

Indigenous Knowledge Forum

Indigenous knowledge and biodiversity: comparative studies between Australia and other countries



The Second Indigenous Knowledge Forum (IKF2): *Comparative Systems for Recognising and Protecting Indigenous Knowledge and Culture*

This Forum will bring together key speakers from around the globe representing those nations with either existing legal frameworks or nations in the midst of developing such regimes for the protection of Indigenous knowledge and culture. IKF2 will facilitate dialogue and discussion, and information exchange bringing together government officials, decision makers, scholars, and especially Indigenous and local peoples' representatives.

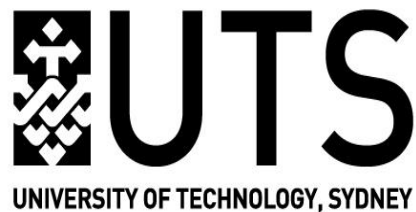
In collaboration with:



Sponsored by:



HERBERT
SMITH
FREEHILLS



PROGRAM:

| | | |
|--------------------------------|---|---|
| <p>Thursday 2/10/14</p> | | |
| <p>9:00am – 9:30am</p> | <p>Welcome Ceremony commencing with Acknowledgement to Country and followed by Opening Address</p> <p>Chair: Professor Natalie Stoianoff (UTS)</p> | <p>Aunty Joan Tranter, Elder in Residence Jumbunna Indigenous House of Learning University of Technology, Sydney (UTS)</p> <p>Mr John Macarthur-Stanham, Chairman of the Local Land Services Board of Chairs John Macarthur-Stanham was appointed as the inaugural Chair of the Local Land Services Board of Chairs in September by the Minister for Primary Industries, Katrina Hodgkinson. He leads a Board of 11 Local Land Services Chairs to drive the strategic direction for this new organisation, formed on 1 January 2014 to deliver integrated biosecurity, extension and natural resource and emergency management function. Mr Macarthur-Stanham has held senior positions and directorships including appointments with Dairy Farmers Milk Co-operative, CSR, Sugar Australia, Sydney Catchment Authority and The Trust Company. He also runs a dairy farm and poultry operation at Menangle. John holds an MBA majoring in Finance and Marketing and a Bachelor Economics from Sydney University.</p> |
| <p>9:30am – 10:00am</p> | <p>Recognising & Protecting Indigenous Knowledge associated with Natural Resource Management</p> <p>Chair: Uncle Gavin Andrews (Banyadjaminga, Dharawal Traditional Descendents and Knowledgeholders Circle)</p> | <p>Natalie Stoianoff UTS; Chris Celovic Team Leader, Strategic Partnerships and Investment NW LLS; and Barry Cain Aboriginal Heritage Conservation Officer at Office of Environment & Heritage NSW Government <i>White Paper: Recognising & Protecting Indigenous Knowledge associated with Natural Resource Management</i></p> <p>Natalie Stoianoff is a Professor in the Faculty of Law at the University of Technology, Sydney, and the Director of the Master of Intellectual Property Program. She is the Chair of the Faculty Research Network for Intellectual Property, Media and Communications, and the Convenor of the China Law Research Group.</p> <p>Natalie’s interdisciplinary research is concerned with the legal, ethical and commercial aspects of biotechnology. In particular, her research interests range from the Patenting of Living Organisms, Technology Transfer and Environmental Taxation. She is a co-author of the Federation Press publication, <i>Intellectual Property Law: Text and Essential Cases</i>. She has been the author of numerous Patent Law Bulletins and has edited the multidisciplinary book, <i>Accessing Biological Resources, Complying with the Convention on Biological Diversity</i>, published in 2004 by Kluwer’s International Environmental Law & Policy Series.</p> <p>Abstract: The White Paper provides draft legislation to effect a regime for protecting the rights in Knowledge Resources held by Aboriginal Communities in New South Wales which are not adequately protected by existing legislation. The draft legislation was created through a project funded by the Aboriginal Communities Fund of the North West Local Land Services (NWLLS) (formerly, Namoi Catchment Management Authority) that examined existing treaties and laws that address similar issues. The project included use of that information by a Working Party to prepare a first draft followed</p> |

