

# VICTORIAN TRADITIONAL OWNER NATIVE FOOD AND BOTANICALS PROTOCOL



We acknowledge the Traditional Owners of the land we work on as the First Peoples of this Country.



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12-14 Leveson Street, North Melbourne 3051, Victoria, Australia  
(03) 9321 5388  
info@fvtoc.com.au  
www.fvtoc.com.au



Prepared by Terri Janke and Company  
(02) 9693 2577  
tjc@terrijanke.com.au  
www.terrijanke.com.au

Graphic design by Mazart Communications

Warning: Aboriginal and Torres Strait Islander readers should be aware that this document may contain images or names of People who have since passed away.

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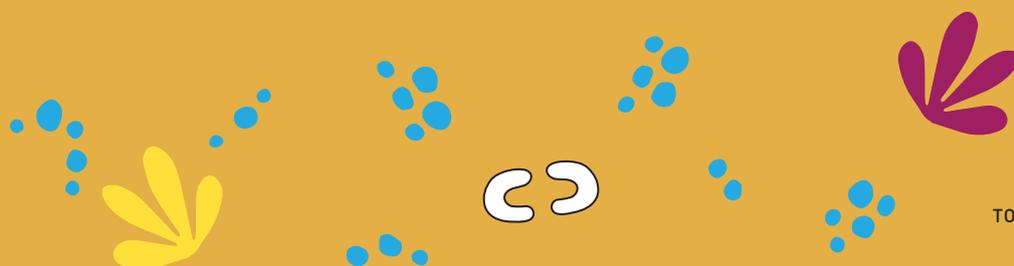
# VICTORIAN TRADITIONAL OWNER NATIVE FOOD AND BOTANICALS PROTOCOL



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NATIVE FOOD AND BOTANICALS PROTOCOL  
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# PART A

## INTRODUCTION & PURPOSE

The following Cultural Protocol (**the Protocol**) has been developed by the Victorian Traditional Owner Native Food and Botanicals Strategy (the **Strategy** or **TONFABS**) Project Control Committee (PCC) to provide best practice guidance to the Victorian native food and botanicals industry (**the industry**). The Protocol is a guide for all individuals and organisations involved in the industry on how to engage with and recognise the rights of Victoria's Traditional Owners in their Biological Resources and Indigenous Knowledge. The Protocol aims to increase Victorian Aboriginal involvement in the industry, and to deliver better outcomes for the industry, consumers and the environment.

## RIGHTS OF COUNTRY

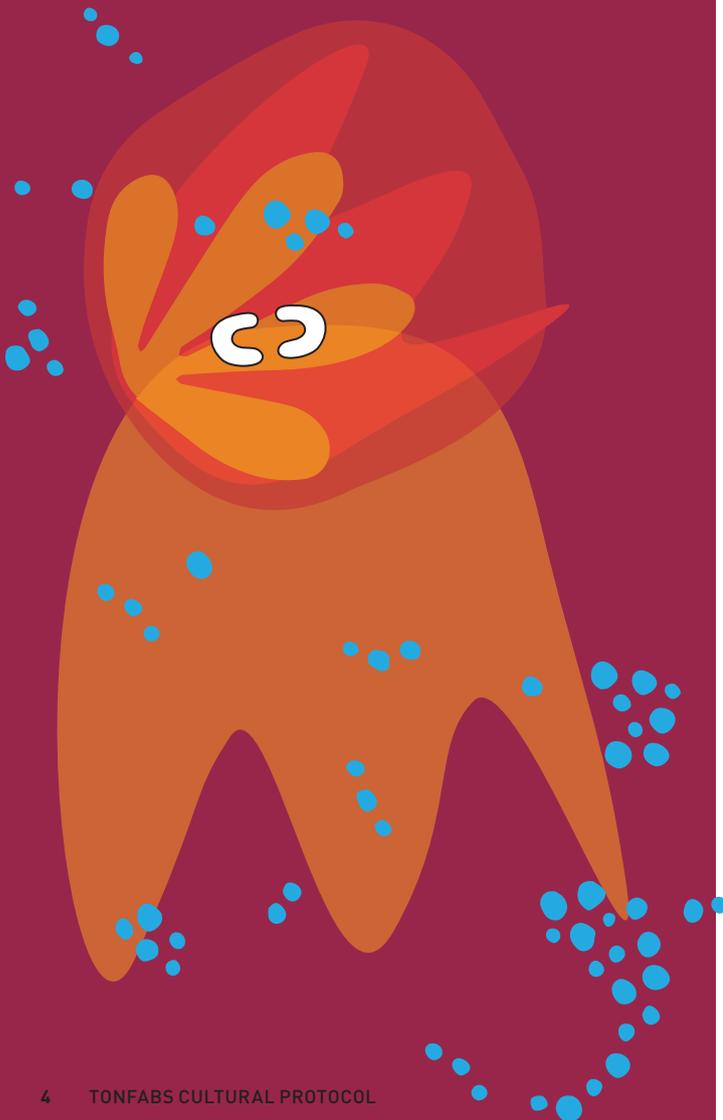
For Victoria's Traditional Owners, Country is the land, waters, seas and skies, and everything on or in it. This includes the natural landscape, the plants and animals and the stories and knowledge handed down from the Ancestors and Elders, past and present.

Country created Aboriginal people. Aboriginal people nurture Country. This is a fundamental cultural responsibility and Aboriginal people have the cultural obligation to care for Country.

Country is sacred and sovereign. Through Aboriginal stewardship, the waters flowed, the lands flourished, and the plants, animals and fish were sustainably managed.

For tens of thousands of years, Aboriginal people nurtured Country as kin. The spiritual connection Aboriginal people have with Country remains strong despite the changes since colonisation.

Aboriginal people assert their stewardship obligation to nurture Country – walking on, listening to, caring for and speaking for Country, so Country can continue to provide for all things on or in it. Aboriginal people are using their Indigenous Knowledge and Practices to protect the native food and botanicals industry



and so protect the land, animals, waters, seas and skies. In doing so, the rights of Country are asserted.

If we look after Country, it will look after us.

## RIGHTS OF ABORIGINAL PEOPLES IN THE VICTORIAN NATIVE FOOD & BOTANICALS INDUSTRY

The cultures of Aboriginal people in Victoria are connected to Country. Country provides Victorian Aboriginal people with the resources for culture and life. For Aboriginal people, Country is a holistic cultural practice, deep with spiritual connections, informing their identity. The land, waters, the plants, the animals and the skies were all interrelated. Knowledge of foods and botanicals was an important part of Aboriginal cultural practice and in recognising customary law.

Traditional Owners and Victorian Aboriginal peoples have been and continue to be significantly impacted by colonisation. The impacts of colonisation are far reaching and intergenerational. Colonisation has significantly affected connection to Country, including land and waterways, seas and skies. It has interrupted Aboriginal people's access to sources of food and water. Caring for Country practices have also been obstructed.

Forced removal and continuing colonisation, has resulted in disruption to traditional knowledge and cultural practice. Victorian Aboriginal peoples and Traditional Owners are resilient and remain strong, and their culture and connection to Country continues. Victorian Aboriginal peoples are revitalising their cultures and languages. Caring for Country is a key part of this process.

Country embodies much more than the Western perception of land and ownership. It is the

source of all customary laws, customs, ways of being and relationships and is the basis for individual and communal identity<sup>1</sup> and all aspects of wellbeing. Caring for Country incorporates the caring for and maintenance of land and waterways, seas and skies, the sustainability of plants and animals, crops and resources. It is holistic. It also covers the economic, social, cultural and health outcomes flowing from strong and vital connections to Country for Aboriginal peoples.

Aboriginal peoples' knowledge and ways of thinking are not human-centric, where considerations of Country are limited to a source of economic gain. Aboriginal ways of knowing are Country-centred, holistic, and more conducive to sustainable outcomes.<sup>2</sup>

There is an ongoing history of the theft of Indigenous Knowledge in the native food and botanicals industry. An ongoing history whereby Aboriginal people were isolated and removed from conversations about their Indigenous Knowledge. An ongoing history where free, prior and informed consent was absent.

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**This is now changing. The industry recognises the totemic relationships Aboriginal people have with the environment, the importance of customary law and cultural practice, and the obligations people have to Country**

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The demand for Australian native food and botanicals has risen exponentially in recent years. This demand will continue to grow as industry responds to consumer appetites, and to the challenges of climate change and unsustainable biocultural practices. The Victorian native food and botanicals industry, including the producers, suppliers and retailers working in the industry, must recognise the importance of an Aboriginal-led industry.

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1 Jessica Weir, Claire Stacey, Kara Youngetob, Australian Institute of Aboriginal and Torres Strait Islander Studies, 'The Benefits Associated with Caring for Country' (Literature Review prepared for the Department of Sustainability, Environment, Water, Population and Communities, 2011) 1.

2 Christine Convington and Louise Lee 'Incorporating care for Country' in planning and design' Corrs Chambers Westgarth, (Media Article, 31 March 2022) <https://www.lexology.com/library/detail.aspx?g=a9cf616a-2c83-4cd6-b112-8172371fda81>.

Meaningful engagement and empowerment of Aboriginal people and communities in this burgeoning industry are the building blocks to self-determination. When Aboriginal people are afforded opportunities to work on and actively manage and care for Country, to exercise, build and pass down their Indigenous Knowledge in line with their custodial responsibilities, all aspects of wellbeing are supported; cultural, spiritual, emotional, physical, and economic.

Co-designed with Traditional Owners and Victorian Aboriginal peoples, continued development, regeneration and ongoing management of our limited resources will be assured, as will the knowledge – the language, stories, song, dance, art and Practices.

## PURPOSE OF THIS CULTURAL PROTOCOL

### SPIRIT OF THE PROTOCOL

This Protocol sets out best practices for engagement, understanding and agreement-making between the Victorian native food and botanicals industry (including the non-Indigenous and Indigenous producers, suppliers, manufacturers and retailers, the researchers, funders and investors, and the consumers) and Victoria's Traditional Owners.

The Protocol aims to empower Traditional Owners when navigating the industry and identify appropriate practices for the industry to understand and to follow.

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The Protocol acknowledges the cultural diversity amongst Victorian Aboriginal communities, having developed different and complex belief systems, knowledge, customary laws, practices, totems, and languages.

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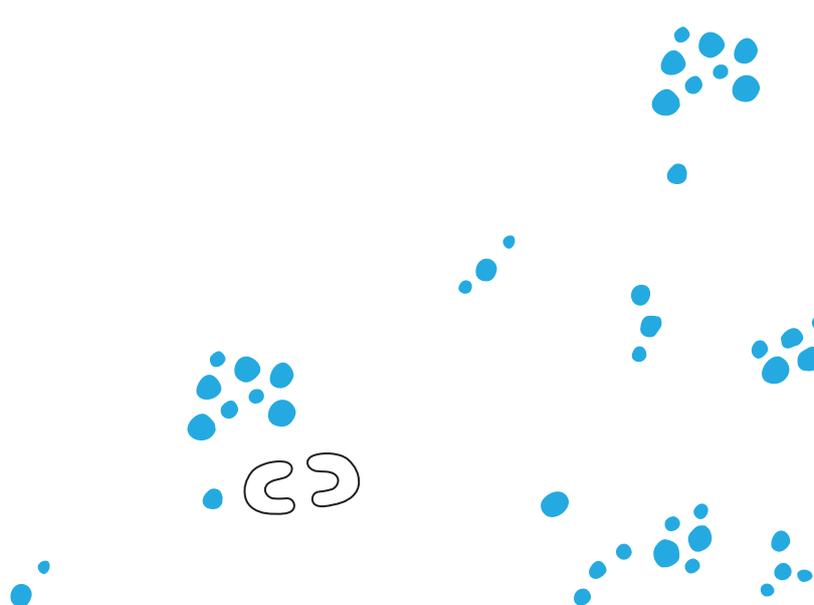
With the implementation of this Protocol, TONFABS aims to increase cultural competency within the Victorian native food and botanicals industry and establish ongoing good faith collaboration, in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples*.

