



### **Demonstrating systematic and continuing land tenure**

The demonstration of the existence or absence of a systematic and continuing form of land tenure requires an order of analysis significantly higher than the mere calculations performed by a database. The NSWNTS Research Unit database *can* however highlight correlations between patterns in the data and contemporary assertions of claimants. A common anthropological hypothesis is that Aboriginal land tenure comprises a system of production and distribution of knowledge and authority. These often have material manifestations in the spatial organisation of families and communities: pronounced patterns of movement established through the documentation of hundreds of individuals quickly shows collective preferences for particular locations. It might be asked: are these preferences symptomatic of an invasion-era land tenure system or a completely new form of tenure? If the records document continuity in the pattern and a strong conservatism in selection extending back to the commencement of records, then we have a strong indication that the pattern *is* invasion-era and thus an expression of traditional land tenure. The subsequent investigative task would then be to establish correlations between this tendency in the record and what claimants say. If claimants articulate a systematic index of the places for which their families and community are traditionally responsible as owners, custodians or caretakers, then we have a basis on which to make a comparison.

Again, the path of analysis is clearly and specifically documented. We have an index of references to every single record on which the analysis is based, together with copies of the documents themselves, and an analytical method that can be reproduced and tested on the same data under independent conditions.

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## **WHAT'S NEW WITH THE NTRU**

### **Staffing**

Jessica Weir has completed her work at the NTRU and will now return to complete her PhD studies at the Centre for Resources and Environmental Studies at The Australian National University. Jessica's PhD engages with the recognition of the cultural identity of the traditional owner in the management of water in the Murray Darling Basin.

Angela Philp (Research Officer – publications) and Amy Williams (Administrative Assistant) both had their part time contracts extended with the NTRU, while NTRU positions are advertised. Tran Tran had her contract extended as an employee until 31st July.

Juliet Badics, a law student from Flinders University in South Australia, has joined the NTRU on a four week internship, which was organised through the Aurora Native Title Internship Program. She is currently updating and further developing NTRU's research resource pages.

### **Congratulations!**

There has been a recent baby boom in our ranks. Lara Wiseman welcomed Zoe Olivia on 27 April, Donna Oxenham and Glen Kelly welcomed Tahlia Rose on 30 May, and Krysti Guest welcomed Polly Jennifer Jean on 3 July. Mothers and babies doing well.

### **Networks and collaboration**

In conjunction with the Library, Grace Koch met with a working group to prepare Web resources in Australian Indigenous languages. She is helping to edit the recent on-line exhibition of wordlists of E.M.Curr.


### **Reconciliation Australia Governance Exchange, USA and Canada 26 May – 13 June 2006**

Visiting Research Fellow and Manager of IFaMP, Toni Bauman, participated in a two week governance study tour to the USA and Canada sponsored by the Kellogg Foundation. It was organized by Reconciliation Australia in partnership with the Native Nations Institute for Leadership, Management and Policy (NNI) of the University of Arizona. It entailed travel to Arizona, British Colombia and New Mexico to meet with representatives from a number of First Nations. She also met with members of the Native Dispute Resolution Network, which is located within the US Institute for Environmental Conflict Resolution.

### **Research Activities**

#### **Connection Requirements Project**

Tran Tran has incorporated final electronic submissions for the state connections requirements project which has received a positive response from interested parties in the native title sector. Tran is now completing the



final draft Report for the project for publication through the NTRU.

### **Indigenous Facilitation and Mediation Project (IFaMP)**

After 3 years IFaMP is coming to a close. The project team has been busy with the final publications and project round-up.

#### **Training Resource Guide**

IFaMP's Training Resource Guide - *Finding Training Solutions in Indigenous Decision-Making and Conflict Management – A Resource Guide for Native Title Representative Bodies* – has been completed.

Produced in collaboration with Capital Careers Pty Ltd. and funding from the Office of Indigenous Policy Coordination, the Training Resource Guide was developed with the aim of providing Native Title Representative Bodies, Land Councils and Native Title Services (collectively called 'NTRBs') with useful, easy to read, up-to-date information on training in areas relating to decision-making and dispute management.