| | | |
|-------------------|--|--|
| | | by consultation with various Aboriginal Communities to obtain feedback. This feedback informed preparation of the final draft presented in the White Paper. The White Paper also provides detailed explanation of the background and context of the draft legislation. |
| 10:00am – 10:30am | NSW Government Programs on Aboriginal Culture and Heritage Chair: Dr Tran Tran (AIATSIS) | <p>Terry Bailey – Chief Executive, Office of Environment and Heritage <i>Aboriginal Culture and Heritage programs delivered by the Office of Environment and Heritage</i></p> <p>Terry Bailey started as a field officer with national parks in Victoria over 25 years ago. He gained extensive experience in joint management while working in Kakadu National Park (NT). He was involved in Commonwealth heritage assessment and management, including preparing World Heritage nominations. Later, with DSEWPaC, he helped prepare the Government response to the independent review of the EPBC Act. Terry then joined NPWS to establish the Coastal Branch in late 2010 and was appointed Deputy Chief Executive Regional Operations and Heritage in 2012. He has a Bachelor of Applied Science, Master of Public Policy and Management and an MBA.</p> <p>Abstract: The Office of Environment and Heritage (OEH) acknowledges that Aboriginal spiritual and cultural values exist in the land, waters and natural resources of NSW. OEH has a range of programs and policies that seek advice from Aboriginal people on spiritual and cultural values associated with Country and how best they should be respected. OEH is committed to negotiating with Aboriginal people to maximise access to, and sustainable use of, OEH lands and associated natural resources for cultural purposes. There are already strong working relationships between OEH and Aboriginal people to jointly and openly identify the level of involvement that their communities want in OEH’s environmental management and conservation activities, especially those that protect and restore Country, facilitate the practice of culture and support their wellbeing. OEH engagement with Aboriginal communities strives to provide the best opportunities for involved in environmental management and protection decisions that affect Aboriginal communities and to allow them to fully enact their custodial responsibilities to Country and its resources. The details of the policies and programs that achieve this are outlined in this presentation.</p> <p>Lou-Anne Lind (AA) Lou-Anne Lind is responsible for coordinating the implementation of <i>OCHRE</i> and evaluating its major initiatives at Aboriginal Affairs, part of the NSW Department of Education and Communities. Lou-Anne has over 20 years’ experience working in public policy, in both government and non-government settings in a range of portfolios including Aboriginal affairs, disability, social housing and children and young people. She has a strong interest in supporting the participation of individuals and communities in policy development, research and evaluation.</p> <p>Abstract: <i>OCHRE</i> is the NSW Government’s plan for Aboriginal affairs. The plan includes a focus on: education; economic agency; language, culture and identity; Aboriginal people’s participation in decision making; and accountability. Respect for Aboriginal knowledge and culture is fundamental to <i>OCHRE</i>’s success. This presentation will briefly explore how the NSW Government, through this plan, can work in partnership with Aboriginal people to advance the protection of knowledge and culture.</p> |
| 10:30am – 11:00am | Morning Tea | |

11:00am – 12:30pm

Comparative Systems Keynote Panel

Chair: **Prof Kamal Puri**
Queensland University of
Technology

Manuel Ruiz Muller, Peruvian Society of Environmental Law (by Skype)

Since 1997, Mr. Ruiz has been Director and Principal Researcher in the International Affairs and Biodiversity Program of the Peruvian Society for Environmental Law (SPDA). He has been actively involved in the process to implement the Convention on Biological Diversity (CBD) at the national regional and international levels. He has also participated as a speaker in events regarding these issues in Peru, Colombia, Chile, Cuba, USA, Bahamas, Canada, Colombia, Costa Rica, Cuba, Indonesia, Jordan, England, Germany, Kenya, México, Morocco, Oman, Venezuela, Switzerland, South Africa, Spain, India, Trinidad and Ecuador. He has been a consultant for FIELD, UNCTAD, UNDP, UNEP, FFLA, IDB, ICTSD, IUCN, South Center, Andean Community, FAO, UK Food Group, IPGRI, World Resources Institute, WIPO, among others.

Mr. Ruiz has also advised the governments of El Salvador, Panama, Peru, Ecuador, Bolivia, Cuba, Paraguay, Vietnam, The Seychelles, and others in regards to their policy and legal framework developments in the area of biodiversity, access to genetic resources, traditional knowledge, biosafety, etc.

Prof Yu, Xiang, China, Huazhong University of Science & Technology. *The special protection of Traditional Chinese Medicine and its interface with patent protection in China*

Prof. Dr. Xiang YU is a full professor at the School of Management and the Director of Chinese-German Institute for Intellectual Property at Huazhong University of Science & Technology (HUST) in Wuhan, China. He is also the Director of the Office of International Affairs of HUST. As an international scholar and a Chinese IP professor, actively engaging in cooperative research projects and academic exchange in IP field, also gave lectures and presentations regularly in European countries, the US, Japan as well as Chinese Mainland and Taiwan. He is a member of the Standing Committee of Hubei People's Congress, and a member of the Commission of Legal Affairs of the Hubei People's Congress; the Director of the Intellectual Property Chinese Group of Sino-US cooperative project CERC-ACTC, and the Director of the Intellectual Property Chinese Group of Sino-EU/EEA cooperative project NZEC-CCUS. Prof. Yu is also a Member of the European Academy of Sciences & Arts, German Alexander von Humboldt Foundation, Chairman of the JSPS Fellow Alumni Association in China.

Abstract:

Traditional knowledge about Chinese Medicine is a huge and complicated system, which includes rich content and various forms of expression and related resources. The core and important traditional knowledge involves Chinese medicine theories, Chinese medicine resources, processing and boiling of Chinese herbal medicine, prescription of TCM, diagnosis technology of TCM, Chinese health care, unique markings and symbols of TCM. Regulations for the Protection of Traditional Chinese Medicine Varieties (Hereafter referred to as Regulations) were developed specially for TCM. This presentation introduces these regulations and the interface with patent protection. The paper analyses the precondition of protection, duration and content of protection, consequences of infringement, especially the differences between these two ways of protection. The protection duration of most TCM provided by the Regulations is shorter than by Patent Law. Patent right is exclusive but the rights granted by relevant department under Regulations is non-exclusive. However, the precondition for patent protection is stricter. Many kinds of Traditional Knowledge about TCM cannot meet these conditions. Protections provided by Regulations and Patent Law are complementary for each other, and therefore provide TCM a more comprehensive protection in China.

