

Indigenous Knowledge Forum  
University of Technology Sydney

Submission by  
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To:

DCCEEW

Re:

Nature Repair Market Exposure Draft

3 March 2023

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## Executive Summary

The Nature Repair Market Draft Bill is a most welcome development and one which has great potential to address the significant ongoing decline in Australia's biodiversity. As a voluntary market, it is suggested that there be a mechanism to incentivise investment from the private sector in conservation and restoration of the environment. This submission proposes that the market be supported by an ESG (environmental, social and governance criteria) scoring or ranking system for private sector investment in biodiversity certificates. Further, this submission recommends careful consideration be given to the way biodiversity certificates are issued and the operation of the market given the potential interactions with other biodiversity focussed regimes. This is necessary so as to avoid a negative impact on the integrity of the nature repair market due to the creation of double benefits. Further, it is submitted that consideration must be given to how conflicts that arise between the operation of the Federal Nature Repair Market and State based environment and planning laws.

This submission also addresses the challenges of protecting Indigenous (ecological) knowledge (IK) and the importance of doing so given that such knowledge may be incorporated in the issuing of biodiversity certificates. The Nagoya Protocol requires

- prior informed consent of Indigenous communities is obtained for access to their traditional knowledge, and
- that fair and equitable benefit-sharing mechanisms are established for use of that knowledge.

This is crucial if Indigenous knowledge is to be incorporated in a project that will be issued with a biodiversity certificate. A National Indigenous Knowledge Authority (NIKA) led by First Nations Australians would go some way toward compliance with Article 18 of the UN Declaration of the Rights of Indigenous Peoples, namely, facilitating the participation of Aboriginal and Torres Strait Islander peoples in decision-making about matters that affect their rights, in this instance, in relation to the use of their Indigenous knowledge and culture. However, while IP Australia is tasked with this development, the Nature Repair Market Bill will likely pass into law before such a body is established. A solution will need to be found in the meantime. Whether that is through the establishment of an Advisory Panel of First Nations knowledge holding representatives or some other mechanism, consultation with First Nations communities will be necessary to determine a way forward to ensure the integrity of the Nature Repair Market.

## Acknowledgement

The Indigenous Knowledge Forum acknowledges and honours the Aboriginal and Torres Strait Islander Peoples of Australia, the First Peoples of this nation. We pay our respects to their Elders, past and present and we acknowledge them as the traditional custodians of their lands, waters and knowledge. We acknowledge and honour the many nations of the Aboriginal and Torres Strait Islander Peoples of Australia.

In this submission, the term Indigenous or First Nations peoples/communities/Australians will be used to refer collectively to the many nations of the Aboriginal and Torres Strait Islander Peoples of Australia. Use of this terminology is done with respect and is in no way intended to diminish identity of particular Indigenous People of Australia with particular nations.

## Indigenous Knowledge Forum Research Background

For the past 10 years, the Indigenous Knowledge Forum has been working to understand the impact of law and policy on Indigenous knowledge and biodiversity management. The Forum focuses on how Indigenous knowledge can be protected in Australia for the benefit of Aboriginal and Torres Strait Islander Peoples and how the implementation and operation of relevant laws affects the rights and interests of Australia's First Nations Peoples.

In 2014 the Indigenous Knowledge Forum presented a White Paper to the NSW Government entitled *Recognising and Protecting Indigenous Knowledge Associated with Natural Resource Management (the NSW White Paper)*<sup>1</sup>. The NSW White Paper was developed during a research project funded by the Aboriginal Communities Funding Scheme of the Namoi Catchment Management Authority (now North West Local Land Services (NWLLS)).

The main aim of that project was to identify key elements for the development of a model law to recognise and protect Indigenous knowledge associated with natural resource management through consultation with Aboriginal communities in North West New South Wales and members of the Indigenous Knowledge Forum. The draft legislation was created through a process of: analysing relevant treaties and laws from other countries that address similar issues; discussion and review of the legislative regimes by Working Party (comprised on Indigenous and non-Indigenous researchers, community leaders, legal professionals and government officials) to prepare a first draft; consultation with various NSW Aboriginal Communities to obtain feedback on the first draft and preparation of the final draft from Aboriginal Community responses during the consultation.

The NSW White Paper recommended adoption of a stand-alone regime for the state of NSW, operating within a natural-resources management framework. An important aspect of that regime was the establishment of a competent authority to manage the protection of and access to Indigenous knowledge (or IK).

