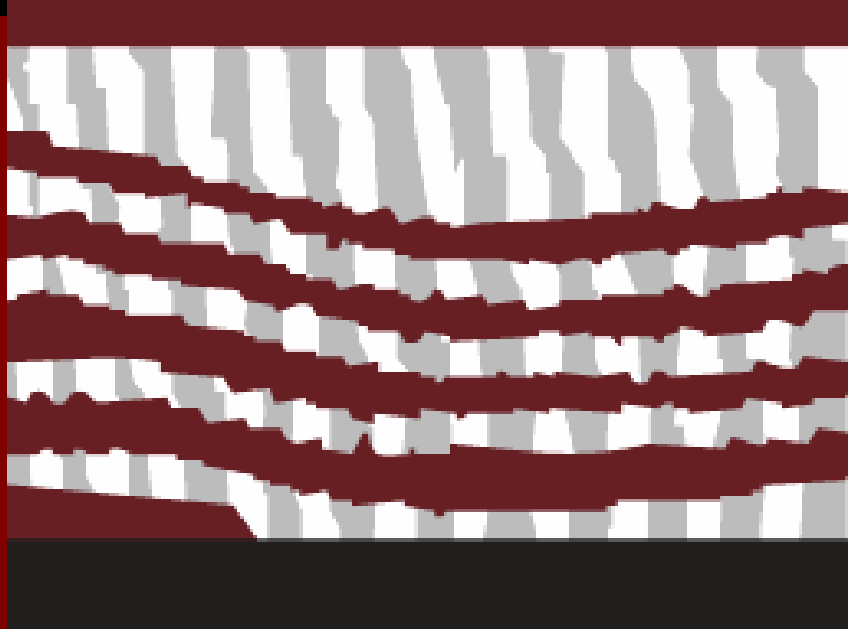


AIATSIS
Native Title Research and
Policy Advice



Native Title Research Unit
Activity plan 2006-07



Introduction

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) is the peak national research institution on Aboriginal and Torres Strait Islander Studies. AIATSIS has responsibility for a multitude of research programs and services, manages world class collections of cultural and research material, houses the Aboriginal Studies Press and engages in numerous partnerships with research and government institutions and Indigenous communities.

AIATSIS was established in 1964, its functions are set out in its enabling legislation, the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* (Cth). Over the last 40 years AIATSIS has established itself as Australia's premiere Indigenous research institute. Since 2004, AIATSIS has been located within the Education, Science and Training portfolio. AIATSIS native title activities are primarily conducted through the Native Title Research Unit (NTRU). The NTRU was established in 1993 in response to the High Court decision in *Mabo v Queensland [No.2]* (1992), which recognised Indigenous peoples' rights to land under the legal concept of native title.

As the peak national multi-disciplinary Indigenous research institution, AIATSIS offers an ideal policy research environment. AIATSIS is in a unique position to assist the Australian Government, the native title representative body system and native title holders and claimants in developing, analysing and evaluating policy and practice in an Indigenous context and coordinating information and resources throughout the native title system.

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Core native title activities

1 Information, Resources and Professional Development

Coordination of effort, sharing of resources, building and retaining corporate knowledge within the NTRB system are high priorities for achieving more efficient use of limited resources. The NTRU necessarily plays a direct role in meeting these policy ends through the monitoring, collection and dissemination of information and development of resources. AIATSIS is also pivotal in improving the quality, quantity and accessibility of information by developing resources that bring together existing information into accessible forms. The NTRU convenes workshops and the Native Title Conference, which bring together key stakeholders, prioritising native title claimants and their representatives, to share information and improve native title research, policy and practice.

1.1 Information Services

- News service: fortnightly summaries of news items of relevance to native title delivered to NTRBs and OIPC electronically and published on the Website.
- 'What's new' information service: monthly information on progress of applications, significant events, inquiries, reports and publications, and job opportunities, delivered to NTRBs and OIPC electronically.
- Native Title Newsletter: combines Native title news items, and developments with claimant comments and features, published 6 times each year and distributed both electronically and in hard copy to a wide audience.
- Native Title Resource Guide: Web-based information resource portal providing jurisdictional analysis of native title policy law and outcomes, involving information sharing agreements with key stakeholders (NNTT, FCA, ILC, Austlii).

1.2 Native Title Resources

- ILUA summary: Regularly updated summary of ILUAs containing links and information on type and content.
- Determinations summary: regularly updated summary of determinations linked to relevant resources.
- Rights and interests database.
- Annotated case list (due for web publication in January 2007).
- PBCs database: contains list of PBCs, characteristics and contact details.
- Resource pages: provide background to an issue or brief summary of cases where relevant, a selected bibliography, links to resources and materials available online, related cases and legislation and additional resources.

1.3 Issues and Practice papers

- Case summaries: timely analysis of determinations and procedural cases of precedential value.
- Issues Papers: multidisciplinary papers by researchers and practitioners on topical issues of importance to native title policy and practice.

