



## Summary of IK2

**Aunty Joan Tranter** gave the Acknowledgement of Country

**John Macarthur-Stanham**, Chair of the Local Land Services Board, outlined the Local Land Services engagement with Aboriginal people and community noting that Aboriginal culture is a living culture and measures should be put in place to protect cultural heritage.

**Chris Celovic**, Northwest Local Land Services Team Leader, spoke on delivering better services in land management to Aboriginal communities and utilizing a different model, for example in the consultation on TSRs, and outlined the three projects on TSRs, Cultural Mapping and Pest Management.

**Barry Cain**, Aboriginal Heritage Conservation Officer with OEH, explained that there are no mechanisms to protect Aboriginal Cultural Heritage from mining and cotton farming. He pointed out that Aboriginal people in Australia have the worst health outcomes and are the most researched people across the country. Barry explained that the explorers did not seek permission to write down the Traditional Knowledge of Aboriginal communities. He also recognised that we need to access our land, even on private land, in order to use our medicines. Barry acknowledged the significant funding cuts that have occurred to Aboriginal programs and the overall impact that this was having.

**Natalie Stoianoff**, Professor Faculty of Law UTS, gave a comprehensive overview of the White Paper prepared by the UTS team for OEH, and outlined the key elements:

1. Protection of Indigenous Knowledge
2. Community engagement
3. Development of a draft regime
4. Discussion Paper

## 5. Conducting consultations

Professor Stoianoff highlighted concerns in Benefit Sharing and Informed Consent by Aboriginal peoples who hold traditional knowledge. She pointed out that Australia is a mega-diverse region in biodiversity terms and questioned the *Common Heritage of Mankind* concept which acts as a barrier to Indigenous management and control of TK.

Professor Stoianoff took us through the comparative framework that underpins the White Paper and the formation of a Working Party to develop a draft regime and discussion paper, and the university engagement with Aboriginal community consultations.

**Terry Bailey**, CEO of the OEH Aboriginal Culture and Heritage programs, outlined the department's engagement with Aboriginal communities in NSW to allow Aboriginal peoples custodial responsibility to *country* and resources *on country*.

**Lou-Anne Lind**, Director of the OCHRE Program, NSW Department of Aboriginal Affairs, gave an overview of the NSW government's OCHRE program and its key focus areas, outlining the reasons for the introduction of the program. She outlined the results of an Aboriginal community survey by the department where the community stated that Aboriginal language is a *birth right* and not a privilege.

**Leota Theresa Potoi** and **Ulupale Fuimaono**, from the Samoa Law Reform Commission, spoke on the current legal protection of Traditional Knowledge in IP laws. It was pointed out that Samoan culture embodies intergenerational equity and the importance of cultural expressions. The Samoan way of life – 'faa Samoa' – examples of Traditional Knowledge and knowhow was made through tattooing, the making of bowls, and in art. In Samoan culture these rights are collective rights and include moral, economic and customary use. It was pointed out that copyright and Intellectual Property legislation provided minimum standards and outlined the requirements for TK applications in Samoa.

**Gerry Turpin**, from the Tropical Indigenous Ethno-botany Centre, Australian Tropical Herbarium, explained the Mbararam Medicinal Plant Project and Ethno-botany Mapping Project. He highlighted that Bush Tucker is a \$20 million industry in Australia. Gerry spoke about how Mbararam Traditional Knowledge has been written down in various journals, explorers diaries, newspapers, and held in museums, yet only 300 words now remain in the Mbararam language.

Gerry spoke on the positive outcomes in research and data collection and the reinvigoration of TK. He highlighted challenges under the Queensland Biodiversity Act such as the acquisition of bush medicine plants from free hold land which does not require any interaction with custodians of the relevant knowledge.

**Manuel Ruiz Muller**, from the Peruvian Society of Environmental Law, explained that South America is a mega-diverse continent and the experience of Indigenous peoples in Andes and

Amazon for TK and TCEs. Where a range of legal regimes cover Indigenous Intellectual Knowledge and examples of the TK register and benefit sharing agreements, the establishment of a national fund, and existing local registers of knowledge, including the difficulty in registering traditional knowledge due to conflict with the national authority. For example there are over 800 different registers.

**Professor Yu**, Xiang, from the Huazhong University of Science & Technology in China, explained that TCM in China is over 1,000 years old and creates wealth for the State. TK involves a range of protection layers and approval system which at times remains difficult. Professor Yu also referred to the different classes under the regulations that exist to attain TCM, and it was noted that only 5 Chinese medicines received 'first class' protection.

**Professor Morse**, Dean of the Faculty of Law, University of Waikato, New Zealand, explained the IP focus was on identifying natural persons and that in Canada Indigenous peoples were never considered to be holders of TK. He went on to explain the land claim settlement for the Nisga'a Nation and the issues of regimes and ownership, noting that there is a 'conflict of laws provision' with federal law.

