

Native Title Research and Access: Assistance with Native Title Claim Preparation

By Grace Koch, Research and Access Officer NTRU

Services offered to Native Title Researchers at the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)

When you begin work on a native title claim, please consider contacting the AIATSIS Native Title Research and Access Officer, Grace Koch, who can advise on AIATSIS holdings relevant to your claim and who has experience working on both native title claims and claims lodged under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

The AIATSIS Library and Audiovisual Archives contain some of the most comprehensive collections of material in Australia about and by Australian Indigenous people. Many of these items are held uniquely at AIATSIS.

Most of the information on this material is accessible through Mura, the on-line catalogue. All entries can be accessed by language group and geographical area, which is a unique feature of the catalogue. A thesaurus of language names helps to ensure that alternate spellings are recognised.

In house service to Native Title clients

The Native Title Research and Access Officer works solely with native title clients, offering a range of services to help them find what they need at the Institute. Requests may be made both by Institute visitors and remote clients.

Clients may do their own searches either remotely or at AIATSIS. Alternatively, a list of search terms can be sent

to the Native Title Research and Access Officer, who can prepare a listing of all relevant material. Please provide information on the geographical spread of the claim, names of claimants and related family groups, language groups, and any historical detail about removals or missions or reserves so that the Officer may be able to find what you need. At present, some material from the Audiovisual Archive is not yet listed on the Web catalogue; however the Native Title Research and Access Officer has access to all listings and can make a comprehensive search. The completed searches can be posted or sent via email.

Print collections

Once relevant material has been identified, it may be accessed at the Institute free of charge or copies may be made for a fee. For external users, the charge per page of photocopying is 30 cents per page. Clients may make their own copies at the Institute for 20 cents per page. Copies must be made in accordance with the *Copyright Act 1968* (Cth) and within the conditions of access as set by the depositors. A large proportion of the Library's holdings are in the form of published material available in open stacks; however there is a considerable collection of original manuscripts, rare books, personal papers, microfilm, rare serials and language materials held in a special room away from clients. The Native Title Research and Access Officer can assist clients in gaining access to this material; however it is best to request such information in advance by email or by phone before visiting the Institute.

Audiovisual collections

Native title researchers can find much valuable documentation for their claims within the Audiovisual Archives. Recordings and images can show important aspects of land ownership and tenure. Listings of much of this material are available on Mura, the web-based catalogue; contact the Native Title Research and Access Officer for complete searches. Visitors and remote clients can order up to 50 images or 15 tapes per request. Copies of film and video holdings can be arranged with the Native Title Research and Access Officer. Please see the AIATSIS web site for charges. Researchers visiting the Institute can arrange, through the Native Title Research and Access Officer, an appointment to view or to listen to the material in-house.

The Family History Unit gives research support to Indigenous clients who are in the process of tracing their own family histories. Although Native Title clients work with the Native Title Research and Access Officer,

sometimes it is helpful for them to seek guidance from the Family History Unit, which is located next to the Library.

Please contact Grace Koch, Native Title Research and Access Officer, at grace.koch@aiatsis.gov.au or by phone at 02 6246 1103.

What's New

Recent Cases

Australia

Adnyamathanha No 1 Native Title Claim Group v The State of South Australia [2009] FCA 358

See Case Note above.

Adnyamathanha No 1 Native Title Claim Group v The State of South Australia (No 2) [2009] FCA 359

See Case Note above.

Brown v State of South Australia [2009] FCA 206

This case was a native title determination application. There were two issues in the case. First, was the group identified in the application a native title claim group under section 61 of the *Native Title Act 1993* (Cth) ('NTA'). It was held that the applicant's family group was not a native title claim group but rather a subgroup or a group larger than specified in the application. Second, was the applicant authorised by the native title claim group to make the application. On this point it was found that the applicant did not meet the authorisation requirements under section 251B. For these two reasons the native title determination application was struck out under section 84C NTA.

FMG Pilbara Pty Ltd v Cox [2009] FCAFC 49

The case concerned a review of a finding by the National Native Title Tribunal (NNTT) that a party did not fulfil its obligation to negotiate in good faith. It was concerned with the scope of the obligation to negotiate in good faith,

in particular the relevance of the stage of negotiations and if there was a requirement to negotiate specifically about a future act. The Court held that the applicant fulfilled its obligation to negotiate in good faith and the Tribunal had the power to conduct an inquiry and make a determination under section 38 *Native Title Act 1993* (Cth) (NTA). Accordingly, the Court allowed the appeal and ordered that the decision of the NNTT be set aside.

Hunter on behalf of the Wiri People No 2 v State of Queensland [2009] FCA 325

This case concerns an application that failed the registration test. There was a notice on the Court's own motion requiring the applicant to show cause why the application should not be dismissed pursuant to section 190F(6) *Native Title Act 1993* (Cth). Under section 190F(6) applications may be dismissed if two conditions precedent are met. These are that (i) the application has not been amended since registration and is unlikely to be amended in way that would lead to a different outcome and (ii) in the court's opinion there is no reason why the application should not be dismissed. Here the court found that the conditions had been met. Also, there was an additional basis for dismissal namely, multiple defaults of appearance by the applicant.

Margarula v Northern Territory of Australia [2009] FCA 290

In this case the judge disqualified himself from further hearing or determining the proceeding. The reason for the disqualification was that the judge, whilst previously working as a solicitor, had given advice in relation to one of the issues likely to arise during the native title claim. Although the judge did not personally feel the apprehension of bias principle applied, he nevertheless considered it prudent to decline to continue to deal with the application. The proceedings were still at an early stage and it would be relatively simple to organise another judge rather than continuing with the possibility of being overruled by the Federal Court and wasting public resources.