

24 May 2024

Re: Inquiry into economic self-determination and opportunities for First Nations Australians

Dear Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs,

Thank you to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (the Committee) for the opportunity to contribute to the inquiry into improving the economic self-determination and opportunities for Aboriginal and Torres Strait Islander peoples (herein respectfully referred to as First Nations peoples). This submission focuses on the barriers that First Nations peoples currently face when attempting to utilise their traditional resources and the associated Traditional Knowledge. We start by introducing ourselves and the team we have formed to bring a cohesive and holistic view on this issue to the Committee. Then, we address most of the questions posed in the Inquiry Terms of Reference and provide recommendations (where relevant) for legislation, policy and funding. Lastly, by way of evidence provision, we provide case studies and a bibliography at the end of this document to support our submission.

About Us

The current submission is co-led by Dr Alana Gall and Dr Luke Williams, with the support of Jacob Birch, Caroline Deen, A.Prof Veronica Matthews, Dr Hamish MacDonald and Brett Rowling (see bios below). We are likeminded individuals who want to see First Nations peoples in Australia thrive. For this reason, we have brought our collective experiences and expertise together on this submission to provide the Committee with a holistic picture of the interconnecting systems at play, that serve as barriers and enablers to the economic self-determination of First Nations peoples. In particular, we will concentrate on the native foods and botanicals industry, including associated genetic resources, traditional medicine preparations and plant knowledges.

- **Dr Alana Gall** is a Truwulway woman and Postdoctoral Research Fellow at Southern Cross University where she leads a research program focussed on the protection and preservation of Indigenous Traditional Medicines, and access via Australian policy. Alana is the Vice President (First Nations) of the Public Health Association of Australia, the Vice Chair of the Indigenous Working Group for the World Federation of Public Health Associations, and the Indigenous Traditional Medicines representative in the TCIH Coordination Council. Alana is a member of the Indigenous Caucus at the World Intellectual Property Organization Diplomatic Conference 2024, supported by DFAT and IP Australia, to represent Indigenous Traditional Medicines and participate in the Treaty negotiations during this landmark event.
- **Dr Luke Williams** is a Gumbaynggirr man and Postdoctoral Research Fellow at the University of Queensland in the Centre for Nutrition and Food Science. Luke recently completed his PhD with his thesis titled 'Evaluating the dietary safety of Australian native foods'. Luke works with First Nations businesses and industry stakeholders to ensure that traditionally used native foods are safe for modern markets. His prior research has highlighted the food safety regulatory hurdles felt by First Nations businesses wishing to develop their traditional food items, while his current research is working towards rectifying these issues. The overall goal of his research is to promote safe and nutritious foods that support sustainable food systems while facilitating the First Nations-led native foods industry.

