

The PBC representatives felt that educating visitors, non native title holders and other stakeholders in the region was the first step to building the authority of PBCs and respect for traditional owners. They agreed on a set of shared principles for engagement with other stakeholders reiterating that *Ailan Lore* and *Kastom* need to be respected at all times and that PBCs need to be consulted on all matters that relate to their land and sea. Horace Baira from Mura Badulgal (TSI) Corporation said that ‘there is no small impact’ and people who do not understand how traditional laws and customs operate on the island communities should consult PBCs before carrying out activities that affect their native title lands. Pastor Jack Billy from the Porumalgal (TSI) Corporation felt that there was no real recognition and that the State Government is not faithful to its consent determination recognising the traditional owners of the Torres Strait.

The lack of consultation has become particularly evident with the recent amendments to the *Torres Strait Islander Land Act 1991* (Qld) which, while enabling PBCs to hold land in trust for their communities, also removes the need for an act of parliament before land can be compulsory acquired for infrastructure on the island communities. Many PBCs felt that the consultation process for such sweeping changes were inadequate.

The inability of PBCs to engage in meaningful negotiations has been a key factor limiting opportunities for development in the region despite having legal recognition of exclusive possession over their native title lands. The meeting turned its focus to business development and planning, and building robust corporations with appropriate legal structures. The PBCs all expressed interest in utilising their land and natural resources effectively to provide benefits to the community and the region as a whole through agriculture, tourism and other local businesses on their islands.

The PBC representatives felt that it is important to clarify governance roles in the region. Dan Mosby from the Kulkagal (TSI) Corporation said that there is a need to reach an understanding with the Torres Strait Island

Regional Council ‘they need to know what our role is, they need to understand our representative roles’.

Traditional owners have the most knowledge and understanding about the land and sea areas in the Torres Strait and can provide the most authoritative and accurate responses to any consultations. PBCs are the culturally and legally recognised entity that can assist with the coordination and communication of any land and sea matters within all native title areas.

## NTRU Project Report

### Happy Birthday: The Native Title Research Unit (NTRU) turns fifteen

By Tran Tran, Research Officer and Jessica Weir, Visiting Research Fellow

The NTRU was established in 1993 as a research unit within AIATSIS after the 1992 High Court decision in *Mabo v Queensland (No.2)*,<sup>1</sup> which recognised Indigenous peoples’ rights to land under the common law concept of native title. This judgement challenged the whole system of land tenure in Australia and laid the basis for profound changes to the relationship between Indigenous peoples and the rest of the nation.

In response to *Mabo*, the former Aboriginal and Torres Strait Islander Commission (ATSIC) convened a meeting of Aboriginal and Torres Strait organisations to evaluate the scope and implications of the decision in order to develop a national strategy for ‘mainland’ land claims, cognisant of the differing situations across the States and Territories. The resulting strategy

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<sup>1</sup> (1992) 175 CLR 1.

included both policy development and funding to assist Aboriginal and Torres Strait Islanders to benefit from *Mabo*. The policy body comprised of land council executives and sub committees with expertise in anthropology, history and law. Professor Mick Dodson and Professor Peter Sutton represented AIATSIS in this technical group. ATSIC also approved the allocation of \$1.5 million for the 1992/1993 financial year to consult with and assist Aboriginal and Torres Strait Islanders in accessing legal advice in relation to land claims. A smaller amount of \$150,000 was allocated by ATSIC to fund research into native title. The AIATSIS Council embraced the opportunity to take a leading role and established the NTRU with three staff – a lawyer, an anthropologist, and an administrative assistant.