In 2016, the Indigenous Knowledge Forum together with other researchers commenced working on the Garuwanga Project which builds on the work of the NSW White Paper. This Project has been funded by the Australian Research Council Linkage Grant Scheme and was led by a team of Chief Investigators from the University of Technology Sydney, the University of NSW and the Australian National University, and Aboriginal Partner Investigators who together directed the research program. The project employed a part time Research Fellow and supported an Aboriginal PhD student who has now graduated with a thesis exploring 'Aboriginal and Torres Strait Islander Peoples' governance of traditional knowledge and the roles and functions of incorporated community organisations'.

The Garuwanga Project considered the elements of the model law developed in the NSW White Paper to be applicable at a national level and so is concerned with developing an Australian competent authority (Competent Authority)<sup>2</sup> to govern and administer a legal framework for protection of 'traditional knowledge' of Indigenous Australians as required under the Nagoya

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<sup>1</sup> Natalie P. Stoianoff, Ann Cahill, Evana Wright and Virginia Marshall on behalf of the UTS – Indigenous Knowledge Forum and North West Local Land Services, 'Recognising and Protecting Aboriginal Knowledge Associated with Natural Resource Management – White Paper for the Office of Environment and Heritage, NSW', (2014) <https://www.indigenousknowledgeforum.org/white-paper> (NSW White Paper).

<sup>2</sup> A 'Competent Authority' is an organisation that has the legal authority to perform a specific function or to deal with a particular matter.

Protocol<sup>3</sup> to the *Convention on Biological Diversity 1992*. The Nagoya Protocol, to which Australia is a signatory, calls for a Competent Authority to govern and administer a legal framework:

- (i) ensuring prior informed consent of Indigenous communities is obtained for access to their traditional knowledge, and
- (ii) that establishes fair and equitable benefit-sharing mechanisms for use of that knowledge.<sup>4</sup>

The term 'traditional knowledge' grew out of Article 8j to the *Convention on Biological Diversity 1992* (CBD) where nation states are expected to:

*respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices.*

To this end the terms 'traditional knowledge' and 'Indigenous knowledge' can be used interchangeably.<sup>5</sup> However, despite this terminology, what the Indigenous Knowledge Forum and its Garuwanga Project recognise is the holistic nature of knowledge and culture such that the expressions of knowledge and culture, artistic or otherwise, are part of the knowledge and culture.

In particular, the Garuwanga Project addresses concerns over the form, independence and funding of a Competent Authority, as well as local Indigenous representation, by facilitating the engagement of First Nations communities in identifying, evaluating and recommending an appropriate Competent Authority legal structure. The specific aims of this project have been to:

1. identify and evaluate a variety of legal structures for a Competent Authority suitable for governing and administering an Indigenous knowledge protection regime;
2. facilitate the engagement of First Nations communities (in this project the Partner Organisations were Aboriginal Communities only) in the process of such identification and evaluation;
3. recommend an appropriate legal structure for such a Competent Authority in accordance with that engagement.

Papers discussing our work are available on the Indigenous Knowledge Forum website:

[www.indigenouknowledgeforum.org](http://www.indigenouknowledgeforum.org). The final report for the Garuwanga Project is available [here](#).

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<sup>3</sup> *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization* was adopted by the Conference of the Parties to the Convention on Biological Diversity at its tenth meeting on 29 October 2010 in Nagoya, Japan, entered into force on 12 October 2014.

<sup>4</sup> Article 13 of the *Nagoya Protocol* requires Australia, once it has ratified the Protocol, to designate both a 'competent national authority' and a 'national focal point' on access and benefit sharing. These functions can be performed by the same entity and there can be more than one competent national authority.

<sup>5</sup> For a discussion regarding these terms and their meaning see N. P. Stoianoff, '[Navigating the Landscape of Indigenous Knowledge – A Legal Perspective](#)' (2012) 90 *Intellectual Property Forum* 23, 23-25.

## This submission was prepared by:

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### Bio:

In addition to her expertise as an Intellectual Property lawyer, Professor Stoianoff is Australia's first female Taxation Law Professor and is a regular participant in the annual Global Environmental Taxation conference series publishing on carbon taxes and policy, climate change and renewable energy, Sustainability and Indigenous ecological knowledge, the circular economy, as well as the evaluation and impact of taxation measures for mine site rehabilitation, local government taxes and conservation covenants.

