



Garuwanga: Forming a Competent Authority to protect Indigenous Knowledge

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Who we are and what we do

- The Garuwanga Project is an Indigenous Knowledge Forum project funded under an Australian Research Council Linkage Grant that started in 2016
- The Project team has Partner Investigators representing four Aboriginal Partner Organisations and three Chief Investigators representing two Australian Universities

Name	Participant Type	Organisation
Uncle Gavin Andrews	Partner Investigator	Banyadjaminga Swaag Incorporated
Aunty Frances Bodkin	Partner Investigator	D'harawal Traditional Knowledgeholders and Descendants Circle
Virginia Marshall	Partner Investigator	Triple BL Pty Ltd
Anne Poelina	Partner Investigator	Madjulla Association
Natalie Stoianoff	Chief Investigator	University of Technology Sydney
Fiona Martin	Chief Investigator	University of New South Wales
Andrew Mowbray	Chief Investigator	University of Technology Sydney
Michael Davis	Research Fellow	University of Technology Sydney
Evana Wright	Former Research Fellow	University of Technology Sydney
Neva Collings	PhD Candidate	University of Technology Sydney

The Garuwanga Project

- The Garuwanga Project aims to
 - Identify and evaluate a variety of legal governance structures for a Competent Authority suitable for administering an Indigenous Knowledge protection regime
 - Facilitate Aboriginal Community engagement in making that determination
 - Recommend a type of Competent Authority structure based on what is important to Aboriginal Communities and how such a Competent Authority should operate
- Key questions for the Garuwanga Project
 - Aboriginal laws and customs considered relevant by Aboriginal Partner Investigators and other Aboriginal members of the Project
 - Expectations of the functions and powers of the Competent Authority
 - Suitability to the domestic legal and regulatory context

- The need to protect Indigenous knowledge from misuse is recognised under several international instruments. Two key international instruments are the Convention on Biological Diversity and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation
- The Nagoya Protocol requires each member state to designate a Competent Authority (or Authorities) to administer a legal framework to
 - Ensure free prior informed consent by Indigenous communities is obtained before Indigenous traditional knowledge is accessed
 - Establish fair and equitable benefit-sharing mechanisms for use of Indigenous traditional knowledge

What is a
Competent
Authority and
why do we
need one?

What issues have already been raised regarding a Competent Authority?

- In earlier consultations by the Indigenous Knowledge Forum with Aboriginal communities, issues were raised regarding:
 - The form a Competent Authority would take
 - Its independence from government
 - How it would be funded and wound up and what would happen in the event the Competent Authority administered databases or registers relating to Indigenous traditional knowledge
 - The importance of local Aboriginal representation and engagement in the Competent Authority and governance systems
- The Garuwanga Project recognises that Aboriginal communities consulted with in north-west NSW called for a 'grass roots' approach in the care of protection of Indigenous knowledge.
- Local representation and decision making by and for Aboriginal communities should be recognised as an important responsibility of the Competent Authority.

Choosing a suitable structure

- Despite the fact that a national presence is required, the structure of a Competent Authority should be determined with the needs and expectations of Aboriginal and Torres Strait Islander Peoples at the forefront.
- Considerations include
 - Providing for community controlled management
 - Whether regional management is needed or desirable
 - How the structure can be adapted to the differing needs of different communities
- Other countries have taken very different approaches to establishing a Competent Authority using existing authorities, establishing new bodies, and establishing Indigenous advisory boards.
- A number of different types of organisations exist in Australia with different features and limitations. Are these existing structures effective to meet the cultural needs of Aboriginal communities?

Garuwanga Governance Principles

- Relationships/Networks
- Trust/Confidence
- Independence from government
- Community participation
- Guarantees/Confidentiality
- Transparency/Accountability
- Facilitation
- Advocacy
- Communication
- Reciprocity

Discussion Questions

- Ensuring a Competent Authority reflects Aboriginal and Torres Strait Islander customary laws and cultural protocols
 - What do you consider to be the most important features for a Competent Authority?
 - What existing organisations do you think provide effective/ineffective models for Aboriginal and Torres Strait Islander interests?
 - How should local competent authorities be formed?
 - Should all employees, officers and councillors be Aboriginal or Torres Strait Islander people?
- Expectations of the functions and powers of the Competent Authority
 - Should there be a single national competent authority?
 - Should a national competent authority carry out the duties of both the national competent authority and the national focal point?
- Suitability to Australian legal and regulatory contexts
 - What form do you think the Competent Authority should take? (For example, what type of body? How many tiers of governance?)
 - How should decision making within the Competent Authority operate taking into account that the Competent Authority needs to meet criteria under the Nagoya Protocol?
 - Should the national registrars for men's business and women's business database and registries be able to delegate authority to others in the Competent Authority?



Bringing Two Laws
Together: Indigenous
Self-Determination
and Competent
Authorities

Competent Authorities in the Nagoya Protocol

- The Nagoya Protocol (Art 14) provides for a 'national focal point' and 'national competent authority' and
- Also refers to 'Relevant competent authorities of indigenous and local communities' (14(3)(a))
- The role of these bodies is to control, regulate and make decisions in regard to natural and genetic resources and traditional knowledge associated with these.

Competent National Authorities

- Nagoya Protocol (Art 13(2)) states that 'competent national authorities' will:
 - In accordance with applicable national legislation, administrative or policy measures, be responsible for granting access or, as applicable, issuing written evidence that access requirements have been met and be responsible for advising on applicable procedures and requirements for obtaining prior informed consent and entering into mutually agreed terms.

Self-Determination

- Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and free pursue their economic, social and cultural development (UNDRIP Art 3)
- ‘Internal’ self-determination entails ‘the possibility of each people and community to regulate its internal matters through the use of its legal institutions and rules, which reflect its cultural patterns, such that the members may generally feel associated with the decision taken’ (Anaya 1996: 112)
- ‘Traditional local institutions regulating the use of lands and natural resources are the primary instrument giving voice to the needs, concerns, and interests of the peoples and communities (Maffi 2014: 9)’ (Sajeveva 2018: 106)

Garuwanga Project Outcomes

- Indigenous models for governance in design of competent authorities
- Emphasise Indigenous self-determination, including Indigenous representation, membership, ownership, decision-making, control and management in operations of competent authorities
- Tiered structure for competent authorities
- Separate but mutually interdependent and complementary roles for national competent authority and regional and local bodies
- Primacy of Indigenous laws
- Integration or 'reconciliation' of Indigenous and Western laws

Competent
Authorities
Working
Together – A
Tiered
Structure

- National Competent Authority
 - Focal point for CBD and Nagoya Protocol
 - Monitors and reports on ABS and TK
 - Sets and maintains Indigenous standards, ethics and guidelines
 - Capacity development and strengthening role for local and regional competent authorities
 - Supports local and regional Indigenous competent authorities

Regional/Local Competent Authorities

- Connected into local/regional communities and existing organisations
- Supported by National Competent Authority
- Uphold and maintain Indigenous laws
- Control and make decisions over local level access and benefit sharing arrangements, Indigenous knowledge and databases

A Way Forward? - Biocultural Rights

Group, or collective rights:

- ‘...aimed at protecting the stewardship role that certain Indigenous peoples and local communities have maintained towards the environment’ (Sajeve 2018: xviii)
- ‘a proposal for the harmonisation of environmental and human rights interests through the shaping of a sui genesis basket of human rights, which builds on environmentally sound world views and customary laws that certain indigenous peoples and local communities have maintained’ (Sajeve 2018: xviii)



Please visit our Project website
www.indigenouknowledgeforum.org
We are very interested in your feedback and input!