



Forever Wild Initiative

Equity in Environmental Markets

Shared Benefits & Stronger
Futures for IPLCs



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Short Report Series



Acknowledgements

Acknowledgement of Country

We acknowledge the Traditional Custodians of the lands and waters on which this work was undertaken and recognise their continuing connection to Country. We pay our respects to Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples.

Project Acknowledgement

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Centre for Social Finance Law

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Imagery

Thank you to Tobias Visuals for the ongoing use of images.





The Forever Wild Initiative

The Forever Wild Initiative designs and implements landscape-scale ecological finance architecture to integrate conservation, enterprise and community livelihoods. The Initiative is headed by a registered Australian charity, providing governance for nature across the group. The goal is to unlock the deployment of finance in a way that delivers genuine progress towards the global biodiversity and science-based targets.

We blend financial, legal, ecological, and governance expertise to ensure finance operates effectively and equitably. We guide investment transactions and provide the technical capability needed to support enforceable rights for nature. We promote equitable practice and accountability of outcomes, and we co-design projects on the ground with Indigenous Peoples and Local Communities (IP&LCs). Most importantly, our work is founded in the reality and complexity of ecological economics. We create the conditions and tools for nature-centric finance to move from intent to action.

Our technical reports focus on solutions to real-world challenges in nature finance.





Executive Summary

Australia is at a critical juncture. Climate change, environmental degradation, and widening social and economic inequality have increased the urgency for new approaches to land and water management that deliver durable ecological outcomes while advancing social justice. At the same time, there is recognition of Indigenous Peoples as Traditional Custodians, whose cultural authority, knowledge systems, and governance practices are central to the long-term health of Country.

Internationally recognised standards increasingly emphasise IPLCs as rights-holders. IPLC's should be engaged in biodiversity finance and nature-based solutions through transparent, equitable and meaningful participation in decision-making. However, evidence from environmental markets, such as carbon and biodiversity, demonstrates that prevailing stakeholder-based engagement models often fail to deliver these outcomes in practice. Without robust safeguards, environmental markets risk reproducing extractive dynamics through opaque governance, inequitable benefit sharing, overly complex legal arrangements, and insufficient protection of cultural knowledge and land rights.

This report responds to these challenges by presenting a practical framework for IPLC engagement in emerging Australian environmental markets. This report focuses on Indigenous engagement, but many aspects are also relevant to broader local communities, particularly regarding land rights. It is grounded in the principle that participation alone is insufficient when authority, governance, and control remain concentrated outside Indigenous and local communities, even as projects are conducted on their lands. In these contexts, Indigenous engagement must specifically embed Native Title holders as project rights-holders and provide meaningful decision-making influence over project design, governance arrangements, the use and protection of cultural knowledge, and material changes to land use or project scope.

For Indigenous engagement, the report focuses on how that engagement can be structured in practice, including the durability of Free, Prior and Informed Consent, the allocation of decision-making authority, the protection of cultural knowledge and intellectual property, and the distribution of benefits and risks. Failure to address governance and authority early in project design increases the risk of disputes, project failure, reputational harm, and stranded environmental assets.

This report is intended to provide guidance for policymakers, funders, project developers, and Indigenous organisations seeking to support ethical and durable participation of Indigenous communities in Australia's evolving nature finance landscape. By focusing on structure rather than intent alone, it supports the development of environmental market initiatives that strengthen Indigenous rights, support equity, and deliver durable environmental and social outcomes.





Important Concepts & Disclaimers

Concept	Definition
Indigenous Peoples and Local Communities	<p>This report refers to both Indigenous Peoples (IPs) and Local Communities (LCs), recognising that these terms describe distinct, though sometimes overlapping groups. Indigenous Peoples are understood as peoples with enduring, pre-colonisation cultural, spiritual, and legal relationships to land and waters, underpinned by customary law, governance systems, and collective rights.</p> <p>Local Communities may include non-Indigenous communities with long-standing connections to place, land-based livelihoods, or stewardship roles, but do not necessarily hold the same collective rights or cultural connections as Indigenous Peoples.</p> <p>The report uses the collective term “Indigenous Peoples and Local Communities (IPLCs)” where shared challenges or considerations are discussed, while acknowledging that the rights, governance arrangements, and legal recognition of Indigenous Peoples are often distinct and must be respected accordingly. The use of collective terms in this report is not intended to reduce or standardise the distinct rights, governance systems, or cultural authority of Indigenous Peoples.</p>
Regionality and Scope of Indigenous Perspectives	<p>Indigenous Peoples are not a homogenous group. Cultural authority, governance systems, legal recognition, and relationships to Country vary significantly across regions and communities. In the Australian context, this report has been informed through collaboration with the Muluridji Indigenous community.</p> <p>The perspectives, experiences, and examples drawn from this collaboration reflect the specific cultural, legal, and regional context of the Muluridji people. They are not presented as representative of all Indigenous Peoples in Australia, nor as a universal model. References to Indigenous perspectives in this report should therefore be understood as context-specific and illustrative, rather than exhaustive or definitive.</p>
Legal framing	<p>The framing and indicative clauses presented in this report were reviewed by legal practitioners from the Centre for Social Finance Law to assess legal coherence, risk, and applicability within Australian legal contexts. This multi-layered process was intended to balance lived experience, cultural authority, and legal rigour.</p> <p>The principles and draft legal clauses presented in this report should not be taken as legal advice. They are shared as guidance only.</p>
Rights Holders	<p>This report recognises Rights Holders as individuals or collective groups who hold customary, cultural, spiritual, or legally recognised rights and responsibilities in relation to land, waters, resources, and cultural knowledge relevant to an agreement. In the context of Indigenous Peoples, these rights and responsibilities are derived from traditional law, governance systems, and enduring connections to Country.</p>

This report contains two appendices designed to bring effect to the principles and intent of this document:

- **Appendix A:** Code of Conduct for Agreements with Indigenous Peoples and Local Communities (IPLCs)
- **Appendix B:** Indicative Legal Clauses for Agreements with Indigenous Peoples and Local Communities





Global standards and the limits of stakeholder engagement

These national developments reflect broader international shifts. Global instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on Biological Diversity's Global Biodiversity Framework, and the IUCN Global Standard for nature-based solutions emphasise that IPLCs must be recognised as rights-holders in biodiversity conservation and climate action on their lands, with engagement grounded in Free, Prior and Informed Consent (FPIC), transparency, equitable governance, and benefit sharing (UN General Assembly, 2007; IUCN, 2020).