- **Jacob Birch** is a Gamilaraay man taking a systems approach to revitalising Australia’s native grains foodways. He works across academia (as a PhD candidate at UQ), social enterprise (as founder and managing director of Yaamarra & Yarral), and governance (co-founding the Australian Food Sovereignty Alliance’s First Nations Sub-Committee and co-founding the Gamilaraay Peoples Food Sovereignty Working Group). He is particularly interested in building up governance capacity and capability within First Nations communities, at the grassroots level, as a way of activating social, cultural, environmental and economic opportunities that are self-determined and in alignment with First Nations values and worldviews.
- **Caroline Deen** is a Kamilaroi woman, Accredited Practicing Dietitian and research fellow at the University of Sydney. Most recently she contributed to a Remote Food Security project co-designed by the University of Queensland, Apunipima Cape York Health Council and Central Australian Aboriginal Congress that aimed to develop and test community led solutions to improving food security in eight remote communities in the Northern Territory and Cape York. Increased access to training and employment opportunities including more support for First Nations led community agriculture and food businesses was identified as a key solution.
- **Associate Professor Veronica Matthews** is a Quandamooka woman, passionate about health of Country and wellbeing of community. She co-leads the Aboriginal and Torres Strait Islander Knowledges theme of the Healthy Environments and Lives (HEAL) Network, a national collaboration that brings together First Nations wisdom, public health, epidemiology, sustainable development, and data science and communication to address environmental change and its impacts on health. She co-leads the Centre for Research Excellence in Strengthening systems for Indigenous healthcare Equity (CRE-STRIDE) a multi-disciplinary quality improvement network aiming to strengthen primary health care systems and its interconnections to other sectors that impact on health and wellbeing.
- **Dr Hamish MacDonald** is a non-First Nations researcher, whose research analyses the ways that intellectual property laws and agricultural regulation structure food systems. He has consulted for IP Australia on the design of Plant Breeder’s Rights in Australia and has worked for the ARC Centre of Excellence for Plant Success in Nature and Agriculture to develop access and benefit sharing guidelines to help researchers comply with Access and Benefit frameworks and environmental regulations.
- **Brett Rowling** is a direct descendent of national figures of Bungoree and Matora from the GuriNgai Awabakal peoples, on the central coast of NSW. Professionally, Brett is an Environmental Research Chemist from Australia’s Nuclear Science and Technology Organisation (ANSTO) which collaborates with universities and industries globally. Specifically, he is working to identify and promote cultural parallels between First Nations and Western scientific practices. This is undertaken using modern scientific instrumentation to validate our First Nations science and engineering towards more sustainable options in the Australian context – or more succinctly, walking in the footsteps of Australia’s first scientists and engineers.

Opportunities for and barriers to training, employment, and business development.

First Nations Peoples prior to invasion, had an uninterrupted, deep, and interconnected relationship to their lands, waterways, and seas that ensured optimum health, and cultural, spiritual, social, and emotional wellbeing. For thousands of years, advanced agriculture and aquacultural techniques supplied ample and dependable abundance of fresh and nutritious foods, with ‘caring for Country’ being the guiding principle behind sustainable harvesting and food procurement practices.

Traditional food and medicine practices have since been extensively impacted by European invasion and settlement. Displacement from traditional lands, forced reliance on poor quality ‘ration’ foods, limited financial independence and ongoing systematic racism are sighted as key determinants of food insecurity and the poor health of First Nations peoples. Despite the ongoing impacts of colonisation, First Nations peoples continue to hold a spiritual connection with Country, including their traditional food systems, however, access is often limited. Considered an exacerbation of colonisation, climate change is threatening the availability of traditional food sources and productivity of local horticultural crops for First Nations communities due to biodiversity loss and impacts on animal and plant distributions. Loss of locally sourced foods is changing subsistence practices and communities are becoming more reliant on store foods. Climate change will also risk food supply chains, further compromising affordability and accessibility for communities. Hence, communities in both urban and remote settings are calling for greater access to traditional foods and more control over their food systems as a solution to both food and economic security, and as part of their sovereign rights.

The native foods and medicines industry within Australia offers an opportunity for First Nations people to not only connect with their foods systems, but also benefit economically from their commercialisation. A 2020 industry report estimated that the native foods industry held a market retail value of ~\$80 million with projections indicating that the value would double by the year 2025. While the industry is heavily reliant on native foods and botanicals that have a long history of use within First Nations communities, a 2022 report stated that First Nations-owned and operated businesses were generating only 1% of the industry’s produce and dollar value. First Nations-led businesses were also said to be grossly under-represented in the supply chain, comprising less than 1% of growers, farm managers and exporters across the supply chain.

Growing interest in the native foods and botanicals industry is not only coming from domestic markets, but international consumers are also increasingly seeking out products that come from First Nations producers and suppliers. While there are a few First Nations-led cooperatives who are successfully servicing the market, the overall First Nations owned and led industry is still very much in its infancy. Furthermore, of the thousands of edible foods or useful plants and botanical preparations, including medicines, that can be found across Australia, there are only a select few that are actively being sold into commercial markets.

