

MARKING PROGRESS ON NATIVE TITLE

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One of the constants of native title during the past seven years has been the universal demand for an understandable guide - of accurate and accessible information on the nature of native title, its origins, and its place in the Australian legal and social landscape.

Continuing uncertainty and anxiety on all sides appears to have as much to do with the discomfort of making our way through unfamiliar territory as the subject matter itself². We would be far happier if there were historical or international precedents to provide even a faded sketch of the lay of the land. It's a rather unsurprising reminder that we don't much like treading where there is little or no evidence of a track.

Mapping tracks

In local communities and industries throughout Australia there is evidence of the effort to understand the strategies and skills necessary for negotiating and settling native title agreements. In many cases, communities and industries are doing it for themselves - from the Yandicoogina agreement for a new iron ore mine, to the Yalanji pastoral deal and South Stradbroke Island local government agreement, the essential step of building relationships is being addressed³.

This progress with agreement making was marked, in part at least, by the outgoing President, Justice Robert French, in the December 1998 release of a 5 year retrospective on the work of the Tribunal⁴ (and by extension, everyone with an interest/involvement in native title). The Retrospective included the results of a Tribunal audit of known agreements, confirming more than 250 native title-related agreements and nearly 1100 future act agreements had been reached in Australia since 1994.

What was also revealing is that prior to the 1998 amendments to the Native Title Act there had been a discernible trend towards agreement making. The amendments debate saw a decline in the number of agreements being made - hardly surprising behaviour given the anticipated impact of the amendments being considered by the Parliament. It should also be of little surprise that agreement-making culture is staging a comeback, although now within a resources sector under the additional pressure of falling commodity prices.

Planning the journey

We had been talking for quite a long time and I couldn't point to a single achievement. I asked a couple of Aboriginal friends for help and they told me to be patient. They assured me dividends would accrue but they said it might take ten years.⁵

Experience tells us that developments in unfamiliar environments are often best undertaken as joint venture partnerships⁶. This has been the approach of many participants in native title, and is also the approach of the Tribunal in its work in assisting broader community understanding of native title and mediation processes. Three joint ventures now underway and scheduled to provide results within the next six months, represent major strategic efforts by the Tribunal to research native title and communicate findings to the community.

Working with native title

This project emerged from the work of the Western Australian Municipal Association and Council for Aboriginal Reconciliation 1997 publication of the sector-targeted booklet, *Working with Native Title*. In what can now be viewed as a fairly harsh environment, the WAMA initiative was an important step in putting factual and accessible information on native title into the public domain. This has since been built on through an ATSIC, NNTT and ALGA partnership, resulting in a sell-out how-to manual *Working out Agreements*, and the preparation of the second edition of *Working with Native Title* and its linked national program of regional, customised workshops, due to commence before the end of the year.

Teacher training in native title

A joint venture project with Curtin University's Centre for Aboriginal Studies is presently developing a native title unit for pre-service and in-service teacher training. The Tribunal President, Graeme Neate and the Deputy Vice Chancellor of Curtin University, Lesley Parker, launched the project for Aboriginal Studies in mid-July with piloting of the training scheduled for February 2000.

Graeme Neate said it was important that teachers understood the history and legal principles underpinning native title laws in Australia.

It's vital that teachers have accurate and factual information about native title as they are educating the future generations for whom native title will be taken for granted as part of the social and legal fabric of society. Teachers are an important group of professionals in regional and metropolitan communities who can play a role in raising awareness of native title issues which many miners, pastoralists, local governments, indigenous people and other landholders may have to face.⁷

Governance structures for Indigenous Australians

An Australian Research Council project with the Tribunal acting as industry partner to the University of NSW, Murdoch University and Macquarie University now in its last year. The Tribunal's contribution includes research on Prescribed Bodies Corporate (PBCs) - the bodies required by the Act to hold (or act as agents for) common law native title following a determination of native title. Mr

Christos Mantziaris and Dr David Martin have been engaged by the Tribunal to draft two reports:

- *Native Title Corporations: A Legal and Anthropological Analysis of Institutional Design*; and
- *A Guide to the Design of Native Title Corporations*

Both works are presently subject to peer review and will be published early next year.

Signposts along the way

The Tribunal's primary administrative and mediation functions are complemented by its response to community short and long-term information needs. It is a role that requires continual critical reflection to ensure the Tribunal's impartial leadership on native title is not threatened. As industries and communities continue to develop their own ability to recognise and protect native title⁸ the Tribunal's strategic partnerships in research and community education will play a vital role in signposting the path.

The Tribunal's and others' research work is now being posted on a research information exchange on the Tribunal homepage. It has proved a popular service – averaging more than 700 web page hits per month in the first half of this year. The research information exchange has generated inquiries about research development from people throughout Australia as well as contacts from Canada, Germany, the USA and UK. If you're involved in any form of research around native title we'd be happy to hear from you via the listed web page research site contact!⁹

¹ This is the work of the author and should not be interpreted as reflecting the policy of the National Native Title Tribunal.

² See P Lane & T McRae, Sustainable Partnerships, in *In the wake of Wik*, NNTT, 1999 and P Lane & T McRae, *Reinventing old relationships*, NNTT, 1997.

³ Ibid.

⁴ *Native title: a five year retrospective 1994 – 1998*, NNTT, 1999.

⁵ Robert de Crespigny in *The Age*, 21 August 1999, p5.

⁶ See also Henry Reynold's discussion in *Why Weren't We Told?* on the role of Aboriginal people in european exploration and occupation of Australia.

⁷ Graeme Neate, 20 July 1999, *NNTT press release*.

⁸ *Native Title Act 1993* s.3.

⁹ The NNTT webpage can be found at www.nntt.gov.au