However, prevailing engagement models and finance structures are often insufficient to deliver these outcomes in practice. IPLCs are frequently positioned as participants, beneficiaries, or delivery partners, while governance authority, legal control, and financial returns remain concentrated in the hands of external actors (Climate Collective, 2024; Chausson et al., 2023). In such contexts, participation does not necessarily translate into influence, resulting in outcomes that constrain Indigenous governance or decision-making authority, rather than support it.

Structural barriers and market risks

Despite their well-established role as stewards of land and biodiversity, IPLCs continue to face systemic constraints in engaging with finance and emerging environmental markets. These include limited organisational capacity, complex reporting and compliance requirements, language and communication barriers, and long-standing trust issues (Wang et al., 2024). Native Title rights often do not confer the same level of control, transferability, or economic utility as other forms of land tenure (Strelein & Muir, 2021; O'Bryan, 2019; Maclean & Robinson, 2020), limiting the ability of Rights Holders to enforce their interests and participate on equitable terms in commercial arrangements.

Evidence from carbon and biodiversity markets globally and within Australia highlights recurring risks such as inequitable benefit sharing, opaque governance

Introduction

Environmental markets in the economy

Australia is being shaped by increasing climate impacts, environmental decline, and persistent inequality in housing, income, and opportunity (Trebeck et al., 2025). These intersecting challenges have intensified calls for new approaches to land and water management that deliver ecological resilience while supporting social equity. Environmental markets offer one such pathway.

Central to these emerging approaches is the growing recognition of Indigenous Peoples as Traditional Custodians whose responsibilities to land and water are grounded in cultural law, knowledge systems, and enduring relationships with Country (Woodward & Marrfurra McTaggart, 2019). In recent years, this recognition has translated into expanded opportunities for Indigenous-led governance, including Aboriginal Corporations, ranger programs, and co-management arrangements that contribute to conservation and ecosystem restoration (Goolmeer et al., 2022; Costa et al., 2025). Emerging research reinforces the view that environmental governance can be more effective through the meaningful integration of Indigenous values, priorities, and decision-making systems (Larsen et al., 2025).





constraints on Indigenous communities, including on their land rights, while decision-making authority and financial returns are concentrated in third parties (Chausson et al., 2023; Climate Collective, 2024). Failure to address governance and authority early in project design increases the risk of disputes, project failure, reputational damage, and stranded environmental assets.

These governance and structural challenges reflect broader questions regarding how emerging environmental markets and nature finance systems are designed, governed, and implemented over time. Related issues concerning financial architecture, market design, and long-term stewardship are explored further in Forever Wild's [The New World of Nature Finance](#) roadmap. While focused specifically on IPLC engagement and governance, this report similarly recognises that equitable and durable outcomes are shaped not only by participation, but by the legal, financial, and governance structures through which markets operate.

Purpose and approach of this project

This project seeks to support the ethical and effective development of Australian environmental markets by establishing IPLC engagement principles grounded in rights, equity, and risk awareness. Rather than focusing on engagement as a procedural requirement, the project examines how governance arrangements, legal mechanisms, and decision-making authority are structured in practice.

In parallel, emerging financial and governance models are being developed to address structural limitations in how IPLCs participate in environmental markets, particularly in contexts where legal ownership does not align with cultural authority or land stewardship, including work by the Forever Wild Initiative. While these models are not examined in this report, they reinforce the importance of embedding principles of equity in the design and implementation of such structures.

Free, Prior and Informed Consent, for example, is

arrangements, imbalanced or overly complex legal agreements, and the unprotected or inappropriate use of cultural knowledge (Loft et al., 2017; Milne et al., 2019; Maclean & Robinson, 2020; Climate Collective, 2024). The literature consistently identifies power asymmetries in market design as a key driver of these outcomes (Chausson et al., 2023).

Importantly, equitable benefit sharing cannot be assessed independently of how financial, legal, and operational risk is allocated. In many market-based initiatives, Indigenous organisations carry disproportionate compliance, reporting, or delivery burdens without commensurate authority or control.

Environmental markets: Opportunity constrained by structure

Environmental markets are increasingly promoted as mechanisms to finance repair and biodiversity conservation. Given that many intact ecosystems are located on lands managed or co-managed by Indigenous Peoples, these markets present opportunities to support long-term land and water management aligned with cultural obligations (Garnett et al., 2018).

At the same time, the relative immaturity of these markets heightens the risk of harm. When governance arrangements, legal structures, and benefit-sharing mechanisms are poorly designed, market participation may impose long-term





Equitable outcomes in environmental markets depend on how agreements are structured, governed, and implemented.

This applied approach was central to avoiding purely conceptual outcomes and ensuring the framework is implementable, protective, and resistant to procedural compliance without substantive equity.

IPLC Engagement Principles for Environmental Market Agreements

This section sets out principles that underpin equitable design, negotiation, implementation, and review of agreements involving IPLCs in environmental markets. These principles are designed to reduce legal, financial, and reputational risk, support equitable outcomes, and ensure that agreements are grounded in Indigenous rights, governance systems, and cultural authority. They seek to provide the structural requirements for legitimate and durable engagement, particularly when applied collectively.

Principle 1: Recognition of IPLCs as Rights-Holders with Authority

Agreements must begin with an explicit recognition of relevant IPLCs as Rights Holders with cultural, legal, and governance authority over their lands, waters, and knowledge. This recognition must go beyond mere acknowledgement and be reflected in how authority, representation, and decision-making are structured within the agreement.

understood as an ongoing process rather than a one-time event, with mechanisms for review, renegotiation, and addressing consent where the project conditions or impacts materially change. Particular attention is given to protecting cultural knowledge and intellectual property, clarifying decision-making roles, and ensuring transparency in financial arrangements.

