



Recognising and Protecting Aboriginal Knowledge Resources Associated with Natural Resource Management

Joint UTS and NWLLS Project

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Introduction & Aims

- Traditional custodians of land hold knowledge critical to conservation of biological diversity and natural resource management.
- Australia has been slow to deal with formal recognition and protection of such knowledge, despite its international obligations.
- Other nations and regions have developed significant regimes that recognise such knowledge as part of a living culture that requires access to country.



This project set out to:



1. identify key elements of a regime that will recognise and protect Indigenous knowledge associated with natural resource management;
2. facilitate Aboriginal Community engagement in the process of developing a regime;
3. develop a draft regime that not only accords with the aims and goals of North West New South Wales Aboriginal Communities but would be a model for implementation in other regions in New South Wales (NSW);
4. produce a Discussion Paper through which the draft regime can be distributed for comment;
5. conduct community consultations to refine the draft regime into a model that may be implemented through NSW legislation by finalising a White Paper to be delivered by the UTS Indigenous Knowledge Forum and North West Local Land Services to the Office of Environment and Heritage (NSW) (OEH).

Background



- ‘A major concern of Indigenous people is that their cultural knowledge of plants, animals and the environment is being used by scientists, medical researchers, nutritionists and pharmaceutical companies for commercial gain, often without their informed consent and without any benefits flowing back to them’: Terri Janke, *Biodiversity, Patents and Indigenous Peoples* (26 June 2000)
- In order to fill the gap in NSW legislation for the recognition and protection of Aboriginal Knowledge, this Project utilises the experience of other jurisdictions , Australia’s international obligations, and the active participation of Aboriginal communities to develop a modal law that addresses the major concern identified by Terri Janke.

Methodology & Research Plan

Stage 1: Comparative Framework

Stage 2: Drafting a Regime

Stage 3: Aboriginal Community Consultation



Stage 1: Comparative Framework

- Collect and analyse legislative and policy regimes already in existence in other parts of the world.
- Key criteria in each regime identified and then compared to international obligations.
- This provided the comparative framework upon which a standard-setting model of involvement in natural resource management and access to country could be developed to ensure the recognition and protection of Indigenous knowledge as part of a living culture.
- A Comparative Study Report was produced.



Stage 2: Drafting a Regime



- A working party (WP), comprising members from the Organising Committee and Advisory Board of the UTS Indigenous Knowledge Forum, interested participants from the August 2012 Indigenous Knowledge Forum, key personnel from the Namoi Catchment Management Authority (CMA) now NWLLS and Namoi Aboriginal Advisory Committee (NAAC) legal scholars and practitioners and scientists, met three times in Sydney during Stage 2 with the assistance of teleconferencing for those unable to travel.
- The WP utilised the Comparative Study Report to develop a draft regime that meets the elements of supporting a living Aboriginal culture with improved access to Country through recognition and protection of Indigenous knowledge about Country.
- A Discussion Paper comprising the Comparative Study Report and Draft Regime was produced.

Stage 3: Aboriginal Community Consultation

- The Discussion Paper was distributed through the NWLLS to the Aboriginal Communities of the North West NSW region and other interested parties.
- Consultation sessions were held in June 2014 in key locations in the North West region, including Tamworth, Gunnedah, Walgett and Narrabri, and the proposed model was explained and discussed.
- The consultations enabled the draft regime to be refined into a model that could be implemented through the creation of legislation.
- To this end a draft White Paper proposing the legislation was prepared and refined with the further assistance of the WP.
- At the Second Indigenous Knowledge Forum the White Paper will be delivered to OEH.

Outcomes of the Comparative Study

- The countries of Afghanistan, Angola, Argentina, Brazil, Chile, China, Ecuador, Ethiopia, Hong Kong, India, Kenya, Malaysia, Peru, Philippines, South Africa and Vanuatu whose laws relating to traditional knowledge, cultural expressions and genetic resources provided useful examples of laws upon which our model could draw.
- In particular, the laws of Brazil, Costa Rica, Ethiopia, Peru, India, Kenya and South Africa provided relevant alternatives to inform the Working Party in developing the model law.
- Mapping against key requirements of the:
 - *Convention on Biological Diversity,*
 - *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity,*
 - *United Nations Declaration on the Rights of Indigenous People,* and the
 - Draft Model Laws of the Intergovernmental Committee of the WIPO.