Leota Theresa Potoi & Ulupale Fuimaono, Samoa Law Reform Commission *Providing intellectual property protection of traditional knowledge consistent with expectations of the Samoan community*

Leota Theresa Potoi is Executive Director of the Samoa Law Reform Commission. Leota is an admitted Barrister and

| | | |
|------------------|-------|--|
| | | <p>Solicitor of the Supreme Court of Samoa, the Australian Capital Territory and the High Court of New Zealand. As a Public Sector Solicitor in both Samoa and New Zealand, she has worked extensively on Legislative Reform and Development.</p> <p>Abstract</p> <p>A reference was received by the Samoa Law Reform Commission (Commission) from the Samoan Government to examine the current legal protection of traditional knowledge under intellectual property laws in Samoa, and to make recommendations for reform. In 2010 the Commission published the ‘Protection of Samoa’s Traditional Knowledge and Expression of Culture Issues Paper, and invited submissions on the paper. Extensive consultations were also carried out with interested persons, stakeholders and the public. The Commission is currently developing its Final Report which includes recommendations for reform. Naturally, there is significant interest by the Samoan community as it relates to Samoan customs and traditions. The general view of the Samoan community during consultations, is that traditional knowledge is an important element of Samoan culture and traditions, inextricably intertwined with the <i>fa’a Samoa</i> (Samoan way of life), and that contemporary intellectual property law is inadequate and unsuitable to provide appropriate protection of traditional knowledge.</p> <p>Gerry Turpin, Australian Tropical Herbarium <i>The Tropical Indigenous Ethnobotany Centre: Early Learnings on the Challenges of Protecting and Securing Intellectual Property Ownership</i></p> <p>Gerry Turpin holds a BSc(Botany) and is an ethnobotanist with The Australian Tropical Herbarium, Department of Science, Information Technology, Innovation and the Arts (DSITIA), and has been with the department for 25 years. Gerry is currently managing the Tropical Indigenous Ethnobotany Centre (TIEC), an Indigenous driven initiative, established to engage, support, and build capacity of Traditional Owner groups in north Queensland to record and utilise Indigenous ethno-biological and ethno-ecological knowledge for cultural use on country. Prior to this role, Gerry has carried out Regional Ecosystem Mapping and Vegetation Surveys in the Channel Country in far south-west Queensland over several years.</p> <p>Abstract:</p> <p>The Tropical Indigenous Ethnobotany Centre (TIEC), based in the James Cook University Cairns campus, was established in 2009 through consultation with Traditional Owners (TOs) from Cape York and the Wet Tropics region in North Queensland, the Australian Tropical Herbarium, CSIRO, Queensland Herbarium and James Cook University’s Cairns Institute. TIEC aims to support TOs to record and document, manage, and protect and sustain their cultural knowledge on their use of plants. The TIEC initiative is the first of its kind in Australia, and is a concept developed and driven by TOs. Traditional Owner groups, research agencies, non-government organisations and NRM organisations are key partners in TIEC projects.</p> <p>TIEC operates under four knowledge management themes: i) Research, ii) Training and Education, iii) Intellectual Property, Protocols and Agreements and iv) Collation of Existing Data and Collections, and Works. ‘Intellectual Property, Protocols and Agreements’ is the most complex of the four knowledge management themes. TIEC’s recent involvement in brokering a Medicinal Plant Project agreement between the Mbabaram peoples and the University of Western Sydney has uncovered issues with the Queensland’s Biodiversity Act, Queensland’s Benefit Sharing Agreement, and the Environmental Protection and Biodiversity Conservation (EPBC) regulations. While efforts are being made to provide some protection for traditional knowledge and Indigenous cultural expression, the protection of traditional knowledge is only modest, if that.</p> |
| 12:30pm – 1:30pm | Lunch | |

1:30pm – 3:00pm

Comparative Systems Panel B

Chair: **A Prof Devleena Ghosh** (UTS)

Margaret Ninsin, Intellectual Capital Institute of Africa *Protecting Indigenous Knowledge and Culture: The African Experience*

Margaret Ninsin is a Knowledge Management Consultant and Legal Researcher and the President and Founder of Intellectual Capital Institute of Africa. Qualified as both a librarian and a lawyer, Margaret has worked in diverse roles relating to law and human rights and is a keen advocate for economic and social development. Margaret is a former Law Librarian and Business Law Lecturer, Former Secretary General of African Commission of Health and Human Rights Promoters (CAPDSH) Accra Ghana, founder and President of Dawn of Hope NGO/Ministry, President and Founder of Hope International Trust-Harare-Zimbabwe and a member of the Alliance for Human Rights and Development Advocates.

Abstract:

This paper is about the current status in Intellectual Property Protection of some African Countries and possible ways of protecting this important resource. All these countries are at various levels of Intellectual Property Protection of their indigenous knowledge. It is about the protection of African Indigenous Knowledge, including genetic resources, and traditional cultural expressions, with a particular focus on the inadequacy of the Conventional Intellectual Property Law regime to protect African indigenous knowledge.

