



AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES

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NATIVE TITLE NEWSLETTER

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NATIVE TITLE IN THE NEWS August - September 1998

(Note: Where an item also appears in other newspapers, etc, an asterisk () will be used. People are invited to contact the Native Title Research Unit at AIATSIS if they want the additional references. As usual, NTRU will try to provide people with copies of particular newspaper articles on request.)*

Ad = Advertiser (SA)

Age = The Age

Aus = Australian

CM = Courier Mail (QLD)

CP = Cairns Post

CT = Canberra Times

Fin R = Financial Review

HS = Herald Sun (VIC)

KM = Kalgoorlie Miner

LE = Launceston Examiner

Mer = Hobart Mercury

NTN = Northern Territory News

Rep = The Republican

SC = Sunshine Coast Sunday

SMH = Sydney Morning Herald

Tel M = Telegraph Mirror (NSW)

WA = West Australian

WAus = Weekend Australian

News from the Native Title Research Unit

Australian Anthropological Society Annual Conference

1-3 October 1998, report by Rebecca Hall

As the Native Title Research Unit's anthropologists prepared to attend this year's Australian Anthropological Society Annual Conference, an invitation was extended to me, the NTRU's resident archaeologist, to join the fray. I accepted the invitation and began to wade through the mass of concurrent sessions to choose those which I would attend. After much consideration, I attended a mix of 'Fieldwork in the corridors: public policy and the role of contemporary anthropology', 'Anthropology and photography' and 'Issues of contemporary practice in consulting anthropology'.

The issues in contemporary practice sessions centred largely, and not surprisingly, around native title practice. Of particular interest was the panel session, chaired by David Trigger (University of Western Australia), consisting of Julie Finlayson (Centre for Aboriginal Economic Policy

Research), Jeff Stead (Northern Land Council), Athol Chase (Griffith University) and Jeannie Devitt (Cooperative Research Centre for Aboriginal and Tropical Health). The issue of 'who owns what' in relation to material produced under contract was discussed after David Trigger's paper 'Anthropology and consultancy contracts: who owns your brain?'. Also discussed at length were appearances by anthropologists as expert witnesses, and provision of fieldnotes and related material subpoenaed by the court. The complexities and problems of this issue were illustrated by the experiences of Athol Chase and Jeannie Devitt. Concern was raised about the need for professional support, as anthropologists increasingly become involved in giving evidence, and providing field notes in their entirety, to the courts.

In all, the presentations I attended highlighted problems common to many disciplines, and were practical and engaging, making my attendance at the conference a worthwhile experience. (Rebecca Hall)

The *Delgamuukw* Decision: the Case and its Implications for

Native Title in Australia. Workshop - 4 October 1998, report by Rebecca Hall

Native Title Research Unit members were involved in the organisation of a one day workshop to consider and discuss the decision of *Delgamuukw v British Columbia*, with speakers coming from British Columbia to participate.

The workshop was organised primarily by the Australian Anthropological Society with major sponsorship coming from the Aboriginal and Torres Strait Islander Commission. Additional funding and support came from the Centre for Aboriginal Economic Policy Research; the NTRU; Phillips Fox, Cairns; Arnold Bloch Liebler, Melbourne; and the National Native Title Tribunal.

The delegation of speakers from British Columbia consisted of Maas Gaak (Don Ryan) speaker for the Hereditary Chiefs of the Gitxan; Midiigim Gyemk (Neil Sterritt) Gitxan Chief and spokesperson; Stuart Rush QC and Louise Mandell QC lawyers for the plaintiffs.

The workshop was well attended, with many participants coming from interstate. Gatjil Djerrkura, Chairperson ATSIC, delivered the opening address and was followed by the Gitxan and Canadian speakers. Olga Havnen, Graeme Neate, Ranginui Walker and Robert Blowes presented the afternoon sessions.

Participants found the presentations both stimulating and inspiring. Papers from the workshop will be published by the NTRU. (Rebecca Hall)

Workshop on the New Registration Provisions of the *Native Title Act 1993*.

17-18 September 1998, report by Kado Muir.

The amendments to the *Native Title Act 1993 (NTA)* came into effect on 30 September 1998. The *NTA* now requires all current and future native title applications to pass the registration provisions in ss.190B and 190C before accessing any Right to Negotiate or to be consulted on dealings in the land that is subject to native title determination applications. Section 190B deals with the merits of applications while s.190C deals with procedural and other matters.

One of the significant implications of these sections is the anticipated need for the expert advice of anthropologists to assist Native Title Representative Bodies (NTRBs) to deal with compiling the documentation to pass the test. Within the next 12-18 months, the majority of the 700 claims currently lodged with the National Native Title Tribunal (NNTT) will be subject to the test. The

Native Title Research Unit at AIATSIS, the Australian Anthropological Society and the Native Title and Land Rights Branch at ATSIC, convened a workshop for Native Title Representative Body staff and senior consulting anthropologists in Canberra on 17-18 September 1998.

The objectives of the workshop were:

- to inform anthropologists of the new regimes and potential administrative processes of the NNTT under the requirements of the registration test;
- to explore practical research approaches for handling the new registration provisions; and
- to establish workable and consistent strategies for management of complex anthropological issues and potentially, to feed these into the NNTT administrative processes.

The topics discussed at the workshop reflected the criteria for establishing the merits of applications under s.190B. These criteria include:

- Identification of the area subject to native title.
The information and map required to accompany the application must show, with reasonable certainty, the particular area over which the native title rights and interests are claimed.
- Identification of native title group.
The persons in the native title claim group are named in the application or are described sufficiently clearly so that it can be ascertained whether any particular person is in the group.
- Identification of claimed native title.
The description of the native title rights and interests is sufficient to allow for all the rights and interests to be readily identified.
- Factual basis for claimed native title.

The description of the factual basis of the claim must be enough to support the assertion that those native title rights and interests exist. This will include:

- the association of the native title claim group and its ancestors with the claim area; and
 - the existence of traditional laws or customs observed by the claim group from which native title derives; and
 - the continued holding of native title in accordance with those laws and customs.
- Prima facie test.
At least some of the native title rights and interests that are claimed can, on the face of it, be made out. Only details of those rights and interests that have satisfied the 'prima facie' test can be entered on the Register of Native Title Claims. The requirement to negotiate in good faith in the right to negotiate process only applies to these registered rights and any determination by the arbitral body should only address these registered rights.
 - Physical Connection.
At least one member of the claim group has or had a traditional physical connection with any part of the claim area. A second way is that at least one member of the claim group used to have a traditional physical connection with any part of the claim area, and ordinarily would continue to have such connection were it not for some action by the lessee or the lessee's agent.

The workshop was well attended and required two full days of undivided attention to consider each of the criteria. Brief discussion papers on each of the criteria were presented, followed by an open discussion with questions and workshops. Lisa Wright of the National Native Title Tribunal made a valuable contribution and was able to provide some insight into the NNTT's perspectives on the provisions. The workshop confirmed that the registration provisions are not a simple process and will require a lot of hard work by NTRBs and assisting experts. The NTRU will publish the proceedings of the workshop. (*Kado Muir*)