As an internationally recognised leader in environmental taxation, she is a member of the editorial boards of the *Journal of Behavioural Economics and Social Systems*, the *Journal of the Australasian Tax Teachers Association*, *Critical Issues in Environmental Taxation* and the *eJournal of Tax Research*. Professor Stoianoff is the Lead Editor of 2 major global publications for Edward Elgar's series on *Critical Issues in Environmental Taxation: Volume XVII, Green Fiscal Reform for a Sustainable Future - Reform, Innovation and Renewable Energy*, and Volume XVIII, *Market Instruments and the Protection of Natural Resources*. She is also currently serving on the GAP National Standing Committee on Energy, the Environment and Agriculture.

## PART A: A new market to provide environmental leadership

### Participation by the Private Sector

The Department of Climate Change, Energy, the Environment and Water is to be commended for this initiative to address the ongoing loss of biodiversity experienced in Australia. The 2021 State of the Environment Report confirms the need for action to encourage investment in conservation and restoration of the environment and encouraging business and the private sector to do so could provide a significant contribution.

The consultation asks the question:

The intent of the Nature Repair Market Bill is to provide a framework for a market that supports an increase in private sector investment in restoring and protecting nature. How well does the draft Bill support this intent?

Establishing such a market is based on the idea that biodiversity loss is a result of market failure and that strategies need to be put in place to correct such market failure. Such strategies can

'range from 'soft' approaches like environmental education and voluntary agreements, to mandatory obligations imposed by 'command and control' regulation. Somewhere between these extremes are a variety of economic incentives provided by market based instruments.'<sup>6</sup>

As we have seen, tackling carbon emissions through market instruments could take the form of carbon taxes or emissions trading schemes. However, carbon taxes have experienced a lack of political acceptability and in the meanwhile we have witnessed the growth of carbon markets instead. This preference for transferable property rights in the form of certificates or credit units has led to the establishment of national carbon markets in Australia and internationally. However, such markets are underpinned by some sort of incentive to participate in the market often backed up by compliance rules.

While the Nature Repair Market Bill offers tradable biodiversity certificates that have integrity through the monitoring, compliance and enforcement mechanisms provided to the Clean Energy Regulator under the Bill, what tangible benefit will the private sector receive for investing in such certificates, other than participation in a market? The Factsheet on Biodiversity Certificates states the following:

Businesses are increasingly wanting to invest in nature. They need a simple, credible and recognised way to show their shareholders, consumers and employees what they are doing to contribute to nature repair.

The owner of a certificate can use this to make and support claims about their investment in nature. Information about certificates and projects will be included on a public register, with reporting requirements to keep information up to date.

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<sup>6</sup> Wayne Gumley and Natalie Stoianoff, Carbon Pricing Options for a Post-Kyoto Response to Climate Change in Australia, Federal Law Review Volume 39, 2011, 131, 132.  
<http://classic.austlii.edu.au/au/journals/FedLawRw/2011/5.pdf>



Guidance material will be developed, in consultation with the Australian Competition and Consumer Commissions, to support how claims are made.

This indicates that the Bill is relying on businesses that have corporate social responsibility (CSR) programs, and now, aim to meet environmental, social, and governance (ESG) criteria. While corporate accountability has been the hallmark of CSR, ESG criteria provide for measurability of corporate efforts and ultimately a ranking of ESG performance which can impact investment in those businesses. As the intent of the Bill is to support an increase in private sector investment in restoring and protecting nature, perhaps an ESG scoring or ranking system for private sector investment in biodiversity certificates can be built into the market.

### Interactions with other initiatives

At the consultation held on Friday 3 March 2023 it was explained that the biodiversity certificates would not interfere with the operation of other initiatives to protect biodiversity and that they could be cumulative. This needs to be given careful consideration from the perspective that the participants in the market are not perceived as receiving double benefits such as funding for restorations projects while obtaining tax deductions for the same expenditure as that would impact the integrity of the market. Accordingly, the methodologies to be implemented should provide mechanisms to ensure such double benefits do not occur.

Consideration should be given to the conservation covenant and biodiversity offset regimes, carbon farming and Indigenous Protected Areas and how they interact with the Nature Repair Market. Also, as the Nature Repair Market is under Federal jurisdiction, issues can arise pertaining environment and planning laws which are under State jurisdictions and potential work against each other. Consideration must be given to how such conflicts are resolved.

