



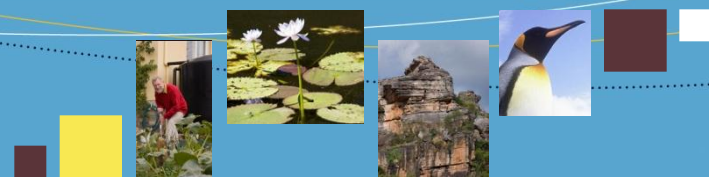
Australian Government

**Department of Sustainability, Environment,
Water, Population and Communities**



Making the Nagoya Protocol work

Cassowary (Wet Tropics Management Authority- QLD) Rock art (C.Zwick)



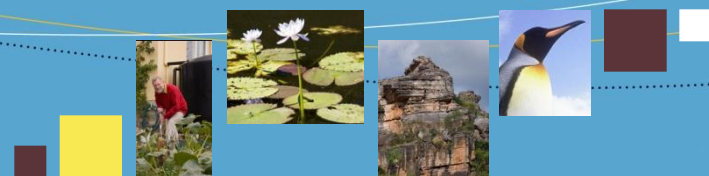
The scope of the protocol

- Genetic Resources – Article 15
- Utilisation definition
- Genetic resources and associated traditional knowledge



The scope of existing legislation

- Genetic resources: the trigger
- Disclosure: use of Indigenous people's knowledge
 - Commercial and non-commercial use
 - Applications
- Informed Consent



Part 8A

8A.08 Benefit-sharing agreements

A benefit-sharing agreement must provide for reasonable benefit-sharing arrangements, including protection for, recognition of and valuing of any Indigenous people's knowledge to be used, and must include the following:

...

(h) a statement regarding any use of Indigenous people's knowledge, including details of the source of the knowledge, such as, for example, whether the knowledge was obtained from scientific or other public documents, from the access provider or from another group of Indigenous persons;

(i) a statement regarding benefits to be provided or any agreed commitments given in return for the use of the Indigenous people's knowledge;

(j) if any Indigenous people's knowledge of the access provider, or other group of Indigenous persons, is to be used, a copy of the agreement regarding use of the knowledge (if there is a written document), or the terms of any oral agreement, regarding the use of the knowledge;

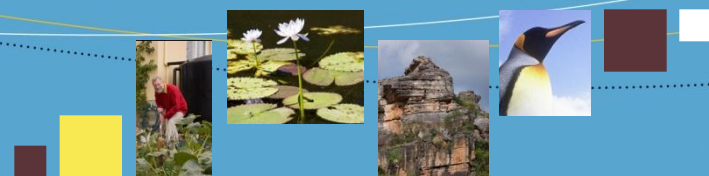


Part 17

In an application, the applicant must provide:

....

- (v) the use that is proposed to be made of Indigenous people's knowledge in determining the biological resources to be accessed or the particular areas to be searched, and details of any agreements made with Indigenous persons in relation to use of specialised information or information otherwise confidential to the Indigenous people of the area; and



Amendments to the regulations - the Hawke Review

Recommendation 22

.....

4. require informed consent where Indigenous knowledge is accessed or used for non-commercial purposes on Commonwealth land.



The specific obligations of the Protocol

Article 5. Fair and Equitable Benefit-sharing

.....

5. Each Party shall take legislative, administrative or policy measures, as appropriate, in order that the benefits arising from the utilization of traditional knowledge associated with genetic resources are shared in a fair and equitable way with indigenous and local communities holding such knowledge. Such sharing shall be upon mutually agreed terms.



The specific obligations of the Protocol

Article 7. Access to Traditional Knowledge Associated with Genetic Resources

In accordance with domestic law, each Party shall take measures, as appropriate, with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with the prior and informed consent or approval and involvement of these indigenous and local communities, and that mutually agreed terms have been established.



The specific obligations of the Protocol

Article 12. Traditional Knowledge Associated with Genetic Resources

1. In implementing their obligations under this Protocol, Parties shall in accordance with domestic law take into consideration indigenous and local communities' customary laws, community protocols and procedures, as applicable, with respect to traditional knowledge associated with genetic resources.
2. Parties, with the effective participation of the indigenous and local communities concerned, shall establish mechanisms to inform potential users of traditional knowledge associated with genetic resources about their obligations, including measures as made available through the Access and Benefit-sharing Clearing-House for access to and fair and equitable sharing of benefits arising from the utilization of such knowledge.

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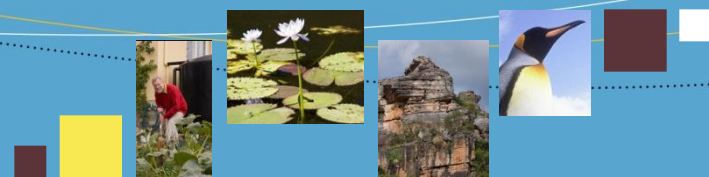
The specific obligations of the Protocol

Article 12 continued:

3. Parties shall endeavour to support, as appropriate, the development by indigenous and local communities, including women within these communities, of:

- (a) Community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of such knowledge;
- (b) Minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources; and
- (c) Model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.

4. Parties, in their implementation of this Protocol, shall, as far as possible, not restrict the customary use and exchange of genetic resources and associated traditional knowledge within and amongst indigenous and local communities in accordance with the objectives of the Convention.



The specific obligations of the Protocol

Article 16. Compliance with Domestic Legislation or Regulatory Requirements on Access and Benefit-sharing for Traditional Knowledge Associated with Genetic Resources

1. Each Party shall take appropriate, effective and proportionate legislative, administrative or policy measures, as appropriate, to provide that traditional knowledge associated with genetic resources utilized within their jurisdiction has been accessed in accordance with prior informed consent or approval and involvement of indigenous and local communities and that mutually agreed terms have been established, as required by domestic access and benefit-sharing legislation or regulatory requirements of the other Party where such indigenous and local communities are located.
2. Each Party shall take appropriate, effective and proportionate measures to address situations of non-compliance with measures adopted in accordance with paragraph 1 above.
3. Parties shall, as far as possible and as appropriate, cooperate in cases of alleged violation of domestic access and benefit-sharing legislation or regulatory requirements referred to in paragraph 1 above.



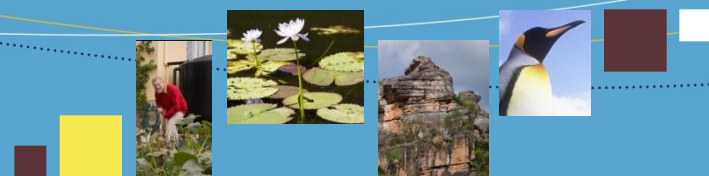
How can we do this in Australia

- Invitation to comment on now
- A series of opportunities to comment
- Working within government to develop options
- Intention to consult widely on specific proposals
- The role of Government – a balancing act



Australian Government

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Thank you!