Those who adopt this Protocol should feel confident engaging with Victoria's Traditional Owners in relation to research and development, commercial uses and biotrade of Biological Resources and associated Indigenous Knowledge by following this Protocol.

The Protocol is informed by:

- The *United Declaration on the Rights of Indigenous Peoples (2007)* – acknowledging that Indigenous peoples have a sovereign right to their cultural heritage, traditional knowledge and cultural expression;
- The *United Nations Convention on Biological Diversity (1992-1993)* and the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization* – acknowledging the rights of Indigenous peoples in the use of Biological Resources, including entering into appropriate and fair access and benefit sharing agreements; and
- Indigenous Data Sovereignty and governance principles – acknowledging the rights of Indigenous peoples to control the collection, ownership and application of Data about themselves and their cultures.

This Protocol deals exclusively with considerations relating to the Victorian native food and botanicals industry. You should seek guidance when engaging with Traditional Owners outside the scope of this Protocol to ensure best practice engagement.



## USING THIS PROTOCOL

This Protocol is for people working in the Victorian native food and botanicals industry to enhance their native bush products and services by recognising the sovereign rights of Victoria's Traditional Owners.

This Protocol outlines the best practice implementation of the Strategy's four principles (Culture, Country, Community and Commercial), and provides practical guides for engagement by different areas of the industry. The Cultural Protocol and the Strategy work in partnership.

It is important you read and familiarise yourself with the overarching Principles and Protocols, as well as the specific guides relevant to your project or activity.

NOTE: This Protocol provides general best practice recommendations for engaging with Traditional Owners and Victorian Aboriginal peoples in the Victorian native food and botanicals industry. In addition to complying with this Protocol, **you must also comply with any Traditional Owner-specific cultural protocols identified to you and respect the customary law of Traditional Owners.**

## WHO THIS PROTOCOL APPLIES TO

This Protocol applies to any individual, business or corporation wishing to work and interact with the native food and botanicals industry and is intended to support Traditional Owner empowerment. This Protocol has been written to enable all areas of the native food and botanicals industry, including suppliers, retailers, research organisations, commercial entities, and industry bodies.

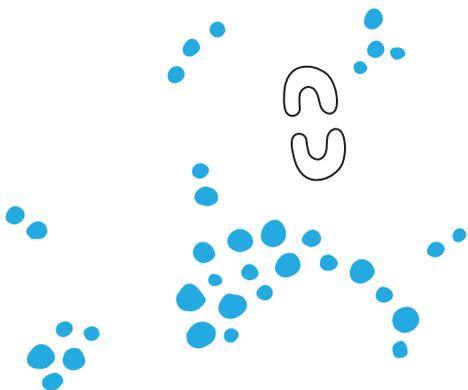
## BIOLOGICAL RESOURCES SELF-ASSESSMENT

### ETHICS AND VALUES FOR YOUR PROJECT

Before proceeding with a project or activity, it is recommended you undertake the following self-assessment:

1. Are you the right person or organisation to be undertaking this project or activity? Can you, your business or organisation commit to following the protocols?
2. If you are the right person, business or organisation to be undertaking this project or activity, do you have the right capabilities? Are you committed to see the project to its completion?
3. It is crucial that engagement in the native food and botanicals industry is Traditional Owner-led. Are you a Traditional Owner or representing Traditional Owners? If not, are you ensuring that Traditional Owners are involved in the project or activity? How are Traditional Owners involved?
4. It is important that you not only identify the risks to Traditional Owners when engaging with the project or activity, but also what are the benefits? How are benefits flowing back to communities? Are benefits appropriately supporting Traditional Owners, their Indigenous Knowledge (IK) and Indigenous Cultural and Intellectual Property (ICIP) in the project? How will you ensure suitable practices?
5. The principles of the Strategy are outlined below. Do you align with these principles? Have you read and familiarised yourself with the Strategy? Do you align with its values?

After completing the self-assessment, and if you still wish to proceed, consider the application of the following TONFABS Principles and Protocols and Best Practice Guides for projects and activities.



# PART B

## TONFABS PRINCIPLES & PROTOCOLS

### TONFABS PRINCIPLES

The four guiding principles outlined in the Victorian Traditional Owner Native Food and Botanicals Strategy (the **Strategy** or **TONFABS**) form the foundation of this Protocol:



This icon represents **Culture**, the first principle.



This icon represents **Country**, the second principle.



This icon represents **Community**, the third principle.



This icon represents **Commercial**, the fourth principle.

These four icons will be used throughout the Protocol to represent the connection with the TONFABS Principles.

Implementing the four guiding principles of the Strategy, the following Protocols have been identified to assist the Victorian Native Food and Botanicals Industry recognise and engage appropriately with Traditional Owners and Victorian Aboriginal peoples in relation to the access, collection and use of Biological Resources and their Indigenous Knowledge.



## CULTURE

**Principle 1. CULTURE** – Traditional Owner cultural knowledge and practice leading the industry.

Traditional Owners must lead the sharing of their resources, cultural knowledge and practices related to native food and botanicals.



## COUNTRY

**Principle 2. COUNTRY** – Restorative and holistic care for Country led by Traditional Owners.

Through their leadership Traditional Owners are enabled to practice and embed Indigenous Knowledge and care for Country in the native food and botanicals industry.



## COMMUNITY

**Principle 3. COMMUNITY** – Benefits are co-created with community to maintain ongoing connection with biocultural species.

Traditional Owners are engaged appropriately and share in the benefits. Sovereignty is recognised and a nation-building approach is adopted that is responsible to relationships and future generations. Benefit sharing and equity are shared by supporting Traditional Owner communities – enabling Traditional Owner communities to strengthen and activate their connection with biocultural species.



## COMMERCIAL

**Principle 4. COMMERCIAL** – Traditional Owners and custodians have the right to economic participation and benefits arising from natural resources.

Traditional Owners are engaged on a nation-to-nation basis – recognising their collection and individual ownership and their right to participate in and benefit from economic activity and developments arising from natural resources and Indigenous Cultural and Intellectual Property.

# CULTURE

## • RESPECT

- Recognise and respect Traditional Owners' connection to all biological and biocultural resources from their Country, and knowledge connected to those resources.
- Traditional Owners' have the right to maintain, control, protect and develop their cultural heritage, their Indigenous Cultural and Intellectual Property, including in relation to Biological Resources, in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples*.
- Gain cultural awareness first – undertake appropriate training.

## • SELF-DETERMINATION

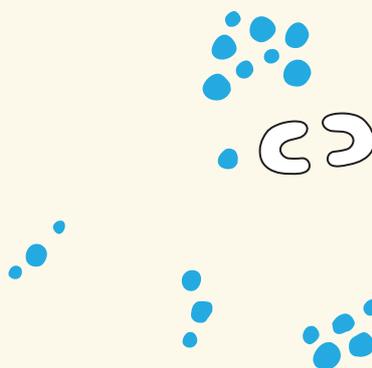
- Recognise Traditional Owners as leaders in the Victorian native food and botanicals industry because of their connection to and knowledge of Biological Resources from Country.
- Empower Traditional Owners to actively participate in decision making processes.
- Empower Traditional Owners to control the access and use of their culture, including Biological Resources and Indigenous Knowledge.

## • INDIGENOUS KNOWLEDGE

- Indigenous Knowledge represents unique ways of knowing that are tens of thousands of years old. Indigenous Knowledge systems are dynamic and evolving, and knowledge is continually nurtured as a living cultural practice so that connection is ongoing.
- Understand that Indigenous Knowledge incorporates, among other things, scientific, biocultural and ecological knowledge, language, story, songlines and art of Indigenous peoples relating to Biological Resources.
- Only use Indigenous Knowledge with the consent of Traditional Owners.

## • CULTURAL INTEGRITY

- Respect Traditional Owners as the custodians of their culture and have responsibilities and obligations in relation to their culture, including protection of plants, animals, Country, land, waterways, ancestors and knowledge.
- Enable Traditional Owners to present and interpret their culture.
- Only use Indigenous languages with permission and in a culturally appropriate manner.
- Ensure Indigenous stories used in relation to Biological Resources and products are told correctly.



# COUNTRY



## • TRADITIONAL OWNER GROWN

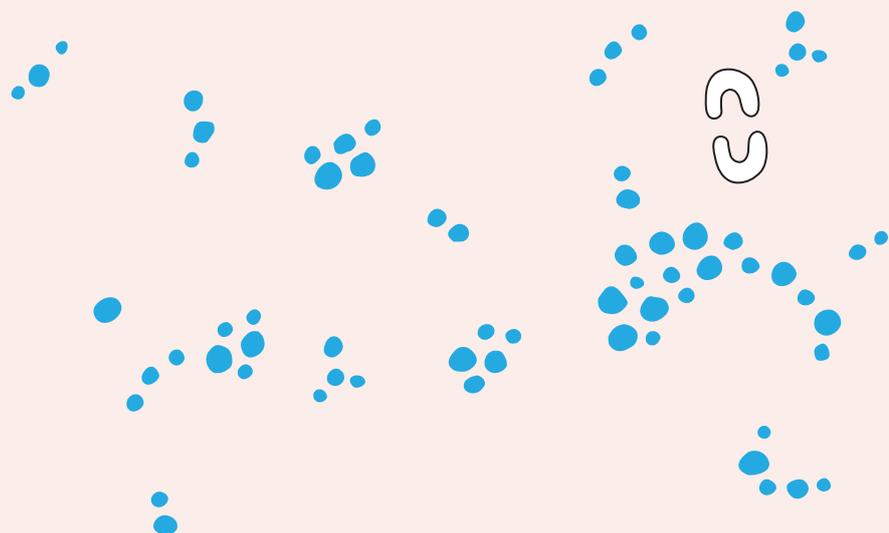
- Appropriately and ethically source Biological Resources that are grown on Country, with the permission and empowerment of Traditional Owners.
- Do not take Biological Resources from Country and grow elsewhere without the consent of Traditional Owners.

## • COLLECTION & USE

- Seek consent for going on Country to collect Biological Resources from Traditional Owners.
- Involve Indigenous people in opportunities on their Country.
- Only collect and use Biological Resources in accordance with customary laws and protocols, as advised by Traditional Owners.

## • CARING FOR COUNTRY

- Country-centred, rather than human-centred approaches, prioritise the health and wellbeing of Country and people equally and ensure sustainable outcomes.
- Leadership from Traditional Owners is needed to gain an understanding of Country.
- Enable Caring for Country practices to be strengthened.
- Understand provenance of Biological Resources - ensure right resources from right Country.
- Consider reception and impact of collection and use of Biological Resources to Country and Traditional Owners.
- Support sustainable land and sea management practices.
- Protect the environment - Do not over harvest or over fish lands and waterways.
- Stories and language associated with Biological Resources must also be considered and treated appropriately.



# COMMUNITY



## • STRENGTHEN CULTURE

- Ensure Traditional Owners are positively impacted by use of Biological Resources and Indigenous Knowledge.
- Support maintenance of cultural practices in relation to Biological Resources and related Indigenous Knowledge.
- Employ Traditional Owners as researchers, collaborators, authors, co-authors, and also as cultural advisors, facilitators, guides, storytellers or artists.

