

ABSENT FRIENDS

FOREBEARS AND COLLEAGUES IN NATIVE TITLE ANTHROPOLOGY

DR JULIE FINLAYSON CENTRE FOR NATIVE TITLE ANTHROPOLOGY AUSTRALIAN NATIONAL UNIVERSITY

**A complete version of this article was first presented to the Federal Court of Australia and National Native Title Tribunal's 25 Years of Native Title Anthropology: A tribute to the contribution of anthropologists to the development of Australian native title law, Duxton Hotel, Perth, 10 February 2017.*

IN THIS ARTICLE I WANT TO BRIEFLY trace the early years of anthropological involvement with native title, our responses, and future challenges. In celebrating 25 years of anthropology's contribution to native title law it is an opportunity to acknowledge a generation of our intellectual forebears in native title anthropology. It is also an opportunity to acknowledge the rise of in-house anthropologists, those we might consider the 'second generation' of native title researchers and beneficiaries of the first wave practitioners.

When the *Native Title Act 1993* (Cth) was introduced in 1993, anthropologists faced challenges for which there were few existing precedents. The Act required new forms of inquiry with the imperative to understand and engage with legal culture and legal processes.

In the absence of guiding precedents native title anthropologists turned initially, and understandably, to paradigms familiar from the.

The land rights era was a watershed in Australian Indigenous land research. From the mid-70s to the late 80s, research was prolific; although in some quarters, ambivalence about research undertaken in the context of legislation developed; a tension identified between 'market forces' and the intellectual validity of applied work.

Notwithstanding this angst, the statutory land councils were major employers of anthropologists outside academia. Anthropologists filled in-house staff positions and some advised the Territory Land Commissioner. Funded research made possible the documentation of regional and local cultural heritage, language preservation and community histories. Anthropologists participated in critical policy inquiries and settings around out-stations, community infrastructure, alcohol use, and a raft of now-familiar socio-economic concerns.

The early discussions about best approaches for native title research were thus enthusiastic, and led to publications on the *what*, and *how*, for the new requirements.

From the start, anthropologists at the ANU's Centre for Aboriginal Economic Policy Research (CAEPR) and the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) played lead roles in supporting discussions on new strategies. Over time, *native title talk* became integral to the Australian Anthropological Society's (AAS) annual conference.

Now it is commonplace to find native title anthropologists working with, and for, Indigenous Australians through the academia, in land councils and native title organisations, in Indigenous cultural heritage, and as independent consultants.

The debates of the 1990s over the intellectual validity of native title anthropology have largely faded. Several factors explain why; the scale of professional employment opportunities, role changes for

institutions administering the native title system, and a continuing demand for anthropological contributions.

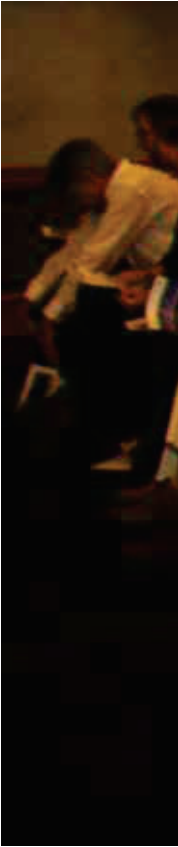
Anthropologists now participate in litigation, operating as a 'friend of the court'; they work for the Crown, as well as with claimants. They play important roles in pre-and post-claim determination situations, in claimant dispute management, and in new areas such as assisting prescribed bodies corporate, researching compensation claims and in community development.

Two critical things led to a shift in the legitimacy of native title anthropology.

As I outlined above, native title opened new employment opportunities; but overtime the complexities of claim situations increased and the need for content-specific training followed.

Specific anthropological courses emerged. Peter Sutton and *Anthropos Consulting* ran non-accredited professional development summer schools in the late 1990s early 2000s; while the National Native Title Tribunal (the Tribunal) supported a trial mentoring project linking 6 early career in-house anthropologists in a one-on-one partnership with a senior anthropologist.

Over 8 years, from 2005–12, the University of Western Australia offered Certificate and Diploma level online courses in native title and cultural heritage supported by scholarships from the Tribunal and the Native Title Unit in the WA Premier's Department. Many staff anthropologists in WA are graduates of this - unfortunately now defunct





Left to right: Prof Peter Sutton, the Hon. Justice Michael Barker, the Hon. John Mansfield AM QC and Mr Barry McGuire representing the Wadjuk Noongar.

– program in spite of graduating 50 students over that period.

Other learning opportunities appeared. The Centre for Native Title Anthropology originated from an idea proposed by native title anthropologists Bill Kruse, Pam McGrath and Jodi Neale, and championed by Nic Peterson through the Australian National University. Deane Fergie and colleagues at Adelaide University ran native title courses and projects through Australian Native Title Studies, while James Cook University of Cairns offered a week-long residential Master’s Course.

Many of these later initiatives were funded by the Attorney General’s Native Title Anthropologist Grants Program.

Twenty five years after the beginning of native title anthropology, the landscape for anthropologists continues to see a strong market demand for knowledge and skills, no less because of Federal Court involvement.

In celebrating 25 years in the relationship between anthropology and native title law, a major cultural challenge identified early by our forebears remains - that of enabling and enhancing anthropologists to effectively work with legal processes.



John Lyne and Dr Julie Finlayson.



Dr Julie Finlayson addressing the conference.

Photos taken at the Federal Court of Australia and National Native Title Tribunal’s 25 Years of Native Title Anthropology: A tribute to the contribution of anthropologists to the development of Australian native title law, Duxton Hotel, Perth, 10 February 2017. Credit: National Native Title Tribunal.