The Training Resource Guide sets out existing training pathways in the Vocational and Education Training sector and provides details of around 80 training providers, many of whom can customise training to requirements. The Training Resource Guide is built around twenty essential training modules which IFaMP identified in a series of workshops with Native Title Representative Bodies in 2003 and 2004, including facilitation and mediation, communication, presentation, debriefing and negotiation skills, managing meetings, dealing with difficult people and behaviours, mapping conflict, team building, relationship building exercises, managing technical experts and third parties in mediation and facilitation, group dynamics and cross-cultural communication

**The Training Resource Guide** comprises two Parts:

*Part One includes information on:* nationally accredited training and the Australian Qualifications Framework

organisations to contact to obtain advice about training  
possible sources of funding for training programs  
the Commonwealth Government's New Apprenticeship (traineeship) program

nationally accredited qualifications that best fit with the twenty priority training areas relating to Indigenous decision-making and dispute management processes.

*Part Two contains information on:*

the names of Registered Training Organisations which deliver nationally accredited qualifications containing units relevant to Indigenous decision-making and dispute management processes  
details and contacts of a range of training providers who may offer training related to the twenty key training priority areas identified by IFaMP and who could possibly partner with an RTO to offer full qualifications.

The Guide will be of considerable value not only to NTRBs but also to other organisations and Government Departments working in Indigenous Affairs, for whom Indigenous decision-making and dispute management is core business.

The Guide is located on the IFaMP website under Latest Updates, and Research and Publications.


#### **Conference Presentations**

Toni Bauman made a PowerPoint presentation of lessons learnt to date from a pilot mediation process being undertaken in Katherine at the National Mediation Conference in Hobart, 3-5 May 2006 entitled 'Waiting for Mary: Process issues in facilitating Indigenous decision-making and managing disputes in an agreement making process.' She presented a revised version of the presentation at the Native Title Conference in Darwin later that month.

IFaMP also ran a workshop for the NTRB Day at the Native Title Conference, within the stream on Training and Development Strategies. A free discussion was held on the establishment of a proposed supported national network of Indigenous facilitators and mediators and the use by NTRBs of IFaMP's Indigenous facilitators and mediators email list. Margarita Escartin from Gurang Land Council spoke of the benefits in using the list to obtain a consultant. Alison Murphy of NTSV and Austin Sweeney of CLC spoke in support of the recent IFaMP pilot training they had received.

#### **Final Project Seminar**

A final seminar of IFaMP findings, recommendations and follow-up implementation



issues was held on 11 July at AIATSIS. The Training Resource Guide was launched at this seminar.

### **Best practice and system analysis – priority projects 2006 – 2009**

The activities of this group require:

- identification of trends and priorities for research and analysis emerging from the recognition and protection of native title
- independent assessment of the impact of practice, policy and legal developments
- recommendations for policy development and improved practice
- collection of data and case study research designed to inform policy development
- solicited research and analysis from native title practitioners and experts
- publication and dissemination of a range of publications to improve knowledge and understanding of native title

### **NTRU Research in 2006 – 2009:**

The NTRU has finalised its 3 year research priorities and determined new projects beginning in July 2006. These new projects include:

- **Prescribed Bodies Corporate** – PBCs are of ongoing policy interest to government and native title claimants/holders. There is no network and little coordinated information about the structure and activities of PBCs. This project will include the development of resources and toolkits for PBCs seeking to access funding and development opportunities and an analysis of the accessibility of such programs and the feasibility of reliance on external/program funding.
- **Taxation, Trusts and the Distribution of Benefits** – the vexed issue of best practice in structuring agreements for taxation, creation of trusts and distribution of benefits from native title remains virtually undocumented. At this early stage it is unlikely that 'best practice' can be clearly identified, however, some good practice examples and invaluable sharing of information and experience will be of significant value.
- **The role of applicants, authorisation and Indigenous decision-making** -

the role of applicants in the native title system is a pivotal one. However, the power and responsibilities held by applicants is managed and exercised differently across native title groups. This project will examine current appointment and management practices and review some of the difficulties that have arisen in the exercise of applicants' powers, including complaints and legal challenges to authorisation. The project will examine examples of Indigenous decision-making structures, both traditional and contemporary, that have led to successful outcomes in authorisation/claim management, agreement-making and implementation, and intro-Indigenous dispute resolution. The outcomes will include recommendations for policy and, if appropriate, legislative reform as well as the identification of best practice.

- **Connection Requirements – stage 2** – the first stage of the project investigated available policy material and gathered qualitative information from the diversity of perspectives affected by the state connection requirements. The data about 'perceptions' now needs to be tested against actual examples of connection reports and state responses.