**Valmaine Toki** from Waikato University described the Tikanga Maori and Kaupapa rules through Maori law and custom and explained that it exists within a web of relationships of both the tangible and intangible where the concept of ownership is not part of the legal framework. For example, Maori knowledge is not held within IP laws and is considered to be in the public domain.

**Professor Martin**, from UNE Law School, is looking for solutions in engaging various groups to identify traditional knowledge issues and how to consult.

**Aunty Fran Bodkin** took us through D'harawal story to explain the notion of truth from community perspective of law and culture and to identify the relationship of science and knowledge.

**Uncle Gavin Andrews** discussed the concept of sui generis. He emphasised that we need to be at the top of the ladder and the use of our words are important to embrace traditional knowledge and knowledge resources. Uncle Gavin explained that Aboriginal law is always preventative and not punitive, for example in penalty provisions that a discretion to apply a minimum or a maximum penalty is not blackfella law.

**Michael Connolly**, from Kullilla Art explained his experience with the misappropriation of Gumbi Gumbi and the use of TK. He made it clear that women in his country make law.

**Emelda Davis**, President of the Australian South Sea Islanders (Port Jackson) Limited, told of the generational trauma from Australia's practice in 'blackbirding' and the effects on community as well as the profound difficulties in returning to homeland, and re-engaging

with family. She also described the direct impact of stolen wages and the breaches of human rights that were experienced by 55,000 Australian South Sea Islanders.

**Dr Vibhaw**, Assistant Professor and Assistant Dean at Centre for Environment and Climate Change, Jindal Global Law School, Delhi, explained the TK practices in India and the purpose and outcomes of legislation for community people and the difficulty in definitions to describe the use and purpose of TK.

**Chatubhoom Bhoomboonchoo**, PhD candidate at the Faculty of Laws, Naresuan University in Thailand explained the purpose of his doctoral research in Muang Fai and the ancestral legend that underpins TK in Thailand. He described how important it is for public participation in decision making and access to ancestral water sources as well as the process for allocating water, and the importance of the ceremony in Muang Fai. The key issue was sustainability which is linked to continuing customary law and dealing with the rural-urban migration that creates a challenge to Muang Fai. Other issues identified was land use change and water quality.

**Dr Virginia Marshall**, from Triple BL Consultancy, referred to her thesis on Aboriginal water rights and interests and the need to conceptualise Aboriginal rights and interests through Aboriginal language and ontological concepts. She emphasised that Aboriginal water rights needed to be allocated as a first right in recognition that Aboriginal people were the First People of Australia and that the interests of other stakeholders should follow and not precede Aboriginal water rights.

**Dr Tran Tran**, from AIATISIS discussed the research undertaken in Aboriginal land and water management and the impact for Aboriginal communities from forced removal from country. She described the various processes that are required to assist Aboriginal communities in developing and implementing land and water management programs on country and the protocols that need to be followed.

**Professor Subra Vemulpad and David Harrington** from Macquarie University explained the Indigenous Bioresources Research Group partnership with the Yaegel Community in northern NSW in TK and the positive effects on building good relations with community and finding solutions for improved science education outcomes.

**Dr Mark Shephard** from the Australian Centre for Agriculture and Law at UNE, described the seed banking project and how there are challenges to bridging western and Indigenous Knowledge systems and the challenges in ownership of databases.

**Steven Bailie** from IP Australia talked about the WIPO International IP negotiations on Indigenous Knowledge and the role of IP Australia on the Intergovernmental Committee set up in 2009 under a mandate to negotiate an international instrument covering Traditional Cultural Expressions and TK. The Objectives and Principles included promoting innovation and creativity while preventing misappropriation and bringing balance into the international

IP system. He referred to the tiered approach which arose at the March 2014 negotiations in Indonesia – that not all TK is the same and didn't need to be protected in the same manner; that there are different levels of rights and measures which can be determined by the character of the TK/TCE in question and the character of their use.

Steven explained how the process had become drawn out and bogged down with 1,500 disputed phrases in the 55 pages of the document. He reported that IP Australian was still inviting submissions on the encouraged interested parties to consider making submissions.

**Daniel Posker**, Senior Associate, Herbert Smith Freehills, spoke about the legal protection of Indigenous Knowledge and gave an overview from the industry perspective on patents, copyright and confidential information and the legal requirements for protection of these rights. He referred to the need of companies which are investing considerable resources in developing IP to have commercial certainty, predictability and a regime with realistic licencing and compliance costs. He emphasised that certainty was needed in regard to identifying the proper TK holders, those who can 'speak for country' and can bind the community to agreed arrangements so infringements risk is minimised.