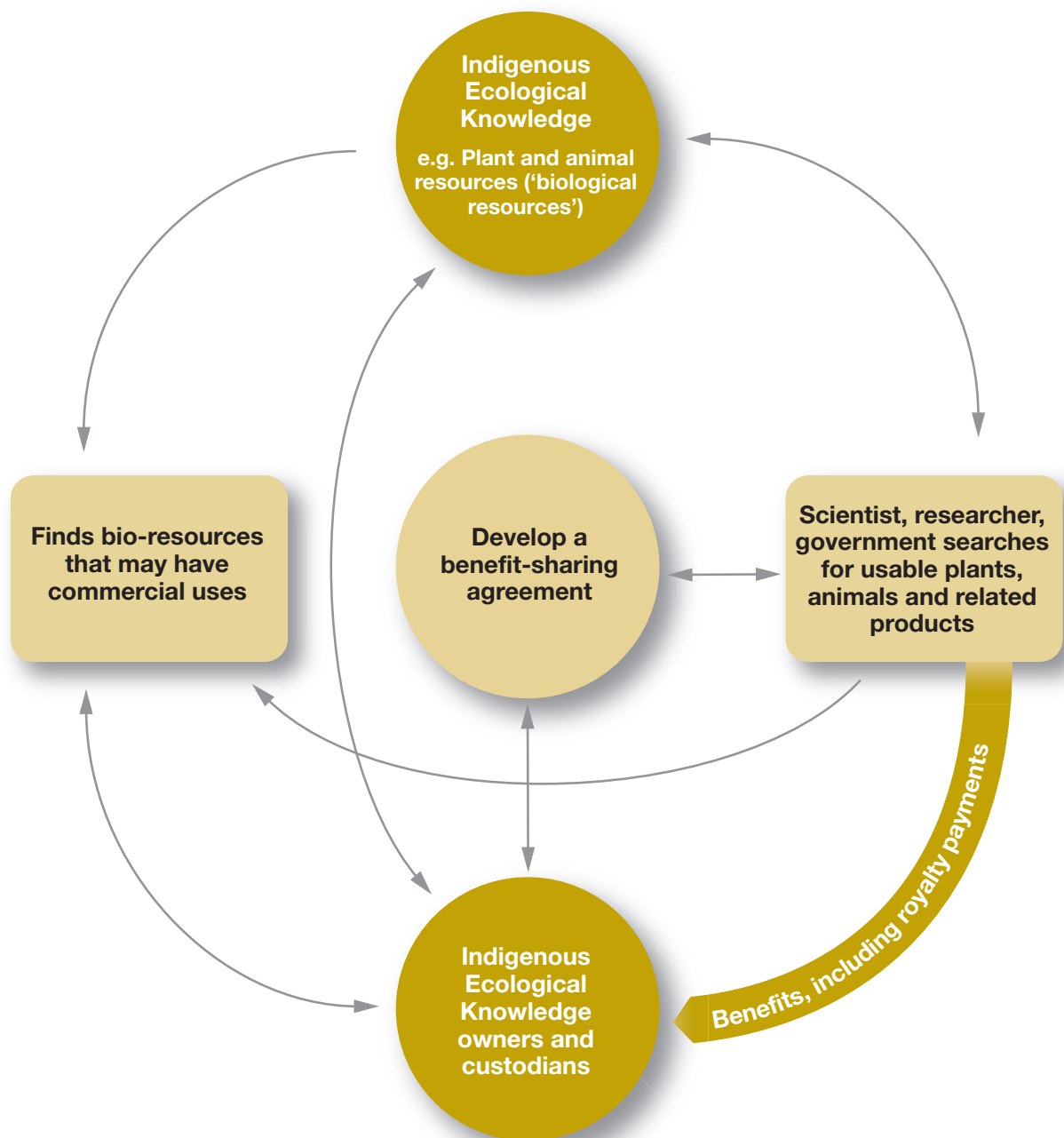
In Australia there is increasing interest from governments and scientific, trade and industry sectors in what is called 'bioprospecting' or 'biodiscovery'. This term means the search for plant and plant products that have actual or potential commercial uses. Many State and Territory governments have introduced, or are in the process of developing laws and policies to regulate these bioprospecting or biodiscovery activities, and to support the negotiation of contracts for these.