## • SUPPORT CULTURAL PRACTICE

- Ensure projects support Caring for Country and strengthen Indigenous Knowledge and ongoing cultural practice.
- Respect the right of Traditional Owners to maintain private or confidential information about their personal and cultural affairs, including secret or sacred knowledge.
- Promote the strengthening of Indigenous languages and story with permission.
- Acknowledge the truth of the history of Indigenous peoples in Victoria and Australia.

## • FREE PRIOR AND INFORMED CONSENT (FPIC)

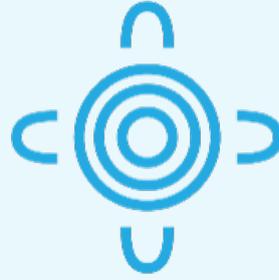
- Seek free, prior and informed consent from Traditional Owners for projects involving their Biological Resources and Indigenous Knowledge, including research and product development.
- Be transparent and engage with Traditional Owners, in good faith, early and throughout the life of a project.
- Inform Traditional Owners of the risks, benefits and impact of the project or activity, and provide enough information and time so that they can make an informed decision.
- Make all reasonable efforts to provide information requested by the Traditional Owners in the form requested.
- Free, prior and informed consent is an ongoing process and should be considered at all stages of a project or activity.

## • ATTRIBUTION

- Acknowledge and credit Traditional Owners and Indigenous Knowledge holders when using their Biological Resources and Indigenous Knowledge.
- Ensure acknowledgement is accurate, appropriate and worded and spelt correctly, as advised by Traditional Owners.
- Recognise Traditional Owners as joint owners, co-authors and co-inventors of project outcomes the result of collaboration, including in relation to intellectual property rights (copyright, trade marks, patents, plant breeders' rights) and future commercialisation.



# COMMERCIAL



- **INDIGENOUS ENGAGEMENT AND CO-DESIGN**

- Empower Traditional Owners as co-designers of projects and activities incorporating their Biological Resources and Indigenous Knowledge.
- Ensure engagement with Traditional Owners is fair, respectful, mindful of cultural practices and in good faith.
- Enter into fair and appropriate contractual arrangements with Traditional Owners. See the Access & Benefit Sharing Agreement.
- Engage Indigenous artists, storytellers and advisors throughout the project.
- Empower Traditional Owner's to identify further commercial opportunities.

- **EMPLOYMENT**

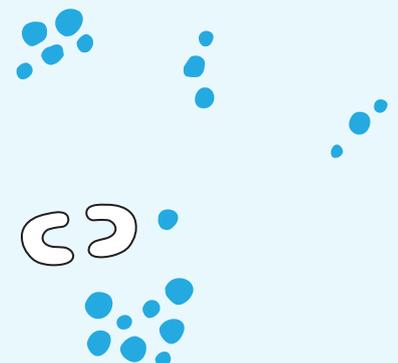
- Provide opportunities for employment of Traditional Owners in relation to use of their Biological Resources and Indigenous Knowledge.
- Ensure Traditional Owner involvement in the supply chain and entering into supply chain agreements.
- Support development and strengthening of Traditional Owner businesses in the Victorian native food and botanicals industry.

- **BENEFIT SHARING**

- Ensure Traditional Owners share in the benefits from the use of their Biological Resources and Indigenous Knowledge.
- Provide opportunities for procurement.
- Engage with Traditional Owners to determine appropriate financial and non-financial benefits.
- Pay appropriate fees for Traditional Owner involvement and expertise, and ensure appropriate royalties are paid.

- **CULTURAL PROTOCOLS**

- Only access, collect and use Biological Resources and Indigenous Knowledge in line with cultural practices.
- Inquire and follow local cultural practices and protocols.
- Comply with this Protocol to ensure best practice.



# PART C

## BEST PRACTICE GUIDES

### 1. WORKING WITH TRADITIONAL OWNERS IN VICTORIA



The following sections provide practical considerations when engaging with Traditional Owners.

#### 1.1. Identify and Engage with Relevant Traditional Owners or Representatives

It is important to identify who the right Traditional Owners to engage with are in relation to the project or activity. Engagement may include a range of Traditional Owners and organisations, and should be ongoing throughout the life of the project or activity.

Start with the Traditional Owner Corporation which will be involved in or affected by the project or activity. It is crucial that proper due diligence is undertaken to ensure accurate and representative community consultation is undertaken. The Traditional Owner Corporation may assist in locating any other community groups or individuals who should be contacted, but this responsibility remains with you.

Where necessary, you should seek advice on who to consult and the extent of appropriate consultation from those mentioned. See Part 9 Who to Consult? for further information.

## 1.2. Undertake Consultation Concerning What You Want To Do

Consultation is the process of exchanging views and information on a particular matter or issue in relation to the project or activity. Through consultation, you can come to understand what the Traditional Owners need, what requires consent and the correct people to provide that consent. In turn, the Traditional Owners, when giving consent, are able to fully understand what they are consenting to.

### **Culturally appropriate engagement with Traditional Owners requires consultation and consent.**

Traditional Owners must be involved in decisions concerning the use of native foods and botanicals, ICIP and IK from the from the inception and development of a project or activity in the Victorian native food and botanicals industry. Collaboration and consultation from the beginning will ensure the scope and nature of the project or activity is appropriate and Traditional Owner-led.

Projects that engage with Traditional Owners in the native foods and botanicals industry, must be flexible in nature, scope and time. You should seek the support, guidance and interpretation of Traditional Owners in relation to the project or activity and adapt project planning and requirements in accordance with the outcomes of consultation.

Consultation must be guided by Traditional Owners and might involve:

- Meetings with Traditional Owner representative bodies;
- Virtual or face-to-face meetings on Country with the wider community to present details of the project or activity;
- Phone calls;
- Emails;
- Newsletters;
- Reports; and
- Follow-up community meetings.

**TIP!** Be guided by Traditional Owners on how to collaborate and consult appropriately, ensure information provided is transparent, and the project and activities should be Traditional Owner-led.]

## 1.3. Obtain Free, Prior and Informed Consent (permission)

Free, prior and informed consent is an essential strategy in protecting Indigenous Knowledge and ICIP, as it allows for the building of ongoing relationships with Traditional Owners based on trust and respect.

**Traditional Owners must be able to give free, prior and informed consent for the use of their Indigenous Knowledge and ICIP.** This involves ongoing consultation, negotiation and informing Traditional Owners about the implications of consent and/or support. It is important to be aware of any tensions between Traditional Owner groups about Indigenous Knowledge and Practices with Biological Resources.

Implications of free, prior and informed consent may include the costs incurred by Traditional Owners throughout a project or activity, how the outputs of the project or activity may be used, and any risks involved.

In order to make an informed decision, the consultation and consent process should begin with providing as much information as known to the relevant Traditional Owner Corporation and/or other Indigenous Knowledge holders (where relevant), including about:

- Yourself, the collaborating organisation and any other project partners;
- Information about your and each partners' expertise in this area;
- The project or activity outline and intended outcomes/outputs;
- The benefits the project will bring to the Traditional Owners, community or for Indigenous people, for instance, training, education and cultural maintenance;

- How you intend to involve/consult/collaborate with Traditional Owners and their level of involvement;
- The project budget and schedule;
- Any costs the Traditional Owners are expected to incur;
- How the Traditional Owners will be attributed for their contributions;
- What benefits (monetary and non-monetary) will the Traditional Owners receive for their time, contributions and use of ICIP;
- The use and potential future use of the project;
- ICIP, IK and the nature of the use, including the intended aim and public exposure of such ICIP or IK and any resulting works and what implications of this are;
- How confidential information will be managed and protected;
- Any risks associated with the project or activity;
- Suitable practices;
- Maps, pictures, shape files;
- Prototypes and examples; and
- Similar projects.

Project information provided to the Traditional Owners should be clear, in plain English, and transparent, and continually updated throughout the life of the project. Consider whether the information is in an accessible format, or whether an interpreter, legal advisor, or cultural consultant is required.

You must not use, promote, or commercialise Indigenous Knowledge, ICIP, or access Country without a written agreement with Traditional Owners.

Ensure that agreements are written in plain English with mutually agreed terms and determine whether multiple agreements are needed i.e., with the Traditional Owner Corporation, individual Traditional Owners and copyright owners.

**There is an expectation when conducting consultations and negotiations that you will bear the costs. Consider whether Traditional Owners need to obtain their own legal advice to support empowerment, and who will pay for this.**

**TIP!** Traditional Owners have a right to say yes, no or to make changes, consent must be sought throughout the life of the project, and ensure that a fair contract is entered into (e.g. ABS Agreement).

#### 1.4. Supporting Healthy Ecosystems and Avoiding Harm

Traditional Owners' connection to Country is expressed through practices focused on sustainability of resources, and care of the environment. The land, seas, waterways and skies sustain life and are alive in their connection with the Traditional Owners.

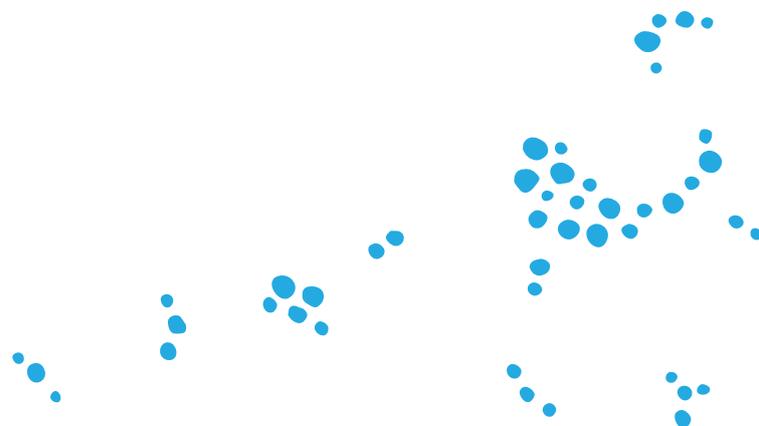
**Projects must take into account the Traditional Owners, their ICIP, Indigenous Knowledge, Country and cultural and land management Practices.**

Sustainability practices require that projects or activities are designed and conducted to meet both present and future needs.

Sustainability means ensuring that projects are environmentally, culturally, socially and economically sustainable. See Part 7.3 for further information.

Sustainability also means ensuring that information and Data collected during a project remains the property of the Traditional Owners, is used in accordance with Traditional Owner protocols and restrictions and is available for current and future generations of Traditional Owners.

**TIP!** Ensure that Traditional Owners are consulted on practices to ensure environmental, cultural, social and economic impacts on Traditional Owners and Country are minimised.



## 1.5 Ensure Authenticity

Traditional Owners are best placed to interpret and explain their ICIP, language, story and art that may be incorporated in, or connected to, the project or activity. **Traditional Owners should be supported to ensure that they control how their ICIP is interpreted and how cultural integrity is maintained.**

When using or representing ICIP or referring to Traditional Owners, projects or activities should ensure representations are accurate and empowering to Traditional Owners.

**TIP!** Need to clearly identify connection of Indigenous Knowledge, language, story, art etc. to the Biological Resources being used.

## 1.6 Consider Outcomes and Ownership Rights of Traditional Owners

IP ownership, registration, publication and commercialisation should be discussed upfront. This is to ensure self-determination of Traditional Owners, and the protection of any ICIP and Indigenous Knowledge that may be incorporated in the project.

**Traditional Owners should benefit from the outcomes of research, development, manufacturing, marketing, sale and use of their Biological Resources and Indigenous Knowledge.** This includes the ownership of rights in the outcomes and results.