The NTRU's establishment in mid-1993 coincided with the release of the Federal Government's discussion paper detailing their plans for a legislative response to *Mabo*. This paper set the political as well as conceptual environment for the national debate that followed. A group of Indigenous negotiators (dubbed the A team) debated the legislation with the Federal government. AIATSIS had direct involvement in this group through Marcia Langton's participation, who at that time was the Chair of the AIATSIS Council. The NTRU assisted the negotiators by providing secretariat support and remained close to the action as it unfolded: Black Friday, when it seemed the negotiations had broken down irrevocably; Ruby Tuesday, when talks were resumed; attempts by the Greens Senators and their advisers to subvert the approach pursued by the Indigenous negotiating team; the differing politics of industry, with the mining industry running a negative campaign and the pastoral industry, with Rick Farley as the head of the National Farmers Federation, engaging in a constructive process; and, the euphoria in the Senate chamber at midnight on 23 December 1993 when the *Native Title Act 1993* (Cth) (*NTA*) was finally passed.<sup>2</sup> For those involved, native title brimmed with possibilities,

and the NTRU was well placed to develop and explore them. In 1994, the NTRU organised its first post-*NTA* workshop to bring together key players and thinkers in the field in order to map the conceptual direction of native title.

In these early days, the work of the NTRU focused on the people who had to work with the native title system to ensure that Indigenous people had the best possible information, research and professional representation to press their claims. In conjunction with ATSIC, the NTRU set up a regular teleconference forum with representatives from the small but growing number of Native Title Representative Bodies (NTRBs). The NTRU also made contact with the National Native Title Tribunal and provided input into the Tribunal's early development. The NTRU issues paper series, *Land, Rights, Laws*, was established as a vehicle to inform NTRBs, practitioners, and government, but also to canvass possibilities while the field of native title was still new. From 1994 onwards, regular workshops have been held to specifically focus on different disciplines and issues within native title practice. Today, the expert analysis of key cases and native title practice continues as central to our research agenda. The NTRU also continues to facilitate access to the records, materials and collections held at AIATSIS, that provide evidence in native title claims.

Unfortunately, since the 1993 *Mabo* decision, the scope of native title has been considerably narrowed by statutory responses made by legislators and politicians to the common law recognition of native title and by the decisions made by the Courts presiding over native title cases. Decisions such as *Yorta Yorta* and *Western Australia v Ward* have also reaffirmed that legal conceptions of native title privilege non indigenous titles and land use rather than the recognition and protection of Indigenous rights and interest. The requirements of proof of native title have become impossibly onerous with decisions appearing increasingly arbitrary. At the same time there has been an increase in the importance of alternative processes to litigation, including the negotiation of comprehensive regional agreements and

<sup>2</sup> Personal communication Mary Edmunds, 16 May 2008.

Indigenous Land Use Agreements. The content of such agreements have not been limited by the narrow definition of common law native title, and have included issues such as health, education, governance and land and sea management. Early on the NTRU established a Regional Agreements Project to explore a regional approach to alternative agreements, and agreement making remains a key focus of NTRU research. Concerns about the sustainability of such agreements led to a significant three year project on the facilitation and mediation of Indigenous decision making.

The NTRU plays a key role in the native title sector supporting system design and analysis – identifying blockages and problems in the process and seeking solutions. As the recognition of native title holders and their country increases across Australia, the NTRU research agenda has moved to encompass the range of issues they experience as part of our PBC project and work on corporate design and taxation. The NTRU also has a land and water project, to analyse the complicated relationships held between native title and other statutory land regimes, and to set native title within its ecological context. All this research activity has been supported by NTRU publications and our growing web resources, including the extensive Native Title Resources Guide. The NTRU is also well known for convening the national Native Title Conference – which remains the largest Indigenous policy conference in Australia.

The NTRU has outlived our funding partner – ATSIC – which established and supported the NTRU. Today the NTRU is supported by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). The longevity of the NTRU has provided a valuable source of continuity of knowledge for native title holders, NTRBs, and the government departments engaged in native title. With working relationships with both the National Native Title Council and other key stakeholders and institutions, the NTRU is in a unique position to assist native title holders and claimants, the native title representative body system, and State, Territory and Federal Governments, Federal Court and NNTT in

developing, analysing and evaluating policy and practice. The quality intellectual and practical support provided by the NTRU has ensured our survival in a tough policy and funding context, and hopeful will ensure our survival into the future.