The Legal Framework for Biological Resources

Benefit-sharing arrangements are supported by Australian laws.

In 1999 the Commonwealth Government introduced a new law, the *Environment Protection and Biodiversity Conservation Act* to provide a framework for regulating access to biological resources on Commonwealth lands. In 2006 the Northern Territory introduced a law to sit alongside the Commonwealth Act. This NT law, the *Biological Resources Act 2006* provides (at Part 4) for Benefit Sharing Agreements.

Both of these laws are important to Aboriginal people who may wish to provide plants and animals and related knowledge for wider use, and to all those who wish to use these things. They are important because they provide some opportunities for people to sit down and negotiate an arrangement in which all participants in a benefit-sharing arrangement can have equal participation, and derive equal benefits from the development and commercialisation of a product.



Some Important Things to Remember when Negotiating a Benefit-Sharing Agreement

Remember: Prior Informed Consent is a PROCESS. It is not just a “ONE-OFF” event. At any stage throughout a research project, Aboriginal people have the right to:

- ✓ Say “NO!” to beginning a project
- ✓ Ask for more information
- ✓ Withdraw from a project

When entering into negotiations for a Benefit-Sharing Arrangement, you can think about the following things:

- 1) Make sure you are fully informed about the project
- 2) Make sure you claim proper benefits from the project
- 3) Set out clearly what you want in a benefit-sharing agreement.
- 4) Think about asking a lawyer. If the agreement is about Aboriginal land, then a Land Council lawyer should be able to assist.

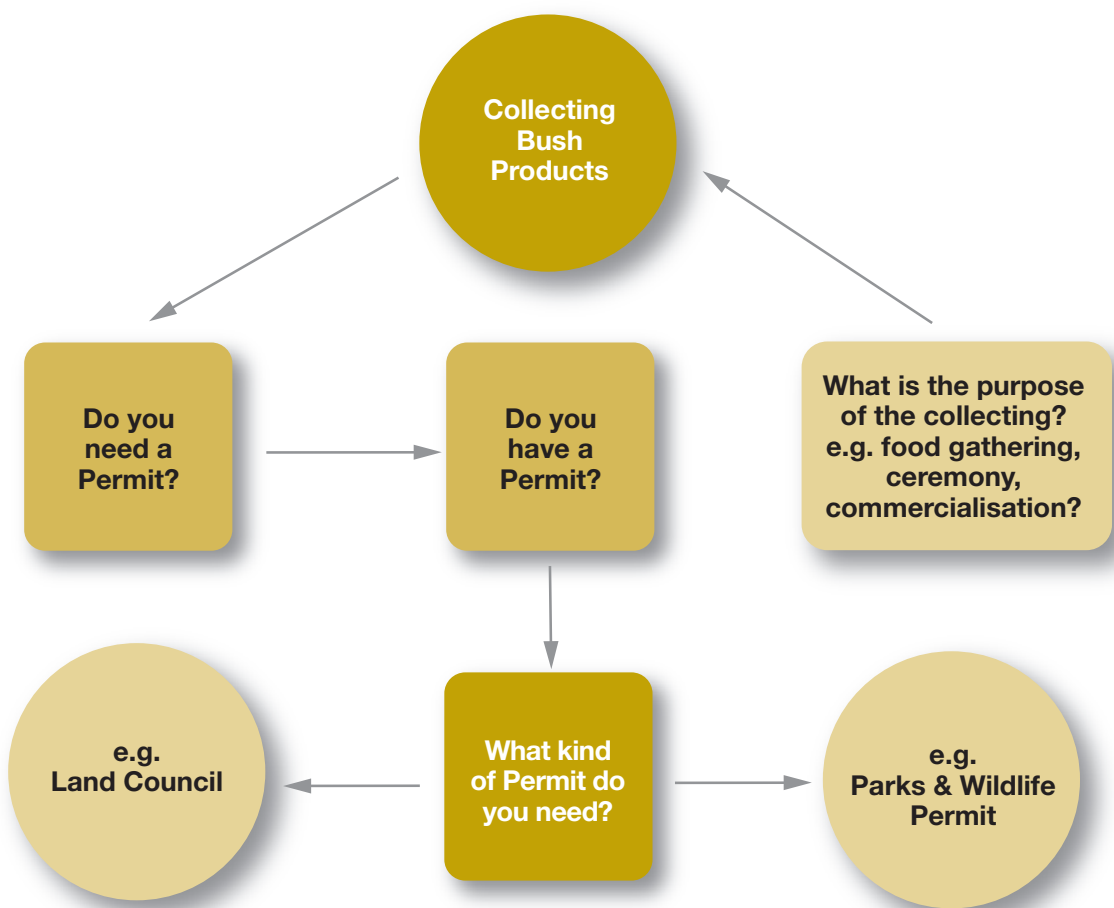
Where are Benefit-Sharing Agreements Used?