Considering that the vast majority of native foods and botanicals grow in rural and remote settings, there is a real opportunity for a successful First Nations-led industry to create economic opportunities for those located in regional areas of Australia. Importantly, this presents an opportunity for First Nations people to build their economic independence while staying on Country and maintaining their culture of caring for Country. Moreover, the industry lends itself to knowledge sharing, where Elders can pass on knowledge to younger generations who will begin to see how their

traditional practices can be applied, and add value, to modern markets. This strengthening of identities of our young people will ensure the continuance of our culture into the future and improves health and wellbeing in the present. Therefore, a First Nations-led native food and botanicals industry would not only benefit economic self-determination for First Nations peoples but would also contribute to the Australian Government's commitment to *Closing the Gap*.

Impediments to building the economic and social infrastructure required to support economic prosperity in the long term.

It is important to recognise the contextual variation across First Nations communities in capacity and resources to leverage opportunities for economic development, particularly in areas already feeling the effects of climate change. Due to ongoing systemic racism, many remote communities struggle daily with access to housing, employment, food and health care. Improving access to these fundamental rights requires shared power and decision-making, sustainable and flexible resourcing and weaving together of traditional and Western knowledge systems to strengthen foundational capacity of communities. This is a necessary precursor to establishment of sustainable wealth creation industries.

First Nations entrepreneurs in the food and agribusiness sector – be it manufacturing or primary production – face many hurdles to the realisation of economic self-determination. These issues centre around a lack of information and education about how Australian food and medicine regulatory systems work, access to land, and access to the capital required to become operational. First Nations peoples do not have the privilege of intergenerational business acumen and networks, or the intergenerational wealth afforded to all other Australians who were not historically marginalised both politically and socially. Indeed, opportunities like this could be transformative for First Nations communities but this will require significant funding to bridge this gap.

To strengthen the industry and ensure its continuity, the native foods and botanicals industry needs funding to help establish strong industry representation that will allow it to attract external funding and investment. This requires a two-tiered approach.

1. The first tier is a national body which can address the industry's overarching issues, such as working with government agencies. The First Nations Bushfood and Botanical Alliance Australia (FNBBAA) was positioned to be such an entity, but because they did not receive dedicated funding and support, they have now become seemingly defunct. The Bushtukka and Botanicals Indigenous Enterprise Cooperative (BBIEC) is a new emerging body, set up as a co-operative made up of First Nations primary producers and wild harvesters, which has the potential to develop into a peak representative body operating at the national level. However, they also lack the funding needed for sustainability in this ever growing and competitive market, dominated by non-First Nations businesses and organisations.
2. The second tier would be regional, such as bodies representing a single Nation (we use 'Nation' here to represent clans, language groups, and Nations (which can include more than one clan/language group)) or a collective of Nations. Regional authorities would allow for targeted and appropriate delivery and oversight of projects. Nation-based governance would also help mitigate funding wastage, which is intended to deliver impact for First Nations communities, which is otherwise diluted across multiple layers of administrative

bureaucracy and service providers and does not reach those it is intended to support. For individual Nations who are seeking to establish regional representative bodies to drive economic development, particularly in relation to activating traditional foods and botanicals, there needs to be dedicated support to help establish these bodies and to grow the capabilities of the directors and executive team (see Case Study 2).

Once strong governance systems are in place at both the national and regional level, the next barrier is access to land. Whilst 57% of Australia's landmass is under some form of First Nations tenure, most of that land cannot be used for economic outcomes and therefore, cannot be leveraged to access capital. In cases where First Nations controlled entities hold land under titles that have provisions for economic development (such as freehold) such titles do not include a mandate to use that land for community economic development. Furthermore, these rights are easily overridden by governments as seen recently in the extinguishment of Wangan and Jagalingou Native Title for the Adani coal mine. This lack of autonomy and control has potentially devastating consequences for both health of Country and community economic wellbeing. The small proportion of First Nations organisations that do see the benefit in native foods and botanicals enterprises, lack the initial capital to establish the infrastructure, buy equipment, employ workers, and ultimately become operational.