The paper will examine the problem of the protection of indigenous knowledge in some African Countries but focus on the specific situation in Ghana. Most African countries are unable to protect their indigenous knowledge due to several reasons: there is no national policy for the protection of indigenous knowledge; there are also no structures (e.g. government departments or ministries responsible for Indigenous knowledge; and there is also no comprehensive legislation to protect indigenous knowledge.

Possible solutions: there must be a national policy for the protection of Indigenous knowledge; there must be Legislation (acts, laws on indigenous knowledge); there must be research and documentation of Indigenous knowledge; and more Intellectual Law experts should be trained.

Communities where this knowledge is acquired and maintained must be documented and recognized as the custodians of such knowledge. Thirdly, regulations that seek to protect IPRs should be put in place and harmonized, and knowledge related to the existence and functioning of these regulations should be disseminated in order to enable all concerned to benefit. Intellectual Property rights of indigenous knowledge systems should be disseminated in communities. To formulate recommendations to assist in the protection of intellectual property rights for communities a *sui generis* system of protection should be introduced. If possible the use of geographical indications law should be explored.

Prof Bradford Morse, Dean Faculty of Law University of Waikato, (on Canada) *The Uphill Struggle to Protect Indigenous Traditional Knowledge in Settler States that Value Short-term Private Ownership: How is Canada Doing?*

Prof Morse has been Dean & Professor of Law, Te Piringa - Faculty of Law, University of Waikato since 2009 and is Professor Emeritus, University of Ottawa; and Dean of Law Designate, Thompson Rivers University, Kamloops, Canada. He has served as Executive Director, Native Legal Task Force of B. C. 1974-75; Research Director, Aboriginal Justice Inquiry of Manitoba 1988-91; Chief of Staff to Hon. Ronald A. Irwin, Minister of Indian and Northern Affairs 1993-96.

| | | |
|--|--|--|
| | | <p>His publications include over 100 books, articles, book chapters and commission reports. He has been a legal advisor and negotiator for many First Nations and national and regional Aboriginal organizations in Canada since 1974 as well as Consultant to various royal commissions, governments and Indigenous organisations in Canada, Australia and New Zealand. He has appeared as an Expert Witness before the Waitangi Tribunal (NZ), Parliamentary and Legislative Committees (Canada) and other administrative tribunals predominantly on Indigenous rights and environmental law issues.</p> <p>Abstract: The purpose of this paper is to assess the degree to which Canada is having any success in protecting ITK when it benefits from having constitutional language that “recognises and affirms the aboriginal and treaty rights of the aboriginal peoples of Canada” in s. 35(1) of the <i>Constitution Act, 1982</i>. While one might readily assume that the concepts of Aboriginal and treaty rights would encompass ITK, this issue is far from clearly resolved. Western IP law, buttressed by a mammoth economic system that has embraced and vigorously defended the law’s focus upon identified personal or corporate creators of copyrighted material, patents and trademarks, has effectively resisted all frontal challenges to the status quo. The breakthrough provisions of the Convention on Biological Diversity, with its Article 8(j)’s Access to Benefit Sharing, has born no significant fruit after 22 years of trying. WIPO and TRIPS have similarly been unyielding despite 1000s of hours of discussions. Little cause for comfort can be found in bilateral and multilateral free trade agreements or investment treaties. On the other hand, there have been some modest successes via forging new relationships with national and regional museums regarding ITK and through the negotiation of new treaties with First Nations, Inuit and Metis peoples in certain parts of Canada where Aboriginal title had not been completely extinguished by the Crown. My contribution will explore how these opportunities have been creatively used to establish some protected space in which ITK can be protected from exploitation and potentially even be allowed to flourish.</p> <p>Valmaine Toki <i>Tikanga Maori - A Traditional Knowledge system</i> Valmaine Toki Ngapuhi Ngati Wai BA LLB (Hons) LLM MBA Senior Lecturer in Law University of Waikato Rapporteur United Nations Permanent Forum on Indigenous Issues.</p> <p>Abstract: Prior to colonisation Maori had effective legal, political and social systems in place. The Maori legal system, or Tikanga Maori, was based on values, rather than rules. Tikanga Maori is often viewed as Maori customary values and practices, nonetheless it is far more complex than a two dimensional definition. For instance, premised on concepts, Maori, like other indigenous people, have a spiritual connection to the environment. This connection has been sourced from cosmology that in turn governs the relationship and attitude to the environment. Thus underscoring a traditional knowledge system.</p> <p>Prof Paul Martin, UNE Law School <i>Indigenous people’s heritage: diverse people, diverse issues, diverse methods</i> Professor Martin joined UNE as the Director of the Australian Centre for Agriculture and Law in 2005. Professor Martin has many years of business experience, including as a director and substantial shareholder in high technology enterprises, as a director of a successful venture capital firm, and as a member of the NSW Innovation Council and the Australian government Pooled Development Funds Registration Board. He was also a senior Visiting Fellow at the Australian Graduate School of Management for 20 years, responsible for a range of programs in both law and</p> |
|--|--|--|

