

Indigenous Ecological Knowledge and Natural Resources in the Northern Territory



Guidelines for Indigenous Ecological Knowledge Management (including archiving and repatriation)

A report commissioned by the
Natural Resources Management Board (NT)
Component 1 (of 3)



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The terms of reference

These Guidelines are one of three resources developed under Program Brief 2: Indigenous Cultural and Intellectual Property Protocols for Indigenous Ecological Knowledge Management, commissioned by the Natural Resource Management Board (NT). The purpose of this Program was to

“develop guiding principles, practical advice and a clear statement of the rights and obligations of natural resource management practitioners in respect of Indigenous Intellectual Property rights in a Northern Territory context”.

The project team consisted of Terri Janke (Terri Janke and Company Pty Ltd), Michael Davis (Jumbunna, University of Technology Sydney) and Sarah Holcombe and Peter Veth (NCIS, Australian National University). The National Centre for Indigenous Studies at the ANU was awarded the contract and managed the project.

The **three outputs** required under the program brief were:

- 1) Guiding principles and appropriate disciplines for establishment of best practise archive and repatriation activity.
- 2) Practical guidance manual for IEK/NRM practitioners
- 3) Report detailing current status of Indigenous IP.

The **Consultancy Terms of Reference** were:

- Review and analysis of current Indigenous IP documentation, legislation, administrative frameworks, research and practice.
- Analysis of any required legislation, research and capacity needed to protect indigenous IP.
- Identify challenges and barriers to the development of IP policy and prepare practical guidelines.
- Identify existing institutional and human resource capacity to support indigenous IP.
- Identify areas where additional resources and capacity are needed to support IEK/NRM practitioners
- Determine the capacity and will of government and institutions to enforce protection of Indigenous IP
- Ensure that due respect is paid to international agreements and overseas protocols in the development of consistent policies and guidelines.

As this was such a wide brief we were given some license to re-develop the project and the outputs as the data was gathered and workshop discussions evolved. As such, two of the three ‘outputs’ – the first 2 - changed. See table 1, below.

Table One:

Output suggested	Output produced
1) Guiding principles and appropriate disciplines for establishment of best practise archive and repatriation activity	Guidelines for Indigenous Ecological Management (including archiving and repatriation)
2) Practical guidance manual for IEK/NRM practitioners	A Handbook for Working with Indigenous Ecological Knowledge and Intellectual Property
3) Report detailing current status of Indigenous IP.	Report on the Current status of Indigenous Ecological Knowledge and Intellectual Property in the NT.

This resource, the Guidelines, changed from having a sole focus on archiving and repatriation to considering the earlier stages of any research activity during the collection stage. It became clear that by establishing sound ethical research practise at the outset of a research project would then lead to appropriate archiving and repatriation activity in the future. Furthermore, most discussions focused on the activity of knowledge transfer – encouraging knowledge as practice rather than knowledge as content. The content side of knowledge is necessarily the focus of existing IEK materials - ie those that are archived and should / could be repatriated.

Like the earlier Scoping Project on IEK¹, in this project we also found a real sense of urgency for inter-generational knowledge transmission. Thus, as illustrated in these Guidelines, any new research should accommodate the principle of “active protection” in its method. Archiving and repatriation activity can only be valuable if it is underpinned by realising it as a locally driven activity reinforcing the importance of customary protocols and knowledge systems, thereby encouraging inter-generational knowledge transmission.

The Handbook for Working with Indigenous Ecological Knowledge and Intellectual Property (output 2) was prepared by Michael Davis. It developed later in the project into a resource specifically for Aboriginal people. The version developed for the project should be regarded as a work in progress. In the recommendations to the NRMB (NT) we suggest that it be further developed, perhaps along the lines of the Grog Book (Brady 2005), which has been through 3 revised editions.

The Report on the Current status of Indigenous Ecological Knowledge and Intellectual Property in the NT is a relatively technical document principally aimed at government, policy makers and lawyers. In it Terri Janke makes a range of recommendations for change (to contracts for instance) that go to the heart of some of the reforms that are needed to recognise Indigenous Cultural and Intellectual Property. This Report is referred to as the ‘Janke IP Status Report’ in these Guidelines.

¹ Indigenous Ecological Knowledge: A Northern Territory Scoping Study. Prepared by NAILSMA for the NRM Board NT. Final April 2006

Part 1

Introduction

1.1 What is the purpose of these Guidelines?

The purpose of these Guidelines is to provide a framework for conduct and decision-making for workers involved in the many complex activities associated with Indigenous Ecological Knowledge (IEK) and Natural Resource Management (NRM) in the Northern Territory. These Guidelines have been developed to help ensure that Indigenous Cultural and Intellectual Property (ICIP) rights are recognised and managed in accordance with key ethical principles. These include respect, free prior and informed consent and basic fairness towards those who hold knowledge.

There are four parts to these Guidelines, including this Introduction. Part 2 outlines definitions and provides the context for use of the Guidelines. Part 3, which can be detached and used separately, comprises the Guidelines themselves.

In the Guidelines a range of principles and practical steps have been outlined to better understand and work with IEK. The Stages of IEK Management outlined in Part 3 of this report (p16-25) offer a step-by-step approach to the (1) Collection; (2) Storage and Access; (3) Acknowledgement and Due Credit; and (4) Repatriation of IEK.

The Guidelines are intended to enable, but not override, Aboriginal community-level decision-making and governance processes and the local protocols that are already in place for some Aboriginal communities, NRM organisations and regional representative bodies. The development of local protocols and research agreements are encouraged and the principles and practices within these Guidelines are intended to provide a guiding framework; an architecture for compliance for all researchers regardless of experience.

1.2 Who are the Guidelines for?

These Guidelines are for all of those people who use, practise and are involved in some way with IEK and NRM and who wish to ensure that the rights of Aboriginal knowledge holders are respected and upheld. As a systematic IEK management resource, the Guidelines are also for those researchers who seek to understand and use intellectual property rights to protect and maintain culture and heritage. Researchers can be based in community organisations (and include rangers) or come from external bodies, such as universities, government departments or visiting non-government organisations (NGOs). This wide group of people are generally referred to as 'researchers' throughout the Guidelines.

Please note that the technical aspects of intellectual property (IP) and further detail about specific IP laws can be found in the Current Status of Indigenous IP Report (3) also produced as part of this current Project for the NRMB (NT), (the Janke IP Status Report).

The principles outlined within these Guidelines are applicable across the Northern Territory, regardless of land tenure (Aboriginal Land or township). In some cases, it would be a breach of

law not to comply with these principles. It is recommended that they apply (see below) to government employees and contractors (Northern Territory or Commonwealth), who work with Indigenous land managers, to ensure that the collection, storage (accessibility) and repatriation of Indigenous knowledge is conducted in an ethical and equitable fashion.

These Guidelines are also relevant to business leaders, policy makers, funding agencies and others seeking meaningful partnerships with Indigenous peoples.

1.3 How will the Guidelines be used?²

These guidelines aim to be ‘best practice’³: in that they are sufficiently broad to operate across a diverse range of contexts throughout the Northern Territory. They are designed to be used in a flexible, rather than prescriptive way. However, it is recommended that regulatory mechanisms are developed from these Guidelines to ensure consistency in standards across the NT. For instance, government workers are currently not required to obtain a permit to work/research on Aboriginal Land. A recommendation of this project is these workers could be contractually obliged to comply with these Guidelines (Parts 2 and 3).

To ensure use of these Guidelines they should be promoted by the NRM Board (NT) as best practice. A challenge for the Board will be encouraging government departments and agencies that undertake work in the NT, but that are not contracted by them, to comply with these Guidelines and utilise the Handbook. One way of gaining support for their use across the many government departments, agencies and private sector entities that do work in the NT could be to maintain a register of departments and organisations that have agreed to comply with the Guidelines and Handbook. As noted above, this could be by contractual obligation on staff. These entities could be promoted as ‘Indigenous protocol compliant’ in terms of their practices. A trade mark could be developed, and the complying agencies could have the rights to use their logo to promote their products and services as complying with best practice standards.