In situations where land is available and products are developed, one of the major factors that often prohibits scale up and ongoing investment into First Nations businesses is the lack of supply and quality control oversight. This prohibits widespread confidence in the First Nations-led industry sector, which has devastating impacts on the growth of the industry for First Nations peoples. The issue of supply is multifaceted but includes a lack of available land to expand the operation (as explained above) and limited access to machinery and processing equipment. Quality control issues often arise due to a lack of basic equipment, such as sterile kitchens, freezers, packaging equipment, storage facilities and appropriate transport. These issues are further exacerbated by a lack of education and training into what is required to meet appropriate food manufacturing practices, food safety regulations, and food handling. These issues could be addressed by the funding of regional centres that provide the facilities needed to operate a food business successfully and safely, such as preparation and processing equipment. Moreover, these centres could host training and information sessions to ensure the workforce is equipped with the appropriate skills to succeed in the industry. However, again, this requires funding in a sustainable way to support the First Nations-led industry sector to flourish.

Underlying all of this and preventing confidence in the industry from a First Nations perspective, is the fact that the current Australian legal system offers very limited protection for traditional or cultural knowledge, including that which pertains to knowledge of traditional plants. Furthermore, under Australian law those entrepreneurs who utilise traditional knowledge in the creation of commercial products are often not required to enter into access and benefit-sharing agreements, nor are they required to pay regard to the interests of First Nations peoples. This lack of protection combined with a lack of support, including the capital needed to compete with multinationals, is resulting in a stagnated industry where First Nations entrepreneurs do not want to develop a product for fear of being outcompeted once the product is in the public sphere. This is resulting in missed opportunities and prevents the growth of a First Nations-led foods and botanicals industry.

Options to unlock capital and leverage intellectual property.

As the sovereign peoples of this land now called Australia, our sovereignty is: “a spiritual notion: the ancestral tie between the land, or 'mother nature', and the [First Nations] peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors” (Uluru Statement from the Heart). Our knowledges of this country hold endless potential, especially our deep understanding of caring for Country, our food practices and our medicinal knowledges. The notion of ‘intellectual property’ and being able to ‘own’ knowledge does not align with First Nations peoples’ worldviews. Regardless, we are the holders of these knowledges, so the use of them requires free, prior and informed consent (as per the *United Nations Declaration on the Rights of Indigenous Peoples*) and fair and equitable benefit sharing with First Nations peoples (as per the *Convention on Biological Diversity* and its associated *Nagoya Protocol*).

Intellectual property law in Australia has the potential to be both a barrier and an enabler to economic self-determination of First Nations peoples. For First Nations peoples to profit from their extensive knowledge of Country, food, and medicine, they first need adequate protection of their knowledges. Indeed, currently in Australia we do not have appropriate protection of First Nations knowledges. Copyright and patent requirements of originality, fixation, and individual ownership make them largely unsuitable for protecting First Nations’ traditional knowledge, and Australia’s implementation of Access and Benefit Sharing laws is piecemeal and fragmented. While Australia does have a patchwork of State- and Commonwealth-level biodiscovery and biodiversity laws, currently only Queensland and the Northern Territory have legislated protection for traditional knowledge. The result is that traditional knowledge protections can be easily avoided.

To enable First Nations communities to leverage their traditional knowledge, it is imperative that these gaps are closed by protecting traditional knowledge in each State and Territory’s biodiscovery legislation. For these laws to be effective, they require effective enforcement, and a means of facilitating partnerships between researchers and communities. Both of these objectives could be achieved through the implementation of representative bodies.

In addition, there are limited protections in place to prevent businesses from falsely claiming or implying First Nations involvement in projects. For instance, the unauthorised use of First Nations art on packaging can imply First Nations involvement, while claims such as “Indigenous run” may not be factual. Misleading branding can deceive consumers while undermining First Nations’ economic self-determination and can result in significant personal or cultural harm by failing to recognise the obligations, rights, and responsibilities which may be associated with traditional knowledge or cultural expressions. Stand-alone legislation prohibiting misleading branding practices would go a long way towards addressing this issue, and therefore, should be supported in Parliament. Some form of certification mark guaranteeing genuine First Nations involvement would also be a positive step towards addressing this issue.