| | | |
|-----------------|---|--|
| | | <p>entrepreneurship. Prior to joining the University, Professor Martin was Chairman of the (NSW) Southern Catchment Management Board. He has authored books and studies on taxation, natural resources, and negotiation; and has advised local and international corporations and governments on strategy in a range of areas including taxation leveraged investment, harvesting and shearing robotics, chemicals, healthcare and high technology.</p> <p>Abstract: This paper integrates four research projects conducted through the AgLaw Centre at the University of New England. The Aglaw approach proceeds from a belief that it is unreliable (and patronizing) to research issues on the basis that there is any homogenous “aboriginal” or “islander” perspective from which legal and other interests should be perceived. We expect that for any issue related to heritage Aboriginal and Torres Strait Islander people may have perspectives ranging from a traditional cultural viewpoint, through to a commercial entrepreneurial interest. We aim to help expand the strategies that Aboriginal and Torres Strait Islander people can use to pursue their diverse interests. The projects concern:</p> <ol style="list-style-type: none"> 1. The potential for Aboriginal and Torres Strait Islander people to use a legally enforceable knowledge trust doctrine to give practical effect to the moral obligation to protect Indigenous peoples’ secrets; 2. Potential legal and institutional arrangements to better protect or enable diverse Aboriginal and Torres Strait Islander people’s interest in the commercialization of “bush foods”; 3. Addressing the limits to the effectiveness of legal duties to consult Indigenous people in relation to their own cultural heritage interests; 4. Mechanisms to better enable Aboriginal and Torres Strait Islander people to defend their own privacy. <p>These projects intersect with others: issues with the cultural content of biological material collected in seed banks and biobanks (Perry, Shephard and Martin) and; consultative mechanisms that provide cultural safety (Aseron, Greymorning and Williams). Contributors: Paul Martin; Kylie Lingard, Chris McLaughlin.</p> |
| 3:00pm – 3:30pm | Afternoon Tea | |
| 3:30pm – 5:00pm | <p>Australian Indigenous Perspectives</p> <p>Chair: Gerry Turpin (Australian Tropical Herbarium)</p> | <p>Aunty Frances Bodkin, Mount Annan Botanic Gardens Frances Bodkin (Aunty Fran) is a D'harawal elder of the Bitter Water Clans and knowledge holder, storyteller, and teacher of Aboriginal knowledge. She is also a botanist, and Indigenous Education Officer with Mount Annan Botanic Gardens having degrees in climatology, geomorphology and environmental science. She works tirelessly to teach traditional Indigenous 'science' and enable a deeper understanding of, and an ability to care for, our natural environment. Frances received her Aboriginal knowledge from her mother, who was also a storyteller, and her grandmother and great grandmother, who were medicine women. She is the author of Encyclopaedia Botanica, which has over 11,000 entries on Australian native plants. Her Western scientific training combined with her invaluable knowledge of D'harawal creation, history and law, provides Frances with a truly holistic approach to understanding our earth.</p> <p>Uncle Gavin Andrews Banyadjaminga, Dharawal Traditional Descendants and Knowledgeholders Circle Uncle Gavin Andrews is a Dharawal man from the Sweet Water Clans (Nattaimattagal). He graduated from UNSW with degrees in Science, Architecture and Landscape Architecture, and from MU with a Diploma of Environmental Studies. Gavin worked in the Schools Section of the Public Works Department for about ten years, He was the NSW Aboriginal Land Council's first Treasurer, taught Landscape Design at Ryde TAFE, was Aboriginal Adviser with the</p> |

| | | |
|------------------|--------------|---|
| | | <p>Department of Mines, National Parks, then the Sydney Harbour Manager's Office, and then returned to Aboriginal Cultural Heritage</p> <p>Michael Connolly, Kullilla Art Michael is an Aboriginal man from Charleville, south west Queensland and a descendant of the Kullilla tribe from the Thargomindah/Eulo region [<i>on his father's side</i>] and from the Muruwari People from Goodooga/Brewarrina region of north-west New South Wales [<i>on his mother's side</i>] who can trace their traditional trade and diplomatic links with Central Desert as well as South Australian and Northern New South Wales' Aboriginal Communities. Together with this rich Indigenous background and unique style of interpretation of his cultural heritage. Michael is able to represent a unique perspective in the visual and performing arts. This is evident in his artwork, craftsmanship, didgeridoo playing and storytelling as a result of blending his own contemporary or urban indigenous style with the traditional style of the Kullilla Peoples under his business name of Dreamtime Kullilla-Art.</p> <p>Emelda Davis, President - Australian South Sea Islanders (Port Jackson) Limited <i>The Australian South Sea Islanders—Port Jackson (ASSI-PJ)</i> Emelda Davis is a Tanna Island, Vanuatu descendant of the blackbirding trade of the South Sea Islands. Emelda's mother was born into slavery. In advocating for her people Emelda is a member of the Pacific Programs Advisory Board to the Casula Powerhouse Arts Centre NSW and has played an integral role since 2011 in her capacity as the main coordinator and then the interim national body president for the development of a National Australian South Sea Islander (ASSI) Association through the delivery of Wantok capacity building workshops. These workshops saw the establishment of a National ASSI Governance Working Group to write the first ASSI national constitution. Her diverse expertise and innovative capabilities stem from a vast history in community development, education, training, media, marketing and awareness campaign strategies having worked for Federal, State Government, Community and Grassroots organisations.</p> <p>Abstract: The Australian South Sea Islanders—Port Jackson (ASSI-PJ) represent the interests of the Australian South Sea Islander (ASSI) people with regards to supporting and promoting ASSI culture, identity, human rights, well-being, economic, social and educational interests within the context of being one of the many contributing cultures of non-European origin in Australia. The term “Australian South Sea Islander” refers to the Australian descendants of people from more than 80 islands in the Western Pacific including the Solomon Islands, Vanuatu (formerly the New Hebrides) in Melanesia, and the Loyalty Islands, Samoa, Kiribati, Rotuma (Fiji), Tuvalu in Polynesia and Micronesia who were recruited to the indentured labour trade akin to slavery to work and establish Australia's economic base in sugar cane, maritime and pastoral industries. Today ASSI people remain marginalized, unrecognized, and even unknown to exist as citizens of Australia, with their labour contribution to the nation's economic base hidden in history, and their own history hidden even from themselves as a community. Our human rights as a community needs to be recognized and restored, empowering the people through a strong sense of identity and stability in belonging through ‘finding our families’ which determines cultural lineage / teachings. The generational trauma from the blackbirding past, still so recent that some are only one generation removed from it, and lack of certainty of the past - a literal and cultural amnesia due to the circumstances of their lives - continues to have lasting personal, social and economic effects on ASSI community.</p> |
| 6:30pm – 10:00pm | Forum Dinner | |