This practical framework aims to promote equity, reduce risk, and ensure that finance contributes to, rather than undermines, community wellbeing and ecological stewardship.

Co-design approach and methodology

This project is the result of the collaborative partnership between the Forever Wild Initiative and the Muluridji Indigenous community, with legal input from the Centre for Social Finance Law. A co-design approach was adopted to ensure the principles and tools developed reflect priorities, lived experience, and governance contexts under Australian law.

Key outputs include:

- IPLC engagement principles tailored to emerging environmental markets;
- Practical guidance for implementing the engagement principles;
- Code of conduct;
- Draft legal clauses to safeguard cultural knowledge and intellectual property with consideration of governance and legal structures appropriate under Australian law.





Shared governance depends on real decision-making influence, clear consent, and protection of rights.

cultural knowledge, and material changes to land use or project scope.

Advisory or consultative roles alone are insufficient when substantive decisions remain under the control of external parties. Governance arrangements should be transparent, documented, and proportionate to the project's scale and risk. Legal innovation is required to develop governance and legal structures that enable meaningful IPLC decision-making authority in practice.

Where decision-making authority is constrained by law or policy, this should be made explicit, and alternative mechanisms must be identified to ensure IPLC influence is substantive rather than merely procedural.

Principle 3: Free, Prior and Informed Consent as an Ongoing Process

Free, Prior and Informed Consent (FPIC) must underpin all stages of engagement, from early project conception through implementation, monitoring, and review. Consent must not be treated as a one-time event, but as an ongoing process supported by agreed review mechanisms and regular engagement to ensure consent remains workable.

Agreements should include mechanisms for:

- providing information in accessible and culturally appropriate formats;
- allowing sufficient time for community deliberation in accordance with nominated IPLC decision-making processes;
- review and renegotiation where project conditions, impacts, or expectations materially change;
- adaptive project management that monitors and responds to evolving knowledge and ecological change, while maintaining the integrity of

Agreements must clearly:

- identify the relevant IPLC(s), their connection to Country, and their governance structures;
- describe who is authorised to represent the IPLC, how that authority has been conferred (for example, through customary law or formal decision-making processes), and any limits to that authority;
- set out the ownership, control, and purpose of each party entering the agreement;
- include clear statements of intent from all parties, documenting the shared understanding of why the agreement is being entered into; and
- Limit a third-party to clearly defined project-specific rights and must not create or enable direct or indirect (proxy) rights over land, resources, or decision-making beyond the agreed project scope for a third-party.

Failure to clearly establish authority at the outset increases the risk of invalid consent, internal community dispute, and subsequent challenge to the agreement.

Principle 2: Shared Governance and Meaningful Decision-Making Influence

Engagement must be structured to provide IPLCs with meaningful decision-making influence over matters that affect their rights, interests, lands, waters, and cultural knowledge. This includes influence over project design where possible, governance arrangements, the use and protection of





- environmental and cultural outcomes; and
- addressing circumstances where consent may be reconsidered, with transparent processes to manage impacts, risks, and project viability in an equitable manner.

Approaches that seek to secure early consent without provision for ongoing engagement and review increase the likelihood of dispute and project failure.

Principle 4: Protection of Indigenous Cultural and Intellectual Property and Indigenous Data Sovereignty

Agreements must recognise that Indigenous Cultural and Intellectual Property (ICIP), traditional knowledge, and Indigenous data are owned and governed by IPLCs in accordance with customary law, governance systems, and cultural authority. In some cases, rights and responsibilities relating to knowledge may also be held or exercised through recognised individual knowledge holders.

Such knowledge must not be treated as public domain, incidental to project delivery, or freely transferable between locations, projects, or landscapes. Indigenous knowledge is often place-based, context-specific, and connected to specific cultural responsibilities, ecological conditions, and knowledge holders.

Protection of IPIC extends beyond conventional intellectual property, confidentiality and privacy

frameworks. Indigenous data encompasses information or knowledge, in any format or medium, relating to Indigenous peoples, communities, lands, cultural practices, and governance systems, whether held collectively or through recognised knowledge holders.

These rights apply across all stages of the data and knowledge lifecycle, including creation, collection, access, analysis, interpretation, management, storage, dissemination, and reuse. The fact that Indigenous knowledge may be held in oral, cultural, spiritual, or practice-based forms does not diminish or extinguish these rights.

Any access to, use of, or reliance on Indigenous cultural knowledge, stories, practices, symbols, data, or ecological knowledge must be:

- based on FPIC;
- clearly defined in scope, purpose and duration;
- supported by agreed cultural and data protocols; and
- accompanied by fair, transparent, and appropriate benefit-sharing arrangements.

Agreements must adopt a default position of protection, with explicit permission required for any use beyond that which is agreed.

Principle 5: Equitable Distribution of Benefits and Risks

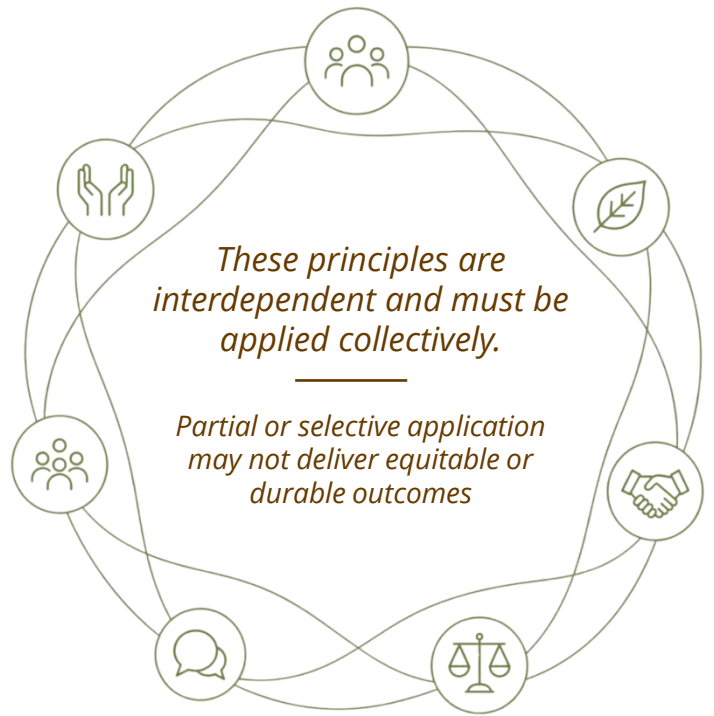
Equity in environmental market agreements must be assessed not only by the distribution of benefits but also by the allocation of risks, costs, responsibilities, and decision-making authority among parties.