## PART B: Supporting the participation of First Nations people

### OVERVIEW:

I recommend consideration of the draft legislation contained in the Indigenous Knowledge Forum's White Paper to the then NSW Office of Environment and Heritage (NSW White Paper). The architecture of that draft legislation was built from the perspective of the Aboriginal communities it is intended to protect. It deals with the challenges for Indigenous ecological knowledge protection while providing a model that has the capacity to bring together Western-based law with Indigenous customary law with the assistance of regulations developed by a competent authority in consultation with First Nations Peoples. The NSW White Paper is available at <https://www.indigenousknowledgeforum.org/white-paper> but is also available at [https://opus.lib.uts.edu.au/bitstream/10453/37401/1/white\\_paper.pdf](https://opus.lib.uts.edu.au/bitstream/10453/37401/1/white_paper.pdf).

### ELEMENT 1: Create a new Indigenous Knowledge (IK) Right

The model law espoused by the NSW White Paper provides for the creation of rights over Indigenous ecological knowledge and offers a permit system for access to that knowledge. In the NSW White Paper such knowledge is referred to as "Knowledge Resources" in an attempt to recognise the breadth of meaning of Indigenous knowledges:

***Knowledge Resource(s)** means bodies of knowledge held by Aboriginal Communities relating to the use, care and understanding of Country and the resources found on Country. Knowledge Resources include cultural heritage, traditional knowledge and traditional Cultural Expressions, as well as manifestations of Aboriginal sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, designs, sports and traditional games and visual and performing arts. Knowledge resources include 'law knowledge' and 'cultural knowledge' of an Aboriginal Community and knowledge of observing ecological interactions between plants, animals, medicines, foods and seasonal cycles which relate to genetic resources. Genetic resources may exhibit different properties in different locations and environments.*

This need for a holistic view of Indigenous knowledge was brought to the fore in the Garuwanga Project Community consultations. The research of the Indigenous Knowledge Forum has shown that dividing Indigenous knowledge and culture, or indeed Indigenous intangible cultural heritage, into "traditional knowledge" (such as bush foods and bush medicines) and "traditional cultural expressions" (such as visual arts and crafts), as the World Intellectual Property Organization (WIPO) has, fails to acknowledge the holistic nature of such knowledge and culture.<sup>7</sup>

As for the establishment of an IK Right, the NSW White Paper addresses this in section 1 of the model legislation.<sup>8</sup> At paragraph (2), Aboriginal Communities have the inherent right to maintain,

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<sup>7</sup> Michael Davis, Ann Cahill, Natalie P. Stoianoff, Fiona Martin, Evana Wright, Neva Collings and Andrew Mowbray, *Report on Consultation Findings - Garuwanga: Forming a Competent Authority to protect Indigenous knowledge* (UTS - Indigenous Knowledge Forum, 2020), 15.

<sup>8</sup> The Model Law can be found in the NSW White Paper, above n 1, Appendix 2, 121 – 137.

control, protect and develop their *Knowledge Resources*, while at paragraph (3) moral rights over these *Knowledge Resources* are granted to the Aboriginal Communities.

Further, the NSW White Paper's model laws include the following rights:

(5) Aboriginal communities that create, hold or preserve Knowledge Resources have the right to:

(a) prevent unauthorised persons from:

(i) the use or carrying out of tests, research or investigations relating to Knowledge Resources; and

(ii) the disclosure, broadcast or rebroadcast of data or information that incorporates or constitutes such Knowledge Resources; and

(b) derive benefit from economic exploitation by authorised persons of Knowledge Resources held by the Aboriginal Community as provided in this Act.

Such rights are considered communal property held by the Aboriginal Community that is a custodian for the *Knowledge Resource* and not an individual person or persons within that Aboriginal Community (section 3 (2) of the model law). Section 5(2) grants Aboriginal Communities the right to regulate access to their *Knowledge Resources*.

These rights are particularly important where First Nations peoples are participating in the nature repair market through the management of Country and the contribution of their Indigenous knowledge about Country. The Nagoya Protocol requires

- prior informed consent of Indigenous communities is obtained for access to their traditional knowledge, and
- that fair and equitable benefit-sharing mechanisms are established for use of that knowledge.

This is crucial if Indigenous knowledge is to be incorporated in a project that will be issued with a biodiversity certificate.

