

Recognising and Protecting Indigenous Knowledge Associated with Natural Resource Management



Comparative Study Report - Document Summary

6 documents have been prepared:

Recognising and Protecting Indigenous Knowledge Associated with Natural Resource Management

Part 1: Background information

Part 2: A detailed review of the international agreements and proposals relevant to this project

Part 3: A detailed review of the regional agreements relevant to this project

Part 4: A detailed review of the national instruments relevant to this project

Part 4b: A detailed review of the national instruments on genetic resources relevant to this project

Analysis of the WIPO and Nagoya Protocol Articles relating to traditional knowledge, traditional cultural expressions and genetic resources

Part 1 was prepared to set out relevant background to the project. The materials presented are of potential use in preparing a briefing document for communities. It discusses the CBD, the Nagoya Protocol, the three draft WIPO agreements and the key concepts relevant to this project that are covered by these documents. It discusses types of legislation, relevant legislation in place in Australia and perceived challenges Australia faces in articulating a legal framework to address use of genetic resources and traditional knowledge.

Part 2 looks at the Nagoya protocol and the three draft WIPO agreements and compares their provisions. An advantage of the WIPO agreements over the Nagoya Protocol from our perspective is

the limited articles. The Nagoya Protocol includes a number of provisions that are not directly relevant to this project.

Analysis of the WIPO and Nagoya Protocol Articles relating to traditional knowledge, traditional cultural expressions and genetic resources- compares the WIPO draft Agreements and the Nagoya Protocol to identify common provisions between the different agreements that would ideally be reflected in draft legislation for Australian use. The identified common provisions are:

1. subject matter of protection- traditional knowledge, traditional cultural expressions, genetic resources
2. definition of terms- key terms used in the draft
3. scope- what is covered, respect for traditional ownership, respect for sovereignty over genetic resources, moral rights
4. beneficiaries- who should benefit
5. access - who speaks for country, process for granting or refusing access including
 - 5a. prior informed consent - ensuring traditional owners are aware of their rights and significance of agreements made
 - 5b. mutually agreed terms- ensuring the bargaining process is fair and equitable
6. benefit sharing- how are benefits shared, what types of benefit, dealing with technology transfer, capacity building
7. Sanctions and remedies- dealing with breaches
8. competent authority-establishment of a body to administer the legislation, deal with education, model clauses, codes of conduct, databases
9. no single owner- addressing situations where traditional knowledge, cultural expressions, genetic resources are common to more than one group
10. exceptions – emergencies, traditional use, conservation
11. disclosure-permits, databases, disclosure in intellectual property applications
12. interaction with existing laws- avoiding conflict with other laws
13. recognition of requirements of other nations- mutual recognition of rights and ensuring they are complied with
14. transitional provisions- existing uses

These common provisions were used in the subsequent analysis of legislation.

Part 3 examines a number of regional agreements against the common provisions. The agreements examined are:

Secretariat of the Pacific Community (SPC): Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture, 2002- focussed on traditional knowledge and cultural expressions *per se* and omits some of the matters Australian law needs to embrace.

Andean Community Decision 391 Common Regime on Access to Genetic Resources- very little coverage of traditional knowledge and benefit sharing.

African Model Legislation For The Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources - deals with plant breeder's rights and farmers' rights as well as genetic resources and traditional knowledge. At the same time it omits a number of matters relevant to the common provisions.

The source of these documents was the WIPOLEX treaty database using traditional knowledge as a search term.

Parts 4 and 4b analyse national legislation relating to traditional knowledge and genetic resources respectively against the common provisions. The source of these documents was the WIPOLEX treaty database using traditional knowledge and genetic resources as search terms. There is some overlap between the two databases.

In both instances a number of instruments have been identified that are considered to provide sufficient coverage of the common provisions to provide a starting point for the workshops. These documents are from Brazil, Costa Rica, Ethiopia and Peru for the traditional knowledge search and India, Kenya and South Africa for the search on genetic resources.