## 1.7 Supply Chain and Benefit Sharing

The Nagoya Protocol on Access and Benefit Sharing, made under the *United Nations Convention on Biological Diversity*, is an international protocol that aims to ensure fair and equitable sharing of benefits with Traditional Owners for the use of their resources, including Biological Resources, Indigenous Knowledge and ICIP.

There may be various opportunities for benefit sharing for use of Indigenous Knowledge, ICIP and Biological Resources. This includes considering what opportunities there are for Traditional Owners to lead, co-design and be involved with the project. Benefit sharing should be discussed with Traditional Owners from inception of the project or activity.

Examples of benefit sharing include:

### Monetary Benefits

- Salaries and fees for consultants and liaisons;
- Procurement services from Traditional Owners;
- Up-front payments;
- Milestone payments;
- Payment of royalties;
- Shares;
- Scholarships;
- Involvement in value/supply chains;
- Licence fees in case of commercialisation;
- Joint ventures;
- Joint ownership of relevant intellectual property rights;
- Discount/deals on services offered.

### Non-monetary Benefits

- Collaboration, co-operation and contribution in development programmes, education and training;
- Cultural competency (inclusive of awareness and safety) training;
- Strengthening capacities for technology and skills transfer;
- Resourcing i.e. opportunities for intergenerational knowledge transmission, language reinvigoration;
- Involvement in the supply/value chain of the raw resource;
- Institutional or business capacity-building;
- Positions on Boards/Committees;
- Memberships;
- Transportation and travel;

- Tools of the trade i.e. computers, phones, etc.;
- Equity plans e.g. cultural diversity and equality plans within the organisation;
- Contributions to the local Victorian Aboriginal economy and Aboriginal economic development;
- Research directed towards priority needs for Traditional Owners;
- Building institutional and professional relationships;
- Support Traditional Owner projects;
- Stewardship strengthening i.e. revitalisation and valuing of Indigenous Knowledge, strengthening language and cultural practice, and caring for Country practices;
- Support intergenerational transfer of knowledge, Elders working with youth;
- Mentoring opportunities;
- Childcare support;
- Social recognition.

### 1.8. Ensure Attribution of Traditional Owners and Indigenous Knowledge Holders

**Traditional Owners and Indigenous Knowledge holders must be acknowledged and attributed in any use of Biological Resources, Indigenous Knowledge, ICIP, Country and provenance in the project or activity.** This includes in relation to product labelling, marketing, promotion and online.

It is important to consult with Traditional Owners to address the form of attribution that is appropriate. Notwithstanding the above, the Traditional Owners and community may not wish to be acknowledged and have the right to have their names removed or amended as appropriate.

The use of the Traditional Custodian's notice should be considered. This notice illustrates that a piece of work embodies ICIP, has been created with the consent of the relevant knowledge holders and must only be reproduced with the authorisation of those knowledge holders.

Additionally, special care must be taken when dealing with references to, and recording or images of, deceased persons. You may be prohibited from reproducing recordings, names, images, likenesses or biographical information of deceased persons. Use warning notices where appropriate to advise Indigenous readers or viewers of the fact the content may refer to deceased persons.

**TIP!** Use a Traditional Custodian's notice or sensitivity notice where appropriate to do so.

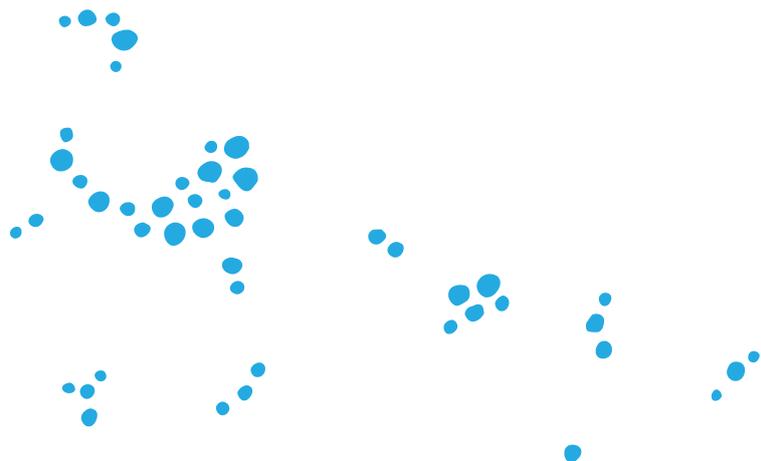
### 1.9 Protect Confidentiality and Privacy

Traditional Owners may keep secret, or sacred, information that should not be disclosed in accordance with cultural Practice. The consultation process must identify what information and material is appropriate to use, and incorporate restrictions determined by Traditional Owners.

Confidentiality and privacy considerations of Traditional Owners must also be considered during consultation and afforded appropriate protection.

#### 1.10 Address Disagreements and Disputes in a Culturally Appropriate Manner

Consultation and contracts should address how to resolve disagreements and disputes in a culturally safe and appropriate manner. In doing so, this must be reflective of the specific resources and labour force of the commercial entity/university/project partner as compared to the Traditional Owner groups. Specific cultural Practices and the sovereignty of Traditional Owners should be taken into consideration.



## CHECKLIST

- Be guided by Traditional Owners on how to collaborate and consult appropriately.
- Be transparent.
- Project and activities should be Traditional Owner-led.
- Traditional Owners have a right to say yes, no or to make changes.
- Seek consent throughout the life of the project or activity.
- Ensure there is a fair contract entered into e.g. ABS Agreement.
- Ensure that Traditional Owners are consulted on practices to ensure environmental, cultural, social and economic impacts on Traditional Owners and Country are minimised.
- Need to clearly identify connection of Indigenous Knowledge, language, story, art and other cultural expression to the Biological Resources being used.

## 2. CONDUCTED RESEARCH, DEVELOPING AND/OR USING BIOLOGICAL RESOURCES



The following sections provide practical considerations when conducting research, collecting and using Biological Resources, biochemical derivatives and extracts, as well as digital sequence information (DSI).

### 2.1. Identify Biological (Biocultural) Resources

In collaboration with the Traditional Owners, **you must identify the relevant Biological Resources you wish to access and the use (and any new uses) to be made of that resource.**

When identifying the Biological Resources (which includes biochemical derivatives, digital sequence information/genomically sequenced information) and engaging in research or use consider:

- What is the Biological Resource you want to access, use, sell or research?
- What geographic area is the Biological Resource native to?
- Who are the Traditional Owners of that area?
- Is the Biological Resource native to multiple Traditional Owners?
- Is the Biological Resource wild or Traditional Owner grown?
- What is the proposed use of the Biological Resource?
- Have you referred to the Access and Benefit Sharing Agreement Flowchart?
- Have you entered into an Access and Benefit Sharing Agreement or other fair agreement with Traditional Owners?

## 2.2 Identify Traditional Owners with Authority

**The appropriate Traditional Owners with the cultural authority to consult with and obtain consent from, must be identified.** It is important that you identify who to contact and the relevant stakeholders for research, ensuring that appropriate consultation and consent is obtained. This includes identifying knowledge holders, processes, channels, structures and organisations that are available should there be an initial uncertainty. See Part 1.1 for further information.

You may identify knowledge or information about Biological Resources and their properties that has previously been published i.e., when undertaking a literature review. However, this knowledge may or may not have been published with the consent of Traditional Owners. It is therefore important that consent for use of published Indigenous Knowledge also be sought from Traditional Owners.

**TIP!** Work with Traditional Owners early as information publicly collected may not be appropriate to disclose or may not correctly identify where the Indigenous Knowledge comes from.

## 2.3. Undertake Consultation and Obtain Permission

Consultation and free, prior and informed consent for any research or use of Biological Resources or Indigenous Knowledge and ICIP associated with Biological Resources must be sought from the Traditional Owners. See Parts 1.2 and 1.3 for further information.

**Research, development and use must not proceed until appropriate consultation and consent has been obtained.** To ensure accurate and informed consent, clear and transparent information must be provided to Traditional Owners on the potential use (and potential future use) of the resources, and any products or other materials developed from the resources. This includes research and development outcomes, commercialisation opportunities and published works.

It is also important that when reviewing existing records and published works which inform the research, development or use of your project, that the material is authentic. Identify what (if any) Victorian Aboriginal people's involvement there was in that work.

**The consent of the Traditional Owners should be reflected in the terms and conditions of a fair contract (such as an Access and Benefit Sharing Agreement), entered into with the relevant Traditional Owners as part of the consent process.** Access and Benefit Sharing Agreements, or other fair contracts should be in writing and entered into with the relevant Traditional Owner Corporation or other entity authorised by the Traditional Owner group.

Consideration should be had to:

- reasons for the project and principles of engagement;
- obligations of the parties;
- ongoing consultation and consent obligations;
- what is being collected, when, how and by whom;
- how Materials are to be collected, used and kept, and by whom – a separate Material Transfer Agreement should be entered into where resources are being researched and developed;
- relevant ethical approvals and cultural protocols to be complied with;
- outcomes and outputs of the project, rights of ownership and Traditional Owner use;
- licensing of Traditional Owner Intellectual Property and ICIP incorporated in the research or use;
- approval for publication and commercialisation of outcomes or outputs, research or products the result of the project;
- the appropriate sharing of monetary and non-monetary benefits that result from access and use of Biological Resources;
- promotion and support of Traditional Owner capabilities and skills;
- attribution of Traditional Owners;
- storage and archiving of Biological Resources and research results.

Third party transfers of Materials are prohibited without a prior written agreement expressed in a Material Transfer Agreement. This requires free, prior and informed consent.

## 2.4. Going on Country

In certain circumstances you may wish to go on Country to observe, study and collect Biological Resources. **Permission must first be obtained from the relevant Traditional Owners, who may grant access to specific areas of Country, and at specified times.** Clarify the process for going on Country, and whether protocols or Practices have to be observed. Further clarify the obligations and responsibilities when on Country, such as whether Country may be accessed without Traditional Owners, around filming and photography, etc. It is best practice to employ Traditional Owners to guide you when visiting Country to ensure compliance.

You will also generally need a State or Federal Government or Traditional Owner permit to take resources and undertake research, development or commercialisation of those resources.

Once on Country you must observe a sustainable approach in accordance with Traditional Owner Practices. See Part 1.4 for further information.

## 2.5. Use of Biological Resources

**Traditional Owners must be involved and empowered in the use of Biological Resources and any Indigenous Knowledge and ICIP relating to Biological Resources.** How outcomes or outputs of a project, including research or products, will be used, and opportunities for future use, must be discussed with Traditional Owners during the consultation and consent process.

Refer to the AIATSIS Code of Ethics to ensure appropriate ethical standards are followed. A Material Transfer Agreement should also be entered into with Traditional Owners where Biological Resources are to undergo research and development (including chemical and safety testing) used in research or product development.

**Any use of Biological Resources, Indigenous Knowledge or ICIP, including in research or product development, must be with the consent of Traditional Owners, with appropriate attribution and benefits flowing to Traditional Owners.** It is important to consult with Traditional Owners to address the form of attribution that is appropriate, including whether they would prefer not to be attributed at all. See Part 1.8 and Part 1.7 for further information.

## 2.6 Limitations on Use

**You must comply with any cultural protocols, limitations or restrictions on the use of Indigenous Knowledge and ICIP applied by Traditional Owners when researching or using Biological Resources.** This includes engaging with internal key personnel or third parties, going on Country, and attribution of Traditional Owners.

Limitations on the use of outcomes and outputs of a project, including in relation to research or product development, should be discussed with Traditional Owners during the consultation and consent process, or as and when those outcomes or outputs are conceived.

