



FEATURE

By David Brooks
August 2005
Working on the Ngaanyatjarra Lands Claim¹

Creating a single claim

After originally lodging six separate claims over nearly 200,000 sq km of their Desert lands, the Ngaanyatjarra people held a series of meetings in 2003 to amalgamate the claims into one. The people had never really comprised six separate groupings. The decision in the mid 1990s to divide up the total area was only ever done for the pragmatic reason that it was very hard to prepare a single claim application over such a vast area.

David Brooks has been working as an anthropologist with the Ngaanyatjarra people for the last 17 years. Prior to the 'Ngaanyatjarra Lands' claim exercise described here he researched and wrote the anthropological report for the successful native claim by the adjoining Pintupi people. Apart from research into land-related issues he has worked in the areas of health and education in the Ngaanyatjarra region. On the basis of his long term relationship with the elders of the area, he is now assisting this group to develop a strong and effective leadership role at a time when issues to do with 'remote communities' are under the microscope as never before.

Like most Desert people, the Ngaanyatjarras actually feel more comfortable and stronger when operating at an inclusive level, and they used to ask us as staff for reassurance that we would be able to 'put the people and the land all back together' later on. I remember telling them that we would find a way to do that.

By late 2002, two of the six claims had received qualified support from the state for a consent determination, and for two others, connection reports were at an advanced stage. But even as we got closer to finishing, our worries about the outcome were rising. Native title had become 'bigger' in so many ways than we had imagined in the 90s. If the court ultimately accepted six determination areas, how difficult would it be in the aftermath to put one single area back on the agenda? Technical issues of amalgamating PBCs and the like were one thing, but there would be vastly more to it in terms of mindsets.

On the Ngaanyatjarra Lands we were wondering more and more about the wisdom of our trajectory. When it became apparent that the six claims were taking on a life of their own even among some Ngaanyatjarra people, an initially small group including myself and some other long term staff persons began to urge a full-scale reconsideration. And it was at this point that things started to get difficult.

Our legal team, together with supporters concerned with the gaining of native title rights on the national stage, cautioned against a change of tack. They warned that we were risking the ground we had gained on our first two claims, plus it was possible that there would be much more opposition from other parties to a very large claim.

But for we 'one claim' advocates, the on-the-ground divisiveness that threatened to arise in the future from separate claims outweighed these kinds of (undeniably real) risks. For a region that has as much going for it as the Ngaanyatjarra Lands (including a system of leasehold land which already provides a strong negotiating basis for land access matters), the gaining of native title was far from the 'be all and end all'. While native title was certainly sought by the people, even more important to the Ngaanyatjarras was that the process should not create difficulties, and particularly that it should not upset the strong existing 'community of interest'.


History shows that at a series of meetings the people decided to amalgamate, and that the state came to accept the change in a positive spirit and worked together with the Ngaanyatjarra Council to obtain a consent determination in record time. The achievement of native title had been put into the service of broader Ngaanyatjarra interests, rather than proceeding purely under its own momentum, cross-cutting, or even threatening, those interests. The financial savings to all parties of the amalgamation exercise would also have been considerable. But it was not from the lawyers' corner that this kind of a push could have come.

Writing the anthropological report

My story is not meant to be negative to lawyers, and in fact the rigour that our PLO Ingrid Hebron brought to the decision-making process for the 'one claim' was beneficial to all. Still, I will admit I had a torrid time at first with our legal team, not only over the switch to the 'one claim' but also over the approach that should be taken to the connection report.

Luckily there was not too much time to get entrenched in battle over this, and I was soon down to work with barrister Robert Blowes on the nitty gritty of the report. The structure he wanted was not at all like the way I had written earlier such reports. Basically, his structure launched into the 'propositions' relevant to the claim right from

¹ This article first appeared in the [WA Office of Native Title's e-Newsletter: August Edition 7](#) and is reproduced courtesy of ONT and the author.



paragraph one, whereas I had always taken the approach, more natural to the anthropologist, of leading into the material more gradually, setting the scene first and so forth. But I did accept the idea that the contextualising kind of material that I had thought indispensable might be actually irrelevant because of the very fact that it was not specific. The trick, I learned, was to smuggle the background in during the course of making the specific points required. Once I got used to writing in this way, I actually didn't find it difficult, and in fact it proved to be quite stimulating to be saying something very focussed to the case in every sentence.

The other main challenge was to write so as to be continually separating the 'facts' from the 'opinions'. While very social scientist knows that such a distinction is extremely dodgy, it is again not so difficult to work in this way when you get the hang of it. Indeed, it can actually be quite useful to have such a device at one's disposal, using it as a tool to make the points one wishes to make. The downside is that it can make for very inelegant writing to have to keep explaining how you know everything you say you know, and it is necessary to develop techniques to get around this.

For me at least, part of the problem was that I had initially felt quite affronted at the lawyers' apparent assumption that I was there to do what they decided needed to be done, when I was the one who had been working in the area for years and who knew the material. The power imbalance between lawyers and anthropologists can be very frustrating! However, when we got down to work I found that Robert seemed to take a lot of what I said on board, and I began to enjoy the process. If there had been no such collegueship and willingness to adapt, things would have been a lot harder.

[Back to contents](#)

WHAT'S NEW

Legislation

Commonwealth: [Aboriginal and Torres Strait Islander Heritage Protection Amendment Bill 2005](#) Its purpose is to make amendments to the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* and to the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*.

Commonwealth: Legal and Constitutional Legislation Committee: Corporations (Aboriginal and Torres Strait Islander). Canberra: Senate Committees Hansard. 4 October 2005.

<http://www.aph.gov.au/hansard/senate/committee/S8756.pdf>

<http://www.parliament.qld.gov.au/view/publications/documents/research/ResearchBriefs/2005/200515.pdf>

Northern Territory: [Northern Territory Aboriginal Sacred Sites Amendment Bill 2005](#) (NT) This Bill proposes to amend the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT). The Bill was introduced into the Legislative Assembly and received its second reading speech on 20 October 2005.

Tasmania: A second round of community consultation on the development of new Tasmanian Aboriginal heritage legislation to replace the *Aboriginal Relics Act 1975* will begin shortly. Contact the [Department of Tourism, Parks, Heritage and the Arts](#) for

more information at

<http://www.dtpa.tas.gov.au/index.html>

Queensland: [A Framework to Protect Wild Rivers in Queensland - the Wild Rivers Bill 2005 \(Qld\)](#)

South Australia: [Pitjantjatjara Land Rights \(Miscellaneous\) Amendment Bill](#), designed to amend governance arrangements on APY Lands, was passed in the early hours of the morning, 19 Oct 2005.

Victoria: [Aboriginal Heritage Bill Exposure Draft](#) has been released. Visit

http://www.dvc.vic.gov.au/AAV/heritage_bill/Fact%20Sheets/DVC%20Fact%20Sheet%201.pdf for a

summary of the main proposals, or http://www.dvc.vic.gov.au/AAV/heritage_bill/Final%20Exposure%20Draft%20for%20distribution%20071005.pdf to view the Exposure Draft in its entirety.

On-line publication, [The New Matilda](#) has launched the [New Matilda's Human Rights Act Campaign](#). Australia is the only Western country without a national Human Rights Act or equivalent. New Matilda seeks to change this. It has produced a draft Human Rights Bill and it wants to know what you think of it. Human Rights Bill 2006 - [download here](#). Human Rights Bill Explanatory Information - [download here](#). View