Financial returns, long-term value creation, capacity-building opportunities, and non-financial benefits should be proportionate to the contributions, rights, and risks borne by IPLCs.

Agreements must transparently define:

- how revenue, costs, liabilities, and financial obligations are shared;





- who bears compliance, reporting, operational, and delivery burdens; and
- how benefits and risks are managed if circumstances change, or projects do not proceed as planned.

Equitable arrangements should not expose IPLCs to disproportionate financial, legal, operational, or reputational risk without corresponding decision-making authority, protections, and participation in long-term value creation. Arrangements that deliver only nominal or short-term benefits while transferring disproportionate risk and liability to IPLCs undermine equitable outcomes, project legitimacy, and long-term viability.

Principle 6: Culturally Grounded Dispute Resolution and Accountability

Agreements should prioritise culturally safe, accessible, and cost-effective mechanisms for resolving disputes, misunderstandings, or unexpected events. Where appropriate, these mechanisms must be grounded in nominated place-based and culturally recognised processes.

Such mechanisms may include dialogue-based processes, community-led forums, or other approaches recognised and nominated by the IPLC in an agreement. Formal legal or institutional processes should be used only when culturally grounded mechanisms have been exhausted or are mutually deemed inappropriate.

Dispute resolution processes must be clearly documented, resourced, and respected by all parties.

Principle 7: Accessibility, Transparency, and Time for Informed Decision-Making

Agreements and supporting materials must be accessible to all parties and support a shared understanding of rights, obligations, and risks. This includes the use of plain language, clear structure, and formats appropriate to varying levels of legal, financial, and digital literacy.

Agreement processes must allow adequate time for review, reflection, and confirmation of understanding. Facilitated walkthroughs, opportunities for questions, and independent advice should be supported where needed. Rushed processes or inaccessible documentation increase the risk of misunderstanding, inequitable outcomes, and subsequent disputes.

These principles are operationalised through a Code of Conduct (Appendix A) and indicative clause examples in Appendix B. Selective application of these principles increases the risk of inequitable outcomes, disputes, and project failure.





Many environmental market agreements remain untested by the courts. Caution is required.

limited legal precedent to support rescission claims or to challenge the interpretation of contractual clauses after execution.

Where corporate or statutory entities are involved, the agreement should align with — and not override — customary governance processes. Recognition of rights alone is insufficient where governance arrangements enable decision-making control to remain with external parties by proxy or otherwise.

Agreements must:

1. explicitly list existing rights
2. ensure that the authority to fully exercise those rights is reflected in how decisions are made and enforced in practice.
3. require independent, specialist legal advice prior to signing; and
4. ensure no clause enables proxy land rights or dilutes other rights in favour of a third-party's financial or other gain.

2. Risk & Benefit sharing

(Principles 2 & 6)

The legitimacy of any transaction structure depends on whether it supports equitable and enforceable participation in value and long-term outcomes, rather than concentrating value externally.

Risk clauses in contracts must not cascade inequitably to Rights Holders, and benefits must be shared proportionally and not tied to mechanisms that undermine IPLC rights or assets.

Pathways may include:

- equity interests in project entities, or the creation of entities to enable equity sharing;

Moving from intent to practice

The IPLC Engagement Principles set out in the previous section seek to establish the conditions for legitimate and durable agreements involving IPLCs. Applying these principles in practice requires deliberate design of legal and governance arrangements that address authority, governance, and control. This section offers practical guidance on applying the principles in a legal and finance construct for environmental markets and may be applicable more broadly in nature finance to support equitable participation, protect Indigenous rights, and reduce legal, financial, and reputational risk.

1: Governance and Authority in Agreement Design

(Principles 1 & 2)

Moving the principles of governance from intent to practice requires thoughtful and consistent intentional planning. Early-stage intentions easily become lost or misdirected in legal and financial technicalities. Once agreements are formed, reversal can be difficult as most nature finance agreements, including carbon project service agreements, remain untested by the courts. As a result, there is





Equitable outcomes depend on how rights, governance, and control are structured — not just what is written in the contract.

• **Tier 2 – Governance and Structural Arrangements:**

The legal entities and governance frameworks through which Rights Holders engage in those agreements.

While deep consideration may be given to Tier 1 in a negotiation, true governance in a legal sense often sits with Tier 2, with institutional arrangements tied directly to Federal and State legislation, which may confer greater legal authority than the contract level.

Yet, most current environmental market practice focuses on Tier 1 contracting, which, even at this level, remains inadequate to protect Rights Holders. Addressing governance, authority, and control at a structural level requires greater attention to Tier 2 arrangements.

Options include:

- creating specific project-delivery entities owned, co-owned or controlled by IPLCs;
- tier 2 governance frameworks that embed IPLC decision-making authority; and
- other structures that align commercial participation with cultural authority, stewardship and long-term community priorities.

Tier 2 arrangements may provide greater capacity for IPLCs to:

- retain control over how rights are granted and exercised;
- manage risk and liability; and
- ensure equitable participation in long-term value creation and legacy outcomes.

While context-specific, the Tier distinction highlights that equitable outcomes depend not only on contract terms but also on who holds project governance power within the agreement framework.

- further to the above, benefit-sharing rights embedded into the corporate or other financial architecture into which finance flows; and
- explicit and shared risk allocation design that does not trigger unilateral loss of benefits or existing rights.

