

The NTRU is in a unique position to assist the Australian Government, the native title representative body system, native title claimants and holders and other institutions in developing, analysing and evaluating native title policy and practice in an Indigenous context and coordinating information and resources throughout the native title system. The NTRU has been established for 15 years and has an interdisciplinary team of lawyers, anthropologists and ecologists who work directly with: native title representative bodies (NTRBs) and service delivery agencies (NTSDAs); native title claimants and holders; government agencies; academics and practitioners; and other native title stakeholders through research partnerships, sponsorships and other collaborations.

### Prescribed Bodies Corporate

This project supports the growing number of determined native title holders, and their Prescribed Bodies Corporate (also known as registered native title bodies corporate), to hold and manage their traditional lands and waters. The project is developing a better understanding of challenges facing native title holder communities post determination and will suggest practical approaches that assist these communities to hold and manage their traditional lands and waters.

This coming year, the project will focus on:

- Finalising case studies/action research partnerships with up to 5 PBCs, examining key aspirations, potential partnerships and other strategic issues relating to the sustainability of the PBCs and carrying out business and operational planning with the case study participants as part of a broader investigation into appropriate planning models;
- Holding a PBC National Meeting and PBC case study participant workshop
- Continue to engage with Australian, State & Territory government agencies, including the convening of regular meetings of Commonwealth agencies; and
- Further develop PBC resources including:
  - Information relating to the implementation of the CATSI Act, and the Good Governance Guide in partnership with the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations,
  - Update of National Overview of RNTBCs and RNTBC Toolkits, and
  - Completion of PBC profiles.

[http://ntru.aiatsis.gov.au/major\\_projects/psc\\_rntbc.html](http://ntru.aiatsis.gov.au/major_projects/psc_rntbc.html)

### Taxation, Trusts and the Distribution of Benefits; structuring and implementation of agreements and corporate design

The vexed issue of best practice in structuring agreements for taxation, creation of trusts and distribution of benefits from native title has been virtually undocumented. Native title groups and holders are seeking to develop effective corporate structures and governance models to support sustainable organisations both pre and post native title determinations.

The lack of understanding of these issues makes policy development, for example in relation to the taxation of native title payments almost impossible.

The project has focused on promoting awareness of tax and corporate issues, improving practice within NTRBs in this area and where possible developing solutions to tax, trusts and distribution questions and culminated in the publication of a research monograph on these topics. In partnership with the Aurora project, the NTRU is co-ordinating the provision of advice requests from NTRBs and NTSDAs on these issues to a panel of pro bono legal experts. The NTRU will continue to co-ordinate this during 08-09.

[http://ntru.aiatsis.gov.au/major\\_projects/taxation\\_trusts.htm](http://ntru.aiatsis.gov.au/major_projects/taxation_trusts.htm)

### Compensation and alternative settlements

There is an increasing interest in the development of clear principles for compensation particularly in the context of proposed alternative processes and settlements. The NTRU will collate existing legal analysis, and research and analyse proposed policies and processes against framework of principles developed specifically for native title settlements in Australia.

[http://ntru.aiatsis.gov.au/major\\_projects/compensationaltsettlements.html](http://ntru.aiatsis.gov.au/major_projects/compensationaltsettlements.html)

### Connection requirements: Threshold and proof

The management of native title claims through proof of connection to final determination continues to be a central concern to native title stakeholders and there is a need for critical discussion of the requirements of proof and the processes involved in establishing native title and resolving claims. Additional questions are raised in the context of consent determinations and alternative agreements. Following the Getting Outcomes Sooner Workshop co-

convened with the NNTT in 2008, the NTRU is planning to convene a workshop in association with the ATNS, University of Melbourne (put in full title) on Section 223 and threshold issues in March 2009. A final report on this project will be published, incorporating outcomes from this workshop.

[http://ntru.aiatsis.gov.au/major\\_projects/connection\\_requirements.html](http://ntru.aiatsis.gov.au/major_projects/connection_requirements.html)

## Native title, land and water management

### **Native Title and Freshwater**

Native title rights and interests in water have been affected by the privatization of water and the creation of new property rights in water, changing this complex political-legal landscape before it has even begun to be understood. There is little capacity for this work among native title holders and government agencies. A manuscript on Indigenous peoples' interests in water management and planning will be prepared for publication as part of a research partnership with the Murray Lower Darling Rivers Indigenous Nations (MLDRIN). Also, ground water is an important planning and management issue for the PBC Kimberley case study.

### **Native Title and Ecology**

An edited volume on native title and ecology, natural resources and sustainability will be prepared for publication. This research work is responsive to the broadening engagement by land and water practitioners in native title, and extends our understandings of native title in the context of ecological relationships, ecological change, and ecological destruction.

### **Native Title and Joint Management of National Parks**

Joint management or co-management of national parks and other protected areas is an increasingly critical issue for native title agreement-making. Of particular interest are comparisons as to what has been achieved through native title in the range of State and Territory agreements. The NTRU is seeking to gather comparative material in the 0809 financial year to be published in 0910. Expressions of interest have been called for those wishing to contribute. The PBC Djabugay case study will also provide material for any comparative analysis of native title outcomes with respect to management of National Parks in Queensland.

[http://ntru.aiatsis.gov.au/major\\_projects/nativetitle\\_land&water.html](http://ntru.aiatsis.gov.au/major_projects/nativetitle_land&water.html)

## Indigenous decision making

Building on the research based established through from the Indigenous Facilitation and Mediation project undertaken in 2003-06 and over 06-08, this project continues to raise external interest in aspects of traditional decision-making and other decision-making processes as part of a broader evaluation of agreement making. The project is also resolving publications around issues of community engagement, models of engagement, risk management, free prior and informed consent and complaints relating to authorisation processes. The NTRU will also continue its involvement with a broader project in partnership with the Federal Court to examine Indigenous Alternative Dispute Resolution, and ongoing issues arising from IFaMP. This research will also inform a workshop for Senior Professional Officers of Native title Representative Bodies on negotiation and agreement-making in March 2009.

[http://ntru.aiatsis.gov.au/major\\_projects/indigenousdecisionmaking.html](http://ntru.aiatsis.gov.au/major_projects/indigenousdecisionmaking.html)

## The future of connection material

The project report containing recommendations for collection management procedures and sustainability for materials held by native title representative bodies was workshopped in early 2008. The final report was published on the NTRU web site (see link below). The Native Title Research and Access Officer is liaising with those NTRBs in Queensland who are in the process of amalgamation in order to advise the government on where specific action and funding should be targeted to ensure the ongoing care of collections.

[http://ntru.aiatsis.gov.au/collections/connection\\_material.html](http://ntru.aiatsis.gov.au/collections/connection_material.html)

## Coming soon

### ***Compromised Jurisprudence, second edition***

*Compromised Jurisprudence* traces the development of the courts' thinking from the original decision in *Mabo v Queensland [No.2]*, through to the significant High Court decisions in 2001 in *Western Australia v Ward and Yorta Yorta*, and the subsequent implementation of those cases by the Federal Court in cases such as *De Rose*. Each chapter contains a discrete analysis of the most significant cases during this period. A timeline of events enables us to map the trajectory of the key doctrines of native title. A new revised edition of *Compromised Jurisprudence* will be coming soon with new material covering overseas issues of Native Title.