To further strengthen intellectual property claims and begin to document a history of use, funding is needed to help support the development of a centralised database that can host information about genetic resources. This would act as a digital repository for data and knowledges associated with the genetic resources that can be found across the continent. Having such a repository would allow communities to substantiate their claims of traditional use while also acting as a hub for traditional knowledge, which would facilitate the creation of access and benefit sharing agreements and stop

the approval of erroneous patents. Furthermore, if intellectual property laws extend to cover traditional knowledges, then having a documented history of use, including traditional and cultural knowledges, would strengthen future claims. The repository would also ensure that knowledge is retained through time, ensuring that knowledge is not lost or forgotten. Importantly, the management of the database would need to be First Nations led, incorporate the CARE and FAIR principles of data sovereignty (see Bibliography), and access to certain information on the database would need to be restricted to those with appropriate cultural authority. While there is much work to be done to ensure this important project is completed successfully, the aforementioned First Nations led collective, BBIEC, have begun to work on what could be considered the first phase of this larger database. If BBIEC are successful, then this would be the first First Nations-led venture into the use of block chain technology to establish a decentralised database that could set the path for a larger national database to be created. However, funding support is needed to ensure this initial project can be fully realised.

It is understood that a successful First Nations-led industry is going to need external help and investment to succeed. While the majority of researchers or investors who are interested in facilitating a First Nations-led industry have the right intentions, they often do not know who best to contact in a community to gain the appropriate cultural authority, nor are they always fully aware of the cultural sensitivities that can be attached to many traditionally used plants. Although research institutions or corporate businesses often develop their own best-practice guidelines, they rarely capture the diversity that can be found across the nation and are not specific to individual language groups or clans. They also perpetuate First Nations people being subjects rather than leaders. Therefore, to facilitate First Nations leadership in this space, there is a need for individual language groups/clans or cooperatives to develop their own research protocols, as has been done by the [Kimberly land council](#), [Mithaka Aboriginal corporation](#), and [Victorian Traditional Owners corporation](#). This would help ensure that individual communities maintain their right to self-determination and are positioned to direct research or investment strategies that concern their genetic resources and associated culture.

Recommendations

To realise the potential for economic security, First Nations communities will need support to:

- support the establishment of sovereign, independent, and representative governing bodies that seek to drive outcomes for their respective nations in the food and botanicals sector;
- support for existing First Nations-led national representation in the food and botanicals sector;
- improve access to and control over traditional lands;
- access flexible funding to establish businesses;
- receive relevant training in business operation, entrepreneurship and intellectual property law;
- develop skills needed to meet regulatory, manufacturing, and supply demands;
- access legal advice and resources regarding intellectual property and regulatory compliance;
- collaborate with research organisations to better understand food and agronomy sciences.

Tangible things that the Australian Government can do to support First Nations peoples to be effective in the native foods and botanical industry are:

- support the above needs outlined through funding, policy and legislative change;
 - support the [stand-alone legislation](#) to protect First Nations traditional knowledge and cultural expressions, also known as Indigenous Cultural and Intellectual Property, when it passes through the two houses of Parliament;
 - support the development of food and medicine regulatory frameworks that have the capacity to consider Indigenous Cultural and Intellectual Property in the risk assessment of traditionally used products (see Williams et al., 2023);
 - support the ratification of the new Treaty being signed in Geneva at the WIPO Diplomatic Conference in May 2024 that introduces a new 'disclosure of origin' requirement in patent applications;
 - support the implementation of a First Nations patent advisory panel at IP Australia to assess all patents that potentially use both First Nations traditional knowledge, and the traditional knowledges of Indigenous peoples globally (see Wright & Robinson 2024; NZ example);
 - support a First Nations Knowledges Patent Transparency Panel to identify and reverse cases of biopiracy and erroneous patents that use First Nations knowledges, to be embedded into IP Australia (see Robinson & Raven 2017; Australian example).
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Illustrative Case Studies

Case Study 1: Maningrida Wild Foods

Maningrida Wild Foods is a micro- enterprise owned and operated by Bawinanga Aboriginal Corporation. Their goal is to create economic opportunities so that they can continue to live on their country, connected to their songlines.