To enforce these Guidelines, the NRMB (NT) should make compliance an express term of contract funding. This will mean that those who receive funding from the NRMB (NT) must comply. We recommend that it should also be made a mandatory element of the terms of employment for staff in recognition of its best-practice objectives.

Consideration should also be given as to whether the Handbook and Guidelines could be made regulations (with due redrafting), under the NT *Parks and Wildlife Act*.

There are 4 Parts to these Guidelines. Each part is complimentary to the others. However, the Guidelines themselves - “Stages of IEK Management” (Part 3) – are the core resource. All the other materials are supportive of this Part and provide the background and context for its use. The case studies at the end of this resource provide pragmatic examples of some of the ways in which researchers and community groups have managed IEK through data bases and archives in appropriate ways for their specific situations.

² See Janke IP Status Report for more detail about enforcement and potential regularity reform.

³ They have been closely informed by the International Society of Ethnobiology (ISE) Code of Ethics (2006) Weblink: (http://ise.arts.ubc.ca/_common/docs/ISE%20Code%20of%20Ethics%20w%20exec%20sum.pdf)

Part 2

Background and Concepts

2.1 Preamble

These Guidelines acknowledge and respect Indigenous people’s prior rights over their own knowledge and intellectual property. This principle underpins these Guidelines.

Aboriginal groups and communities have their own protocols to manage customary knowledge. These protocols have been developed over many generations. They are embedded in rights to land and ceremony and are usually hierarchical, inherited and locally defined. Researchers need to be aware of these protocols, respect them, understand them and work with them as an ongoing part of collaborative research.

There are four parts to these Guidelines, including the Introduction. This part outlines definitions and provides the context for use of the Guidelines. The third Part, which can be detached and used separately, comprises the Guidelines themselves. The Guidelines outline the different stages of the IEK research process and its management, which broadly comprise: 1) Collection 2) Storage and access 3) Attribution and Due Credit, and 4) Repatriation.

2.2 Aboriginal Customary knowledge Protocols

Aboriginal society is framed in terms of families. Families are at the centre - directing all other relationships, including relationships to land and concomitant access to knowledge. For example, kinship terms are used extensively to describe the land itself, or in other words land is kin. Land, as the embodiment of the deeds of past generations, is literally related to those who own it.⁴ Therefore a family with a particular sub-section affiliation or ‘skin’, e.g. Jampijinpa / Jangala will, if fulfilling a range of other criteria, have primary rights to the country that is also of this skin.

Rights and responsibilities to land are inherited through both the father and the mother. These rights confer different, yet complementary, responsibilities on individuals. Thus, broadly, there are two categories of land managers. In Aboriginal English they are often referred to as the “boss” (or owner) and the “manager” (or the policeman). These terms in some languages are given below:

Mother’s father’s country	Father’s Father’s country	Region / language group
‘manager’ or ‘policeman’ (Aboriginal English)	“owner” or “boss” (Aboriginal English)	
Kurtungulu	Kirta	Warlpiri, Pintupi, Luritja
Kwertengerle	Apmereke-artweye	Arrernte, Anmatyerr, Alyawarr
Junggayi	Minggirringi	Katherine and Roper River region and some Yolgnu groups

⁴ See The Alice Springs Native Title Determination – quoting John Morton’s Anthropology Expert Witness Report (1999).

In some regions of the Top End a third category, Darlnyin, is used to describe the relationship an individual has with their mother's mothers' country. In many circumstances at least one representative from each of these 2 or 3 groups (thus a minimum of two people) will be required to make decisions about land-related activities.

Customary knowledge is thus held by groups of people, so that there are inevitably a range of interests that need to be considered when consulting over IEK and NRM related matters.

2.3 Indigenous Cultural and Intellectual Property (ICIP)

ICIP refers to all the elements that make up Aboriginal peoples' cultural heritage. It includes genetic materials, cultural objects and languages, songs, ceremonies, photographs, sound recordings, films and written reports (including archival and historical documents) as well as Aboriginal knowledge systems. In other words, it comprises all the tangible and intangible elements of Aboriginal culture and heritage.

2.4 Indigenous Ecological Knowledge (IEK) or Indigenous Knowledge (IK)?

There is no universally agreed definition of IEK or how it is distinguished from IK. As Indigenous people's knowledge about how to live within and manage their environment is bound by customary law, it is clear that IEK is not simply a subset of IK. Understanding that IEK is not just about "bush tucker" or some narrowly defined perception of environmental knowledge that is distinct from Indigenous culture is an important step to recognising that IEK is socially and culturally embedded. This embeddedness means that knowledge and thus intellectual property is collectively held.

Thus, although particular programs or projects may focus on ecological knowledge that is held by particular Indigenous people, separating this out from how and why the knowledge is held is often difficult, if not impossible. This creates complex issues for both the research process and the management of the research products; the data.

These Guidelines recognise that culture and language are inextricably connected to land and territory, and that cultural and linguistic diversity are inextricably linked to biological diversity. The concept of "biocultural heritage"⁵ draws out these connections. Nevertheless, for the purposes of these Guidelines the term Indigenous Ecological Knowledge (IEK) is used to emphasise the fact that the focus is on Indigenous knowledge as applied to natural resource management. Some examples might illustrate this:

2.4.1 Bushfire management practises

To avoid devastating hot fires and in order to tap into innovative carbon abatement schemes - traditional fire burning techniques (including seasonal burning) are being practised by various ranger groups across the Top End. Many work with the NT Bushfire Council, CSIRO and the NT Department of Natural Resources (NRETA). Traditional owners of the area between Maningrida on the coast to the headwaters of the Katherine and Mann Rivers entered an agreement in 2008

⁵ According to the ISE Code of Ethics (2006) "Biocultural heritage is the cultural heritage (both tangible and intangible including customary law, ... spiritual values, knowledge, innovations and practices) and biological heritage (diversity of genes, varieties, species, ecosystems...) of Indigenous peoples, traditional societies and local communities, which often are inextricably linked through the interaction between peoples and nature over time and shaped by their socio-ecological and economic context. This heritage includes the landscape and spatial dimension in which the evolution of Indigenous biocultural heritage takes place. This heritage is passed down from generation to generation, developed, owned and administered collectively by stakeholder communities according to customary law"

with the Northern Territory Government, the NLC and Darwin Liquefied Natural Gas (DLNG). Early season burn offs by Aboriginal Rangers is expected to reduce greenhouse gas emissions by 100, 000 tonnes a year.

2.4.2 Warlpiri Rangers program

The Warlpiri Rangers Program uses traditional knowledge to find out about faunal extinctions and how to protect endangered species into the future. The work includes trips as part of a Threatened Species Network funded project to look after *walpajirri* (bilby), *jajajina* (mulgara) and *warrarna* (desert skink).⁶

2.5 Indigenous Knowledge as Practice

Crucially, IEK is about practice, rather than just content. That is; it is about the *activity* of cultural transmission, as much as the knowledge that is taught. The practice of inter-generational knowledge transfer - of young people learning 'on country' from their elders - is the underpinning principle of these Guidelines. There are increasingly few elderly people with this knowledge (see Appendix 1, J. Taylor's age pyramid). This consideration informs all stages of the research engagement process – from the collection stage through to the repatriation of research products. Researchers have a responsibility to ensure that, as far as practicable, they acknowledge the cultural source of knowledge and enable the opportunity for inter-generational knowledge transfer within projects.

The principle of '**active protection**' that these Guidelines promote necessitates that researchers are supportive of:

- a) Engaging with the knowledge holders and relevant community;
- b) Ensuring that data is in an accessible form; and
- c) Encouraging opportunities for inter-generational knowledge transmission: for intangible knowledge transfer.

2.6 Knowledge as Data

The type of knowledge that these Guidelines principally apply to is data, (usually as research products). Data is knowledge that has been made into tangible form; that is, it is no longer solely stored in people's heads. It includes written materials (published and unpublished), digital (DVD, video, GPS coordinate lists, audio-files), art, photographs, maps and tape recordings. Thus, knowledge becomes transformed in the process of its recording.

