
Contents

<i>List of illustrations</i>	x
<i>Preface</i>	xi
<i>List of Acronyms and Abbreviations</i>	xii
1 Introduction	1
I Overview and Purpose	1
II Research Questions	7
III Research Methods	8
IV Justification for Research	11
V Terminology	13
VI Chapter Outline	16
2 International Legal Framework: Respecting Traditional Knowledge and Fair and Equitable Benefit-Sharing	23
I Introduction	23
II Objectives of the CBD	25
A Promoting the Wider Application and Exchange of Traditional Knowledge and ‘Equitable’ Benefit-Sharing	27
B Facilitated Access to Genetic Resources and Benefit-Sharing	28
III Supplementary Instruments of the CBD: The Bonn Guidelines and the Nagoya Protocol	30
A Negotiating the Bonn Guidelines and the Nagoya Protocol for Access and Benefit-Sharing	33
B Comparing the Operative Provisions of the Bonn Guidelines and the Nagoya Protocol	36
IV Characterising Benefit-Sharing as ‘Fair and Equitable’: Balancing Transactional Certainty and Participatory Rights of Indigenous Peoples	47

V	<i>Indigenous Peoples' Human Rights to Full and Effective Participation in Measures for Access and Benefit-Sharing</i>	52
A	Human Rights Relevant to Fair and Equitable Benefit Sharing with Indigenous Peoples	53
B	Obligations for Access and Benefit-Sharing Measures of the CBD and the Nagoya Protocol to Mutually Support Human Rights Agreements	56
VI	<i>Conclusions</i>	59
3	Australia's Implementation of the <i>Convention on Biological Diversity</i> and the Supplementary <i>Bonn Guidelines</i> and <i>Nagoya Protocol</i>	68
I	<i>Introduction</i>	68
II	<i>Differentiated Responsibility of Australian Governments for Managing Access to Biological Resources</i>	70
A	National Strategy for the Conservation of Australia's Biological Diversity 1996	74
B	Nationally Consistent Approach for Access and Utilisation of Genetic and Biochemical Resources	75
III	<i>Measures and Mechanisms for Accessing Biological Resources in Commonwealth Areas</i>	77
A	Accessing Biological Resources from Commonwealth Areas and Indigenous Peoples' Lands	78
B	Obligations for Benefit Sharing Arising from the Utilisation of Associated Traditional Knowledge	80
C	Administrative Mechanisms of the Commonwealth for Access and Benefit Sharing: National Competent Authorities and National Focal Point	82
IV	<i>Legislative and Policy Measures of States and Territories for Access and Benefit-Sharing</i>	84
A	Queensland	85
B	Northern Territory	91
C	Australian Capital Territory	94
D	Victoria	96
V	<i>Western Australia and New South Wales: Draft Legislation for Access and Benefit-Sharing and Existing Measures for Taking Public Resources</i>	99
A	Western Australia	99
B	New South Wales	101
VI	<i>Australian States and Territories Without Legislation Enabling Access to Biological Resources for Benefit-Sharing</i>	104

A South Australia	105	
B Tasmania	108	
VII <i>Practical Implications of Nationally Inconsistent Measures:</i>		
‘Poepel Corner’	110	
VII <i>Conclusions</i>	114	
4 Aboriginal and Torres Strait Islander Peoples’ Governance and the Role of Incorporated Organisations in Domestic Measures under the Framework of the <i>Nagoya Protocol</i>		123
I <i>Introduction</i>	123	
II <i>Recognising Indigenous Communities and Peoples under the Nagoya Protocol and Facilitating Benefit Sharing in a ‘Fair and Equitable Way’</i>	124	
III <i>The Diversity of Aboriginal and Torres Strait Islander People and Communities, and Their Governance of Traditional Knowledge</i>	127	
IV <i>The Role of Incorporated Organisations for Community Governance as Competent Authorities</i>	132	
V <i>Governance Principles for Aboriginal and Torres Strait Islander People’s Community Governance</i>	136	
VI <i>Criteria for Analysing the Governance Structures and Procedures of Incorporated Community Organisations as Case Studies</i>	140	
A Representativeness	141	
B Power	143	
C Cultural Legitimacy	145	
D Subsidiarity	147	
E Reciprocity	151	
F Accountability	152	
VII <i>Conclusions</i>	153	
5 Case Study of the Gawler Ranges Aboriginal Corporation		163
I <i>Introduction</i>	163	
II <i>General Characteristics of the GRAC</i>	163	
A Formation and Purpose	163	
B Membership of the GRAC	166	
C Location of the Gawler Ranges Native Title Determination Area	167	
D Governance Instruments of the GRAC	168	
E Government Regulation of the GRAC	170	

