

Free, Prior and Informed Consent of Indigenous People

In Australia and internationally, free, prior and informed consent is emerging as one of the key legal requirements for the protection of the rights of Indigenous people over their resources and traditional knowledge. This fact sheet provides an overview of the concept of free, prior and informed consent and the procedure to obtain such consent for the access and use of biological resources (eg plants, seeds, germplasm) and traditional knowledge.

What is the concept of free, prior and informed consent?

- *Free* means that there is no intimidation, coercion, or manipulation of Indigenous people in making decisions about the access and use of their biological resources and traditional knowledge.
- *Prior* means that consent is to be sought sufficiently in advance of the commencement of the proposed project. In so doing, it is important to show respect to the relevant customary laws and practices, including the time requirements that Indigenous people may need for their community consultation and consensus processes.
- *Informed* means that sufficient information is provided to Indigenous people to make them fully aware of the proposed project, including potential costs, benefits, risks and implications.

What is involved in the procedure to obtain free, prior and informed consent?

The procedure to obtain free, prior and informed consent of Indigenous people must involve the full and accurate disclosure of information regarding the project for which access to biological resources and traditional knowledge is being sought.

At the minimum, before accessing biological resources and traditional knowledge from Indigenous people, the access seeker should

obtain free, prior and informed consent by disclosing the following information:

- the nature and purpose of the proposed project (eg academic research, scientific and taxonomic studies, impact assessment, biodiscovery, commercial research, non-commercial research);
- the duration of the proposed project;
- the locations of areas of access, including the traditional owner groups and Indigenous communities likely to be affected;
- an assessment of the impact of the proposed project on conservation and sustainable use, and particularly the continued customary access to and use of the biological resources for which access is being sought;
- details of project participants, including third parties;
- conditions for third party-access to biological resources and traditional knowledge;
- specific procedures the proposed project would entail (eg desktop research, sample collecting, random surveys, field trials, archaeological excavation);
- kinds of biological materials and their quantities to which access is sought;

- potential risks involved (eg, entry into sacred areas, partial destruction of an Indigenous site);
- details of any plans to record and document traditional knowledge (eg, verbally, audio-visual recording, verbatim transcripts, photographs, or combination of these, etc), including details of how the accessed traditional knowledge is to be used and protected;
- measures to be taken to protect the confidentiality of the traditional knowledge and its owners;
- the full implications of the project that can realistically be foreseen (eg, commercial, environmental, cultural), including details of the intellectual property implications with regard to the standard forms of intellectual property (copyright, patents, plant breeder's rights, trade marks, collective marks, etc);
- benefit sharing arrangements with Indigenous people;
- whether the results, outcomes or findings of the proposed project are likely to be published or released;
- an agreement to inform Indigenous people of any changes in the nature of the proposed project, particularly regarding changes to the relevance, role and use of the biological resources and traditional knowledge, and possible commercial or intellectual property implications.

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This fact sheet is only for information purposes, and to assist you in understanding your legal rights and obligations in a general sense. It is not tailored to any particular fact, situation or specific requirements, and must not be relied on as legal advice.

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