2.7 Formalised Storage of Indigenous Knowledge

The formalised storage of IEK is gaining increasing currency across the globe. However, databases and registers alone do not provide adequate protection of IEK. As found in the UNU IAS report on "The role of registers and databases in the protection of IK" (2004),⁷ they should only be seen as one element or mechanism in a wider system of IK governance. This governance includes observance and application of customary law and practice, national access and benefit-sharing legislation, and *sui generis* IEK law and policy (see the Janke IP Status Report).

⁶ <http://www.clc.org.au/OurLand/rangers.asp>, viewed 14 January 2009.

⁷ UNU IAS - United Nations University Institute of Advanced Studies (2004) Weblink: (http://www.ias.unu.edu/binaries/UNUIAS_TKRegistersReport.pdf)

The above UN Report also found that there are 3 driving forces relating to the development of databases and registers for the protection of IEK. These are;
1) intellectual property, 2) access and benefit sharing and 3) cultural integrity. Getting the balance right between these driving forces is something that each database or register has to consider in its development.

2.8 What is an Archive?

The non-Indigenous view of archives, as records of Indigenous Australia, tend to be as static documentation to be used as legal and historical proof (Onopko 2002).⁸ Historically, Indigenous people did not keep 'archives' as viewed in that context; they had no need to prove their culture through documentation. Instead, traditionally, they relied on a complex system of oral transmission, cultural practice and customary law. Onopko argues that researchers, as the makers of the record, need to review their understandings of the role that archives play. This includes evaluating how collections can best be structured *and* accessed so that they are not repositories of the past, but are also *living* places which are shaped by the nature of the culture they document. Archives can be in the form of databases or registers.

2.9 Databases or Registers?

Databases and registers tend to have different purposes and different legal status. Both, however, can operate for defensive or positive protection and either can be developed at the local or national level. Where databases tend to be more interactive at the community level, registers often operate as a record, as defensive protection, for example the Site Register operated by the Aboriginal Areas Protection Authority (NT). Thus, registers are developed to gain recognition of rights; registering information 'puts it on the record' that the registrant asserts a claim.

Databases on the other hand can be public or private and they have no legal function, except where public databases can act as defensive protection for Indigenous Knowledge (IK) as 'prior art' (opposing patents, see Janke IP Status Report) or if the structure of the database is copyrightable – such as the Ara Irititja database.

The UNU IAS report (2004)⁹ found that the overall effectiveness of databases and registers as a means of protection of IK for the benefit of Indigenous peoples will depend upon a number of different factors, including:

- the extent to which any database is linked to local and Indigenous communities in a manner which respects and responds to the dynamic nature of IK and ensures that compilation and classification of data does not atrophy IK;
- the capacity of a database to compile, maintain and provide access to IK for local communities in a usable form;
- their capacity to control access to and use of IK by third parties, and
- the extent to which any database may serve as an effective means to secure recognition of community rights over IK and as a source of evidence of prior art.

⁸ Onopko (2002) website: <http://www.mybestdocs.com/onopko-h-rmaa2002-indigen-recs.htm>

⁹ UNU Institute of Advanced Studies Report (2004), cited earlier.

Part 3

Stages of IEK Management

(This Part can be used as a standalone resource)

3.1 Collection of IEK

3.1.1 Ethics ¹⁰

Anyone wishing to work with Aboriginal people and their IEK must respect local Aboriginal protocols. This includes actively respecting that IEK is owned by Aboriginal peoples and that ownership of IP must be discussed and negotiated at the outset of a project. Where groups have established their own research protocols, these should be followed. These could be made legally binding by including a term in the relevant funding agreements, university and research body policies etc (see section 3.1.3: Benefit Sharing).

A fundamental principle is to respect and abide by local customary protocols, as these protocols direct decision making over knowledge sharing. As outlined in Part 2 p11) protocols concerning the management of IEK are embedded in relationships to family. These rights are thus shared and associated with specific areas of land. Therefore groups of people, rather than individuals, hold IEK and there are customary protocols for the transmission of this knowledge. Working through existing Aboriginal land management organisations, local organisations (including regional land council offices) where they exist and larger land councils is essential. On Aboriginal Land, the land councils have a statutory responsibility to consult traditional owners and to take instruction from them on any land related matters.

3.1.2 Free Prior Informed Consent ¹¹(education and understanding)

All projects that involve Aboriginal people, and Aboriginal knowledge and practices must ensure that the following free prior informed consent processes have been carried through. This means that

- Aboriginal participants in the project have been **fully informed** about the project by:

¹⁰ All projects in which Indigenous people participate, and that involve Indigenous knowledge, and Indigenous intellectual property, will only be carried out if they meet appropriate ethical standards, consistent with those such as the Australian Institute of Indigenous and Torres Strait Islander Studies (AIATSIS) *Guidelines for Ethical Research in Indigenous Studies* (2000), and the *National Statement on Ethical Conduct in Human Research* (2007).

¹¹ The use of "free" in this concept has raised concern for some people, as it might be seen to imply that the knowledge is free / of no cost. This is not the intended meaning. The "free" it does refer to, as explained in this section, is that consent must be given without coercion, without the knowledge holder being pushed by the researcher. Other than wanting to maintain this important element of the concept, this term is developing as a standard in international law (for example the UN Convention on Biological Diversity). Hence, in this resource and in Janke's IP status Report we maintain this full definition. However, in the Handbook for Aboriginal use (By Davis) the definition excludes the "free" to ensure that there is no misunderstanding.

- Gaining a clear understanding of the purpose, methodology, and intended outcomes of the research, including potential uses and possible commercialisation options; that is **'full disclosure'** of the risks as well as the benefits;
- Ensuring that participants are given adequate opportunities and timeframes to make their **own decisions** about the research and whether they will participate. This may be either as individuals or through their communities and organizations; and
- Ensuring that this consent is offered **without coercion** or pressure;
- Ensuring that consent is an educative process employing bilingual and intercultural education methods and tools, as appropriate to ensure understanding by all parties involved. This may take time and needs to be built into the planning of the project,
- Reviewing the initial consent if the focus of the research project changes or the outcomes are unanticipated in ways that may be problematic for community members;
- Recognising that consent is an **ongoing engagement** between the community and the researcher. Subject to local circumstances, it can be suspended or withdrawn and this should be expressly noted in the informed consent proforma (Protocol) used with the community.

3.1.3 Benefit-sharing (how will participants gain)

- Research must produce **direct benefits** to Aboriginal people through their active participation and negotiation in the decision-making process for the research with due recognition of local priorities;
- All research that entails IEK must facilitate opportunities for inter-generational knowledge transfer. Thus, senior IEK holders who a researcher may be working with should be invited to ask younger family members to participate in the activity: the principle of **"Active protection"**;
- It is the researchers responsibility to provide resources enabling such knowledge transfer, this may include vehicles and catering for a wider group;
- Aboriginal research participants should be **paid appropriate and agreed rates** that acknowledge and pay due respect for expertise. Such rates should be standardised across research institutions and government departments. In the interim the Desert Knowledge Co-operative Research Centre's (DKCRC) 'Schedule of rates of pay for Aboriginal research workers might be employed';
<http://www.desertknowledgecrc.com.au/socialscience/downloads/payratesAborresearctemplate.pdf>
- The terms and conditions of the benefit-sharing arrangements - clarifying expectations and responsibilities of all key parties – should be **negotiated** while gaining free prior informed consent; and
- Such benefit-sharing arrangements can be set out in a **Research Engagement Protocol** that is specific to the research project (see for example DKCRC Research Engagement Protocol template - page 1 - in Appendix). This Protocol can in turn be attached to the funding contract.

3.1.4 Application and use (applying and using the research)

- The question ‘how can the Aboriginal participants **use** the research?’ is a fundamental consideration at the outset of the project;
- Aboriginal peoples’ own research agenda, based on their own priorities and methodologies, should be facilitated and supported;
- **Capacity building**, training exchanges and technology transfer to communities and local institutions should be included in research and co-management activities to the greatest extent possible;
- It is the responsibility of the researcher to **create useful** and relevant research outputs, this may include plain English reports, presentations to school groups and community councils, DVD’s, etc;
- Research reports or research outcomes will not be used in a manner that is likely to adversely affect the interests of the particular research participants, particular Aboriginal communities or of Aboriginal people generally.
- Future use of research materials could be considered and included in a **copyright license form**, or a separate form, that attributes responsibility for the research materials in the future.
- If an external researcher is recording or filming IEK a **release form** should be used. This should clearly outline the proposed use of the film/recording, where copies will be deposited, who to speak to if consent is required in another context, access conditions and so forth (See Janke IP Status Report).