One of the main ways in which a Benefit-Sharing Arrangement is useful is in situations where Aboriginal people wish to develop plants, animals, and knowledge of these into a product for commercial use and benefits.

Collecting Bush Plants, Animals, and Seeds

When collecting plant or animal parts of these for making bush food products or other products, you will need to consider whether a Permit is needed, and if so, what kind.

It is best to check with the relevant authority, such as Land Council or Parks and Wildlife offices to find out about permits.



Developing Enterprises from Bush Products

How do you start up and develop an enterprise drawing on your Indigenous Ecological Knowledge?



- ✓ What are the steps in this process?
- ✓ What are the things that people will need to know along the way?

The following pages show some of the questions you need to ask in relation to use of plants and animals for commercial or other (e.g. community) purposes.

Groote Eylandt (photo by Bruce Rose, at website <http://www.nrm.gov.au/do/indigenous/case-studies/index.html>)

Akatyerr

Desert raisins (bush tomato) and acacia seeds are major bush foods that are also used commercially. Up to 500 harvesters collect for families and wholesale to trade in the wider markets.

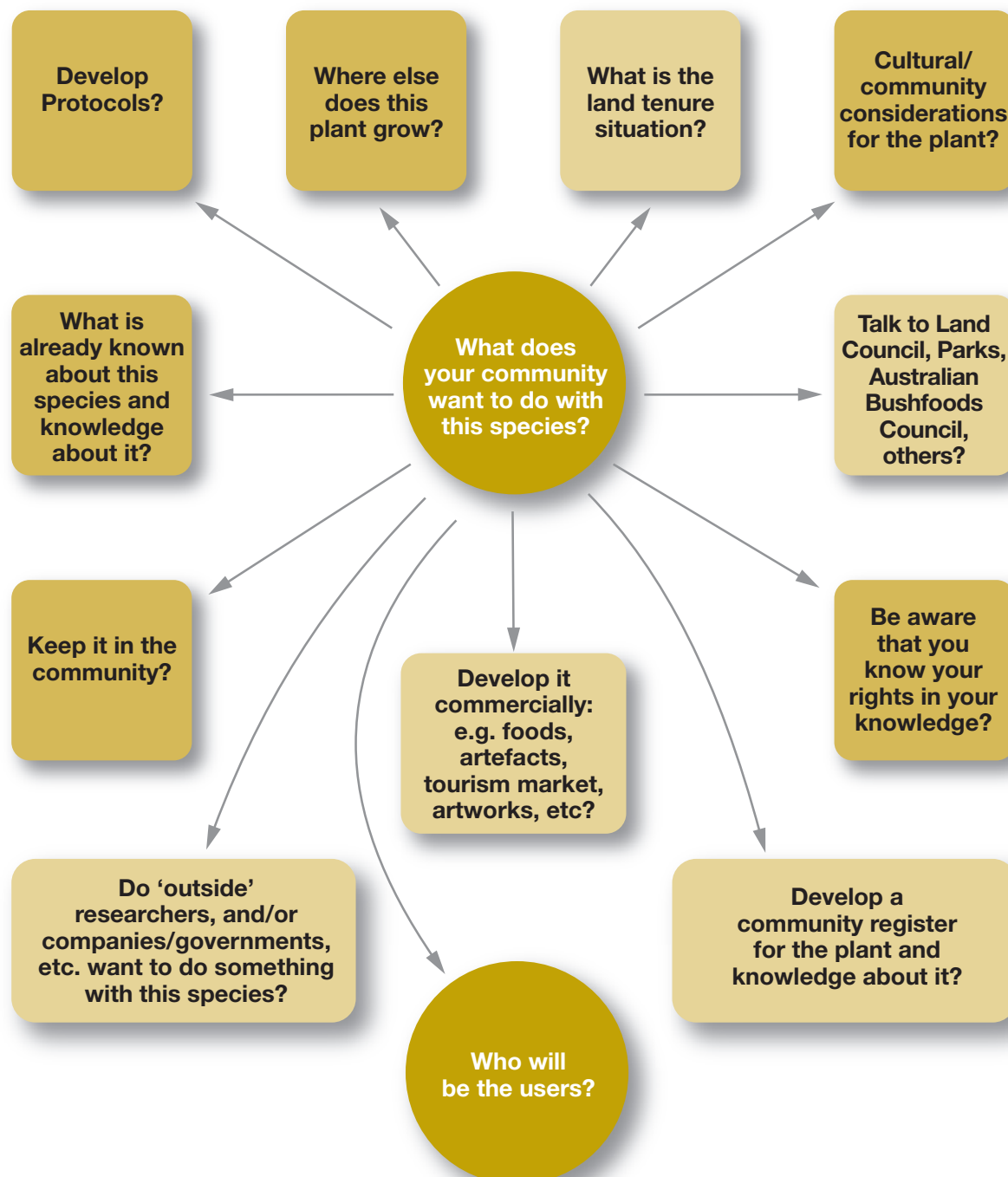
To collect the plants and seeds for this species and any others, you will firstly need to obtain a Permit from the NT Parks and Wildlife Department. This is required by law, even if you want to harvest it on your own Aboriginal land.



Common names Bush tomato, desert raisin (*Solanum central*)
Image may be subject to copyright.

