

Turning the Tide Workshop

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Held on 1–2 July 2010, the Turning the Tide workshop was an important 'first' in that it was designed specifically for anthropologists working in native title contexts in south east Australia. Co-ordinated by Dr Gaynor Macdonald of the University of Sydney and Ms Toni Bauman of AIATSIS, anthropologists from universities, government arenas, native title representative bodies, and independent consultants met in Sydney to discuss issues specific to anthropology with the aim of raising awareness of issues, sharing concerns, and developing strategic anthropological approaches to native title in south-east Australia. One outcome was the development of a collegial network for ongoing support.

The title of this workshop recalled the *Yorta Yorta* native title decision where it was determined that 'the tide had washed away'

any remnants of native title. There have been many people committed to turning this tide of misconception ever since by pushing forward the boundaries in the discipline of anthropology.



Dr Gaynor Macdonald of the University of Sydney



Douglas Hudson, from British Columbia in Canada

DAY 1

The program contained a mix of papers, panels and small discussions. Starting with welcomes from co-ordinators, Toni Bauman and Gaynor MacDonald, Gaynor then presented the first paper, 'Unsettling the anthropology of "settled" Australia: ancestors, societies and country.' She questioned taken-for-granted notions, such as society, social boundaries and apical ancestors, within the knowledge systems of Aboriginal societies and the ramifications this has for native title claims. Mark Winters, consultant anthropologist, followed with 'Elephants in the room? Evidence, politics and anthropologists' which raised questions about the role of anthropologists in the political economies of the native title process, a paper which attracted the laughter of déjà vu.



Participants at the Turning the Tide Workshop at Sydney University's Darlington Centre

In 'A fine mesh: double descent and classical southeast Australian local organisation', Ray Wood, consultant anthropologist, argued that an undercurrent of descent logic informs classical serial patrilineal affiliation to land in Australia, and that double descent is the emic intent in many regions and implicit in one form or another in many others. Diana McCarthy of NTSV took a more phenomenological approach to

connection in her paper entitled 'Flowing substances: ways of connecting'. A panel discussion then focused on connection reports, with panellists Lee Sackett, Simon Blackshield, Ian Parry and Vance Hughston providing the workshop with anthropological and legal perspectives on the good, bad and ugly aspects of connection reports. Good reports were identified as those specifically addressing State concerns, based on good anthropological data and methodology, and which are honest about any flaws in the applicants' case. Bad and ugly reports are often disorganised, presume things are self evident, produce information beyond the requirements of the native title claim, attempt to influence other live cases rather than focusing on the case at hand, and can be so even handed that they don't mount a case for the claim.

The last session of the day involved Tony Jefferies and Kim de Rijke who spoke about the Caroline Tennant Kelly collection they had recently uncovered in northern New South Wales, and Tim Dauth gave a paper on 'Group names and native title: issues of authenticity and construction' which examined the dilemmas posed by group names, or ethnonyms, in the literature.

DAY 2

Day 2 started with Sally Babidge discussing the tricky situation of 'Society without country', these

are cases where claimants whose histories have led them to be dislocated from country, often have limited, if any knowledge of claimed lands or histories of residence on them. A highlight for many was the very different situation

presented by Douglas Hudson, from British Columbia in Canada, where

he is also engaged in native title. His paper, 'Negotiating identity in the courts: kinship and Indigenous rights, explored court cases which have highlighted both matrilineal and bilateral kinship systems as the cultural frameworks within which land rights and social relationships are expressed. Douglas was able to provide an interesting comparative framework between British Columbian and Australian approaches to native title.

A second panel followed, involving Marcia Langton, Paul Memmott, John Morton and Annie Keely discussing

'Continuity, change, transformation and society'.

On completion of these

sessions, a list of six key interest areas that had emerged over the two days that were discussed in more depth in small groups with a plenary feedback session. These were 'modelling cultural change', 'rights and interests', 'the significance of country', 'minimum threshold connection requirements', 'NTRBs, intellectual property and contracts', and 'genealogies, descent and apical ancestors'.

The afternoon of the final day was left aside for discussion about the upcoming research



Toni Bauman of AIATSIS



Ray Wood, consultant anthropologist

monograph based on the workshop presentations and discussions; and establishment of an ongoing supportive email network and website for anthropologists working on native title. Possibilities for further workshops were also explored.

The papers and proceedings of the Turning the Tide workshop will hopefully be published as a Special Edition of *Anthropological Forum* in late 2011.

Case Note: *Akiba on behalf of the Torres Strait Islanders of the Regional Seas Claim Group v State of Queensland*

Federal Court of Australia, Cairns

2 July 2010

Finn J

By Zoe Scanlon, Research Officer, NTRU

Introduction

The Torres Strait Sea Claim was handed down by Finn J in the Federal Court of Australia in Cairns on 2 July 2010. This was a distinctive case as the native title claimants sought a determination of native title rights and interests over a large part of the sea area of the Torres Strait.

Justice Finn held that the claim group held non-exclusive native title rights and interests over approximately 37,800 square kilometres of sea between the Cape York Peninsula and Papua New Guinea.

Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Mick Gooda stated, 'Today's result is the end of a long process for the people of the Torres Strait and is testament to their resilience and determination'¹ and Torres Shire Councillor, Mr

Phillemon Mosby said, 'We've got a special kinship with that water...this is a very significant thing for the people of the Torres Strait....and I know that our ancestors would be very proud of us today.'²

Background

Native title was first recognised over the Murray Islands in the Torres Strait in the historic decision of *Mabo v Queensland [No 2]* (1992) 175 CLR 1. Since that time, twenty-two native title consent determinations have been made in relation to the Torres Strait area. This has resulted in native title being recognised over all the inhabited islands and the majority of the uninhabited islands in the region.

In the current proceeding, a group of people constituted by living descendants of a long list of Torres Strait Island Elders sought a determination of native title rights and interests over a large area of sea in the Torres Strait region, between the islands over which native title is already held. The claim was divided into parts A and B. This decision covers part A, which encompasses a larger part of the claim area. Part B is yet to be determined and is constituted by areas over which overlapping native title sea claims exist.

The number of societies

The applicant argued that the members of the native title claim group comprise – as their ancestors at the time of sovereignty comprised – one single society which exists across the Torres Strait. The State argued that there are thirteen societies in the area – each one containing one island community and the Commonwealth argued that four separate societies exist— made up of regional cluster groups of islands.

Justice Finn considered the laws and customs of the Torres Strait Island people, particularly in relation to descent, reciprocity and exchange, the emplacement of social identity by original occupation and subsequent inheritance, territorial

¹ M Gooda, Australian Human Rights Commission, 2 July 2010, http://www.humanrights.gov.au/about/media/media_releases/2010/65_10.html, viewed 15 September, 2010.

²S Elks & N Lim, 'Torres Strait ruling a first: native title to cover vast expanse', *The Australian*, 3 July 2010.