

## RECOMMENDATIONS

This submission is an individual submission by Mr. Shane Bawden. The submission addresses issues of Indigenous concerns in relation to examining the development of high technology industries in regional Australia based on bioprospecting.

In summary I recommend that the House of Representatives Standing Committee on Primary Industries and Regional Services Inquiry into the regional development of bioprospecting:

**1 *Recommend:*** *Consideration is given to the development of international mechanisms to ensure intellectual integrity of indigenous and other rural peoples Intellectual Property.*

### Intellectual Property

Support international mechanisms such as the *Convention on Biological Diversity* and the development of standards by United Nations agencies such as the World Intellectual Property Organisation (WIPO) and the United Nations Educational, Scientific and Cultural Organisation (UNESCO). That includes the right of indigenous peoples, collectively, to benefit from their traditions and intellectual knowledge, and to be compensated for their intellectual property and their role in conservation and sustainable use of biomaterials. International treaties and standard-setting processes such as the *Draft Declaration on the Rights of Indigenous Peoples*, *ILO Convention 169*, and the United Nations Study on the Protection of the Heritage of Indigenous People by Erica-Irene Daes (Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities) by no means exhaustive, will provide a framework, under which protection can be advanced.

**2 *Recommend:*** *Consideration is given to the recommendations in the Aboriginal and Torres Strait Islander Commission (ATSIC) GATT TRIPS Review. Also, the Committee should note the United Nations Development Program Report (UNDP), Human Development Report 1999, which indicates consequences of TRIPS on Indigenous knowledge and bio-safety.*

### Trade Related Intellectual Property (TRIPS):

There must be consistency between the TRIPS agreement and the *Convention On Biological Diversity*. In particular providing for protection of Indigenous knowledge, innovations and practices that are relevant to the conservation and sustainable use of biological diversity. Steps should be taken to provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by a combination of mechanisms in line with article 27.3 of the TRIPS Agreement. *There should be specific means to protect Indigenous peoples' traditional and intellectual property rights.*

**3 Recommend:** *The Committee should note the report on Australian Indigenous Cultural and Intellectual Property Rights: Our Culture Our Future and implement the recommendations of this report.*

### **Patenting**

There is a strong argument that there is no reason to allow the patenting of living products or processes. To allow western notions of intellectual property over biomaterials is a foreign concept to many Indigenous peoples. However, Indigenous medicinal plants and indigenous knowledge lies unprotected and is continually exploited by corporations. Current intellectual property systems do not provide adequate protection of intellectual knowledge nor does it protect the interests of Indigenous people's cultural heritage.

**4 Recommend:** *Encouragement of intellectual integrity, meaning the right of indigenous communities to say 'NO' to bioprospecting and assist to upgrade international accords relating to "prior informed consent" (PIC).*

### **The Right of Self Determination**

Encourage intellectual integrity, meaning the right of indigenous communities to say 'no' to bioprospecting. While it is proper and necessary to upgrade international accords related to (PIC) for the collection of biomaterials and indigenous knowledge, it is urgent that the government conform to the *Convention on Biological Diversity* and acknowledge the right of nations and communities not to consent. Cultural and intellectual property forms a significant part of Indigenous people's special connections to country and to their sense of identity. Indigenous rights in cultural and intellectual property include the right to determine its nature and extent in accordance with their laws and customs, the right to manage and control it, and the right to exclude others from access to and use of this property.

**5. Recommend:** *A moratorium on further collecting and new agreements in the absence of significant global ethics or clear intentions on the part of the international community.*

### **Moratorium**

A moratorium is both unfortunate and unavoidable. However, once equitable institutional and financial mechanisms are operational and supported by strong multilateral mechanisms on a domestic and international level, then bioprospecting and the development of related industries could resume.

**6 Recommend:** *Active participation of Indigenous peoples at all levels of government in the development of new industries resulting from indigenous intellectual knowledge.*

### **Participation**

The recommendation by the Concluding observations of the Human Rights Committee on 28 July 2000 that sufficient action has not been taken in regard to “self-determination” of Indigenous peoples. The government should take the necessary steps in order to secure for the indigenous inhabitants a stronger role in decision-making over their traditional lands and natural resources.

**7 Recommend:** Engagement and development with Indigenous peoples concerning the development of high technology industries in regional Australia based on bioprospecting.

### **Indigenous Peoples**

Indigenous peoples' organisations must receive governmental support to ensure their full and effective participation in all decision-making that affect the conservation and use of biomaterials, indigenous knowledge and resources.

**8 Recommend:** *The Committee suggest changes to the Native Title Amendment Act 1998 (Cth) (NTA) to allow equitable and effective participation of Indigenous and Non-Indigenous participants in the development of high technology industries in regional Australia based on bioprospecting.*

### **Native Title**

The Human Rights and Equal Opportunity Commissions Report 1999, which considered the implications of the March 1999 decision of the Committee on the Elimination of All Forms of Racial Discrimination (CERD). Found the Federal Government's (NTA) is in breach of Australia's obligations under the Convention. It was concluded that ‘equity and effective participation have been eroded by the amended NTA and diluted by an ever expanding labyrinth of state legislation’.

**9 Recommend:** *The Committee notes the recommendations in Elizabeth Evatt's report on the Aboriginal and Torres Strait Islander Heritage Protection Act 1984.*

### **Aboriginal and Torres Strait Heritage**

Concerns that future legislation to replace the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) must ensure the sustainability of biodiversity, protection of Indigenous forms of economy and sites of religious or cultural significance. Also, particular attention should be drawn to article 27 of the Covenant for Human Rights to help secure the rights of the Indigenous population in relation to cultural heritage.

**10 Recommend:** *The Committee examines the September 2000, Submission by Aboriginal and Torres Strait Islander Commission (ATSIC) to UNESCO World Heritage*

*Committee on World Heritage Properties in Australia and Kakadu and notes the recommendations.*

### **World Heritage**

I draw the Committees attention to the ongoing struggle of the Mirrar people of Kakadu as noted in the ATSIC submission to UNESCO World Heritage Committee on World Heritage Properties in Australia. The Mirrar ‘struggle to fulfil their living tradition obligation of caring for that country Kakadu’. The controversial development of industry has adversely impacted on the living culture of the Mirrar who are at times deliberately and systematically restricted from adequately managing their country. Any development of high technology industries in regional areas based on bioprospecting must consider the difficulties of development in culturally sensitive areas. Moreover, particularly those of World Heritage value such as Kakadu.

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