“Ownership and benefit interest” does not imply a single model. It refers to a range of arrangements that must be designed in line with Indigenous governance systems and community priorities.

3. Tier 1 and Tier 2 Design Considerations

(Principles 1 - 7)

Environmental market agreements often operate as a form of usufruct arrangement, where rights to use and derive value from land are granted without transferring ownership. While this can enable investment, it can also constrain how existing Rights Holders exercise control over land use, management, and future decision-making.

In some cases, this can result in effective or de facto control over land by a third party, even where legal title remains unchanged.

To address these risks, it is useful to distinguish between two levels of design:

- **Tier 1 – Contractual Arrangements:** Agreements governing project activities and rights granted to third parties.





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Appendix A

Code of Conduct for Agreements with Indigenous Peoples and Local Communities (IPLCs)

This Code of Conduct translates the principles in this report into practical expectations. While developed specifically for an IPLC group in Queensland and oriented more broadly toward Indigenous Peoples in Australia, the concepts and approaches may also be relevant to other communities stewarding land and waters in other contexts.

Purpose

This Code sets out practical expectations for respectful, fair, and culturally grounded engagement when designing agreements with Indigenous Peoples and Local Communities (IPLCs). It is designed to support long-term, durable partnerships that uphold Indigenous rights, protect cultural knowledge and decision-making authority, and ensure that benefits and risks are shared equitably.

The Code can assist decision-making across all stages of engagement and support the negotiation, documentation, implementation, and review of agreements involving IPLCs.

The Code can be used as a reference during negotiations and if questions or problems arise post-agreement. The Code does not replace legal advice, statutory obligations, or community-specific governance processes.



Definition

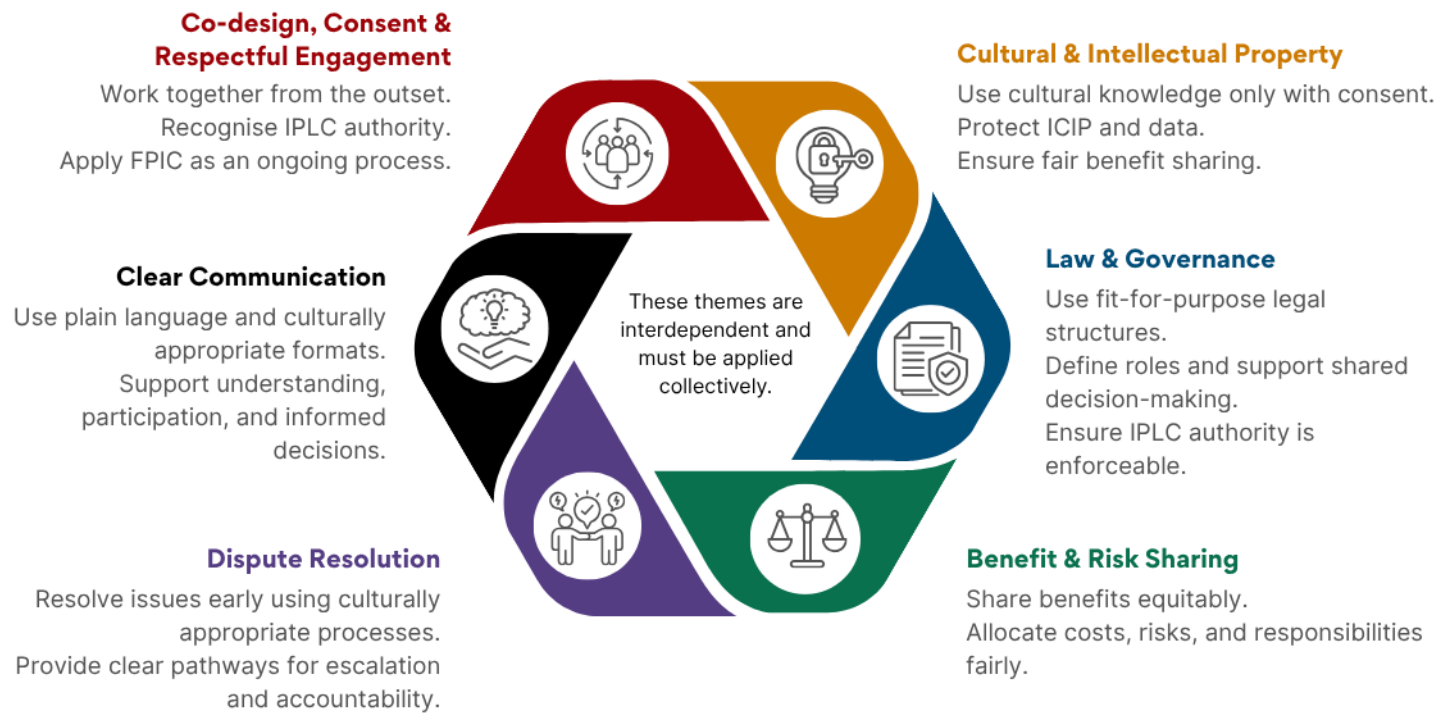
Term	Definition
Data Sovereignty	The right of Indigenous Peoples and Local Communities to control the collection, ownership, access, use, and interpretation of data relating to their people, Country, culture, and knowledge, in accordance with their laws, values, governance systems, and cultural obligations.
Free, Prior and Informed Consent (FPIC)	A process through which Rights Holders are provided with full, accessible, and culturally appropriate information, sufficient time for consideration in accordance with their governance processes, and the genuine ability to give or withhold consent without coercion. FPIC is an ongoing process that applies at key decision points and where project scope, impacts, or use of knowledge may change.
Indigenous Cultural and Intellectual Property (ICIP)	Cultural knowledge, stories, symbols, language, practices, expressions, and associated meanings that are collectively owned, maintained, and governed by Indigenous Peoples in accordance with customary law and cultural protocols. ICIP is living knowledge and must not be treated as public domain or used without permission.
Indigenous Peoples and Local Communities (IPLCs)	This Code refers to both Indigenous Peoples (IPs) and Local Communities (LCs), recognising that these terms describe distinct, though sometimes overlapping groups. Indigenous Peoples are understood as peoples with enduring, pre-colonisation cultural, spiritual, and legal relationships to land and waters, underpinned by customary law, governance systems, and collective rights. Local Communities may include non-Indigenous communities with long-standing connections to place, land-based livelihoods, or stewardship roles, but do not necessarily hold the same collective rights or cultural connections as Indigenous Peoples.
Rights Holders	Individuals or collective groups who hold customary, cultural, or legally recognised rights and responsibilities in relation to land, waters, resources, and cultural knowledge relevant to an agreement. This includes Indigenous Peoples whose authority is derived from traditional law, governance systems, and connection to Country.
Traditional Owners / Custodians	Aboriginal and Torres Strait Islander peoples who have ancestral, cultural, and spiritual responsibility for Country, including obligations to care for land, waters, and ecosystems in accordance with customary law, knowledge systems, and cultural practice.