Friday 3/10/14

9:00am – 10:30am

Comparative Systems Panel C

Chair: **Steven Bailie**
IP Australia

Dr Nawneet Vibhaw, Assistant Professor and Assistant Dean; Executive Director, Centre for Environment and Climate Change, Jindal Global Law School, Delhi NCR *Protecting Traditional Knowledge: the Indian Story*

Nawneet Vibhaw is an Assistant Professor and Assistant Dean at the Jindal Global Law School. He is also the Executive Director of their Centre for Environment and Climate Change. Nawneet received his B.A., LL.B. (Hons.) degree from NALSAR University of Law, Hyderabad. He was awarded the Environmental Ambassador Scholarship to pursue his LL.M. in Environment and Natural Resources Law from Lewis & Clark Law School, Portland, Oregon, USA. During the LL.M. he specialized in Energy and Climate Change laws. Before joining academia Nawneet worked with top Indian law firms like AZB & Partners and Trilegal in Mumbai. He has worked with lawyers, NGOs, World Bank and the Ministry of Environment and Forests, Government of India, on various projects in the past. Nawneet is a member of the IUCN World Commission on Environmental Law. He is pursuing his Ph.D. at the University of Antwerp on “Right to Water and Sanitation for the urban poor in NCR Delhi” under a Belgian Government fellowship. In the past, Nawneet taught Environmental Law and Energy Law to the LL.B. and LL.M. students at NLU Delhi and headed the NLUD Environmental Research and Advocacy Centre.

Abstract: India is a nation rich in its culture and traditions. These traditions also include various age old practices involving traditional medicines. There is a substantial mention of traditional knowledge and medicines in various ancient texts. There have also been various forms of medicines practiced by the indigenous and local communities and codified traditions like Ayurveda, Unani, Siddha and others bear testimony to that. In this globalized world there is a need to protect this traditional knowledge and empower the communities with legal rights to the traditional knowledge and also to the resources involved. We need to also realize that these resources are fast depleting, many times unknowingly and hence there is a need to incentivize the harvest collection and use of such resources so that we not only preserve them but also that the local communities benefit from it.

It is with this objective that India enacted the Biological Diversity Act of 2002 and the related rules. This statute in consonance with the Convention on Biological Diversity aims at ensuring the conservation of biological diversity, sustainable use of its components and fair and equitable sharing of its benefits that arise out of the use of biological resources and knowledge. Possibly to further this, the Indian Patents (Amendment) Act, 2005 has kept traditional knowledge out of the purview of patents. The Geographical Indications of Goods (Registration and Protection) Act, 1999 provides for a framework which could be used to protect medicinal plants in the country which are unique and have qualities attributable to India. Legislations like the Indian Forest Act, 1927, Forest Rights Act, 2006, Panchayat Extension to Scheduled Areas (PESA) Act, 1996 and the Wildlife (Protection) Act, 1972 govern the access of the traditional knowledge holders to the medicinal plants in the wild. This paper would be an attempt at highlighting the statutory framework with respect to traditional knowledge in India and suggest ways in which it could be made better.

Chatubhoom Bhoomiboonchoo, Faculty of Laws Naresuan University Thailand *The problems of Muang Fai water management customary law in present day Thailand*

Chatubhoom Bhoomiboonchoo is a lecturer in law of the Faculty of Laws, Naresuan University, THAILAND. He holds a Bachelor of Law degree and Master of Law in International Law from Chulalongkorn University, THAILAND and LL.M. degree from the University of Aberdeen. Now, Chatubhoom is currently a Ph.D. Candidate of the School of law, University of Western Sydney, Australia where he is writing thesis on the topic "The recognition of Muang Fai water management customary laws for the Sustainable Development in Thailand".