3.1.5 Documenting IEK in NRM research (depending on who’s keeping the records)

- External researchers have a responsibility, during the collection phase, to keep **accurate records** of names of people, communities or clan groups involved. This includes taking addresses and contacts for key people who will speak for the IEK material in the future, as well as those who shared their knowledge in the present;
- Such support for **correctly provenancing data** ensures that collections are clearly traceable to their origins, while it is important for the purposes of due credit or establishing ‘prior art’ in the event of future ownership claims (see discussion on Geographic Indexes in the Janke IP Status Report);
- Information should also be included on who took the photo/recorded the material;
- External researchers have a responsibility to ensure that they have **scoped all relevant previous research** on the issue, both so as to not repeat the research and to allow this material to inform both their own and local knowledge;
- Use of **local place names**, local language concepts and terms is a standard approach to recording IEK and bio-diversity;
- Internal community researchers, if given access to funding, are encouraged to **create dictionaries** and glossaries of local language terms and phrases used to describe IEK (they should also be aware of any copyright issues and apply relevant notices to any publications);
- For all researchers; enough information should be included, about the place/ownership, to ensure that data can be restricted where necessary (such as with material that is gender specific, secret/sacred, or personally sensitive) and as appropriate;

3.2 Storage and Access

3.2.1 Storage

- Once permission for the ‘capture’ of knowledge has been granted (through free prior informed consent) a key consideration and question to ask the IEK holder is “where should this knowledge you are sharing with me/the project be **stored**?”
- It is the external researcher’s responsibility to assist, as far as practicable, with ensuring that materials they have developed in the course of research are stored in ways and places **accessible** to the IEK holders. This may require assistance with setting up or acquiring physical infrastructure (such as computers);
- The researcher needs to outline the **current storage possibilities** and consider their suitability (a lockable filing cabinet, a centralised system such as the NT government TRIMS – see the Davis Handbook on how TRIMS works);
- Where they exist, local community archives, keeping places and knowledge centres should be utilised. Subject to negotiation and consultation, research products should be **deposited with communities**, and stored in accordance with community protocols; digitised data on servers is now affordable and can be made secure;
- Even with local storage facilities and access friendly programs systematic centralised storage may also be necessary (re: high turnover of remote staff and fallibility of local technology);
- Thus **dual storage locations** may be necessary – in the head office or university as well as on the community as both the ability to store and the materials that require storing are considered. Appropriately moderated mirror copies (on and off site) provide additional security for the knowledge base.
- If IEK storage is on either a public or private database or register (in accepted format) it may usefully be part of the ‘prior art base’ to oppose a patent. Patent examiners would need access to the register/database and would need to endorse it (see Janke IP Status Report).

3.2.2 Access

- Ensure appropriate **access** to researcher materials is negotiated, such as a community located digital archive or knowledge centre;
- This may include **user-friendly** and interactive icon-driven ‘shop fronts’ (a living data base), including providing relevant access protocols and data protection for both Aboriginal and non-Aboriginal users (see the **Case Studies in Part 4**).
- Once stored and/or archived, data must be **accessible upon request** by Aboriginal people with interests and rights in it;
- Moderation of requests for access is almost inevitable given the gender, ceremonial and commercial sensitivity of much data. **Secure access passwords** might be given to individuals or families. However, these must be updateable;
- Research materials will not be used for any purpose other than for which it was collected without the free prior informed consent of the Aboriginal persons that originally provided the information (or their descendents);
- If the IEK data is not stored locally, but in a government or university office it will be held in accordance with relevant legal, ethical, and Aboriginal community and cultural

guidelines, including the Information Privacy Principles contained in the Privacy Act 1988 (Cth). Nonetheless, discussions need to be held as to how it can be reasonably accessed;

- Government offices are subject to **Archives law** (1983 Act), requiring the deposit of government research materials to the National Archives. The record must be transferred to the archives if the record ceases to be a current Commonwealth record or within 25 years of the record coming into existence.
- Under the Archives Act anyone has a right of access to most Commonwealth government records that are over 30 years old.

3.3 Attribution and Due credit

- Aboriginal research participants and local communities must be acknowledged in accordance with their preference and given due credit in all agreed publications and other forms of research outlet;
- **Due credit** means that, at the least, individuals who assisted be named in the acknowledgements section of the report / publication (preferably at the front of the document);
- **Joint authorship** with Aboriginal participants to the project should be considered, if appropriate;
- Discussions need to be held and agreement reached on where the intellectual property that is produced by the project is vested. Joint authorship does not mean joint copyright;

Different materials/data have different copyright laws;

- For **reports and publications** copyright usually vests with the government department (such as CSIRO) or with the CRC (such as Desert Knowledge), unless other arrangements are made. If there is substantial IEK then co-authorship should be with the Aboriginal organization and individuals (see Janke IP Status Report – DKCRC Jampijinpa case study).
- For **films** copyright belongs to the maker, but rights for participants in films should be respected through performer's rights / moral rights. Note also that release forms are required.
- For **sound recordings** copyright belongs to the researcher / researcher organization and speaker equally.
- For **photographs** copyright belongs to the researcher / researcher organization, but use is subject to clearance from the photographic subject (release forms required) with special provisions for deceased if published after death.
- External researchers who hold copyright in IEK related materials hold a **fiduciary duty** to safeguard the integrity of the knowledge (see Janke IP Status Report). This could include an ongoing duty to consult and display a traditional knowledge notice in conjunction with any copyright.
- The contributions of Aboriginal organisations, research institutions and funding bodies should be recognised;
- Acknowledgements and credits should also appear in databases and other secondary uses so that the connection to the original IEK material is maintained.
- Research may be published in a form that does not allow for identification of the Aboriginal persons or communities involved, if the initial informed consent obtained from such persons or communities specifically sought non-attribution (e.g. pseudonyms may be required in some contexts);

- **Research reference groups** may be established as part of a project to assess the content and risks of any proposed publication; with effective representation of Traditional Owners, researchers and other interested parties.
- An alternate perspective **cautioning against publication** (especially in this area of IK/ethnobotany/ethno-pharmacology) is the “precautionary principle”: publications present opportunities for uncontrolled appropriation and exploitation of IK and resources by third parties. Because third party users do not interact directly with providers of the knowledge, they rarely assume obligations to communities from where the knowledge originated, and are often unaware of negative impacts that may result from knowledge appropriation. Thus, a mechanism is needed that would require all users to seek consent through direct interaction with Indigenous communities (UNU IAS report 2004:12).

3.3.1 Suggested Traditional knowledge notice

Such a mechanism could be to include an “Aboriginal story notice” or “Traditional knowledge notice”.

Notices included within published documents and websites will put the users of particular content on notice that any traditional knowledge should not be used, adapted or commercialised without the free prior informed consent of the relevant custodians. Here is an example of a notice used in a published book on Aboriginal plant knowledge:

“The language and information contained in this book includes traditional knowledge, traditional cultural expression and references to biological resources (plants and animals) of the Manyjilyjarra and Warnman people. The information is published with the consent of Manyjilyjarra and Warnman traditional custodians, for the purposes of general education and language maintenance purposes”.

Optional paragraphs to allow researchers a limited licence if appropriate

“Use and reference is allowed for the purposes of research or study provided that full and proper attribution is given to the author, knowledge holder and traditional custodial group. No commercial use by educational institutions is authorized without prior consent and negotiation of rights”.

“This information should not be used commercially in any way including in tourism, food technology including bush tucker applications, medicines, pharmaceutical products, health and beauty products, storytelling or as trade marks, patents and designs, without observing the Aboriginal cultural protocols of prior informed consent, attribution to traditional Indigenous communities, cultural integrity, and the sharing of benefits”.