Consider also whether you need to have ethical clearances if you are working through a university.

Ensure that Confidential Information, Indigenous Knowledge or ICIP contained in the results of the project are protected, including against third party use i.e. upon publication of research or product information containing Indigenous Knowledge.

## 2.7 Indigenous Data Sovereignty and Governance

When Data collected as part of a project includes information pertaining to Indigenous people, their cultural heritage or Indigenous Knowledge, then principles of Indigenous Data Sovereignty and data governance are raised – see Article 31 of *the United Nations Declaration on the Rights of Indigenous Peoples*. This includes collection of Personal Information of interviewees or collaborators, stories told about Biological Resources and their capabilities and uses, and language or cultural Practices associated with the Biological Resource and Indigenous Knowledge.

**You must adhere to principles of Indigenous Data Sovereignty and governance.** Indigenous Data Sovereignty both recognises the rights of Traditional Owners to control the use of their Data, wherever it is held (governance of data), and the importance of access to Data for Traditional Owner decision making and self-determination (data for governance).

Traditional Owners have the right to manage the collection, interpretation, use and storage of their Indigenous Knowledge and ICIP. Ownership management and communication of project Data and results should be negotiated between the Traditional Owners and project partners based on the principles of Indigenous Data Sovereignty and governance. Written agreements can provide clarity around the negotiated rights in access, use and storage of Data.

## 2.8 Publication of Research or Product Information

Publication of research or product information incorporating Biological Resources, Indigenous Knowledge or ICIP should be discussed during the consultation and consent process, and throughout the life of the project.

If information is going to be published or used outside of the relevant community, approval must first be sought from the Traditional Owners. The Traditional Owners may identify limitations on the suitability for dissemination and publication of the information, particularly if culturally sensitive information is incorporated in the research or materials.

You must provide the Traditional Owners with enough time to consider the publication proposal and either consent or deny the publication, or request changes. If the Traditional Owners consent to publication, then co-authorship and appropriate acknowledgement should be incorporated. You must be guided by the appropriate acknowledgement and attribution determined by the Traditional Owners.

## 2.9 Supply Chain Management

It is important to empower and meaningfully engage Traditional Owners in the supply chain of product development incorporating Biological Resources, Indigenous Knowledge or ICIP. It is an obligation to build Traditional Owner capability and capacity, such as employment opportunities, skills and knowledge transfer and support of bushfood businesses on Country. Traditional Owners must be resourced and empowered throughout this process.

**It is best practice to ensure Biological Resources are sourced from Traditional Owners or from suppliers that have supply agreements with Traditional Owners.**

See Part 3.6 for further information.

## 2.10 Reporting and Approval Obligations

Projects should include appropriate procedures for honest and transparent reporting on the outcomes of research and development. This may include progress, interim and final reports to the Traditional Owners. Reporting should be in a form that is culturally appropriate, useful and informative.

You should discuss reporting and approval obligations, including the appropriate form, during the consultation and consent process and ensure it is appropriately documented as part of the Access and Benefit Sharing Agreement.

## 2.11 Storage and Archiving

**Traditional Owners should be informed and consulted on how the storage and archiving of Biological Resources and materials containing Indigenous Knowledge and ICIP will be undertaken.** While it is generally appropriate to keep an archival copy of materials after completion of a project licence period, the Biological Resources and materials must be appropriately stored in a secure location (whether physically or digitally) and provenance information correctly recorded to ensure Traditional Owners are recognised and any restrictions on use specified. You may be required to compensate the Traditional Owners if Biological Resources are missing, lost or damaged.

It is crucial to keep accurate and up-to-date records of Biological Resources which are accessed, collected or removed from Country. This will ensure efficient destruction or return of Biological Resources as determined by the Traditional Owners. You must return all raw Data and Biological Resources, such as seeds, samples, propagations, derivatives etc. to the Traditional Owners.

You should discuss storage and archiving considerations, including provision of copies of Material for Traditional Owner use, and who can access and use the Materials, during the consultation and consent process and ensure they are appropriately documented as part of any agreement. Empower Traditional Owners to store Materials with themselves where possible.

**TIP!** Keep accurate and up-to-date records of Biological Resources accessed, collected or removed from Country so they may be destroyed or returned to the Traditional Owners as directed, or stored as otherwise agreed.

## CHECKLIST

- Identify Biological Resource and Traditional Owner with cultural authority.
- Enter into an ABS Agreement, or other fair contract.
- Obtain permission prior to going on Country.
- If you take resources for research or development (which includes testing), also use a Material Transfer Agreement.
- Follow Indigenous Data Sovereignty and Governance principles.
- Discuss use and limitations on use of Biological Resource, Indigenous Knowledge and ICIP.
- Include appropriate mechanisms and procedures for honest reporting.
- Empower Traditional Owners in the supply chain.
- Observe appropriate storage and archiving processes.

## 3. COMMERCIALISING BIOLOGICAL RESOURCES



The following sections provide practical considerations when commercialising Biological Resources.

### 3.1 Commercialisation Opportunities

Opportunities for commercialisation of Biological Resources will generally arise out of research and development, harvesting and supply, product development and value adding. **It is important to work with and be guided by Traditional Owners in the consideration of appropriate ways to commercialise Biological Resources and associated Indigenous Knowledge or ICIP.**

Consider:

- What Biological Resources are you wishing to commercialise?
- What extracts, biochemicals, derivatives or data will be derived from the Biological Resources?
- What subsequent uses are intended?
- Where do those Biological Resources come from?
- How are those Biological Resources grown, harvested and collected?
- Is there a cultural connection to those Biological Resources?
- Is it culturally appropriate to grow, harvest or process those Biological Resources other than on Country?
- Do you have permission to grow, harvest or process those Biological Resources on the chosen Country?
- What products or resources will be developed from those Biological Resources?
- Is it culturally appropriate to make those products or develop those resources from the Biological Resources in question?
- What is the size and scale of the commercialisation?

- What quality and quantity of Biological Resources will be needed?
- Is there sufficient supply?
- How will the products of resources be manufactured?
- What are the opportunities for Indigenous employment and/or subcontracting to other Indigenous businesses?
- What is the social, cultural and environmental impacts of the commercialisation?
- What name or brand will you use to market or promote those resulting products or resources?
- Will stories or artworks be used in branding and promotion?
- How will Traditional Owners, origin and provenance be attributed?
- What will the returns on commercialisation be?
- How will Traditional Owners be recompensed for commercialisation?
- Does there need to be a new story, song or dance that goes with the commercialisation of a Biological Resource?
- What is the timeline? Is there constant FPIC from access to resourcing to commercialisation?
- Have you negotiated an Access or Benefit Sharing Agreement or supplier agreement (or other fair contract) with Traditional Owners for commercialisation?
- Have you complied with these Protocols?

### 3.2 Identify Impacts of Commercialisation

This Protocol has a large role to play in developing inclusive and sustainable practices for Traditional Owners in the Victorian native food and botanicals industry. It ensures that Traditional Owners are no longer exploited for their unique knowledge and understanding of resources or excluded from economic benefits associated with development of those resources or knowledge.

However, it remains crucial that impacts of commercialisation are identified in relation to any project involving Traditional Owners, their Biological Resources, Indigenous Knowledge and/or ICIP. This includes consideration of current and future impacts on:

- resource management (including supply and sustainability);
- associated knowledge (including wide publication and potential misuse);
- cultural practices and integrity.

Through the consultation and consent process, **Traditional Owners should be made aware of the impacts, or potential impacts, of commercialisation of their resources and knowledge in order to make an informed decision about whether to proceed with the project or opportunity.**

**TIP!** Impacts of commercialisation must be discussed with Traditional Owners even after the conclusion of a project or activity.

### 3.3 Ensure Traditional Owner Engagement

**Traditional Owners must be engaged in the commercialisation of native plants and animals, and Indigenous Knowledge and ICIP associated with those resources.** There should be active participation and leadership of Traditional Owners throughout the supply chain. Although it may not always be possible, a Traditional Owner retailer should be engaged where available.

### 3.4 Undertake Consultation and Obtain Permission

It is best practice to undertake consultation and seek free, prior and informed consent from Traditional Owners for the commercialising of Biological Resources, Indigenous Knowledge and/or ICIP in the Victorian native food and botanicals industry. You must not commercialise the outcomes or outputs of any project or activity, including research, development or products, until appropriate consultation and consent has been obtained. See Parts 1.2 and Part 1.3 for further information.

A fair contract (such as an Access and Benefit Sharing Agreement) should be entered into with the relevant Traditional Owners addressing commercialisation opportunities, approvals processes, Intellectual Property ownership (including registrations of trade marks, patents

and plant breeder's rights), use of ICIP and sharing of monetary and non-monetary benefits that result from commercialisation. See Part 1.3 and Part 1.7 for further information.

Appropriate consultation and permission must be sought for the use of language, story or art in the commercialisation of Biological Resources. See Part 4 for further information.

Where the commercialisation opportunities are unclear at the beginning of a project or activity, it is worth incorporating an obligation in the initial contract that identifies:

- that commercialisation opportunities will be discussed between the parties as and when they arise;
- an approvals process will be developed by the parties;
- whether Traditional Owners have veto rights over any commercialisation;
- that a separate Commercialisation Agreement will be entered into by the parties.

**TIP!** Enter into an ABS Agreement, supply agreement or other fair contract addressing the process for management of commercialisation opportunities arising from projects.

### 3.5 Ensure Best Practice Use

You must follow best practice for commercialising Biological Resources, Indigenous Knowledge and ICIP.

It is important that you clearly identify the intended use so Traditional Owners can make an informed decision on whether to proceed with commercialisation.

Traditional Owners may determine that specific uses of Biological Resources or associated Indigenous Knowledge or ICIP in connection with a product, further development or activity is inappropriate. For example, there may be group specific cultural protocols relating to where a plant can be grown that conflicts with a development opportunity.

**You must respect any determination from Traditional Owners and not proceed with commercialisation or use in that manner.**

### 3.6 Supply Chain Management

**Raw ingredients for commercialisation should be ethically sourced from Traditional Owner suppliers or growers or sourced from suppliers that have Traditional Owner consent.**

Projects that provide Aboriginal employment and support Aboriginal businesses in the Victorian native food and botanicals industry, for example, as subcontractors, suppliers and retailers should be prioritised.

Traditional Owners should be involved in the supply chain from end-to-end when commercialising Biological Resources. Including Traditional Owners in this process further empowers capability and fosters self-determination.

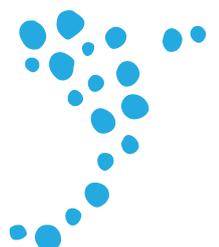
New varieties of resources may contain existing or altered Biological Resources or Indigenous Knowledge. Additionally, trade marks, patents or plant breeder's rights may need to be registered for any new resources or varieties developed. When registering trade marks, patent or plant breeder's rights, **it is important to acknowledge, and attribute, Traditional Owners as co-owners, co-inventors where appropriate.**

### 3.7 Distribution and Sale

Undertake consultation and consent on how Traditional Owners would prefer the product or resource to be distributed, and the appropriate use of language, story or art. Observe any limitations placed upon the distribution by the Traditional Owners.

**Consult Traditional Owners on how the resource should be sold.** A proposed sales strategy will assist Traditional Owners in providing input and addressing limitations.

Engage Traditional Owner retailers where possible.



### 3.8 Ongoing Consent Requirements

If, at any point, during engagement you consider that a biological resource or associated Indigenous Knowledge is capable of being commercialised, the relevant Traditional Owners should be notified. The commercial opportunities should be clearly identified, with risks and impacts outlined, and appropriate benefits flowing back to the community. This is relevant whether in relation to research and development, harvesting and supply, or product development.