Abstract:

Muang Fai water management system is a community based water resource management customary law in the northern part of Thailand. It has been applied for over 700 years. There are at least 300,000 farmers still using Muang Fai customary laws to irrigate 80,000 hectare of their paddy fields [Phonpilai, Suphachai & Nonthachi 2009]. Studies contend that Muang Fai is a sustainable water management customary law [Falvey 2001, Neef, Bollen, Sangkapitux, Chamsai & Elstner 2004]. However, it is argued that Muang Fai customary law is undermined by the present legal system of Thailand. Although Muang Fai customary laws have been incorporated into a statutory law [People Irrigation Act 1939], there are a lot of problems form the legal "recognition" and the lack of implementation. There are conflicts between rights according to Muang Fai customary laws and rights according to statutory laws, the weakness of Muang Fai water management because of the intervention of the governmental agencies, the attitude of the officials to the customary laws, the effects of urbanization and land uses changes. Moreover, Thailand has no water law now and the water right of people is still unclear. This paper argues that Muang Fai is a sustainable water resource management customary law. It explores the problems of Munag Fai water management customary law in present day Thailand.

Dr Virginia Marshall Principal, Solicitor Triple BL Legal *A reconstructed metaphor for Aboriginal property rights and interests: The challenges in normalizing Aboriginal ontology into Western concepts of knowledge and resources*

Dr Virginia Marshall is Wiradjuri Nyemba and is connected in kinship with Nyikina Mangala. She is a Sole Practitioner in NSW Australia (Triple BL Legal) primarily in intellectual property and commercial law. She is an active NSW Law Society committee member in the Indigenous Issues Committee (Acting Chair), Litigation Practice and Law Committee, and teaches her peers in legal practice. Virginia has practised in criminal and civil law and has an LLM at the Australian National University. Her doctoral research thesis, awarded this year at Macquarie University, is on Aboriginal water property rights and interests in Australia. The thesis develops original Aboriginal frameworks such as intellectual property, reframing Indigenous research, conceptualising difference in Indigenous water values and Western legal concepts.

Abstract:

A conundrum arises when one tries to define Aboriginal property interests through Western legal concepts, because the values, beliefs and law inherent in Western and Aboriginal ontological concepts exist within polarized cultural paradigms. The theoretical legal framework needed to develop a conceptual framework of Aboriginal interests should not merely 'accommodate' or 'integrate' Aboriginal knowledge, but must provide a 'voice' of Aboriginal peoples

| | | |
|-------------------|-------------|--|
| | | <p>through the ‘cultural linkages’, inherent in Aboriginal laws, language, and the layers of relationships that are embedded in ‘country’.</p> <p>The unique characteristics of Aboriginal property rights exist as a ‘nexus’ to how Aboriginal communities engage in natural resource management and why such property rights, woven through generations of ancestral relationships, permeate the cultural and contemporary Aboriginal concepts of values and use. From an Aboriginal perspective, the land and the waters are inseparable. In Australian legislative regimes both water and the land are separate entities. How should then we protect Aboriginal values in Aboriginal knowledge resources when Western policy and legislative regimes are so divergent?</p> <p>Dr Tran Tran <i>AIATSIS Reclaiming Indigenous knowledge in land and sea management</i></p> <p>Tran Tran is a research fellow based at the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) in the Centre for Land and Water Research. Tran has worked as co-investigator on the barriers to traditional owners working in land use planning in the context of climate change adaptation, the development of traditional owner aspirations for the management of native title lands post determination and the design and implementation of shared management arrangements over Indigenous lands in Western Australia with Central Desert Native Title Services and the Wiluna native title holders. Tran has worked extensively with the AIATSIS Guidelines for Ethical Research in Australian Indigenous Studies, which forms a key element of the negotiated action research methodology applied in her work.</p> <p>Abstract:</p> <p>Indigenous land and sea management is a growing area of Federal and state government policy – in recognition of the aspiration of many Indigenous groups to be back on country and look after it. However, Indigenous land and sea management is often embedded in broader natural resource management frameworks and funding programs aimed to deliver land management outcomes such as fire burning, water management, controlling weeds and feral animals, monitoring endangered species and ensuring compliance. However, within these land management frameworks ranger groups, Indigenous land councils and native title holders and other Indigenous corporations are generating a body of cultural knowledge to firstly, assert claims to land and waters and secondly leverage partnerships to actively care for Country. This body of knowledge includes stories and songs about the relationships traditional owners have to places of ecological and cultural importance, knowledge of seasons and associated links with plant and animal life cycles, patterns of fire use and burning, knowledge of water flows and interlinkages between surface and groundwaters, as well as the activity of key traditional owners on country. How this wealth of information is stored and shared within Indigenous communities and outside of them has not been fully explored, despite increasing investment in Indigenous land and sea management technologies. There are also practical issues of physical storage and security as well as cultural authority and the responsibility for the transmission of these knowledges. This paper focuses on the challenges and opportunities faced by Indigenous groups who are in the process of developing their independent community archives on a grassroots level. The paper draws from the experiences of native title holders throughout Australia as they gain increasing independence after the recognition of their native title.</p> |
| 10:30am – 11:00am | Morning Tea | |

11:00am – 12:30pm

Approaches and experiences

Chair: **Prof Bradford Morse**
University of Waikato

David Harrington, A. Prof Joanne Jamie & A Prof. Subramanyam Vemulpad Macquarie University
Collaborative partnership between Yaegl Aboriginal Elders and the Macquarie University Indigenous Bioresources Research Group, for recognition and protection of traditional medicinal knowledge.