The Engagement Framework diagram provides a visual summary of the Engagement Principles. Each element reflects how the principles are applied in practice and should be read alongside the detailed guidance in this Appendix.

ENGAGEMENT FRAMEWORK

For agreements with Indigenous Peoples & Local Communities



The diagram is **not** intended to represent a sequence, but rather the core elements that must be embedded across the design, negotiation, implementation, and review of agreements involving IPLCs. It groups the principles into visually recognisable operational themes. The table below shows how these themes correspond to the formal principles.

Diagram Theme	Corresponding Principle(s)
Co-design, Consent & Respectful Engagement	Principles 2 & 3
Cultural & Intellectual Property	Principle 4
Law & Governance	Principles 1 & 2
Benefit & Risk Sharing	Principles 5
Dispute Resolution	Principles 6
Clear Communication	Principles 7



How to Use this Code of Conduct

This Code of Conduct is intended to:

- guide early-stage engagement and negotiation;
- inform the drafting and review of legal agreements;
- support shared understanding between parties; and
- provide a reference point if agreements evolve over time.

The CoC should be adapted to reflect local context, community governance, and the nature of the proposed agreement.

Operational Guidance Aligned to the Principles

1. Recognition of IPLCs and Authority

Agreements must clearly identify:

- the relevant IPLC(s) and their connection to Country;
- the governance structures through which decisions are made;
- who is authorised to represent the IPLC and how that authority was conferred; and
- the intentions and purposes of each party in entering the agreement.

Clear articulation of authority at the outset reduces the risk of invalid consent, internal dispute, and future challenge.

2. Shared Governance

IPLCs must have meaningful decision-making influence over matters that affect their rights, interests, lands, waters, and cultural knowledge, including over:

- project design,
- governance arrangements,
- the use and protection of cultural knowledge, and
- material changes to land use or project scope.

Decision-making authority should be explicit and structured to ensure IPLC influence is real rather than just acknowledged.

3. Free, Prior and Informed Consent (FPIC)

FPIC must guide engagement from project conception through implementation and review. Operational considerations include:

- providing information in plain language and culturally appropriate formats;
- allowing sufficient time for community deliberation;
- documenting how consent was sought and provided; and
- building in mechanisms for review where project conditions change.

FPIC should be understood as a process, not a single decision point.



4. Protection of Indigenous Cultural and Intellectual Property and Indigenous Data Sovereignty

Agreements must:

- clearly define what cultural knowledge or data may be used;
- the structure of how cultural knowledge is held within the IPLC;
- specify permitted uses and prohibited uses;
- require consent for any new or expanded use; and
- include benefit-sharing arrangements linked to the use of knowledge or data.

A default position of protection should apply unless explicit permission is granted.

5. Equitable Distribution of Benefits & Risks

Agreements must transparently address:

- how financial and non-financial benefits are distributed;
- how costs, liabilities, and compliance obligations are allocated; and
- how risks are managed if projects are delayed, altered, or discontinued.

Equity requires consideration of both benefits and burdens.

6. Culturally Grounded Dispute Resolution and Accountability

Agreements should prioritise culturally grounded, accessible dispute resolution processes, including:

- dialogue-based or community-led mechanisms;
- agreed escalation pathways; and
- clarity on when formal legal processes may be used.

These processes must be documented and resourced.

7. Accessibility, Transparency and Time for Informed Decision Making

Agreements should be drafted in plain language and supported by:

- summaries or visual aids;
- facilitated walkthroughs;
- opportunities for questions; and
- independent advice where appropriate.
- A process to ensure that all parties have a clear and shared understanding of obligations, risks, and rights prior to agreement.

Clear communication reduces the risk of misunderstanding and dispute.



Appendix B

Indicative Legal Clauses for Agreements with Indigenous Peoples and Local Communities

Status and Purpose of These Clauses

The following clauses are provided as **indicative examples** and are intended to support enforceable and equitable agreements when adapted to context. They are intended to illustrate how the principles in this report may be reflected in legal agreements involving Indigenous Peoples and Local Communities, particularly in the context of environmental markets.

These clauses are intended for an agreement that sets out the guiding principles governing the relationship between the Indigenous community and a commercial counterparty for the relevant project (**Project**). They are intended to govern the negotiation and terms of the more specific agreements and legal structures established to implement the Project (collectively called the **Project Documents**).

These clauses have been developed with the Centre for Social Finance Law, but they are intended only as indicative illustrations to assist in discussions about implementing the IPLC Engagement Principles and as a starting point for developing legal arrangements that reflect the specific legal framework, governance arrangements, cultural protocols, and priorities of the particular Indigenous community and agreement. They do not constitute legal advice and must not be relied upon for any purpose. Please take legal advice before applying anything contained in this document to specific issues or transactions.

The clauses are organised by principle to reinforce that legal mechanisms are intended to serve, rather than be a substitute for, the underlying rights, governance structures, and consent processes of Indigenous Peoples and Local Communities.

Why These Clauses Are Indicative Rather Than Prescriptive

The indicative clauses provided in this report are intentionally non-prescriptive. Indigenous governance systems, legal contexts, and community priorities vary significantly across Australia, and effective agreements must be tailored accordingly.