**Appropriate free, prior and informed consent must also be obtained for new uses or subsequent applications.** It is important that any commercial opportunity or venture has the approval of Traditional Owners.

### 3.9 Limitations on Commercialisation

There may be limitations on commercialising due to certain cultural protocols or restrictions expressed by Traditional Owners, such as with secret and sacred information or materials. It is best practice to comply with and respect any limitations. These limitations should be reflected in an ABS Agreement, supply agreement or other fair contract.

#### CHECKLIST

- Consider whether the commercialisation opportunity is appropriate.
- Identify impacts of commercialisation.
- Enter into an ABS Agreement or other fair contract.
- Ensure best practice engagement and leadership.
- Involve Traditional Owners in the supply chain.
- Consent is ongoing and throughout the life of a project.
- Observe limitations expressed by Traditional Owners.

## 4. USING ABORIGINAL LANGUAGE, STORY, OR ART



The following sections provide practical considerations when considering using Victorian Aboriginal language, story or art in relation to your project or activity.

**Obligations under Part 5A of the *Aboriginal Heritage Act 2006 (Vic)* should also be considered.**

### 4.1 Identify Language, Story, or Art

When using Victorian Aboriginal language, story, art or other cultural expression in relation to their project or activity, you should consider:

- Do you have consent to use the language, story or art?
- What is the particular Indigenous language, story, art or other knowledge that you want to use?
- Why do you want to use that language, story, art or knowledge in relation to your project or activity?
- Where does that knowledge come from? Can you identify the Traditional Owners or knowledge holders?
- Does the use benefit the Traditional Owners and is not culturally offensive?
- Are Traditional Owners or knowledge holders being used involved?
- Do you have Traditional Owner consent for the use?

#### 4.2. Undertake Consultation and Obtain Consent

Consult with artists, storytellers and advisers, including language, cultural and art centres, to obtain free, prior and informed consent for any use of Indigenous Knowledge.

This is generally the Elders of a particular Traditional Owner or language group or family. There may be more than one person who must consent. See Part 1.3 for further information.

**Traditional Owner Corporations are best placed to identify the appropriate consultation and free, prior and informed consent processes to be followed.**

Consultation must begin at the start of the project. This will ensure that the scope and nature of the project or activity is appropriate and, where possible, Traditional Owner-led.

Projects that engage with Traditional Owners and Indigenous Knowledge must be flexible in nature, scope and timing. Project planning and requirements should be adapted in accordance with the outcomes of consultation. The larger the use and impact, the more consultation will be needed. Ensure that considerations of irreversibility and impact of use are discussed and understood.

Once the consultation and consent process are undertaken, a fair contract (such as a Licensing Agreement or, where Biological Resources are also being used, an ABS Agreement or Supplier Agreement) should be entered into with the relevant knowledge holders.

- Ensure that contracts are written in plain English, and determine whether multiple contracts are needed;
- Consider whether the Traditional Owners or knowledge holders need an interpreter, legal advisor, or cultural consultant to ensure they understand the terms of the contract.

#### 4.3. Recording of Language, Story, or Art

Where language, story, artwork or other Indigenous Knowledge is going to be recorded (i.e. written down, filmed, photographed or audio recorded), consent to record and use that information is required. This should generally be in writing in the form of a **Recording Consent**.

Copyright ownership of the resulting material must be considered and can be dealt with in the Recording Consent. It is best practice that copyright resides with the Traditional Owners or knowledge holders of the information being disclosed, and then for a copyright licence to be granted back for use in relation to the project or activity.

This will involve an assignment of any copyright that the author or maker holds in the material or recording to the relevant Traditional Owners or knowledge holders, and must be in writing, signed by the author or maker. It is recommended that the licence back for use also be in writing.

**TIP!** Use a Recording Consent Form to record and use language, story, artwork or other Indigenous Knowledge.

#### 4.4. Appropriate use of Language, Story, or Art

Traditional Owners or knowledge holders must be empowered to control and manage the use of their language, story, art or other Indigenous Knowledge.

The use of any Indigenous Knowledge must be:

- with consent;
- limited to the scope of the project or activity;
- recorded in a licensing agreement or other fair contract;
- with appropriate benefits flowing to Traditional Owners, knowledge holders and community (where relevant) for that use.

### **Non-Indigenous businesses which use the language, story or art of Traditional Owners must not suggest they are Indigenous.**

Cultural protocols or restrictions may apply to use and must be respected. This includes in relation to cultural practices, men's and women's business and secret or private information:

- For use of language, you must consider any Traditional Owner or Language Centre protocols that apply to use. A good resource to consider is Department of Communications and the Arts' *First Language, Law & Governance Guide*.
- For use of stories (including creation stories, stories of Country, stories about the totemic nature of species) and art, you must comply with the Australia Council's *Protocols for Using First Nations Cultural and Intellectual Property in the Arts*.

Any new use or alternative use that is outside the scope of the licence must be renegotiated.

**TIP!** IP Australia will ask for a letter of consent for the use of Aboriginal language if you try and register the language word or phrase as a trade mark.

#### **4.5 Product Marketing and Publicity**

The use of language, story or art in relation to products, resources, projects and activities, including those incorporating Biological Resources or as part of the Victorian native food and botanicals industry, provides a unique marketing and promotional tool.

However, the language, stories, art and knowledge associated with a plant or animal that is being commercialised must still recognise the cultural significance to Traditional Owners and knowledge holders.

**Any such use must be culturally appropriate (as determined by the relevant Traditional Owners) and with the consent of Traditional Owners.**

Product labelling and marketing and publicity materials should be approved by Traditional Owners or knowledge holders to ensure authenticity. Be aware of the importance of truth telling. Do not romanticise or stereotype

Victorian Aboriginal peoples, their culture or knowledge in photographs, films and statements, but rather connect with this living culture. Do not tokenise language, art or stories in your product marketing and publicity.

Seek guidance from Traditional Owners or knowledge holders or other Indigenous professionals such as graphic designers and marketing companies, if unsure of how material can or should be presented.

#### **4.6 Publications**

Consent is ongoing. This means that approval must be sought from Traditional Owners or knowledge holders for any publication of language, story, art or other Indigenous Knowledge as and when materials for publication are developed to ensure appropriateness of use.

Enough time must be given to the rights holders to be able to consider the publication and provide or deny consent.

Co-authorship of the publication should also be considered, and appropriate attribution to Traditional Owners or knowledge holders incorporated. See Part 1.8 and Part 2.8 for further information.

#### **4.7 Brand Names**

Many businesses in the native food and botanicals industry wish to take part in the success and desire for authentic Victorian Aboriginal bushfoods, products, medicines, experiences and knowledge. There has been a history of misuse of Victorian Aboriginal language to promote native food and botanical products suggesting authenticity and connection to Country where in fact there is none. Be careful that your statements are not misleading and deceptive.

The best approach is to have Traditional Owners check the language wording.

**Use of Victorian Aboriginal language as a business, brand or product name must only be with permission of the relevant language group.** Where free, prior and informed consent is sought for use, a fair licensing agreement should be entered into and an appropriate licensing fee paid. The Trade Mark Office of IP Australia requires a consent letter prior to



filing a trade mark that includes an Indigenous word. For more information, see IP Australia's Indigenous Knowledge IP Hub.

#### 4.8 Limitations on Use

Ensure that any particular protocols, limitations or restrictions on use of the knowledge or material is complied with. This includes use of the knowledge or material by third party contractors such as manufacturers, suppliers or designers, as well as in any labelling, media or online promotion or marketing.

Consider how third parties may access and use the knowledge or material without permission and mitigate those risks where possible.

#### CHECKLIST

- Do not record, use, publish or commercialise Indigenous Knowledge or ICIP without permission of Traditional Owners or knowledge holders.
- Ensure ongoing consent is sought throughout the life of the project.
- Enter into an appropriate Licensing Agreement or other fair contract.
- Where recording Indigenous Knowledge or ICIP, ensure IP ownership rests with the Traditional Owners or knowledge holders.
- Be aware of men's and women's business sensitivities.
- Ensure no publication of secret or private information.
- Avoid stereotyping Victorian Aboriginal peoples.
- Attribute relevant Traditional Owners or knowledge holders.
- Do not authorise third party use of Indigenous Knowledge or ICIP without permission.
- For branding and marketing, check statements and text with Aboriginal people, and seek consent prior to use of language words as brands, company names and seek consent before registering these as trade marks.

## 5. LABELING BIOLOGICAL RESOURCES BIOLOGICAL RESOURCES



The following sections provide practical considerations when labeling and packaging Biological Resources.

### 5.1 What Labelling and Packaging Requirements Apply?

Labelling and packaging, and marketing and promotion, are what catch the eye of the consumer and drive the sale of a product in the marketplace. Getting your labelling and packaging right is essential to building a strong position in the market and a successful business.

Where products or resources incorporate Biological Resources and/or Indigenous Knowledge (including language, stories, art or design), appropriate labelling and packaging must be considered. This includes where the resource comes from, which Traditional Owners or Victorian Aboriginal people have led or been involved in development of the product or resource, and how people wish to be recognised.

**Do not mislead or deceive consumers as to the provenance and origin of products or resources.** Do not suggest or imply you (or your products or resources) have a connection to Traditional Owners or Victorian Aboriginal peoples or their culture where there is none.

Consider:

- Who needs to be acknowledged for use of Biological Resources and/or Indigenous knowledge?
  - Traditional Owner group?
  - Individual knowledge holders?
  - Individual co-designers or creators?
  - Organisations or other groups?

- How do Traditional Owners or individuals want to be attributed?
- What is the correct spelling of Victorian Aboriginal language words for people, places and things?
- Should an Acknowledgement of Country be incorporated?
- Will language, stories, art or design be incorporated in the labelling or packaging?
- Is that use appropriate? Is it related to the source Country?
- Have you sought permission for use of logos or names of organisations?

## 5.2 How should Traditional Owners be Attributed in Labelling and Packaging?

Where Traditional Owners or individual has been involved in the development of a product, or their Biological Resources or Indigenous Knowledge has been used, they should be attributed in the product labelling or packaging, whichever is most appropriate.

**Attribution must be with the consent of those Traditional Owners or individuals.** Enough time must be provided to review and approve draft labelling and packaging to ensure correct attribution.

If there are changes to labelling and packaging from time to time, re-consult with Traditional Owners and individuals.

Attribution and approval processes for labelling and packaging are best dealt with in any ABS or Licensing Agreement.

## 5.3 How should Traditional Owners be Attributed in Marketing and Promotion?

Attribution is required in relation to the marketing and promotion of any product or resource containing Biological Resources or Indigenous Knowledge. **Attribution should be with the prior consent of the relevant Traditional Owners or individuals, providing reasonable time for review and approval of the material.**

Attribution and approval processes for marketing and promotion should be covered in an ABS or Licensing Agreement. You should also get written consents to film people and

include them in promotional videos. You might also need permissions to film on Country. See Part 1.8 for further information.

## 5.4 How to Incorporate Language, Stories, Art or Design?

Use of Victorian Aboriginal language words, names, stories, art or design to connect a product or resource to a particular Country, Aboriginal peoples and cultural Practices is a key marketing and promotional tool, suggesting uniqueness, quality and cultural consent.

**It is important to ensure that whatever Indigenous Knowledge is used in relation to a product or resource, it is with the consent of the creator or copyright owners, as well as the cultural custodians of that knowledge.**

While language or words are not generally protected by copyright, stories, artwork, design, illustrations, songs and dance that are written down or recorded in some way, are protected.