Some Things to Consider in Developing Aboriginal Bush Product Enterprises

This diagram shows you some questions you can ask, and things you can do if you want to develop a plant or animal for different purposes, such as commercially.



Making Products from Bush Plants and Animals

Many things that come from the bush can be developed into products. These products might include foods, cosmetics (e.g. soaps and creams), and cultural objects, including for tourism, and artworks. You may want to develop some of these commercially and through the markets.

For example, some bush foods are already finding a place in the market or in commercial products. For example, some restaurants in Alice Springs, are serving meals that include bush tomatoes produced by an Aboriginal enterprise (the *Pwerte Arntarntarenhe* Aboriginal Corporation).

Some of the important things people need to think about when developing products from bush plants and animals include:

- ✓ Intellectual property issues. For example, are trade marks being used to 'brand' the product?
- ✓ Is there a Label of Authenticity for the product?
- ✓ Are there licenses for use and distribution of the product?
- ✓ What about the use of, and/or development of Protocols for the development of the product?

Kakadu Plum

This species has the scientific name *Terminalia ferdinandiana*. It used to be called “Billygoat Plum”, but the name was changed to make it better for the markets, because people connected it to billy goats. It is now known as the Kakadu Plum. Fruit appears in the late wet to early dry season, March to June. Some plantations have been established in the Northern Territory.