## ELEMENT 2: A National Indigenous Knowledge Authority

Through the recent consultations by IP Australia, commitment<sup>9</sup> to implementing laws which are consistent with the human rights principles of the United Nations Declaration on the Rights of Indigenous Peoples<sup>10</sup> (UNDRIP) is evidenced by a proposal to establish legislation to protect IK and a legislative body to work with First Nations Australians to administer such a regime.

Indigenous- led decision-making processes and institutions are crucial to achieving the key principles espoused by the UNDRIP. A National Indigenous Knowledge Authority (NIKA) led by First Nations Australians would go some way toward compliance with Article 18 of UNDRIP, namely, facilitating

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<sup>9</sup> Jenny Macklin, 2009, Statement on the United Nations Declaration on the Rights of Indigenous Peoples. Canberra: Australian Government; Human Rights Council, 2016, Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review, Report of the Working Group on the Universal Periodic Review: Australia. Doc no. A/HRC/31/14/Add.1, 29 February.

<sup>10</sup> United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN GAOR, UN Doc. A/RES/61/295, 13 September 2007, Arts. 18, 19 (UNDRIP).

the participation of Aboriginal and Torres Strait Islander peoples in decision-making about matters that affect their rights, in this instance, in relation to Indigenous knowledge and culture:

‘The UNDRIP specifically recognises the rights and obligations of Indigenous people to their cultural knowledge and practices, and grounds these rights and obligations in the customary laws of their communities.’<sup>11</sup>

In particular, Article 31 of the UNDRIP not only confirms the rights of Indigenous peoples over ‘their cultural heritage, traditional knowledge and traditional cultural expressions ...’, but specifically notes that Indigenous peoples

‘also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.’

This, together with the acknowledgement that Indigenous peoples have the right to self-determination,<sup>12</sup> reinforces the importance of consent processes being facilitated by Indigenous-led institutions and organisations.<sup>13</sup> Accordingly, the structure, form and governance of NIKA must be chosen by Aboriginal and Torres Strait Islander peoples in accordance with their decision-making processes, cultural practices and institutions. This is a crucial element of Indigenous empowerment and central to Indigenous governance and ultimately self-determination.<sup>14</sup>

Consequently, how NIKA would be constituted is a matter for Aboriginal and Torres Strait Islander people. It is reasonable that IP Australia through its recent work makes some suggestions regarding structure and membership, but ultimately, it is for Australia’s First Nations Peoples to determine the constitution and operation of NIKA. The only problem is that IP Australia is at the beginning of this journey while the Nature Repair Market Bill is closer to becoming law. That raises the question of how IK will be dealt with when it is used for or becomes part of a biodiversity certificate.

While the NSW White Paper sets out the functions of such a competent authority for administering its proposed Model Law (section 22),<sup>15</sup> there is also a recognition that there could be local, regional and state level administrations. Such a tiered approach is recommended by the Garuwanga Project which had the specific aims to:

1. identify and evaluate a variety of legal structures for a Competent Authority suitable for governing and administering an Indigenous knowledge protection regime;
2. facilitate the engagement of First Nations communities (in this project the Partner Organisations were Aboriginal Communities only) in the process of such identification and evaluation;
3. recommend an appropriate legal structure for such a Competent Authority in accordance with that engagement.

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<sup>11</sup> Natalie Stoianoff and Alpana Roy, ‘[Indigenous Knowledge and Culture in Australia – The Case for sui generis Legislation](#)’, (2016), *Monash University Law Review* (Vol 41, No 3), 745, 755.

<sup>12</sup> UNDRIP, Article 3.

<sup>13</sup> Terri Janke Company for IP Australia, ‘Managing Indigenous Knowledge: Report 2 - Indigenous protocols and processes of consent relevant to trade marks’ (Discussion Paper, 2020), 12.

<sup>14</sup> Natalie Stoianoff, ‘[Sustainable Use of Indigenous Ecological Knowledge: A Case Study for Implementing the Nagoya Protocol](#)’, in Mauerhofer V., Rupo D., Tarquinio L. (eds) *Sustainability and Law*. (2020) Springer, Cham., pp. 431- 451, [https://doi.org/10.1007/978-3-030-42630-9\\_22](https://doi.org/10.1007/978-3-030-42630-9_22)

<sup>15</sup> NSW White Paper, above n 1, Appendix 2, 133.