3.3.2 Alternatively – Aboriginal copyright (Bannister and Hardison 2006)¹²

“The Tulalip Tribes [of north America] are developing an Aboriginal copyright that will accompany any research that is made using tribal traditional knowledge. Non-traditional, factual information, such as historical record is explicitly exempt. The copyright must accompany any publication, and while researchers and publishers may claim copyright in works as-a-whole, rights in passages marked by Aboriginal copyright are retained by the tribes in perpetuity. The intention is to limit uses that may be made of published information. Amendments can only be made by contacting the traditional knowledge holders. In some cases, publication may be allowed only if special provisions are made for certain kinds of protection, such as the development of special collections with access controlled by the tribes. The code is designed to respect the tribes' collective ownership over traditional knowledge, and their rights to set the terms of its use” (Bannister and Hardison 2006:15).

¹² “Mobilising Traditional Knowledge and Expertise for decision making on Biodiversity”. See <http://www.polisproject.org/PDFs/BannisterHardison%202006.pdf>

4 Repatriation:

This includes the return of any knowledge, in the form of data, that has been removed from the location from which it was obtained. Bodies of IEK data exist within a diverse range of organisations and government departments throughout the NT, Australia and internationally. Such data includes photos, maps, reports, oral recordings, lists of place names/sites, list of plant names/uses, digital recordings and DVD's.

4.1 Return and feedback

- Long term research is encouraged, that is; when the researcher returns over a period of years. This provides the opportunity for building relationships and trust and developing longitudinal outputs and evaluation;
- Researchers should ensure that there is appropriate and relevant (plain language) feedback of plans, knowledge and research products, including all intellectual property to all Aboriginal people with interests in the project;
- In returning and depositing final products of research to communities, researchers will recognise local keeping places and knowledge centres, and store and retrieve materials in accordance with community protocols;
- Feedback and return of results and project information will be provided to all Aboriginal participants in ways that are relevant, accessible and meaningful;
- All efforts should be made to support the repatriation of other data that came to light during the researcher's project.

4.2 Commercialisation and Equitable Benefit sharing

- No commercialisation (including the publication of books on IEK) should take place until researchers have ensured that the Aboriginal people and communities who have rights and interests in such material have had opportunities to decide whether to provide their free prior informed consent to such commercialisation;
- Aboriginal people have a right to expect that research conducted on their lands and in their communities will be of benefit to them. The precise terms of benefit-sharing will be determined by negotiation of all participants on mutually agreed terms when the research is developed;
- These mutually agreed terms need to be defined by an MOU or, when the research entails interest in Aboriginal medicinal knowledge or the specific properties of plants (bio-prospecting) a legally enforceable agreement.¹³

¹³ For an example of a Traditional Knowledge Agreement (First Nations Canada) see "Template Traditional Knowledge Protocol. <http://www.fntc.info/files/FNTC%20Strategic%20Plan/Traditional%20Knowledge%20Protocol%20Template.doc> In Australia see the Plants for People project – Titjikala (near Alice Springs)¹ Evans, L., Scott, H., Muir, K. & Briscoe, J. (2009). Effective intellectual property protection of traditional knowledge of plants and their uses: an example from Australia. *GeoJournal*, 74(5), doi 10.1007/s10708-008-9229-6. In Davies, J. & Holcombe, S. (2009). Desert knowledge Special edition *GeoJournal*, 74(5).

- The “NT Government Policy for access to and use of Biological resources in the NT” states:

“The Northern Territory Government has established this policy to ensure that the conditions under which biological resources are accessed and used for the purposes of bio-prospecting are such that the community benefits directly from these activities. To this end benefit sharing agreements are to be entered into to ensure that any benefits (monetary and non-monetary) ... are shared fairly and equitably ...on mutually agreed terms”.¹⁴

- It is incumbent on the researcher to ensure that the Aboriginal group/individuals they are seeking to work with have access to appropriate legal advice in developing an Agreement or MOU.
- Intellectual property rights, such as patent or plant breeders rights, should be jointly owned.
- See Janke’s IP Status Report for further advice on patents and plant breeders rights.

¹⁴ “Policy for access and use of biological resources in the Northern Territory. NT Department of Business, Economic and Regional Development (DBERD). See http://www.nt.gov.au/business/documents/general/DBERD_Policy_Biological.pdf

Part 4

Case Studies

This Part overviews a series of case studies of archives, registers and community data bases or knowledge centres. They are included to inform the potential development of Aboriginal community databases and to provide information on some of the resources that exist in the Northern Territory.

Successful examples of local knowledge centres: Some key ingredients

In this section the key resources (human, financial and institutional) are briefly outlined that are necessary for successful local knowledge centres or community databases. The examples drawn on are taken from the Ara Irititja data base, the Mukurtu community archive and the Anindilyakwa knowledge centre:

Must haves for local data base technology:

- Variable user access
- Community-focused metadata and search categories
- User-generated comments and tags
- Restricted content based on locally defined protocols
- The ability to print, edit and/or remix content for individual use
- Reliability of computers and high speed internet access

Most of these principles were taken from those developed for the Mukurtu archive in Tennant Creek (K. Christian 2005, 2008)

Other features of successful knowledge centres /archives / data bases include:

- Affiliation (usually through shared office space) with an existing successful community organisation; such as a culture/language centre, land management organisation, museum or library.
- Shared access for both genders is important for community wide use. This may include demarcated male / female areas.
- A strong community drive to develop and maintain the database as an active and useful tool to maintain and preserve local cultural values. A 'cultural transmission' educative committee or group may be required to oversee such moderated servers at the community network level.
- Strong community links with external resources that provide support and expertise. Such resources will include social science researchers and IT experts who are able to work with local knowledge protocols.
- Crucially, ongoing funding for Aboriginal staff and external support is needed to ensure that the archive / data base / keeping place remains an active place that is constantly growing and adapting to changing needs.

Case Studies: community data bases, Archives and Registers

Community Database case studies:

1 Mukurtu Wumpurrarni-kari Archive – Tennant Creek ¹⁵ (per K. Christen)

This archive sits within the Nyinkka Nyunyu Art and cultural Centre in Tennant Creek. The need for the archive was realised during the development of the Cultural Centre, which opened in 2003, when community members sought to repatriate items for inclusion in the Centre. They began with some physical objects that had been returned, however, many more – objects, photos, videos, etc remained within institutions or private collections. With some investigation they found that many people – former school teachers, missionaries, miners, etc – had collections of photos and videos from the 1930s. Two Warumungu community members (a male and female) were employed for several years gathering CDs full of images from around the country. By 2005 they had thousands of photos and then had to develop a comprehensive system to archive them locally. Their goal in creating a community archive was to leverage the technological functionality of search, database retrieval, and interface design to create a system built from Warumungu protocols and knowledge systems.

The archive operates as an Aboriginal system of accountability in the ways in which it manages access to knowledge. Like other Aboriginal knowledge centres, it is not a free search engine like Google, but has in place a sophisticated system of access with the expertise of technical design consultants, who like K. Christen, are from the US. It is a visually driven interface with short paths to content: nothing more than 2 clicks of the mouse.

In addition to standard archive metadata, including a unique ID number of each piece of content, dates, names and places, all content is tagged with a set of restrictions relating to family relations, gender and country affiliations. When data is entered a specific set of criteria must be considered: which families can see the image; is the content gender restricted; the image/content restricted to those relating to specific countries; is the image sacred and thus restricted to elders only; is anyone in the video/photo deceased; is this content open to everyone. There are pull down menus that allow this checking.

Each individual is assigned one of 3 status levels, determined by community members; community member, traditional owner and elder – each status has associated levels of access to sacred materials, the ability to add content and edit materials. With this individual user access each person, in a sense, has their own mini-archive. Each user can add comments and stories to any piece of content as part of the on-going curatorial process and as active participants in the production and preservation of knowledge. Preservation becomes a type of cultural production. see Kimberley Christen references and website: <http://www.mukurtuarchive.org/>

¹⁵ This case study draws on 3 Kimberly Christen papers:

2005. "Gone Digital: Aboriginal remix and the Cultural Commons". In the International Journal of Cultural Property 12:315-345.

2007. "The Politics of Search: Archival Accountability in Aboriginal Australia". Work in progress conference paper. April 28.

2008. "Archival challenges and digital solutions in Aboriginal Australia". In The SAA Archaeological Record. March.