They use the knowledge of bush food and seafood cultivated by their ancestors over thousands of years which means that practices are highly sustainable: “we know when to harvest and how much to leave behind to protect local ecosystems. It also means our practices have high cultural significance and help us preserve our culture to pass down to our children.”

The fish and bush food that are collected are sold locally to the school, aged care centre and at the local store, as well as being sent to Darwin. The fishermen received training from NT Fisheries on the fishing techniques permitted with the fishing licenses required and how to appropriately meet transport and storage requirements. With the profits made so far, the fishermen have invested in two additional nets and are looking to scale up their operations, selling fish more regularly to Darwin and nearby communities.

See: [Nardilmuk fish - a new homeland micro-enterprise - Bawinanga Aboriginal Corporation](#)

Case study 2: Gamilaraay Peoples Food Sovereignty Working Group

The Gamilaraay peoples are a freshwater Murri people from north-west NSW and south-west QLD. Their homelands consist of some of Australia’s most productive agricultural land, particularly for broadacre cropping, livestock and cotton. While the Gamilaraay people have lodged a Native Title claim, they are still waiting for consent determination. In lieu of a prescribed body corporate, an independent collective of sovereign Gamilaraay peoples has begun formalising as the Gamilaraay Peoples Food Sovereignty Working Group (the Working Group). The Working Group, consisting of Native Title Claimants, Elders, cultural knowledge holders, entrepreneurs, community leaders, and academics, has set the intention to establish a legally recognised entity and emerge as the peak representative body for the Gamilaraay Nation in the food and agriculture sector. Their purpose is to ensure Gamilaraay people can participate within, benefit from, and ultimately be leaders of the food and agriculture sector on their homelands.

The Working Group started off the back of Gamilaraay-led efforts to re-establish their traditional native grain economy. The transformational potential of the nascent native grain industry was soon recognised and with it the paradigm shift that could come from Gamilaraay people engaging across the entire food and agriculture sector. However, three fundamental barriers to achieving this vision emerged – access to land, access to capital, and strong governance. Access to land and capital were beyond reach and influence, but setting up strong governance within the Working Group was not just achievable for the Gamilaraay people, but it is their prerogative. Under strong nation-based governance, the Working Group will begin addressing the other fundamental barriers to unlock the economic potential of their community. What comes next for the Working Group is uncertain but, without external support, it is dependent on how long the collective of people involved can maintain their leadership before they burn-out or step away due to lack of progress.

Case study 3: Northern Australian Kakadu Plum Alliance

The Northern Australian Kakadu Plum Alliance is a successful Aboriginal owned consortium consisting of several Aboriginal Corporations harvesting Kakadu Plum from across northern Australia. To ensure the sustainable harvest and develop economic opportunities from their traditional practices, the communities involved build upon their knowledge gained since the beginning of time through oral stories of these fruits' superior health and nutritional benefits.

With growing interest in the health benefits that can be attributed to this traditionally used fruit, there has been an increased need to monitor traceability and provenance. This helps to minimise food fraud, empowers the First Nations value chain, and increases consumer confidence. A key initiative has been to develop, in partnership with Australia's Nuclear Science and Technology Organisation (ANSTO), a national iso-element fingerprint database. This technology allows traceability of the fruit from its geographic origin where it was originally grown right through to the supply chain to the final product.

This is a key example of a successful collaboration between a First Nations collective and an Australian government agency. The successful project brings two worlds together to strengthen the First Nations value chain.

See: [ANSTO helps verify the origin of traditional Aboriginal products | ANSTO](#)

Bibliography

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- *Convention on Biological Diversity (CBD)* <https://www.cbd.int/>
- *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol)*: <https://www.cbd.int/abs>
- CARE Principles for Indigenous Data Governance: <https://www.gida-global.org/care>
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