The community consultations that were carried out have been reported by the Indigenous Knowledge Forum.<sup>16</sup>

*The analysis of the consultations indicated that the national competent authority needs to have the following features:*

- *clear purpose*
- *security of tenure*
- *secure funding*
- *independence from government*
- *sound governance*
- *Aboriginal and Torres Strait Islander leadership and employees*
- *capacity strengthening protocols*
- *protocols for facilitating local and/or regional competent authority operations*
- *sound decision making protocols*
- *databases with robust security.*

*The consultations showed that people in a specific community and/or region should have the opportunity to determine the form of competent authority that is best suited to their needs at a local level.*<sup>17</sup>

The grass-roots level of governance is crucial for a regime that aims to protect IK. This was made clear in both the NSW White Paper and the Garuwanga Project. Aboriginal communities consulted for the development of the NSW White Paper favoured ‘the concept of subsidiarity with decision-making residing with regional bodies or the local community where possible’.<sup>18</sup>

*The traditional owners are the custodians with authority to speak for their Country. Consequently, it must be these custodians who make decisions that affect that Country.*<sup>19</sup>

While the establishment of a national body was recognised as important for the operation of a regime to protect IK, the consultations carried out in the Garuwanga Project noted the importance of local-ness to Aboriginal peoples, requiring consideration to be given to establishing regional and/or local competent authorities that are the decision-making and negotiating bodies for each community with regard to their IK.

*For self-determination to be achieved by Aboriginal communities, a more local or regional response is required with the national body providing support to such local or regional*

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<sup>16</sup> Michael Davis, Ann Cahill, Natalie P. Stoianoff, Fiona Martin, Evana Wright, Neva Collings and Andrew Mowbray, [Report on Consultation Findings - Garuwanga: Forming a Competent Authority to protect Indigenous knowledge](https://www.indigenousknowledgeforum.org/garuwanga-forming-a-competent-authority) (UTS - Indigenous Knowledge Forum, April 2020) (Stage 3 Activity 6 Analysis of Consultations Report) available at <https://www.indigenousknowledgeforum.org/garuwanga-forming-a-competent-authority>

<sup>17</sup> Ibid, 4.

<sup>18</sup> Ibid, 29.

<sup>19</sup> Ibid.

*authorities while satisfying international reporting requirements that Australia may have under its international obligations.*<sup>20</sup>

Another important contribution from the Garuwanga Project was the development of a set of governance principles that would assist in identifying and evaluating the most appropriate legal structure for the competent authority. These principles are:

- Relationships/Networks
- Trust/Confidence
- Independence from government
- Community participation
- Guarantees/Confidentiality
- Transparency/Accountability
- Facilitation
- Advocacy
- Communication
- Reciprocity

An explanation of each of these principles can be found in the Discussion Paper for the Garuwanga Project.<sup>21</sup> By developing a set of ‘culturally appropriate governance principles against which a variety of already existing governance structures could be evaluated in order to identify the most suitable structure for the Competent Authority’, these principles effectively define a model of governance that might be acceptable to Indigenous Australians more generally.<sup>22</sup>

The Garuwanga Project analysed a broad spectrum of legal structures that might be suitable for the establishment of a competent authority. Organisations capable of meeting the Garuwanga governance principles ranged from unincorporated to incorporated organisations including Prescribed Bodies Corporate and proprietary limited companies.<sup>23</sup>

*A potential model for the establishment of a national or even a regional competent authority might be a trust arrangement which has a charitable purpose, an Aboriginal and Torres Strait Islander Corporation as trustee, and beneficiaries being either regional competent authorities which have their own trust arrangements or, in the case of a regional competent authority, the Prescribed Bodies Corporate or other organisations of the communities in that region. While such cascading trust arrangements can be complicated, they offer a workable independence from government provided they are able to attract the necessary funding to operate.*<sup>24</sup>

The Garuwang Project Report is available [here](#) and may provide some guidance on how First Nations rights and interests in the use of their Indigenous knowledges under the Nature Repair Market can be protected. Whether that is through the establishment of an Advisory Panel of First Nations knowledge holding representatives or some other mechanism, consultation with First Nations communities will be necessary to determine a way forward.

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<sup>20</sup> Ibid, 41.

<sup>21</sup> Indigenous Knowledge Forum, Garuwanga: Forming a Competent Authority to protect Indigenous knowledge – [Discussion Paper](#), UTS, April 2018.

<sup>22</sup> Natalie Stoianoff, '[Indigenous Knowledge Governance: Developments from the Garuwanga Project](#)' (2019) 117 Intellectual Property Forum 9, 15-16.

<sup>23</sup> Ibid, 21

<sup>24</sup> Ibid.