Permission must be sought from the copyright owner (generally the creator) of any such “work” to use that material in relation to your particular product or resource.

An appropriate Licence Agreement should be entered into. The creator should be paid a licensing fee for use of their work, and where individual units are to be sold, the creator is generally entitled to a percentage of royalties from the sale of each product.

It is not best practice to seek an assignment of copyright from the creator. A licence for use for particular purposes i.e. on the labelling or packaging of a particular product, is more appropriate.

Using a story, artwork or design without the permission of the creator or copyright owner will likely about to copyright infringement unless a licence has been granted.

## 5.5 How to Ensure Cultural Integrity?

To ensure the cultural integrity of any use of Indigenous Knowledge, including language, stories, art or design, approval from the relevant Traditional Owners or knowledge holders must also be sought for that use (unless this can be provided by the creator or

copyright owner instead), including ongoing approval rights in relation to subsequent use. Additionally, **the use of language, art and stories must not be tokenistic in nature. Use must be genuine, authentic and support Traditional Owner empowerment.**

This is to ensure that the context of use is culturally appropriate and not insensitive.

When considering incorporating Victorian Aboriginal stories, art or design into product labelling, packaging, marketing or promotion, it is important to ensure that:

- the works are authentic – made by Aboriginal people who have authority to incorporate the relevant knowledge into their work;
- the works relate to place – if you are selling a product incorporating a plant endemic to Victoria, it is not appropriate to use the artwork or design of an Aboriginal artist from Central Australia;
- the creator (or copyright owner) has cultural authority – to grant permission for use of the work incorporating Indigenous Knowledge in relation to the product or service;
- where the creator (or copyright owner) does not have cultural authority – they can assist with the arrangement of the necessary consent.

Permission for use of Victorian Aboriginal language words must be sought from the relevant language group who can speak for that language. It is important to ensure that the language used:

- has a connection to the Biological Resources or Indigenous Knowledge incorporated in the product or resource;
- is not used out of context;
- is not derogatory or inappropriate.

## CHECKLIST

- Ensure origin and provenance are correctly identified.
- Don't mislead or deceive consumers about the origins of products or suggest a connection with Indigenous peoples or their knowledge where there is none.
- Ensure Traditional Owners are appropriately attributed on product labelling and packing and in promotion and marketing.
- Consider whether Acknowledgement of Country is required.
- Seek permission from copyright owners and performers for use of stories, art, design, illustrations, song & dance.
- Seek consent from language custodians for use of Victorian Aboriginal language words.
- Ensure use is not culturally inappropriate or insensitive.

## 6. SHARING BENEFITS WITH COMMUNITY



The following sections provide practical considerations to ensure appropriate benefits are shared with Traditional Owners.

### 6.1 Discuss Benefit Sharing with Traditional Owners

It is important to **ensure that benefits from the use of Biological Resources, Indigenous Knowledge and ICIP in relation to the Victorian native food and botanicals industry flow back to Traditional Owners and community.**

See Part 1.7 for further information.

Traditional Owners are best placed to identify appropriate benefit sharing for projects and activities involving their Biological Resources and knowledge. You should discuss monetary and non-monetary benefits during the consultation and consent process and ensure they are appropriately documented as part of any agreement. Traditional Owners must receive benefit and be empowered, in exchange for information, time and resources.

### **Monetary**

Monetary benefits may include:

- Salaries and fees for consultants and liaisons;
- Procurement services from Traditional Owners;
- Up-front payments;
- Milestone payments;
- Payment of royalties;
- Shares;
- Scholarships;
- Involvement in value/supply chains;
- Licence fees in case of commercialisation;
- Joint ventures;
- Joint ownership of relevant intellectual property rights;
- Discount/deals on services offered.

Monetary benefits may include a combination of, or alternatives to, what has been listed.

### **Non-Monetary**

Non-monetary benefits may include:

- Collaboration, co-operation and contribution in development programmes, education and training;
- Cultural competency (inclusive of awareness and safety) training;
- Strengthening capacities for technology and skills transfer;
- Resourcing i.e. opportunities for intergenerational knowledge transmission, language reinvigoration;
- Involvement in the supply/value chain of the raw resource;
- Institutional or business capacity-building;
- Positions on Boards/committees;
- Memberships;

- Transportation and travel;
- Tools of the trade i.e. computers, phones, etc.;
- Equity plans e.g. cultural diversity and equality plans within the organisation;
- Contributions to the local Victorian Aboriginal economy and Aboriginal economic development;
- Research directed towards priority needs for Traditional Owners;
- Building institutional and professional relationships;
- Support Traditional Owner projects;
- Stewardship strengthening i.e. revitalisation and valuing of Indigenous Knowledge, strengthening language and cultural practice, and caring for Country practices;
- Support intergenerational transfer of knowledge, elder working with youth;
- Mentoring opportunities;
- Childcare support;
- Social recognition.

Non-monetary benefits may include a combination of, or alternatives to, what has been listed.

## **6.2 Building Traditional Owner Capability**

Traditional Owners should be empowered in the sharing of their Indigenous Knowledge, history, Country and ICIP. Where possible, Traditional Owner capability and capacity should be incorporated into any project and activity.

This may include employment and training opportunities, and fair and equitable payment. It may also include non-commercial opportunities such as supporting transfer of knowledge amongst members of a community from Elders to youth and providing more opportunities for Traditional Owners to spend time on Country.

Traditional Owner or Aboriginal supplier businesses in the Victorian native food and botanicals industry may also benefit from support and skills transfer opportunities.

## 7. EMPOWERING CULTURE



The following sections provide practical considerations to ensure culture is empowered.

### 7.1 Comply with the Strategy

This Cultural Protocol has drawn inspiration from the Traditional Owner Native Food and Botanicals Strategy, and the two documents work in partnership. You should read and familiarise yourself with the Strategy, and when engaging with Traditional Owners must also comply with the principles and strategies it speaks to.

### 7.2 Ensure Self-determination of Traditional Owners

Traditional Owners have a right to self-determination. To be self-determined is to empower Traditional Owners with the capacity to make economic, cultural and social decisions about themselves and their community. This reinforces the sovereignty Traditional Owners have in themselves, their culture, their Country, and the Victorian native food and botanicals industry. It furthers intergenerational learning and Practices of community, from Elders to young ones.

Culture is practiced, taught and experienced in numerous ways. It is important that you support other ways Traditional Owners are empowering culture, in the forms they intend to express it.

**TIP!** When engaging with Traditional Owners, seek to support and empower them through the project or activity.

### 7.2 Conservation and Sustainability of Biological Resources and Traditional Owner Management

Since time immemorial, Traditional Owners and their Ancestors have been caring for Country in sustainable ways. This practice and responsibility is passed down to subsequent generations. The connection to Country, Biological Resources, Indigenous Knowledge and biocultural knowledge is not static, it is in constant flux and evolution.

In revitalising, strengthening and advancing Indigenous Knowledge and practice, the Country and Biological Resources must be conserved and sustained. Traditional Owner practices relating to conservation and sustainability of Country must be complied with.

Access to Country is vital for Traditional Owners to maintain connection and to Practice culture. Where possible, the project or activity should assist with, and not restrict, this access.

You must ensure any negative impact on Biological Resources are minimised. You must not overharvest and should ensure that the plant or animal (or Biological Resources) on Country is maintained, healed or improved.

Practices which you may undertake include, but are not limited to:

- Recycling;
- Composting;
- Restoration of vegetated areas;
- Development/conservation of green spaces;
- Zero/reduced paper-based operations;
- Waste management;
- Appropriate chemical use;
- Appropriate vehicle use;
- Correct ethical permits i.e. permits to handle animals or disturb an animals natural habitat;
- Pest, plant, animal and disease management;
- Biosecurity management;
- Habitat assessment and record keeping;
- Indigenous fire management;
- Adhering to appropriate harvesting and seasonal schedules as directed by the Traditional Owner Corporation.

**TIP!** Always seek to empower and strengthen Country by following conservation and suitability practices as directed by the Traditional Owners.

#### 7.4. Support Promotion and Protection

Historically, Traditional Owners and their Indigenous Knowledge and ICIP have been exploited. Best practices, like this Cultural Protocol, are emerging to prevent the future degradation and exploitation of culture. Activities and projects within the Victorian native food and botanicals industry must involve Traditional Owners, and that involvement must be supported and protected. It is through this protection that the oldest living culture in the world can prosper and share its knowledge for the betterment of all.

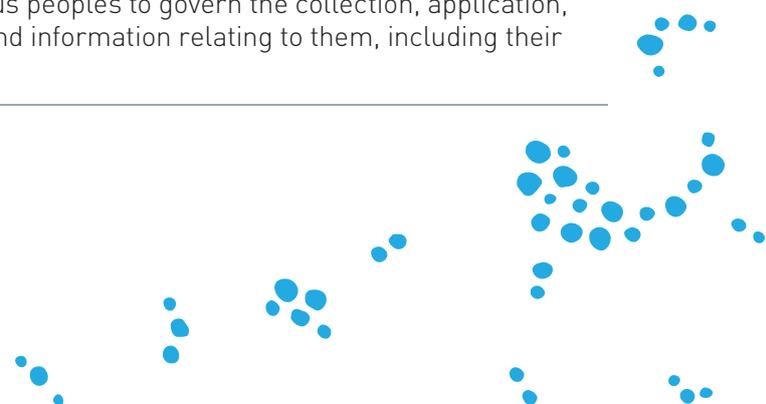
#### CHECKLIST

- Comply with the Traditional Owner Native Food and Botanicals Strategy.
- Engagement must always support and empower Traditional Owners.
- Maintain conservation and sustainability practices of Biological Resources and Country.

## 8. DEFINITIONS

<b>Aboriginal</b>	means a person of Australian Aboriginal descent who identifies as such and is recognised and accepted as such by an Aboriginal community.
<b>Access and Benefit Sharing Agreements</b>	means an agreement that defines fair and equitable sharing of benefits which has been created in accordance with the Victorian Traditional Owner Native Food and Botanicals Strategy.
<b>Biocultural</b>	recognises the interconnection of bio-physical, social, spiritual and cosmological relationships with native species, with emphasis on cultural connections.
<b>Biological Resources</b>	includes genetic resources, fungi, microbes, organisms or parts thereof, biochemical extracts and derivatives, populations, or any other biotic component of ecosystems (including plants and animals) with actual or potential use or value for humanity, as is also understood in the <i>Convention on Biological Diversity</i> .
<b>Bioprospecting</b>	means the unauthorised extractive research into biological resources and/or Indigenous Knowledge from other countries, indigenous or local communities usually from pharmaceutical or biomedical purposes.
<b>Confidential Information</b>	means information: <ul style="list-style-type: none"> <li>(i) relating to or developed in connection with the project, business, financial, intellectual or cultural affairs of personnel or an organisation, including Intellectual Property or ICIP, which is disclosed to, learnt by, or which otherwise comes to the knowledge or possession of the personnel;</li> <li>(ii) that is secret or sacred;</li> <li>(iii) designated by the personnel as confidential;</li> <li>(iv) regarding processes, policies, clients, customers, employees, contractors of or other persons doing business with the personnel; or</li> <li>(v) contained within Materials, Data or Products.</li> </ul>
<b>Conflict</b>	includes any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising throughout a project.
<b>Country</b>	means all of the sentient and non-sentient parts of the world and the interactions between them, according to Aboriginal lore. Indigenous lore and life originates in and is governed by Country. Country must be respected. In a Western conservative context, this is more aligned to a systems and resilience approach to thinking and to an active, adaptive management approach to practice.
<b>Data</b>	means the physical representation, digital sequence information (and any biological material propagated from the Biological Resource), and metadata of information in a manner suitable for communication, interpretation or processing by human beings or by automatic means.

