

Procedure to address Ngarrindjeri Cultural Knowledge Agreement

Purpose:

The Cultural Knowledge (CK) procedure is a guide to the appropriate implementation of the cultural knowledge clause (attachment 1) between the Department of Environment, Water and Natural Resources (DEWNR) and the Ngarrindjeri Regional Authority (NRA).

Intent of the CK clause

The CK clause was a key component of the *Kungun Ngarrindjeri Yunnan Agreement (KNYA)*, 2009 between the NRA and the State of South Australia. The State committed to negotiate in good faith with the Ngarrindjeri to develop an agreement (effectively the CK clause) that acknowledges Ngarrindjeri ownership of Cultural Knowledge and ensures that all Cultural Knowledge is managed consistently with that ownership. As per the KNYA, the CK clause intends to promote the ethical use of Ngarrindjeri people's knowledge of biodiversity by the involvement of and cooperation with the owners of the knowledge.

Addressing Cultural Knowledge at the start of joint planning

At the start of any joint planning or field work between DEWNR and the NRA the following steps will be followed:

1. DEWNR and the NRA will read the Cultural Knowledge clause at the commencement of a joint activity so all participants are aware of their responsibilities.
2. DEWNR must state whether the outcomes of the activity are to be developed into a report or publication, if that information is then known to DEWNR.
3. If a plan or publication is proposed, DEWNR must state the nature of the report or publication being developed and whether it is designated to be an internal DEWNR, or publicly available document.
4. The Ngarrindjeri representatives will state that if information shared during the activity is Cultural Knowledge, they will disclose this fact to the DEWNR representatives either before or directly afterwards the Cultural Knowledge is disclosed.
5. Notes taken by DEWNR during joint activities that include Cultural Knowledge disclosed to them will be treated as confidential and not for dissemination.
6. Meeting notes will minute the Cultural Knowledge procedure was followed and note whether any disclosures had been made and by whom.
7. DEWNR officers must keep confidential all cultural knowledge disclosed to them either verbally or in written form during the course of the planning process.

Addressing Cultural Knowledge in Reports and Publications

The CLLMM program requires written consent from the NRA before a report or publication that includes Ngarrindjeri CK is released outside of DEWNR (clause 13.1.3 in Attachment 1). The following steps will be followed:

1. In developing draft reports or publications, DEWNR will at all times, make arrangements with the NRA to collaboratively develop parts of the report or publication which are informed by, or contain Ngarrindjeri Cultural Knowledge.
2. Draft reports or publications prepared by DEWNR in conjunction with Ngarrindjeri, and irrespective of whether they contain Ngarrindjeri Cultural Knowledge will be provided to the NRA for review.
3. In regard to a Category A Report, the Ngarrindjeri will advise DEWNR whether Cultural Knowledge documented in the draft report is fit for inclusion, and whether that information, or parts of the report or publication are restricted.
4. DEWNR will remove restricted sections or parts of Category A Report before finalisation.
5. Once a Category A Report is finalised, DEWNR will advise the NRA that the report or publication is being distributed.
6. In regard to a Category B Report, or restricted parts of a Category A Report, DEWNR will store draft and finalised versions of the documents in a secure location and marked "Confidential – Not for Distribution outside of DEWNR".
7. If the CLLMM program considers a Category B Report, or restricted parts of a Category A Report to be relevant to other parts of DEWNR, the CLLMM program will seek written consent from the NRA before distributing the information.
8. The CLLMM program will maintain a register of written consent provided by the NRA with regards to step 7 above.
9. DEWNR will provide finalised copies of all jointly developed reports or publications to the NRA.

Attachment 1 - Ngarrindjeri Partnerships Project funding agreement clause

Cultural Knowledge Definition:

- 1.1. "Cultural Knowledge" means all and any cultural knowledge including but not limited to:
- (a) traditions, observances, customs and beliefs;
 - (b) songs, music, dances, stories, ceremonies, symbols, narratives and designs;
 - (c) languages;
 - (d) spiritual knowledge;
 - (e) traditional economies and resource management;
 - (f) scientific, spatial, agricultural, technical, biological and ecological knowledge

and includes the manifestation of such Cultural Knowledge in documentation and other forms of media arising there from including but not limited to archives, films, photographs, videotape or audiotape, subject to any Intellectual Property rights owned by third parties in any such manifestation;

Cultural Knowledge Clause:

- 13.1. Notwithstanding any other clause in the Agreement, it is acknowledged that:

13.1.1. The Ngarrindjeri has an interest recognised under customary law in their own Cultural Knowledge;

13.1.2. The Ngarrindjeri acknowledges and agrees that Cultural Knowledge is not Intellectual Property for the purposes of this Agreement;

13.1.3. The Department undertakes that it will use its best endeavours to not knowingly collect or use Cultural Knowledge or knowingly divulge Cultural Knowledge provided to the Department in respect of the Project and the performance of the Services to third parties outside of the Department without the prior written consent of Ngarrindjeri; and

13.1.4. The Parties agree that any report or publication resulting from the Project shall be designated as either a 'Category A Report' or a 'Category B Report', and the following shall apply:

13.1.4.1. the publication of a Category A Report shall be unrestricted (except such parts of the report which refer to Cultural Knowledge provided to the Department in respect of the Project and the performance of the Services) unless Ngarrindjeri agrees to waive the restriction; and

13.1.4.2. the publication of a Category B report shall be restricted to internal use of the Department only.

13.1.5. the Ngarrindjeri acknowledges and agrees that it shall not take any action against the Department in relation to the collection, use or divulgence of Cultural Knowledge, the status of which as Cultural Knowledge has not been disclosed to the State, provided that once disclosed by Ngarrindjeri to the Department, Clauses 13.1.3 and 13.1.4 shall apply to such Cultural Knowledge in respect of the Project.