2 Groote Eylandt Aboriginal Knowledge Database

(taken from Janke's IP Status Report)

The Anindilyakwa Land Council from Groote Island has initiated the 'Memory Place' database, which is designed to store Aboriginal knowledge in a variety of categories.¹⁶

Memory Place is a software project being developed by the Anindilyakwa Land Council, who represent the traditional owners of the Groote Eylandt archipelago in East Arnhem Land, for use in Indigenous communities on Groote Eylandt and in other communities. The software is being developed in close partnership with the NT Library.

'Memory Place is designed to store and present information and materials including but not limited to: clan songs and stories; modern music; historical and contemporary photos and videos; Aboriginal plant and animal knowledge; totemic information; mapping data and information about places; photos and stories about art and crafts; information about people and clans. The first version of Memory Place contains a sub-set of the above, and later versions will expand on this.'

'Memory Place has been developed in response to the wishes of older Groote Eylandters to pass on cultural knowledge and language to younger generations, and provide a safe keeping place for records of the past, in a culturally sensitive and responsible way. Memory Place seeks to address the many challenges and current issues in the rapidly developing and converging fields of Indigenous Knowledge recording, and digital archiving in Indigenous communities.' (From the website)

3 Warlpiri Media as a Keeping Place (Yuendumu)¹⁷

Warlpiri Media is widely accredited as being the first community organization to develop and facilitate video production in remote Aboriginal communities. As a result, they have a rare and unique collection of tapes that have national and international significance. It is a collection of videotapes from 20 years of production. They estimate that there are over 1000 tapes in the collection.

The collection consists of WMA News presented by Warlpiri speakers, recorded ceremonies, Yuendumu School 'Country Visits', 15 years of Yuendumu Sports Weekends and 13 episodes of the Warlpiri language children's program 'Manyu Wana'.

As archive videos are being logged, some community members have sat in on the process. As a result, there is a real sense of community and unity in recognizing the history of WMA productions and the people represented on screen.

The WMA Archive Project was initially funded by the then ATSIC and is still in its first stage of development with an aim to clean and transfer 300 hours of fragile and important tapes to a more stable format for the longevity of the archive. They have also recently set up a room where community members can watch Warlpiri media materials and others that are beginning to be repatriated. A small library is also being established with a focus on research with Warlpiri.

¹⁶ <http://memoryplace.sourceforge.net/>, viewed 20 January 2009.

¹⁷ Thanks to Susan Locke and Simon Japangardi Fisher of Warlpiri Media for giving Michael Davis and myself a tour of their facilities and participating in the workshop, with other staff, for the Handbook.

'This project is very valuable for the younger generation, for our grandchildren in this era of new technology. The archive project will facilitate the Warlpiri, Kaytetye, Anmatyerr and Pintupi people. I feel confident in my workplace, working on the database and proud to be part of this important project and I enjoy collaborating with other archive workers' (Simon Japangardi Fisher, cultural liaison).

Warlpiri Media have also developed a range of protocols and access agreements for Yuendumu. These include the Media, filming and photography protocols and the Application to the Warlpiri Media keeping place for Kardiya (non-Aboriginal people) and the associated Access Agreement.

4 Yanyuwa song line project and the Yanyuwa website (Borroloola) ¹⁸ **(<http://www.deakin.edu.au/artsed/diwurruwuru/yanyuwa/index.htm>)**

A close collaboration between Yanyuwa people, and at their request, IT developers from Deakin University, John Bradley (Monash uni), Richard Baker (Australian National University) and others, has led to the development of the Yanyuwa Land and Life website. Bradley as a linguist and anthropologist also led the development of the associated Kujika animated song lines project (not on the website).

As you open the website (above) it notes: **This website belongs to the Yanyuwa Community.** The website itself, however, is open access and is a general resource that acts as a "mini museum" which archives important cultural information about the Yanyuwa and acts as a platform to communicate their cultural values to a wider non-Aboriginal audience. So this website could be regarded as a resource for external researchers as much as for Yanyuwa community members. It is therefore not interactive or locally based (unlike the other archives/knowledge centres discussed). As a resource it lists Yanyuwa related publications and has links to the AIATSIS Mura catalogue when you search for "archives" – noting that the most extensive archival material is found there. It also lists a wide range of Yanyuwa related publications from the diverse range of researchers who have worked there.

So it is a useful repatriation resource. Likewise, the Kujika songline animation project is repatriating songs. Bradley and Kearney from Monash's Centre for Australian Indigenous Studies are working on animating over 400 kilometres of song lines and 26 stories from Aboriginal elders in the community. These songs (like other Dreaming songs) record local knowledge about specific species and local biodiversity.

Funding is from the Sidney Myer Foundation. Bradley said Indigenous languages like the Yanyuwa were dying at an alarming rate taking with them enormous amounts of knowledge. "Thirty years ago there were close to 230 people who spoke the language," Bradley said. "Today there are about five women and four men capable of speaking the language as their first language. "For many of these elders, these animations are about a will and testament left in a form that future generations can access."

"The Yanyuwa elders are very progressive in their willingness to maintain cultural continuity using modern day media," Kearney said. "They realise that to try and teach the language to young people using traditional methods would be like teaching them French or German. She noted that "These animations will convey information critical to the development of Yanyuwa youth, including their identity and role in their family and country."

¹⁸ Some of this content is taken from <http://www.monash.edu.au/news/monashmemo/stories/20080528/animation.html>

Non-Aboriginal Archives

1 Strehlow Research Centre (SRC), Alice Springs¹⁹

This Centre was established under sui generis Northern Territory legislation in 1988; *The Strehlow Research Centre Act*. The Strehlow Centre (SRC) building opened in Alice Springs in 1991. The original aim of the Centre was to centralise and preserve Strehlow's diverse ethnographic collection of ceremonial artefacts, photographs, films, recordings, genealogies, field and personal dairies and letters; a 'keeping place'. At the time there was controversy and debate amongst some Aboriginal groups and organisations about the value of a repository that did not allow for repatriation or encourage Aboriginal participation in the development of the Centre. Nearly twenty years on, the major work of preserving and archiving the collection has been virtually completed and the focus appears to be turning to making the collection accessible through indexing it and cross-referencing materials with supporting materials. To this end, the Act was revised in 2005 to allow for repatriation. The first successful repatriation, the return of shields and tjurunga (all male ceremonial objects), took place in mid 2008. In late 2008 there were a number of repatriation claims being processed. Establishing the unique provenance of objects and identifying those with contemporary rights requires extensive research, which typically includes linking requesters with genealogies, film footage or photos and written ethnographic evidence.

This refocused SRC has also led to the engagement of a contract staff member to specifically process requests for genealogies. Since May 2008 there has been a 30% increase in requests for family genealogies. This new social history role has the potential to engage the (principally Arrernte) Aboriginal community, as perceptions gradually change. However, if the SRC is to shift from being a research centre for non-Aboriginal people (there is also an open access library) to a resource centre for Aboriginal people then it seems clear that a suite of formal policies are required. Such policies might include an Aboriginal access protocol and access agreement, and the development of an Aboriginal committee to advice on the future direction of the Centre and its approach to repatriation. The Minister still has the ultimate power to decide whether objects leave the centre. The Board consists of Kathleen Strehlow or her nominee, while she lives, and 6 other members appointed by the Minister of whom one must be appointed to represent the interests of Aboriginal people (i.e. they do not have to be Aboriginal people)²⁰.

While it is the stated policy of the board to consult traditional custodians regarding access to the materials and the traditional custodians can express their concerns, the pathways for them to do so are not necessarily clear-cut. Ultimately any decision about the collection rests with the Board and then the Minister, as above.

2 NT Archives²¹

The NT archive is in Darwin. As the Commonwealth administered the NT from 1911 to 1978, the records held by the Archives office in Darwin hold considerable information about Aboriginal children removed from their families. These include Aboriginal population records, patrol officers reports and records about government run institutions that housed Aboriginal children. An MOU was developed in 1997 for open access to commonwealth records (those that are over 30 years

¹⁹ We would like to thank Adam MacFie who was Acting Director during our visit (19/11/08) to the Centre for much of this content.