This plant is used for its medicinal properties. The gum that exudes from the bark is also edible. A preparation from the inner bark is used to treat sores, boils, backache and ringworm. In the past it was used for leprosy.

Larrakia people in the Top End are developing products such as chutney and jams from the Kakadu Plum (also known as Damiyumba, Lime Jam in Larrakia). Some of this work has been supported by the Australia wide conservation organisation – Greening Australia. The Daniyumba lime chutney is ready for sale as part of the Greening Australia project. This enterprise has raised issues of traditional knowledge, traditional bush foods and commercialisation.

The project raises questions such as:

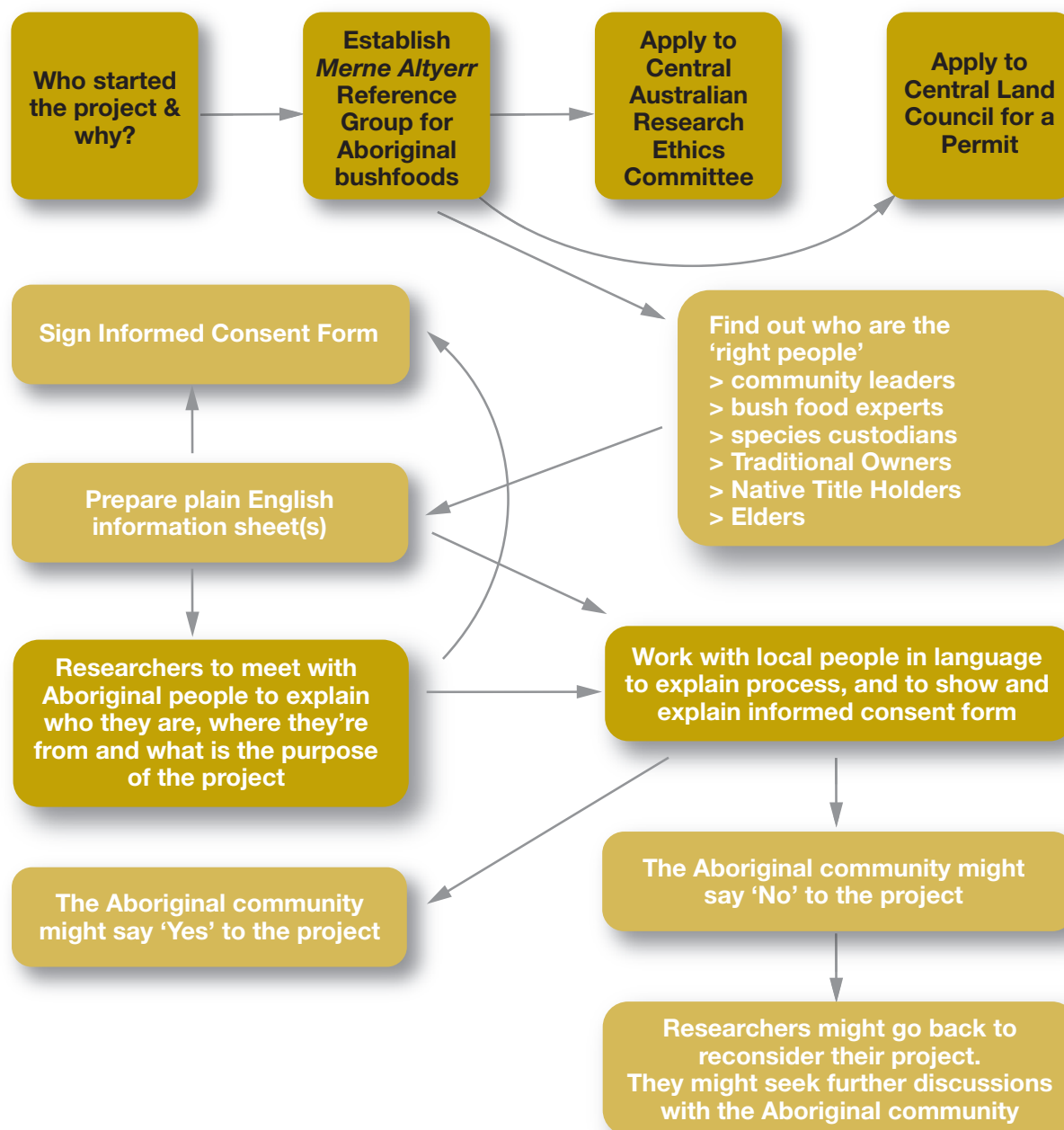
- ✓ What is the role of intellectual property in this project? For example, Greening Australia is using the Larrakia word with an artwork as an unregistered trade mark with permission from the Larrakia Association.
- ✓ How was consent from the Larrakia obtained? What are the issues for the wider Larrakia community and organisations?