Providing fixed templates risks encouraging procedural compliance without substantive equity or failing to reflect governance and cultural protocols. Instead, the clauses are organised by principle to demonstrate how legal mechanisms can support Indigenous authority, consent, cultural protection, and equitable outcomes in different contexts.

This approach balances the need for practical guidance with respect for Indigenous self-determination, legal diversity, and risk management. It supports informed negotiation and adaptation rather than standardisation.



Principle 1: Recognition of IPLCs as Rights Holders with Authority

Recognition of Country and Cultural Authority

1.1 The Parties acknowledge that the Project Area is located on the Traditional Lands of the [Traditional Owner Group Name] (**Rights Holders**) and pay respect to their Elders past and present.

1.2 The Parties recognise the Rights Holders as the cultural authority for the Project Area and acknowledge their traditional knowledge systems, cultural responsibilities, and obligations to care for Country.

1.3 The Parties intend that all decision-making and engagement under this Agreement will occur on Country or in community or on-farm settings wherever possible, and will be guided by local governance arrangements and cultural protocols. The Parties will establish mutually acceptable arrangements to achieve this.

Recognition of Rights

1.4 The Parties acknowledge that the Rights Holders hold the Native Title Rights and Interests for the Project Area.

1.5 The Parties acknowledge that the Rights Holders also hold [other relevant rights as applicable, e.g., pastoral lease].

1.6 In this Agreement **Native Title Rights and Interests** means the native title rights and interests recognised in the Determination and set out in Schedule [##] to the Determination (replicated in Schedule [##] to this Agreement)

[add definitions of Determination, Project Area, etc. as needed].

Legal Representation

1.7 The Parties agree that [name of relevant Aboriginal Corporation / Prescribed Body Corporate / Entity] is the nominated representative of the Rights Holders for the purposes of this Agreement, acting in accordance with both customary and statutory governance arrangements.

Preservation of Customary Rights and Native Title

1.8 Nothing in this Agreement diminishes the customary rights of the Rights Holders to speak for Country, practise culture, or make decisions in accordance with traditional law and governance.

1.9 Nothing in this Agreement extinguishes, impairs, or otherwise affects native title except to the extent expressly permitted by the Native Title Act 1993 (Cth) (**NTA**) and this Agreement on and from registration of this Agreement under the NTA.”



Principle 2: Shared Governance

Decision-making

2.1 The Parties shall ensure that all decision-making arrangements set up for their collaboration or the implementation of the Project give the Rights Holders meaningful decision-making influence over matters that affect their rights, interests, lands, waters, and cultural knowledge. This includes:

- (a) participation in all decision-making of the Parties or any Project Entity relating to Project design, governance arrangements, the use and protection of cultural knowledge, and material changes to land use or project scope with veto rights wherever a decision could have a material adverse effect on the Rights Holders cultural, spiritual or legal relationship to Country; and
- (b) participation in, and voting rights at, all membership, board, committee and other decision-making bodies of any Project Entity or otherwise established under this Agreement or by any Project Entity.

2.2 **Project Entity** means any joint venture, partnership, company, trust or other legal entity or relationship established under this Agreement or any other Project Document for the Project.

Good faith

2.3 Each of the Parties agrees and undertakes to co-operate and act in good faith in the performance of its obligations and the exercise of its rights and discretions in relation to the Project, including under this Agreement and the other Project Documents, and including in particular in relation to all matters affecting the Rights Holders rights, interests, lands, waters, and cultural knowledge.

Principle 3: Free, Prior and Informed Consent as an Ongoing Process

Free, Prior and Informed Consent (FPIC)

3.1 In this Agreement **Free, Prior and Informed Consent (FPIC)** of the Rights Holders means, in respect of any activity or decision, a process by which Rights Holders are provided (for their consideration and determination as to whether to give consent) full, accessible information in relation to the proposed activity or decision, sufficient time, and the ability to give or withhold consent voluntarily and without coercion, intimidation or manipulation.

3.2 All activities and decisions undertaken pursuant to this Agreement or otherwise in relation to the Project that affect the rights, interests, lands, waters, or cultural knowledge of the Rights Holders are subject to the ongoing Free, Prior and Informed Consent of the Rights Holders.

3.3 Free, Prior and Informed Consent must be obtained at agreed decision points, including prior to commencement of activities and where there are material changes to project scope, impacts, use of cultural knowledge, or anticipated benefits.

3.4 Processes for seeking, recording, and reviewing the consent of the Rights Holders must be documented as part of the Project Documents and implemented in a manner consistent with the governance arrangements described in Principle 2.



Principle 4: Protection of Indigenous Cultural and Intellectual Property and Data Sovereignty

Indigenous Cultural and Intellectual Property (ICIP)

4.1 **Indigenous Cultural and Intellectual Property or ICIP** means the rights of Indigenous peoples to their cultural heritage, including but not limited to traditional knowledge, cultural expressions, stories, songs, dances, languages, symbols, designs, artworks, performances, and any other traditional or cultural material, whether tangible or intangible, and any intellectual property rights subsisting in such material. ICIP also includes the right to protect, maintain, control, and benefit from the use of such cultural heritage in accordance with the customary laws and practices of the relevant Indigenous community.

4.2 The Parties acknowledge that the Project may draw on knowledge, experience and practices of the Rights Holders which may constitute or incorporate their ICIP.

4.3 All ICIP disclosed, shared, or otherwise accessed under this Agreement or otherwise for the Project remains the sole and collective property of the Rights Holders at all times.

4.4 No ICIP may be used, recorded, adapted, reproduced, communicated, or shared without the Free, Prior and Informed Consent of the Rights Holders, and then only for the purposes expressly set out in the Project Documents.

4.5 Where use of ICIP is agreed, the Project Documents must clearly define the scope of permitted use, attribution requirements, duration, and any benefit-sharing arrangements.

4.6 Each new or additional use of ICIP outside the project scope, including repurposing of previously approved material, requires separate consent of the Rights Holders.

4.7 The Project Documents shall include remedies and mitigation processes to be followed where ICIP is used in a manner inconsistent with the permissions granted.