<p><b>Free, Prior and Informed Consent</b> or FPIC</p>	<p>has the meaning given by the United Nations Human Rights Office of the High Commissioner as:</p> <ul style="list-style-type: none"> <li>(i) <b>Free</b> implies that there is no coercion, intimidation or manipulation.</li> <li>(ii) <b>Prior</b> implies that consent is to be sought sufficiently in advance of any authorisation or commencement of activities and respect is shown to time requirements of indigenous consultation/consensus processes.</li> <li>(iii) <b>Informed</b> implies that information is provided that covers a range of aspects, including the nature, size, pace, reversibility and scope of any proposed project or activity; the purpose of the project as well as its duration; locality and areas affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; and procedures the project may entail.</li> <li>(iv) This process may include the option of withholding consent. Consultation and participation are crucial components of a <b>consent</b> process.</li> </ul>
<p><b>Indigenous</b></p>	<p>means a person of Australian Aboriginal or Torres Strait Islander descent who identifies as such and is recognised and accepted as such by an Aboriginal or Torres Strait Islander community.</p>
<p><b>Indigenous Cultural and Intellectual Property</b> or ICIP</p>	<p>means the cultural rights of Indigenous peoples to their heritage. Heritage comprises all objects, sites, languages and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory. It also includes traditional knowledge in respect of the whole body of cultural practices, resources and knowledge systems that have been developed, nurtured and refined (and continue to be developed, nurtured and refined) by Indigenous people and transferred and maintained by Indigenous peoples from generation to generation as part of expressing and maintaining their cultural identity. This heritage is a living one and includes objects, knowledge and works which may be created in the future based on that heritage. Heritage includes:</p> <ul style="list-style-type: none"> <li>(i) literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages and designs);</li> <li>(ii) scientific, agricultural, technical and ecological knowledge (including cultigens, medicines and the phenotypes of flora and fauna);</li> <li>(iii) cultural governance and Practices;</li> <li>(iv) totems and sound signatures;</li> <li>(v) all items of movable cultural property;</li> <li>(vi) human remains and tissues;</li> <li>(vii) immovable cultural property (including sacred and historically significant sites and burial grounds);</li> <li>(viii) documentation and collections of Indigenous peoples' heritage in archives, film, photographs, videotape or audiotape and all forms of media.</li> </ul>
<p><b>Indigenous Data Sovereignty</b></p>	<p>refers to the right of Indigenous peoples to govern the collection, application, and ownership of their Data and information relating to them, including their ICIP.</p>



<b>Indigenous Knowledge or IK</b>	means the understandings, skills and philosophies developed by societies with long histories of interaction with their natural surroundings. For rural and indigenous peoples, local knowledge informs decision making about fundamental aspects of day-to-day life. This knowledge is integral to a cultural complex that also encompasses language, systems of classification, resource use practices, social interactions, ritual and spirituality. These unique ways of knowing are important facets of the world's cultural diversity, and provide a foundation for locally-appropriate sustainable development.
<b>Intellectual Property or IP</b>	refers to the existing and future industrial and intellectual property rights, including any copyright, database, patent, design, trade mark, domain name, business or company name, know-how, trade secret, Confidential Information and any other rights of a similar nature whether registered registrable, patentable or not.
<b>Material</b>	means Biological Resources, samples, propagations, any derivatives, and Data.
<b>Personal Information</b>	has the same meaning given to that term by section 6 of the <i>Privacy Act 1988</i> (Cth).
<b>Personnel</b>	includes but is not limited to officers, employees, agents, consultants, contractors or volunteers of an organisation.
<b>Practice</b>	means how Traditional Owners act on their cultural law, principles and Indigenous Knowledge through the holistic management and use of Country. This includes how species are cared for within an ecological and cultural landscape and the ways in which Traditional Owners use contemporary knowledge and practice to produce, process and use those species according to its connected law and ICIP.
<b>Products</b>	means material and know how (physical and/or non-physical) produced, obtained, extracted or derived through utilisation of Biological Resources or Materials and Project IP or otherwise in accordance with a Project.
<b>Project Data</b>	means Data collected and recorded about or in relation to Materials as part of a Project, including genomically sequenced data, digital sequence information and metadata.
<b>Project IP</b>	means Intellectual Property created for or in connection with a Project but excludes any Project Data and Reports.
<b>TONFABS</b>	means the Victorian Traditional Owner Native Food and Botanicals Strategy, developed by the Federation of Victorian Traditional Owner Corporations with the support of Agriculture Victoria.
<b>Traditional Owners</b>	means a Victorian Aboriginal person or group claiming Traditional Owner status over a particular Country with cultural authority to act on their rights.
<b>Traditional Owner Corporation</b>	means any corporation that is a Recognised Aboriginal Party (RAP), Prescribed Body Corporate (PBC), or a Traditional Owner Group Entity (TOGE) for the purpose of the relevant Act.
<b>Utilisation of Biological Resources</b>	means research and development, commercialisation and subsequent development, which includes derivatives.



# ANNEXURE

## ANNEXURE A – RESOURCES

### 9. WHO TO CONSULT?

#### Where to start:

- Local Councils;
- The Federation of Victorian Traditional Owner Corporations;
- Traditional Owner Corporations (see Office of the Victorian Aboriginal Heritage Council);
- Traditional Owner groups.

### 10. CULTURAL NOTICES

#### Cultural Sensitivity Warning Notice

WARNING: The following [document/material] contains the name, image, likeness, recording or other information of deceased persons of Aboriginal and Torres Strait Islander descent. It also contains language that may be considered offensive to some audiences.

#### Traditional Custodian's Notice

This work embodies traditional knowledge of the [NAME] community. It was created with the consent of the custodians of the [NAME] community. Dealing with any part of the work for any purpose that has not been authorised by the custodians is a serious breach of customary law of the [NAME] community and may also breach the *Copyright Act 1968* (Cth). For enquires about permitted reproduction of the traditional knowledge contained in this work, contact [NAME] community [insert contact email].

## 11. ACCESS & BENEFIT SHARING AGREEMENTS AND MATERIAL TRANSFER AGREEMENTS

### Access and Benefit Sharing Agreements

An Access and Benefit Sharing Agreement is an agreement which sets out the way in which genetic resources may be accessed, and how the benefits that result from their use are shared between the users and the source community.<sup>3</sup>

The TONFABS PCC has developed a template Access and Benefit Sharing Agreement for Traditional Owner Corporations that can be adapted to the particular circumstances.

See also the World Intellectual Property Organization's *A Guide to Intellectual Property issues in Access and Benefit Sharing Agreements*.<sup>4</sup>

The Commonwealth Department of Agriculture, Water and Environment has developed a template agreement in relation to access to Biological Resources and an Explanatory Guide that may prove useful.<sup>5</sup>

In addition, the Queensland Government has developed a model benefit sharing agreement as a starting point for negotiations and a Guideline for preparing a benefit sharing agreement containing information on the purpose and content of benefit sharing agreements.<sup>6</sup>

The Northern Territory Government has also prepared template Benefit Sharing Deeds for use with or without the NT Government.<sup>7</sup>

### Material Transfer Agreements

A Material Transfer Agreement refers to an agreement that sets the terms for transfer of materials from the owner of a biological resource (or authorised licensee) to a third party, primarily for research purposes.

A Material Transfer Agreement should outline the authorised uses of the biological resource by the third party, and the ownership/licence

arrangements for any pre-existing IP and ICIP as well as for any IP or ICIP created during the research project. Where an Access and Benefit Sharing Agreement also exists, it may be appropriate to make reference to this Agreement in the Material Transfer Agreement.

### General Resources

Victorian Traditional Owner Native Foods and Botanicals Strategy.

United Nations Declaration on the Rights of Indigenous Peoples.

United Nations Convention on Biological Diversity.

Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From Their Utilization.

AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research.

TJC Resources.

Other Native Food and Botanicals Protocols and Best Practice Strategies:

- Department of Primary Industries and Regional Development, *Setting up for success: Bushfoods*;
- Department of Primary Industries and Regional Development, *Protection of Indigenous Knowledge and bushfood businesses*;
- Ninti One, *Aboriginal people, bush foods knowledge and products from central Australia: Ethical guidelines for commercial bush food research, industry and enterprises*;
- Aboriginal Bush Traders, *Know your rights to your Aboriginal plant knowledge*;
- Kylie Lingard, *Strategies to Support Aboriginal and Torres Strait Islander Interests in Gourmet Bush Food Product Development*.

3 See *Convention on Biological Diversity – Introduction to access and benefit sharing* <https://www.cbd.int/abs/infokit/brochure-en.pdf>.

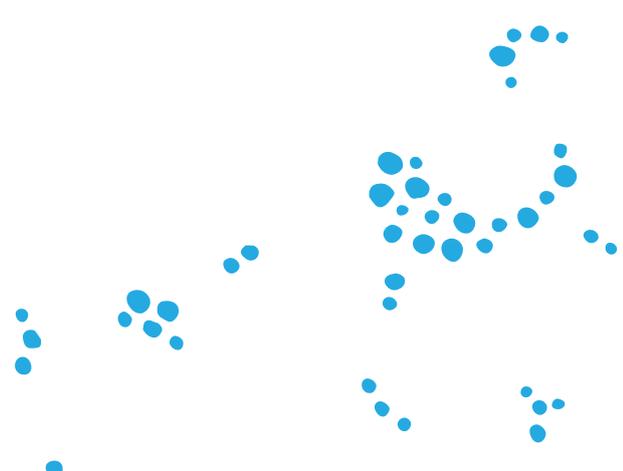
4 See World Intellectual Property Organization, *A Guide to Intellectual Property issues in Access and Benefit Sharing Agreements*, 2018: [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_1052.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1052.pdf)

5 Australian Government, *Permits for commercial or potentially commercial purposes – Benefit-sharing agreements*, Department of Agriculture, Water and the Environment: <https://www.awe.gov.au/science-research/australias-biological-resources/permits-%E2%80%93-accessing-biological-resourc-0>

# ANNEXURE B – TRADITIONAL OWNER CONSIDERATIONS

The Traditional Owner Considerations List may assist Traditional Owners in making a determination whether to engage with a project partner on a specific project or activity. It is important that engagement and agreements are in line with the self-determination of Traditional Owners. The variations of Indigenous Knowledge and Biological Resources will require internal analysis by the Traditional Owners to minimise disputes and disagreements amongst neighbouring communities.

- 
- A. What resources can be used/commercialised?  
a. Traffic light system
- 
- B. Is the Knowledge public knowledge?
- 
- C. Identify the Supply Chain  
a. Harvest  
b. Manufacture  
c. Production  
d. Distribution
- 
- D. Who are the Traditional Owners collaborating with?
- 
- E. How to maintain cultural integrity?
- 
- F. What are collaborations which would impact or harm the cultural integrity?
- 
- G. What are the perceived impacts of use?  
a. Overharvesting  
b. Pests  
c. Climate Change
- 
- H. What are the variants in species?
- 
- I. Is the species native to the community?
- 
- J. Is there a possibility of modification?  
a. Cross-breeding
- 
- K. What is the harvesting practice?  
a. Wild harvest or Commercial harvest
- 
- L. Does the species' Knowledge and use vary across communities?
- 



The way things are  
is not the way things  
have always been.

And, the way things are  
is not the way things  
have to be.

We are guided by the  
resilience, resourcefulness  
and intelligence of our Elders,  
past and present.