Kakadu Plum or “Billy Goat Plum” *Terminalia ferdinandiana*.
Image may be subject to copyright.)

The Merne Altyerr Reference Group's Protocol – from Central Australia

This shows the *Merne-Altyerr* Aboriginal Bush Food Reference Group's development of their Protocol (thanks to Fiona Walsh, from whose original illustration this one has been adapted and thanks to Josie Douglas). This project is developing products from bushfoods harvested in different places in the desert country. The Reference Group is developing a Protocol for Aboriginal bushfoods to make sure that Aboriginal peoples' rights in the bush foods and in the Indigenous Ecological Knowledge are protected all the way through.



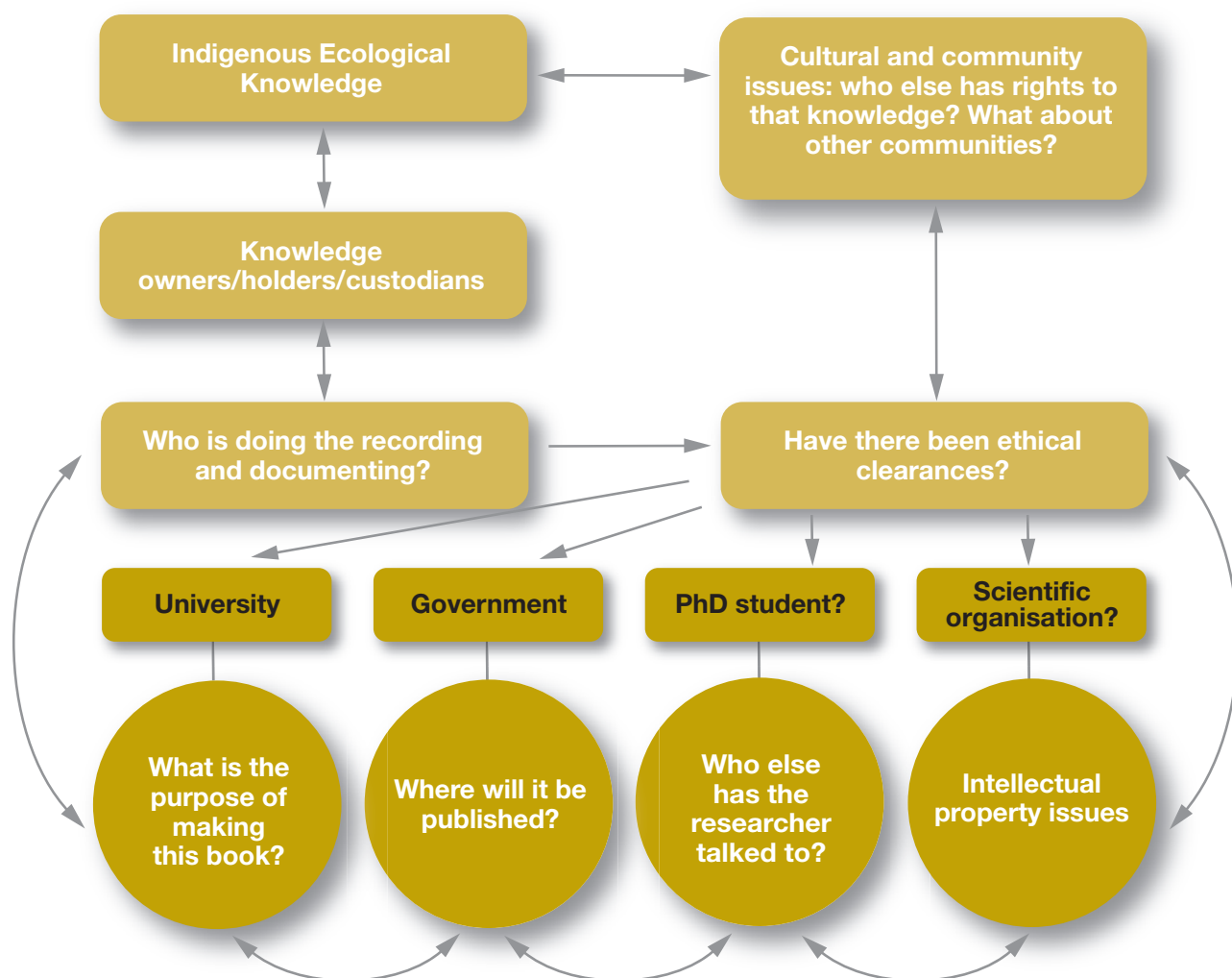
Making a Plant and Animal Book

As well as bush product enterprises using Indigenous Ecological Knowledge, another area to look at is the production of books based on this knowledge.

People might want to develop a book with all the names, uses and locations of plants and animals in their country. When making a Plant and Animal Book (referred to as an ethnobotanical or ethnobiological study) there are some very important things Aboriginal people need to know.

This kind of activity requires some careful processes to be followed, to make sure that your cultural knowledge and intellectual property rights are not exploited.

It is very important that the processes by which a Plant and Animal Book are produced are clearly understood. The diagram below gives an idea about some of these processes.



Guidelines and Protocols

As well as using Intellectual Property Laws, and developing Benefit-Sharing Agreements, a very useful tool for managing Indigenous Ecological Knowledge in NMR projects and processes, is to develop a Protocol.

A 'protocol' is a rule, or a guide to proper behaviour. There are protocols being developed by various organisations, for different purposes. If you have access to the internet, many of these can be found there. Some examples are:

- > Guidelines for Indigenous participation in Natural Resource Management. Published by the Commonwealth Government's National Heritage Trust in 2004.
- > Parks and Wildlife Commission of the Northern Territory, 'Aboriginal Cultural Interpretation Guidelines for the NT', March 2000
- > Desert Knowledge Cooperative Research Centre (DKCRC) Aboriginal Knowledge and Intellectual Property Protocol and Research Engagement Protocols, 2007
- > Central Land Council (CLC) has developed a set of protocols under its Permit System. Anybody accessing Aboriginal land under the permit system for the following special purposes must apply in writing and agree to the conditions imposed by the relevant permit. The CLC Protocols include:
 - General research
 - Anthropological research
 - Tourist activity
 - Archaeological work
 - Environment and conservation activities
 - Linguistic work
 - Photography, film, recording and media

- > NT Natural Resource Management Board Interim Protocols for Natural Resource Management Board Indigenous Ecological Knowledge Projects
- > North Australian Indigenous Land and Sea Management Alliance (NAILSMA) has developed interim protocols for NRM projects involved in the transfer of Indigenous Ecological Knowledge or “Talking Culture on Country”, and Guidelines and Protocols for the Conduct of Research
- > The Northern Territory Parks and Reserves in conjunction with the CLC are currently drafting a protocol
- > The Central Australia Merne Altyerr-ipenhe (Food from the Creation time) Reference Group is developing a protocol. This protocol will set out a code of practice to assist people involved in the bush food process.
- > Warlpiri (PAW) Media Protocols and Access Agreements (with thanks to Susan Locke for providing copies of these). These include the Media, Filming and Photography Protocol.