14 provisions were identified

Provision 1. What this Act relates to and what it aims to do

Provision 2. Definitions of key terms used in this Act

Provision 3. What this Act covers

Provision 4. beneficiaries- who should benefit

Provision 5. access - who speaks for Knowledge Resources and the process for granting or refusing access

Provision 6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building

Provision 7. Sanctions and remedies- dealing with breaches

The 14 provisions continued

- Provision 8. competent authority-establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases
- Provision 9. no single owner- addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group
- Provision 10. exceptions – emergencies, traditional use, conservation
- Provision 11. Registers and disclosure
- Provision 12. interaction with existing laws- avoiding conflict with other laws
- Provision 13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with
- Provision 14. transitional provisions- existing uses

Working Party Members



In addition to the UTS Research Team, the members of the WP are:

- **Aunty Fran Bodkin** (Mount Annan Botanic Gardens),
- **Uncle Gavin Andrews** (Banyadjaminga, Dharawal Traditional Descendents and Knowledgeholders Circle),
- **Barry Cain** (Aboriginal Heritage Conservation Officer OEH),
- **Simon Munro** (formerly Senior Strategic Land Services Officer (Aboriginal Communities) of NWLLS now Tamworth Local Land Council),
- **Chris Celovic** (Team Leader, Strategic Partnerships and Investment NWLLS),
- **Patricia Adjei** (Copyright Agency Ltd),
- **Dr Virginia Marshall**, Solicitor and Acting Chair, Indigenous Issues Committee, Law Society of NSW
- **Gerry Turpin** (Australian Tropical Herbarium),
- **Daniel Posker** (Senior Assoc Herbert Smith Freehills),
- **Francis Kulirani** (former Deputy Director Anthropological Survey of India),
- **Gail Olsson** (formerly of traditional knowledge work programme, Pacific Islands Forum Secretariat),
- **Judith Preston** (Law School Macquarie University),
- **Dr Michael Davis** (Dept of History Sydney University),
- **Peter Fitzpatrick** (Solicitor, Herbert Smith Freehills),
- **Associate Professor Subramanyam Vemulpad** (Macquarie University Indigenous Bioresources Research Group),
- **David Harrington** (Macquarie University Indigenous Bioresources Research Group),
- **Omar Khan** (Medicines Australia),
- **Nerida Green** (Ministerial Division OEH) and
- **Gail Pearson** (Business Law School, University of Sydney)

What the draft legislation is about

The draft legislation aims to:

- protect knowledge held by Aboriginal Communities
- Ensure that Aboriginal Communities have the right to control the knowledge they hold
- Ensure that others can only use that knowledge with the prior informed consent of the community
- Ensure that where others are given permission to use the knowledge that Aboriginal Communities get benefits back for sharing their knowledge

Issues discussed in formulating the Draft

- What is knowledge?
- Who should speak for the knowledge?
- Who should benefit from the knowledge being shared with others?
- Should there be particular types of benefit?
- What should happen if there are disagreements?
- What sort of organisation should look after these matters?
- What sort of databases (if any) are appropriate?
- What should happen if knowledge is owned by more than one community?

Community Consultations & Working Party

- Assisted with:
 - refining the draft legislation, and
 - the development of the White Paper into a document that provides adequate explanation and justification for the regime crafted.
- Together with the further advice and recommendations of the Working Party assisted with refining the:
 - background material,
 - draft legislation including the model Bill, and
 - development of a case study to demonstrate the operation of the draft legislation
- Recognition there are gaps and that regulations will be required to fill those gaps for the proper operation of the draft law.

General Public Consultation

The White Paper has been made available for this Forum to enable further discussion and raise the key areas where more work is required – hence the Workshops on Day 2 covering:

- Form and operation of the Competent Authority – Moot Court
- Establishing and maintaining the databases – Room 317 (Level 3)
- Remedies and offences – Room 318 (Level 3)

