

Fairness and the protection of traditional knowledge: Fair and equitable benefit sharing in the Indo-Pacific

Dr Evana Wright, University of Technology Sydney

This paper addresses the conference theme through an exploration of the use of access and benefit sharing regimes to secure rights in traditional knowledge (TK) in the Indo-Pacific region. In particular, the paper will focus on whether provisions requiring the 'fair and equitable sharing of benefits arising out of the utilisation of traditional knowledge' operate to address the needs and expectations of Indigenous people and return adequate benefits to knowledge holders and communities.

Existing systems of intellectual property are insufficient to protect TK and there has been increasing international recognition of the need to protect TK with a number of treaties and instruments introduced operating on principles of fairness. The *Convention on Biological Diversity (CBD)* and the *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization* both have the objective of ensuring the fair and equitable sharing of benefits arising out of the utilisation of genetic resources and associated TK. The Nagoya Protocol provides examples of 'benefits' including both monetary benefits and non-monetary benefits such as technology transfer, capacity building, education and training.

A number of jurisdictions have introduced regimes for the protection of TK based on the principles of prior informed consent and fair and equitable sharing of benefits and the Indo-Pacific region is home to a number of these examples. Despite the intentions of these regimes, it has been suggested that the focus remains on managing access to traditional knowledge rather than ensuring that benefits are returned to the Indigenous people. This paper will explore the issue of what constitutes 'fair and equitable benefit sharing' in this context with reference to case studies drawn from the Indo-Pacific.