## The Future of Connection Material held by representative bodies

By Grace Koch, Research and  
Access Officer, Native Title  
Research Unit

Many valuable and irreplaceable documents have been created during research for native title claims. Although some of this material has come from other sources, the arrangement of the documents coupled with original field research gives a unique description of Indigenous societies and their connections with the land. Also, much of the field material is irreplaceable because the elders who gave the information may have passed away.

This connection material is of great value, not only to claimants, but to the wider community because it offers a valuable contribution to Australian history, anthropology, sociology, land management and other disciplines; however, because it was created as part of a legal process, it deserves special recognition and respect. Some Native Title Representative Bodies (NTRBs) have dedicated staff to manage these documents, but others are not able to care for them properly.

When NTRBs were established, funding went to claim research and there was very little, if any, provision for documentation and storage of research reports, connection material, and other print and audiovisual documents generated by the Native title process. As a result of the native title process, NTRBs now hold significant collections which require extra funding for their care if they are to be available for future generations. This funding should be in addition to the normal allocation of money for each NTRB.



Access to the documents held needs to be efficient. Contract researchers who prepare connection reports are employed for fixed time periods and depend upon efficient and accurate retrieval mechanisms for locating relevant information on local groups, historical documents, and neighbouring claims. Unfortunately, databases for documentation and internal storage provisions vary widely amongst Native Title Representative Bodies with some material being in danger of dispersion or decay.

It became obvious that action needed to be taken to ensure that the holdings of NTRBs be catalogued and that secure storage and preservation issues be addressed. These became the aims and objectives of a project sponsored by the NTRU of AIATSIS entitled 'The Future of Connection Material'.

Early in 2005, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), through the Native Title Research Unit (NTRU), sponsored a project to focus upon issues of arrangement, preservation, and access to connection material. A series of workshops, surveys, and web resources have resulted from directions and input provided by NTRB staff, who have set the goals for the project.

The AIATSIS Native Title Research and Access Officer (NTRAO) has been working through the recommendations arising from meetings and sessions held at the last three annual Native Title conference; however further implementation of these will require staffing and funding. Four recommendations are proposed in this report, which was workshopped at a Senior Professional Officers' seminar (3-4 March 2008), sponsored by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). A resolution in support of the project was formulated at the seminar and circulated to attendees at the seminar and to senior FaHCSIA staff.

The following key recommendations emerged from the Future of Connection Project:

#### **Recommendation 1: Identification, arrangement and description**

An assessment needs to be made urgently of which NTRBs are successful in organising their material and

which ones need help, after which a plan should be implemented to get the material into proper order.

#### **Recommendation 2: Preservation/conservation measures**

Each NTRB needs to develop and implement a plan to ensure secure storage facilities to assess the condition of its records and to develop procedures for digitising the holdings.

#### **Recommendation 3: Access and use protocols**

Each NTRB needs a plan for access and use of native title material.

#### **Recommendation 4: Location of an external repository**

Each NTRB needs to select a separate and secure repository for their holdings to ensure their preservation for posterity.

The Future of Connection Material project aims to formulate a plan for NTRBs nationwide to establish standards and to develop skills towards proper documentation and secure storage for connection material and other original documents generated by the native title process. The project has been conducted within the NTRU, which exists as part of the Research Program of AIATSIS.

The final report of this project is now available online: [http://ntru.aiatsis.gov.au/collections/connection\\_material.html](http://ntru.aiatsis.gov.au/collections/connection_material.html)

## What's New

### Reforms and Reviews

#### [Victorian Government's Alternative Framework for Negotiating Native Title](#)

The Victorian State Government and traditional Aboriginal owners can negotiate directly with each other outside of the Federal Court System which will allow the State to be proactive rather than reactive in the resolution