Word List

[This List is taken from Terri Janke and Company, 'Report on the Current Status of Indigenous Intellectual Property', prepared for the NT NRM Board, April 2009]

'Indigenous Ecological Knowledge' refers to the ecological information, passed on through the generations that Aboriginal people draw upon to live their culture. It is knowledge relevant to Aboriginal people, individually or communally, as part of their heritage. It includes oral stories, language, songs, skills, knowledge of sites, historical information, genealogical information and information about plants and animals. Aboriginal Knowledge is an integral part of Aboriginal cultural heritage values. It is central to Aboriginal identity, beliefs systems and cultural practices. Aboriginal people have obligations to pass this knowledge on as part of their cultural practices. Whilst it may draw upon other sources, Aboriginal Knowledge is fundamentally the community's interpretation of its culture and knowledge.

'Aboriginal' means a descendant of an Aboriginal person, an original inhabitant of Australia.

'Heritage' comprises "all objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory." Indigenous people's heritage is a living heritage and includes objects, knowledge, artistic, literary, musical and performance works that may be created now or in the future based on that heritage.

'Indigenous' refers to the descendants of Aboriginal and Torres Strait Islander people, the original inhabitants of Australia's mainland, Tasmania and the Torres Strait Islands when used with a capital 'I'. When it is used with a lower case 'i' it refers to world indigenous peoples.

'Indigenous cultural and intellectual property (ICIP)' refers to Indigenous people's rights to the tangible and intangible aspects of their Heritage.

‘Prior informed consent’ refers to the principle that recognises that the prior informed consent of Indigenous peoples and their communities must be obtained before any research or use of the Indigenous cultural and intellectual property is undertaken. This principle has growing recognition in international law in documents such as the Convention of Biological Diversity.

‘Sacred’ means restricted class of information based on ritual, ceremonial status or gender based.

‘Sacred and secret’ refers to information that is restricted under customary laws. For instance, some cultural information may be learned or viewed only by men or only by women, or only after initiation.

‘Traditional owner’ refers to those Indigenous people who have the responsibility through membership in a descent group (clan) for caring for particular country. As defined in the Australian Heritage Commission, *Ask First, A guide to respecting Indigenous heritage places and values*, “traditional owners are authorised to speak for country and its heritage.” Authorisation to speak for country and heritage may be as a senior traditional owner. It could also be an elder or a Native Title claimant.

‘United Nations’ (the UN) is the main body responsible for making rules (international law), and for monitoring the ways in which countries (Members of the UN) implement these laws domestically.

Acronyms

ALRA	Aboriginal Land Rights Act
CLC	Central Land Council
DK CRC	Desert Knowledge Cooperative Research Centre
EPBC	Environment Protection & Biodiversity Act
GIS	Geographic Information System
ICIP	Indigenous Cultural and Intellectual Property
ICMR	Indigenous Communal Moral Rights
IEK	Indigenous Ecological Knowledge
IK	Indigenous Knowledge
ILUA	Indigenous Land Use Agreement
IP	Intellectual Property
NAILSMA	Northern Australian Indigenous Land and Sea Management Alliance
NHT	Natural Heritage Trust
NLC	Northern Land Council
NRM	Natural Resource Management
UNESCO	United Nations Educational, Scientific and Cultural Organization

Where to Go for Help

- > The four NT Land Councils and their websites
- > EPBC – Uluru and Kakadu websites
- > Legal Centres
- > Australian Government Departments
- > Australian Copyright Council
- > Arts Law Centre of Australia
- > Caring for our Country websites

The Australia Council provides for Indigenous arts and culture and offers funding support through its grant programs. It has developed a set of Indigenous protocols, which can be seen at the following website:

<http://www.australiacouncil.gov.au/publications/indigenous>



**Handbook for Working
with Indigenous
Ecological Knowledge &
Intellectual Property**