If you are interested in contributing papers or expertise or wish to partner in these projects please contact us at [ntru@aiatsis.gov.au](mailto:ntru@aiatsis.gov.au)


### **Workshops**

**ARC - Implementation of Agreements with Indigenous People - Linkage Partners workshop** was held at AIATSIS on 26 June 2006, with people attending from the University of Melbourne, OIPC, The ANU, and Rio Tinto. Following the workshop a meeting of the ARC research team was held on Tuesday 27 June 2006.

### **Databases and management of connection material, 29-30 June at AIATSIS**

On 29-30 June a workshop was held on databases and access issues for representatives of NTRBs throughout Australia. Although all NTRBs were contacted, positive responses came from 13, who sent 23 delegates to the workshop. A grant from OIPC enabled one airfare to be paid for each NTRB





and accommodation for all delegates to be covered.

The workshop arose from the second working session of NTRB representatives at the Darwin conference, which focused on two demonstrations of databases – one from Native Title Services NSW and the other from the National Native Title Tribunal. Because time was limited for discussion, they requested that a workshop be held at AIATSIS in Canberra before the end of the financial year in order to construct a best practice document addressing database structure and content, and ethics and

## **WHAT'S NEW**

### **Legislation**

#### **Recent Cases: Australia**

[Sampi v State of Western Australia \(No 3\) \(2005\) 224 ALR 358; \[2005\] FCA 1716](#)

Litigated determination. Outcome: Native title exists in parts of the determination area

Available at:

[http://www.nntt.gov.au/ntdetermination//1134098706\\_1640.html](http://www.nntt.gov.au/ntdetermination//1134098706_1640.html)

[Mundraby v State of Queensland \[2006\] FCA 436 \(24 April 2006\)](#)

Consent determination. Native title exists in relation to the land and waters.

Available at:

[http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2006/436.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2006/436.html)

[Sampi v State of Western Australia \(No 4\) \[2006\] FCA 760 \(19 June 2006\)](#)

Determination: Native title exists in relation to parts of the determination area. The orders include recognition of exclusive native title rights over parts of the land claimed and non-exclusive native title rights over areas below the mean high water mark. A determination that native title does not exist has been made over Brue Reef.

Available at:

[http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2006/760.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2006/760.html)

[James Dimer on behalf of the Esperance Nyungar People/Paul Winston Askins, James Ian Stewart/Western Australia, \[2006\] NNTTA 70 \(8 June 2006\)](#)

Native title - future act. Application for determination for the grant of exploration licences. The registered native title claimants are deceased. The application was dismissed.

protocols for access and use of connection materials. This document would result in savings for NTRBs who need to update or establish databases by seeing what is already available within NTRBs and learning from their experiences rather than investing in database design all on their own. A report from the workshop will be available shortly on the NTRU website under 'The Future of Connection Material Project'.

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Available at:

<http://www.austlii.edu.au/au/cases/cth/NNTTA/2006/70.html>

[BROWNLEY & ORS -v- MINARA RESOURCES LTD \[2006\] WASC 93 \(25 May 2006\)](#)

Supreme Court of Western Australia

Defendant application to stay the plaintiffs' action and further to strike out certain paragraphs of the statement of claim. In 1997 the defendant entered into negotiations with the Bibila Lungutjarra Native Title Claimant Group (the 'Bibila people') and the Goolburthunoo Native Title Claimant Group (the 'Goolburthunoo people') as part of the process of developing a laterite nickel and cobalt project at Murrin Murrin.

Available at:

<http://www.austlii.edu.au/au/cases/wa/WASC/2006/93.html>

[Bradley Foster & Ors \(Waanyi Peoples\)/Copper Strike Ltd/Queensland; \[2006\] NNTTA 61 \(19 May 2006\)](#)

Future Act Determination. - By consent, the determination of the Tribunal is that the acts, namely the grant of Exploration Permits (EPM) 15071 and 15073 to Copper Strike Ltd, may be done subject to compliance with the terms of the 'Native Title and Heritage Protection Agreement' as filed with the National Native Title Tribunal.

Available at:

<http://www.austlii.edu.au/au/cases/cth/NNTTA/2006/61.html>

[Hamersley Iron Pty Ltd - v - Puutu Kurnti Kurrama Pinikura Native Title](#)

Western Australia. Open Court. Tenements applied for to facilitate infrastructure required for the development of an iron ore mine (Brockman Number 4). The objectors maintain that the applicant did not pursuant to the relevant provisions of the *Mining Act* obtain an entry permit authorising it to enter and mark out the