Confidentiality and Cultural Sensitivity

4.8 All culturally sensitive information, including ICIP and traditional knowledge, must be treated as the proprietary and confidential information of the Right Holders unless otherwise agreed in writing by the Rights Holders.

4.9 No such information may be disclosed to third parties without the express written consent of the Rights Holders and expressly set out in the Project Documents.

4.10 Any recordings or documentation of cultural information, where permitted, remain the property of the Rights Holders regardless of which Party funded or undertook the recording or documentation.

Indigenous Data Sovereignty

4.11 All data, information, and knowledge collected, generated, or shared under this Agreement that relates to the Rights Holders, their Country, culture, or traditional knowledge is deemed to be the sole and exclusive property of the Rights Holders and only licensed for use by another Party to the extent expressly set out in the Project Documents.



4.12 Without limiting clause 4.11, the collection, storage, use, interpretation, and sharing of such data must comply with principles of Indigenous Data Sovereignty (as set out in the Commonwealth of Australia, Framework for Governance of Indigenous Data (May 2024) issued by the National Indigenous Australians Agency) and be undertaken only with the Free, Prior and Informed Consent of the Rights Holders.

4.13 Data must be stored securely, in systems accessible to the Rights Holders, and may only be shared with third parties where the Rights Holders have given their explicit consent in writing.

4.14 Where data is jointly generated, the interpretation, publication, or external communication of that data must be co-developed with the Rights Holders and their ownership and perspectives must be appropriately acknowledged.

4.15 The Parties will work together to develop and document data governance protocols that reflect the Rights Holders' values, cultural obligations, and decision-making processes and the principles of Indigenous Data Sovereignty.

Principle 5: Equitable Distribution of Benefits and Risks

5.1 Financial and non-financial benefits arising from the Project shall be shared fairly between the Parties in a manner agreed in writing and documented in the Project Documents, recognising and reflecting the essential role and contribution of traditional owners and traditional knowledge to the lands and waters on which the Project will take place and to their conservation.

5.2 The Project Documents must specify the timing and conditions of the sharing of financial and non-financial benefits, and address how costs, liabilities, compliance obligations, and risks are to be allocated between the Parties.

Principle 6: Culturally Grounded Dispute Resolution and Accountability

6.1 In the event of any dispute, controversy, or claim arising out of or in connection with this Agreement, the Parties must first seek to resolve the matter in good faith through culturally appropriate processes agreed with the Rights Holders.

6.2 Dispute resolution must proceed through the following stages unless otherwise agreed:

- (a) On-Country or community-based dialogue over a fixed and agreed period;
- (b) On-Country mediation facilitated by an independent mediator with cultural governance expertise, with costs shared equally unless otherwise agreed;
- (c) Formal mediation or other agreed dispute resolution processes as specified in the Project Documents.

6.3 Formal legal proceedings may only be initiated where the above processes have been exhausted or are demonstrably inappropriate.





Further reading

The following sources provide additional context, evidence, and perspectives relevant to Indigenous governance, equity in environmental markets, and the design of ethical and durable nature finance initiatives. They are provided for readers seeking deeper engagement beyond the references cited directly in this report.

Indigenous Governance, Rights, and Economic Participation

- NAILSMA (2024) *Reimagining Conservation: Key Themes Report*. Darwin: North Australian Indigenous Land and Sea Management Alliance.
- Pearson, N. (2000) *Our Right to Take Responsibility*. Cairns: Noel Pearson and Associates.

Equity, Benefit Sharing, and the Political Economy of Environmental Markets

- Chausson, A., Welden, E.A., Melanidis, M.S., Gray, E., Hiron, M. and Seddon, N. (2023) 'Going beyond market-based mechanisms to finance Nature-based solutions and foster sustainable futures', *PLOS Climate*, 2(4), e0000169.
- Oxfam (2016) *Balancing the Scales: Community Voices on REDD+ and Experiences of Benefit Sharing*. Oxford: Oxfam International.
- Sikor, T., Martin, A. and Fisher, J. (2017) 'The politics of accountability in ecosystem services governance', *Global Environmental Change*, 45, pp. 89–98.

Indigenous Participation in Carbon, Biodiversity, and Natural Capital Markets

- Maclean, K., Robinson, C., Gerrard, E. and Woods, R. (2022) 'Indigenous participation and governance challenges in emerging natural capital markets', *Ecological Management & Restoration*, 23(2), pp. 112–124.
- Robinson, C.J., Gerrard, E., May, T. and Maclean, K. (2014) 'Australia's Indigenous carbon economy: a national snapshot', *Geographical Research*, 52(2), pp. 123–132.
- Wang, S., Yang, S., Li, M. and Goron, C. (2024) *Institutional Innovation for Biodiversity Finance with Direct Financing from International Foundations to IPLCs*. Master's thesis, Duke University.

Legal Frameworks, Agreements, and Indigenous Rights

- Janke, T. (2009) *Writing up Indigenous Research: Authorship, Copyright and Indigenous Knowledge*. Melbourne: Indigenous Cultural and Intellectual Property (ICIP).
- Posey, D.A. and Dutfield, G. (1996) *Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities*. Ottawa: IDRC.
- Strelein, L. (2020) 'Native Title, agreements and Indigenous land governance', *Australian Indigenous Law Review*, 23(1), pp. 17–33.
- Strelein, L. and Muir, K. (2021) *Indigenous Land Governance and Agreement-Making in Australia*. Canberra: AIATSIS.

Standards, Policy, and Practitioner Resources

- IUCN (2020) *Global Standard for Nature-based Solutions*. Gland: International Union for Conservation of Nature.
- Rights and Resources Initiative (2020) *Mega-Projects, Market Forces and Human Rights: Indigenous Lands at Risk*. Washington, DC: RRI.
- Indigenous Carbon Industry Network (n.d.) *State of the Indigenous Carbon Industry*.
- Carbon Market Institute (n.d.) *Indigenous Inclusion and Engagement Strategy*.

This list is not exhaustive and is provided to support further inquiry rather than prescribe a definitive evidence base.

Engaging with us

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