²⁰ See the Strehlow Research Centre Act: http://www.austlii.edu.au/au/legis/nt/consol_act/srca2005261/

²¹ See National Archives of Australia Fact Sheet 114 "MOU with NT Aboriginal People".

old). A register of wards and records relating to pastoral properties, health and education are also stored in the NT Archives – which also has an active ‘shopfront’ for family history link-up in Darwin city.

3 Commonwealth Archives

The Commonwealth archives are based in Canberra. They are included here because of the range of policies that have been developed, below.

Australia’s Federal Record: A review of Archives Act 1983 (Australian Law Reform Commission Report No 85, 1998) notes that

Aboriginal and Torres Strait Islander people have had a significant but troubled relationship with recordkeeping by governments, churches and other organisations and individuals... At best, many of these records now seem intrusive and patronising. At worst, they can be cruel, malicious and misleading... yet the records created by Europeans are also of great importance to Indigenous people... [They] provide vital evidence on issues such as land rights and the reunification of families from whom children were removed forcibly.

This page(http://www.archivenet.gov.au/Resources/indigenous_aust.htm#holdings) as part of the Archives of Australia network, offers opportunities for the promotion and protection of collections of value to Aboriginal and Torres Strait Islander people. It provides annotated links to websites which provide information about archival resources relating to Indigenous Australians under the following headings:

- [Policies on relations between Aboriginal and Torres Strait Islander people and archives](#)
- [Recommendations relating to records by inquiries into issues facing Aboriginal and Torres Strait Islander people](#)
- [Holdings of and guides to records relating to Aboriginal and Torres Strait Islander people](#)

Registers

1 Aboriginal Areas Protection Authority, Darwin and Alice Springs

(mostly after Scott 2004):¹⁹

The Authority is a twelve-member board established under the Northern Territory Aboriginal Sacred Sites Act. This Act is NT legislation pursuant to special powers given to the Territory under Commonwealth legislation to protect sacred sites in the NT. Five male and five female Aboriginal custodians of sites nominated by the Northern Territory Aboriginal Land Councils, together with two Government appointees, constitute the Aboriginal Areas Protection Authority. The AAPA keeps a register of sacred site and issues authority certificates (from website <http://www.nt.gov.au/aapa/index.html>).

Overview Aboriginal Sacred Sites of the NT database. This includes the locations of registered and recorded sites, anthropological information and administrative records
Rights Management IP and Negotiation Traditional Owners and the AAPA Board give permission for data to be collected. TO's can come and access data whenever they want to. Data can be exported to communities in any form if requested. CDs of Aboriginal song recordings were produced and distributed to participant communities in 2003 and presumably this is ongoing.

Content Site information includes: location, boundaries, custodians, stories connected with the site. This dataset is continual and dynamic and will never be complete. Data is gathered through consultation with relevant Aboriginal site custodians. The Authority Board reviews data about registered sites before being placed on the public Register. Data on recorded sites is to a lesser standard of accuracy and completion. Data covers all of the Northern Territory.

Data Structure Some data using old maps can be inaccurate but now differential GPS is very accurate. Input mechanisms include maps, photos, audio, movies and text.

Users Public may view site location and extent, and other data on the Register of sacred sites. The Authority maintains records of inspections of this Register.

This data may be copied and other data may be viewed with the permission of the Aboriginal Areas Protection Authority. Aboriginal TOs occasionally request information. Data could be put onto the internet and TO's could use a password to gain access. Data can be returned to communities but the AAPA has not received any requests as at 2004 (note that this is in distinct contrast to the Department of Indigenous Affairs in Western Australia which has all generic non-restricted site data accessible on a web enabled database and where requests for repatriation have been occurring from communities and representative bodies for many years (Veth, pers comm. 03/03/2009)

Technical and Design All information is maintained in an Oracle database. A GIS system is connected to this. Licencing of Oracle is very expensive. As at 2004 a new version was estimated to cost approx \$100,000. The database requires a couple of big servers to run it. Users can search any field and make detailed queries.

General Comments Could be made more visual for use by Aboriginal people i.e. click on maps and zoom to location (as in the Titles Information System on former Department of Mines and Energy website <http://www.dme.nt.gov.au/>). The internet is the most accessible route and there is no need for expensive software.

Overall Assessment Potential for data to be returned to communities especially as a web-based interface. Oracle is moving more towards becoming web-based.

2 The Land Councils (as registers)

(mostly after Scott 2004):

About the Organisation The land councils are Commonwealth statutory bodies operating under the Aboriginal Land Rights (NT) Act 1976. It is an elected Aboriginal body which represents all Aboriginal people in the southern part of the Northern Territory. It is also a native title

representative body (From <http://www.clc.org.au/>).

Overview No formalised IEK databases exist as yet. However, there are burgeoning land management units in all of the four NT land councils. Data has been collected for IEK reports for many Aboriginal groups used for planning purposes by CLC and TO's and to record the knowledge of the old people. Current funding comes from a variety of sources including the IPA program and NHT, now Caring for our Country (Department Environment, Heritage, Arts).

Content: plant and animal uses, fire management, extensive anthropological content about land tenure and Dreamings

Data Structure: text and photos. As at 2008 the Ara Iritja program has been purchased and redeveloped as "my story". This is a database of public and often newsworthy text and photos. The CLC head office has a computer accessible in the foyer for public access.

Users TOs have hard copy reports and can request information from CLC.

Overall Assessment Possibility exists for returning the IEK information to TOs in a digitised format and further possibilities for expanding the "my story" database.

See http://www.clc.org.au/Looking_after_Country/iek.html for some of the current work the CLC is doing with IEK and caring for country and

http://www.clc.org.au/Media/features/youth_media.html

for work with Warlpiri youth and digital technologies

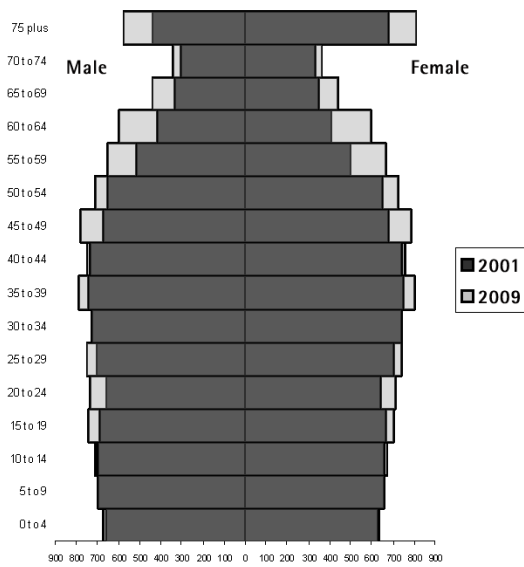
Acronyms

AAPA	Aboriginal Areas Protection Authority
ALRA	Aboriginal Land Rights Act
CBD	Convention on Biological Diversity
CLC	Central Land Council
CSIRO	Commonwealth Scientific and Industrial Research Organisation
Cwth	Commonwealth
DKCRC	Desert Knowledge Cooperative Research Centre
EPBC	Environment Protection & Biodiversity Act
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
IUCN	International Union for Conservation of Nature
NAILSMA	North Australian Indigenous Land and Sea Management Alliance
NHT	Natural Heritage Trust
NLC	Northern Land Council
NRETA	Natural Resources Environment Arts and Sport (NT)
NRM	Natural Resource Management
NRMB (NT)	Natural resource management Board of the Northern Territory
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
WIPO	World Intellectual Property Organisation
WCC	World Conservation Congress
WWF	World Wide Fund for Nature

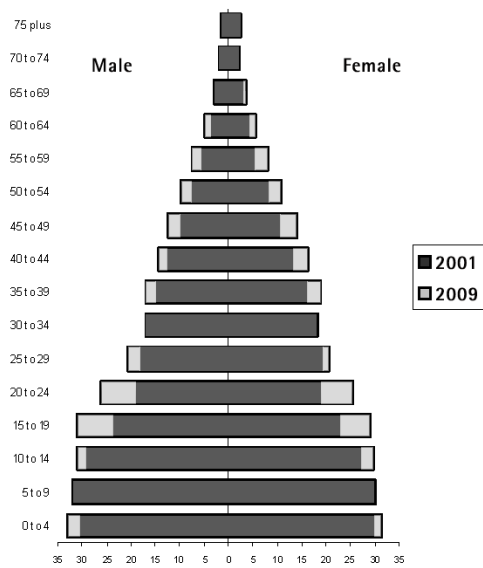
Appendix 1

Total and Indigenous Australian age pyramids 2001 and 2009

Total Australian Population Australian



Australian Indigenous population



Source: ABS 2004a.