1.4 Access to AIATSIS collections

- Access services: Facilitation of access to the AIATSIS collections for native title purposes.
- Collections development: Acquisition of materials, promotion of the deposit of materials into the AIATSIS collections and enhancement of records.
- Future of connection material project: The NTRU will work with NTRB research and information managers to establish standards and develop skills for the authorship/ownership, proper documentation and secure storage of connection material and other original documents generated by the native title process

1.5 Technical workshops

Technical workshops and forums provide opportunities for claimants, NTRB/NTS staff and practitioners to discuss emergent policy and practice issues. In some instances such forums may be closed to NTRB/NTS participants only, where matters are sensitive or strategic. In other circumstances, coordination of communication across the system is desirable. Forums may be coordinated with other organisations. Additional sponsorship or support may be required for certain workshops where participants are unsupported. AIATSIS will convene/coordinate up to three (3) forums each financial year. Planned forums for 2006-09 may include:

- Connection reports and requirements
- Taxation, trusts and distribution of benefits
- Future Role of NTRBs
- PBCs: decision-making structures, funding and operations, and
- Benchmarking Agreement Making

1.6 Native Title Conference

The annual national Native Title Conference remains the leading Indigenous policy conference in Australia and a flagship event for AIATSIS. The Conference is co-convened each year with a Native Title Representative Body and hosted by the native title claimants/holders on whose land the conference is held. The Conference is the primary professional development and capacity building opportunity for people working in the native title system as well as a strategic opportunity to discuss native title policy and directions. Evaluations for the 2005 and 2006 conference will be considered in developing the program for future Conferences. A detailed implementation plan and new innovations and improvements for the 2007 Conference will be developed in August 2006.

The activity requires three main outputs:

- National Native title Conference – public program
- NTRB pre-conference program
- Distribution of papers

2. Best practice and system analysis – priority projects

AIATSIS is a recognised leader in the conduct of research and analysis of direct relevance to practice and policy in the native title sphere. The identified priority research projects involve:

- 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.

The details of the priority projects will be determined in accordance with the topical issues most in need of systemic analysis. The following priority projects have been identified:

2.1 Prescribed Bodies Corporate

The project will examine the structure and activities of PBCs, the critical transition from pre- to post-determination claim management and governance and the relationship between claim groups, PBCs and NTRBs. This project will include case studies of PBCs that have been operating for over twelve months as well as 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.

2.2 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. The lack of understanding of these issues makes policy development, for example in relation to the taxation of native title payments almost impossible. This project will provide some initial baseline data and qualitative information. At this early stage it is possible to identify issues for analysis, survey of current practice, identify good practice examples and promote invaluable sharing of information and experience.

2.2 Connection requirements – stage 2

A project undertaken in 2005-06 to investigate available policy material and gather qualitative information from the diversity of perspectives affected by the state connection requirements has revealed some significant issues for policy and practice. The project elicited qualitative data from intensive interviews. This data about 'perceptions' now needs to be tested against actual examples of connection reports and state responses.

2.3 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 processes for 'authorisation' of native title applications and agreements is becoming a central issue as more claims come to court and the sustainability of agreements and PBC management hangs over all native title claimant groups. Identification and support for sustainable decision-making structures are underpinned

by NTRB/NTS certification and dispute resolution. This project will therefore examine examples of Indigenous decision-making structures, both traditional and contemporary, that have lead to successful outcomes in authorisation/claim management, agreement making and implementation, intra-Indigenous dispute resolution. The outcomes of the project will include recommendations for policy and, if appropriate, legislative reform as well as the identification of best practice.

3. Deferred and Discretionary Projects

The list of priority projects will be revisited in planning the work program for 2007-08. Projects identified this year as meriting examination but are unable to be undertaken within current funds are outlined below. These projects may begin in 2007-08 as existing projects lapse. Or, where additional resources can be identified from other project partners in the current financial year, new projects may be undertaken.

3.1 Agreement Benchmarking

The project undertaken in 2005-06 to closely examine large scale agreements, including the Miriuwung Gajerrong – Ord stage II, Burrup and Wimmera agreements, will be continued to include further case studies. Analysis of these agreements will provide a greater comparative base for the development of principles for the negotiation and implementation of agreements.

3.2 Claims management practices – land summits and the resolution of overlaps

The resolution of overlaps and intra-indigenous disputes remains a primary responsibility and focus of activity for most NTRBs. A number of initiatives have been trialled to reach resolution in order to allow claimant groups to progress their claims. This project will survey the approaches of NTRBs to this process and provide additional in-depth analysis of successful initiatives to determine the indicators of success, including Land Summits and other approaches.

3.3 Federal Court practice and innovation

The variety of interventions employed by the Federal Court continue to create innovation in the claim management practices of all parties. The impacts and outcomes should be considered by a thorough analysis in collaboration with the Court and native title claimant groups, and their representative bodies. In this context it will be of value to analyse the outcomes of the review into the claims resolution process, in particular the respective roles and responsibilities of the Federal Court and NNTT and the impact on NTRB claim management.

3.4 Native title and the joint management of National Parks – best practice

The creation of national parks, reserves and natural resource management regimes in most instances does not extinguish native title. As a result, joint management and NRM partnerships remain one of the key aspirations and outcomes from many native title settlements, even in states such as WA where native title is extinguished over some national parks. This project will involve collaboration with NTRBs and will examine resolution of joint management issues, various determinations and involve comparative analysis of outcomes.

4. Secondments, fellowships and visitors

AIATSIS has provided occasional short term fellowships for NTRB staff, practitioners and scholars where opportunities arise. AIATSIS visiting fellowships provide opportunities for visitors to critically analyse an issue and reflect on their practical experience as well as bringing the work of the NTRU more relevant to native title practice and academic networks.