

Aurora Project: Intern Report

From 18 January 2010 to 26 February 2010, the Native Title Research Unit hosted three Aurora interns. The Aurora Project aims to provide university students from around Australia the opportunity to gain practical experience within the native title field. All three interns - Patricia Carlisle and Zoe van der Lee from the University of Adelaide, as well as Jack Brumpton from the University of Queensland - are in the process of completing their law degree.

While the interns were usually busy completing their set tasks within the NTRU office, they also took the opportunity to engage in some uniquely Canberra activities. Among other things, the interns attended a hearing first hand at the High Court and watched question time unfold at Parliament House.



(l - r) Aurora Interns - Jack Brumpton, Zoe van der Lee and Patricia Carlisle and new NTRU Research Assistant, Zoe Scanlon

Each intern reflects on their time with AIATSIS below:

Jack Brumpton:

My internship consisted almost entirely of assisting AIATSIS Research Fellow, Joe Fardin, with the development of an agreements database for use by NTRBs Australia-wide. At this early stage, the project is focussing on developing a database of agreements made between traditional owners and mining/exploration companies.

My role involved researching both theoretical and practical issues in regard to development of the database. I looked into the concept of 'knowledge management' (KM) and examined whether it has ever been considered in the native title context. Finding any such consideration lacking, I drafted a KM strategy for the average NTRB, with a nationwide agreements database at the centre of that strategy. I also researched 'best practice' in agreement making (a subject, unlike KM, that has been considered in great detail, particularly of late)

and examined best practice case studies, in an effort to find common elements from which to construct the database. Finally, I looked into practical issues around setting up the database, such as database structure, and copyright, confidentiality and privacy issues.

When the database is up and running it will be an incredibly useful tool for NTRBs which will save much time and money. I hope that my work at AIATSIS has contributed to that goal in at least some small way.

Zoe van der Lee:

I spent my time at AIATSIS completing a research project under the supervision of Research Director, Dr Lisa Strelein. The project involved contrasting the corporate structure of NTRBs and NTSPs: the incorporation legislation involved; constitutional requirements and governing structure. Essential to my project was accessing the *Corporations Act 2001* (Cth) and the *Corporations (Aboriginal and Torres Strait Inlander) Act 2006* (Cth) ('the CATSI Act') and identifying the similarities and differences of incorporation in accordance with each piece of legislation. The constitutional design, as well as the representative and administrative structure of NTRBs and NTSPs was compared at length.

While I have completed the required component of corporate law at university and was familiar with the *Corporations Act*, I had never come across the *CATSI Act* before. The *CATSI Act* is a complex piece of legislation that is central to the native title system, with all NTRBs and RNTBCs required to be incorporated in accordance with it. On the other hand, NTSPs are incorporated under the *Corporations Act*. The success of the native title system is dependant upon the effective interaction of various corporate bodies that are incorporated in accordance with these two different legislative formats.

Patricia Carlisle concludes:

Native title is complex and controversial. Whether from an anthropological, historical-cultural, Indigenous or legal perspective, navigating the path to recognition of Indigenous 'traditional' laws and customs exercised from pre-sovereign to contemporary times as the basis of a Native Title claim is at best arduous and at worse divisive. The concept of traditional is extremely nebulous and the controversial text of s. 223 of the *Native Title Act 1993 (Cth)* remains the focus of much heated debate since the momentous *Mabo* decision in 1992.

While I recognise that my understanding on this topic is limited at this time, I cannot help but question at what point does one draw the distinction between the use of 'traditional' as a legitimate exercise of legal precedent and that as a medium of exploitation, hypocrisy and oppression? As an Aurora intern, these issues were the basis of much reflection and are as potent for me as they are for the more experienced and wise in this field. Perhaps in 21st century Australia, it may be timely for the legal profession to pay heed to former Justice Kirby's poignant remarks:

*"we the judges, lawyers and law students of contemporary Australia, must always be willing to hear the voice of justice. Form is not sufficient. Our function in the law is the substance of justice according to law."*¹

The Aurora Project provides anthropology, law and social sciences students and graduates career opportunities in native title, policy, social justice and Indigenous affairs. The program aims to provide assistance to under-resourced and over-worked Native Title Representative Bodies (NTRBs) and Native Title Service Providers (NTSPs) as well as various other organisations working in these areas.

Applications for the Winter 2010 placement are open from Monday 8 March and close 5pm AEDST Thursday 1 April 2010. Most internships run for 5 to 6 weeks over the June to August semester break.

For more details, see the Aurora website at <http://www.auroraproject.com.au/>

New Database at the University of Dundee – Court Interpretation of Indigenous Agreements

The last two decades has seen a growing preference for negotiated outcomes in the relationship between Indigenous people and resource management. Previous practices, in which governments and developers simply dealt with land and resources while ignoring Indigenous interests in that land, are no longer accepted.

Developers and/or governments are placing a greater emphasis on agreement making with Indigenous peoples in relation to developments which will affect them.

The Centre for Energy, Petroleum and Mineral Law and Policy (CEPMLP) at the University of Dundee in Scotland has released a database of court and tribunal decisions dealing with documents involving Indigenous parties (e.g. treaties, impact & benefit agreements, petitions, land use agreements).

This database focuses on court and tribunal decisions and relevant commentary. It has been compiled from over 200 cases and articles from courts and tribunals in Australia, Canada, New Zealand and the United States of America.

The database aims to help parties involved in developer-Indigenous relations, by identifying relevant decisions and commentary on courts' approaches to Indigenous agreements.

The database is free and fully searchable, and can be accessed via the [Centre for Energy, Petroleum and Mineral Law and Policy](#) website.

¹ M Kirby, 'Black and white lessons for the Australian judiciary', *Adelaide Law Review*, vol. 23, 2002, p. 213