J. Taylor. (2006) CAEPR DISCUSSION PAPER No. 283/2006. "Population and Diversity: Policy Implications of Emerging Indigenous Demographic Trends".

This graph illustrates the youthful age of the Indigenous population, where the highest proportions of the population are under 24 years of age.

Appendix 2

<http://www.desertknowledgecrc.com.au/socialscience/downloads/AborEngageprotocoltemplatedoc.pdf> (page one only)



DESERT KNOWLEDGE
CRC

Desert Knowledge Cooperative Research Centre

ABORIGINAL RESEARCH ENGAGEMENT PROTOCOL

1 PREAMBLE

The conduct of research undertaken on behalf of the Desert Knowledge CRC can, through partnership, provide real social, cultural and economic benefits to Aboriginal people and their communities. This protocol acts as a guide to both researchers and community members in how research is conducted in Aboriginal Communities. This protocol is also a negotiation tool that enables the researchers and community residents to sit down and discuss the benefit sharing arrangements and mutual expectations and outcomes from the research. It is, therefore, an active document that is specific to each research project, within the framework of best practice outlined. The sections at the bottom of each heading are rough guides only – they are to be altered and/or filled out as relevant to each project.

Continual improvement of this protocol will be taken on the advice of Aboriginal research partners and other researchers within the Desert Knowledge CRC. To this extent this protocol is a work in progress (2007).

2 PRIOR INFORMED CONSENT

- 2.1 All applications for research must obtain the prior informed consent of the Aboriginal people the research is going to be engaging with. It is important to note that consent can be retracted at any time during the research project. Informed consent is ongoing. It is the responsibility of the researcher/s to keep Aboriginal people involved in and affected by the research updated on emerging research outcomes.
- 2.2 The Desert Knowledge CRC actively encourages Aboriginal involvement in designing and developing projects. This iterative methodology allows scope for investing in local relationships and acknowledges that informed consent will take several meetings and cannot be granted at the first meeting, but only after the Aboriginal participants are happy with the research project and understand its implications.
- 2.3 Where the research project has been designed externally the researcher/s should provide the communities and Aboriginal organisations involved with full details of the proposed project. This will assist applicants who wish to obtain a permit to enter Aboriginal land in order to conduct research in Aboriginal communities in seeking prior informed consent from Aboriginal people. The possibility of adapting the project to local interests should be explored once in the community.
- 2.4 Discuss: (organisation/community) and researchers from the (name of research project) are working together to (project goal)
- 2.5 Discuss: The story of (research project) will address and talk about (project objectives)
- 2.6 Discuss: This is how the project will be done collaboratively (project methodology)

Appendix 3

Relevant Declarations and Conventions:

- The Johannesburg Declaration on the Biopiracy, Biodiversity and community rights (2002) – quotes below (<http://www.wrm.org.uy/subjects/GMTrees/johannesburgdeclaration.pdf>)
 - “We oppose biopiracy and patenting of our biological resources and knowledge because of goes against our human and cultural rights and identity. We firmly believe that benefit sharing is possible without patents.
 - “We believe that community rights over biodiversity and indigenous knowledge are collective in nature, and therefore can’t be privatised or individualised. Intellectual property rights as applied to biodiversity and traditional knowledge are private and monopolistic in nature and therefore incompatible with community rights. IPRs cannot exist within a traditional knowledge system and attempts to bring these two worlds together are misguided and unacceptable.
 - “We call on the international community to initiate a process to negotiate a legally binding agreement under the CBD to prevent biopiracy, to ensure national sovereignty over biological and genetic resources and to protect the rights of Indigenous and local communities over their resources and knowledge”
- Declaration on the rights of Indigenous Peoples (see articles 24, 29 and 31) (http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)
- Convention for the safeguarding of the intangible cultural heritage. UNESCO (<http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>)
- **Convention on Biological Diversity (CBD)** (<http://bc.zo.ntu.edu.tw/cbd/cbd-en.pdf>) and <http://www.cbd.int/>

The Australian government is a signatory to the CBD

- Article 10. Sustainable Use of Components of Biological Diversity
Each Contracting Party shall, as far as possible and as appropriate:
 - (c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;
 - (d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and
 - (e) Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.
- Article 17. Exchange of Information
2. shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialized knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information.
- Article 18. Technical and Scientific Cooperation
4. ...shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.

Relevant Resources

Community Cultural Documentation Clearing House Site:

- World Intellectual Property Organisation (WIPO) – clearing house site (<http://www.wipo.int/tk/en/folklore/culturalheritage/community-cult.html>)

New technologies provide communities with fresh opportunities to document and digitize expressions of their traditional cultures, meeting the strong desire of communities to preserve, promote and pass on their cultural heritage to succeeding generations. Yet, these new forms of documentation and digitization can leave this cultural heritage vulnerable to unwanted exploitation.

In response, WIPO:

- has established a cultural documentation and IP management training program for communities, in partnership with the American Folklife Center (AFC) and the Center for Documentary Studies (CDS) in the USA. The program provides intensive, hands-on training in documentary techniques, archival skills and IP management necessary for effective community-based cultural conservation;
- has established a searchable database which includes IP protocols and codes of conduct established by indigenous and local communities;
- makes available a range of other practical resources, including an interview with ethnomusicologist Dr. Wim Van Zanten on prior and informed consent in ethnomusicology;
- is developing guidelines for communities on establishing their own IP protocols, guidelines, codes and license agreements.
- Links
- WIPO-AFC-CDS Training Program Database: A searchable database of codes, guides, policies, protocols and agreements relating to IP and the digitization of intangible cultural heritage
- Surveys: Surveys of existing practices, protocols and policies
- Case Studies: Short case-studies presenting informal summaries of practices drawn from the surveys
- Prior Informed Consent and Ethnomusicological Recordings
- Resources: Multimedia materials, articles, laws and other resources

Appendix 4

Existing Australian Protocols, Guidelines (and policies)

A range of guidelines and protocols already exist that can be drawn upon for principles of IEK governance. These Guidelines draw from the relevant sections of some of the following resources. These resources include:

Research Management and IP

- IEK: A Northern Territory scoping study (NAILSMA 2006)
- Natural Resource Management Board (NT), Interim Protocols for Natural Resource Management Board Indigenous Ecological Projects (2007?)
- NT Parks and Reserves AK and IP Protocol (2008 CLC draft)
- Aboriginal and Torres Strait Islander Library and Information Resources Network Protocols (date)
- NAILSMA Guidelines and Protocols for the conduct of research (June 2007)
- Desert Knowledge CRC (DKCRC) Aboriginal research engagement protocol (2007)
- DKCRC Aboriginal Knowledge and IP Protocol (2007)
- Undertaking projects and research in Central Australia: CLC protocols and the development of protocols for projects and research in the CLC region (2005)
- Aboriginal Cultural and interpretation guidelines for the NT (parks and wildlife commission) (2000)
- National Heritage Trust Guidelines for Indigenous participation in Natural Resource management (2004)
- FATSIL Guide to Community Protocols for Indigenous language Projects. (2004)
- Guidelines for Indigenous participation in Natural Resource Management. Commonwealth. 2004.
- National recording project for Indigenous performance in Australia fieldwork protocols
- Kimberley Language Resource Centre: Protocols, Guidelines and Agreements for Protecting and Managing Language and Language Knowledge. Draft, Michael Davis. (2006).

Indigenous Archive specific

- Aboriginal and Torres Strait Islander Library and Information Resources Network Protocols (2005)
- Protocol for access to NT Government Records by Aboriginal People Searching Their families plus MOU
- National Film and Sound Archive Indigenous collection policy
- AIATSIS Audiovisual Archive Collections Management Policy Manual
- National recording project for Indigenous performance in Australia archiving protocols
- State Library of Qld Protocols for Aboriginal and Torres Strait Islander Collections

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