Abstract:

The Macquarie University Indigenous Bioresources Research Group (IBRG) works in collaborative partnership with Indigenous people to i) document and preserve first hand traditional medicinal knowledge; ii) identify flora of significant medicinal potential; iii) evaluate their effectiveness using biological assays; iv) identify the bioactive components responsible for their medicinal properties; and v) provide community resources that will allow our Indigenous partners to manage their traditional knowledge for medicinal, cultural, economic and educational purposes.

This presentation will detail a 10 year collaborative relationship between the Yaegl Aboriginal community and IBRG, for research on traditional medicinal (ethnobotanical) knowledge of the Yaegl community in northern New South Wales. For this form of research to be successful, the community with which the research is being conducted needs to be an equal partner and benefit equally from the study. In the case of the Yaegl partnership, Elders and community representatives have guided the direction and outputs of the research as well as suggested capacity building initiatives that benefit the community as a whole. The relationship has produced many benefits including the development of a community owned database of cultural information, a community authored bush medicine handbook, post graduate theses, co-authored publications in international journals and conference and poster presentations. Most significantly the program has realised community desires for support strategies addressing Aboriginal educational outcomes and cultural education in local schools. This collaborative research partnership is an example of how cooperation and consultation, within a framework of reflective practice and action research can produce innovative and successful solutions for ethically recording, sharing and transmitting cultural information and to recompense Indigenous partner communities appropriately.

Dr Mark Shephard Australian Centre for Agriculture and Law, UNE School of LawnSeed *bio-banking processes and the protection of indigenous socio-cultural knowledge*

Dr Mark Shephard is a University Postdoctoral Fellow at the School of Law, University of New England (UNE), Armidale. Mark is one of several researchers linked to the Australian Centre for Agriculture and Law at UNE. Research in this role is focussed on improved institutional performance of seed banks in respecting and managing indigenous knowledge. Mark’s research has spanned legal and social expectations of a farmer’s duty of care for environmental protection and water resource stewardship.

Abstract

Respect and protection for socio-cultural knowledge is a moral and possibly legal imperative that has neither been satisfied through resource governance nor legal mechanisms to date. The challenge is to bridge the gap between ‘western’ conceptualisation of the ownership of data and knowledge of seeds, and the traditional knowledge and custodial obligations about seeds that typically lie outside the prevailing paradigm for privatisation of rights. Intellectual property rights have become a primary legal tool for the protection of knowledge in western legal systems entrenching commercial considerations.

Policy makers often consider intellectual property and other rights protection frameworks as superior to the socio-cultural interests of communities, and often these rights are seen from a narrow perspective. This is particularly evident

| | | |
|------------------|--|--|
| | | <p>in relation to the use and development of plant seeds and their products. Significant issues exist with the potential for stripping out and depreciating socio-cultural knowledge associated with seeds under the current legal regime.</p> <p>The central issue for this paper is to identify concepts in law that can support:</p> <ul style="list-style-type: none"> • the moral and ethical relationships between people and seeds; • the provision of practical approaches to express obligations associated with the collection, storage, germination and cultivation of plant seeds; and • the identification of how these approaches may be applied to support a transition to better governance of socio-cultural interests in bio-banking and subsequent use of seeds. <p>This work has begun by identifying issues in the commercialisation of “bush foods” to enable Aboriginal and Torres Strait Islander people’s interests and the biobanking of bush food seeds. Contributors: Mark Perry and Mark Shephard</p> <p>Steven Bailie IP Australia <i>Intergovernmental Committee Text</i> Steven Bailie works in IP Australia’s International Policy and Cooperation Section. IP Australia’s roles are to (i) administer the patents, trade marks, designs and plant breeder’s rights regulations, (ii) conduct IP public education and awareness activities and (iii) provide advice to government on IP issues. Much of Steven’s IP policy work involves biodiversity and Indigenous peoples’ knowledge. Steven is currently engaging with domestic stakeholders on these issues and has represented the Australian government at international meetings, including the Convention on Biological Diversity and the World Intellectual Property Organization. Prior to his current role, Steven worked in a university technology transfer office and has done both laboratory research and patent examination in biochemistry.</p> <p>Daniel Posker Senior Associate, Herbert Smith Freehills</p> |
| 12:30pm – 1:30pm | Lunch | |
| 1:30pm – 3:00pm | Parallel Workshop Sessions on the White Paper | <p>Form and operation of the Competent Authority Chair: Professor Natalie Stoianoff, UTS:LAW</p> <p>Establishing and maintaining the databases Chair: Evana Wright (UTS)</p> <p>Remedies and offences Chair: Daniel Posker, Senior Associate, Herbert Smith Freehills</p> |
| 3:00pm – 3:30pm | Afternoon Tea | |
| 3:30pm – 4:45 pm | Public Forum Chair: Dr Virginia Marshall | <p>Reporting back from the Workshops & General Discussion Next Steps</p> |
| 4:45pm – 5:00pm | Closing Ceremony | |