III	<i>Analysing the Legal Governance Framework of the GRAC for Sharing and Protecting Traditional Knowledge</i>	171
A	Representativeness of the GRAC	171
B	Legal Power	176
C	Cultural Legitimacy	178
D	Subsidiarity	183
E	Reciprocity	188
F	Accountability	192
IV	<i>Conclusions</i>	195
6	Case Study of the North Australian Indigenous Land and Sea Management Alliance Ltd	200
I	<i>Introduction</i>	200
II	<i>General Characteristics of NAILSMA</i>	200
A	Formation and Purpose	200
B	Membership	203
C	Location of NAILSMA Activities	204
D	Governance Instruments of NAILSMA	205
E	Regulation of NAILSMA	206
III	<i>Analysing the Legal Governance Structures and Procedures of NAILSMA for Sharing and Protecting Traditional Knowledge</i>	206
A	Representativeness of NAILSMA	206
B	Powers of NAILSMA	210
C	Subsidiarity	215
D	Cultural Legitimacy of Governance Structures and Procedures	223
E	Reciprocity	226
F	Accountability	232
IV	<i>Conclusions</i>	235
7	Comparing the Legal Governance of GRAC and NAILSMA for Sharing and Protecting Traditional Knowledge	241
I	<i>Introduction</i>	241
II	<i>Comparing the Representativeness of the GRAC and NAILSMA</i>	243
A	Conclusions: Representativeness of GRAC and NAILSMA	245
III	<i>Comparing the Legal Power of the GRAC and NAILSMA to Govern</i>	245
A	Conclusions: Legal Power	247

IV	<i>Comparing Structures and Procedures for Culturally Legitimate Governance</i>	247
	A Conclusions: Cultural Legitimacy of Governance	250
V	<i>Comparing Subsidiarity of Governance Between the GRAC and NAILSMA</i>	250
	A Direct Participation in Decision-Making	251
	B Delegated Decision-Making Power to Officers of Corporations	252
	C Conclusions: Subsidiarity of Governance	253
VI	<i>Comparing Reciprocity Promoted by the GRAC and NAILSMA</i>	254
	A Promoting Benefit-Sharing	254
	B Promoting Mutually Beneficial Relationships	255
	C Conclusions: Reciprocity	256
VII	<i>Comparing the Accountability of the GRAC and NAILSMA</i>	256
VIII	<i>Conclusions</i>	259
8	Main Conclusions and Steps for the Future	264
I	<i>Introduction</i>	264
II	<i>Demonstrating the Need to Ratify and Implement the Nagoya Protocol</i>	265
III	<i>Demonstrating the Inconsistency and Inadequacy of Australia's Access and Benefit-Sharing Measures</i>	266
IV	<i>Confirming the Diversity of Aboriginal and Torres Strait Islander Communities and Governance Systems</i>	267
V	<i>Developing a Framework for Evaluating and Comparing the Role and Functions of Incorporated Organisations</i>	269
VI	<i>Law and Policy Reform</i>	270
VII	<i>Avenues for Further Research</i>	273
VIII	<i>Conclusions</i>	274
	<i>Index</i>	279

IV	<i>Comparing Structures and Procedures for Culturally Legitimate Governance</i>	247
	A Conclusions: Cultural Legitimacy of Governance	250
V	<i>Comparing Subsidiarity of Governance Between the GRAC and NAILSMA</i>	250
	A Direct Participation in Decision-Making	251
	B Delegated Decision-Making Power to Officers of Corporations	252
	C Conclusions: Subsidiarity of Governance	253
VI	<i>Comparing Reciprocity Promoted by the GRAC and NAILSMA</i>	254
	A Promoting Benefit-Sharing	254
	B Promoting Mutually Beneficial Relationships	255
	C Conclusions: Reciprocity	256
VII	<i>Comparing the Accountability of the GRAC and NAILSMA</i>	256
VIII	<i>Conclusions</i>	259
8	Main Conclusions and Steps for the Future	264
	I Introduction	264
	II Demonstrating the Need to Ratify and Implement the Nagoya Protocol	265
	III Demonstrating the Inconsistency and Inadequacy of Australia's Access and Benefit-Sharing Measures	266
	IV Confirming the Diversity of Aboriginal and Torres Strait Islander Communities and Governance Systems	267
	V Developing a Framework for Evaluating and Comparing the Role and Functions of Incorporated Organisations	269
	VI Law and Policy Reform	270
	VII Avenues for Further Research	273
	VIII Conclusions	274
	Index	279