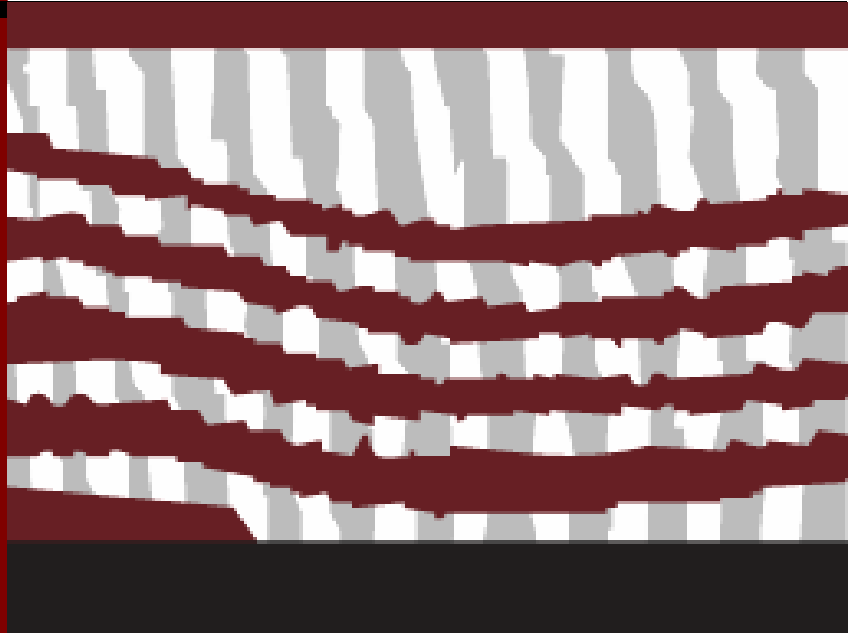


AIATSIS
Native Title Research Unit
Activity Plan 2008-09



**Native Title Research
and Policy Advice
2006-2009**



2008-09 Activity Plan

The AIATSIS 2000-09 Native Title Research Unit (NTRU) Activity Plan looks at key activities and deliverables for the final year of a three year contract with the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) for the provision of native title research and services for the native title sector.

The NTRU is celebrating 15 years of operation in 2008, having commenced as a collaboration between AIATSIS and the Commonwealth native title program, now managed through the Land Operations, International and Secretariat Service branch of FaHCSIA. The NTRU is located in the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) in Canberra and provides high quality independent research, policy advice and services in order to promote the recognition and protection of the native title of Aboriginal and Torres Strait Islander Peoples.

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 works 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.

A three year plan was developed in consultation with FaHCSIA that divides the work of the NTRU into three activity groups:

- Information, resources and professional development
- Best practice and system analysis – priority projects
- Best practice and system analysis – additional projects

Activity Group: 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. The NTRU 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 annual 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.

Activities under this group are ongoing for the duration of the three year agreement as outlined below.

Activity 1: Information Services

The mode of delivery of information services was revised for 2007-08 in line with the needs of NTRU's identified stakeholders to promote accessibility, ensure timeliness and enhance relevance. The NTRU website has been added to this listing of information services as twice yearly reviews of the website content are undertaken to update links and content. These information services will be delivered during 2008-09.

- Native Title in the News**
 - *Native Title in the News* provides **monthly** summaries of native title news items and is delivered to subscribers including NTRBs/NTSDAs, FaHCSIA, practitioners and claimant communities electronically. This publication is also available for download online.
- What's New**
 - The *What's New* service provides a **monthly** round-up of native title information, publications and events and is designed to assist organisations, practitioners and individuals involved in native title to access news, information and resources from a broad range of sources. This publication is delivered monthly to subscribers by email and is also available for download online.
- Native Title Newsletter**
 - Combining native title news items and developments with claimant comments and features, the Newsletter is published **6 times each year** and distributed both electronically and in hard copy to a wide audience. This publication is also available for download online.
- Native Title Resource Guide (NTRG)**
 - This web-based information resource portal provides jurisdictional overviews of native title policy, law and outcomes. The NTRG involves information sharing agreements with key stakeholders (NNTT, FCA, ILC, ORATSIC & Austlii).
 - The entire content of the NTRG is reviewed annually and updated to 31 December, however significant events, issues or statistics are also updated at other times as needed.
- NTRU website**
 - The NTRU website is regularly updated and content reviewed to ensure that resources are visible and accessible. This also involves a twice yearly review of broken hyperlinks.

Activity 2: Native Title Resources

Native Title Resources provide specific information to the native title sector about key native title issues. During 2007-2008 additional summary information was added to the ILUA, Determinations and RNTBC summary homepages to provide up to date national statistics about these native title outcomes. These services will continue to be maintained in 2008-09 as outlined below.

- ILUA summary** • Regularly updated summary of ILUAs showing jurisdiction, date, type and subject matter providing links to information on the NNTT and ATNS websites. National statistical overview of the number and type of ILUAs in each state and territory also regularly updated.
- Determinations summary** • Regularly updated summary of determinations showing jurisdiction, date, case names, legal process and outcome providing links to the NNTT, Austlii & ATNS websites. National statistical overview of the number and type of determinations in each state and territory also regularly updated.
- RNTBC summary** • Regularly updated summary of RNTBCs showing type, jurisdiction, case names, legal process and native title determination date providing links to information on the ORAC, ATNS, NNTT and Austlii websites. National statistical overview of the number and type of RNTBCs in each state and territory also regularly updated.
- Rights and interest database** • The rights and interests database provides a national overview of the rights and interests identified by the Court in successful determinations of native title, and is updated annually by the NTRU.
- Annotated case list** • This resource on native title cases since the *Mabo* decision will be made available online and updated annually.
- Research resources pages** • The Research resource pages provide background to an issue or brief summary of cases, a selected bibliography, links to resources and materials available online, related cases, legislation and additional resources. These pages are reviewed annually to repair broken hyperlinks and updated with new information and/or resources.

Activity 3: Publications

This activity area has been revised to provide an overview of the wide range of publications and presentations produced through NTRU research activities. Publications arising from these activities may include the following:

- Case summaries**
 - Timely analysis of determinations and procedural cases of precedential value. These may be prepared in response to a direct request from FaHCSIA or NTRB/NTSDA staff and depending on length and complexity may be published in the *Native Title Newsletter* or as an Issues Paper.
- Conference & seminar papers**
 - Presentations delivered at conferences, seminars, workshops or other forums will be published on the NTRU website where possible and may also be published in other formats.
- Discussion papers**
 - Multidisciplinary papers by researchers and practitioners on topical issues of importance to native title policy and practice. Discussion papers are generally between 6,000-12,000 words in length, peer reviewed and published by the NTRU as part of the AIATSIS Research Discussion Paper Series.
- External publications**
 - NTRU research fellows may be invited to contribute, or may submit papers to be published as books, book chapters, journal articles or edited volumes.
- Issues papers**
 - Multidisciplinary papers by researchers and practitioners on topical issues of importance to native title policy and practice. Issues papers are generally between 3,500-5,000 words in length, peer reviewed and published by the NTRU as part of the *Land, Rights, Laws: Issues of Native Title* Issues Paper Series.
- Other publications**
 - Publications not otherwise outlined in this list may be required to communicate research outcomes such as CD-ROMs, community reports, oral histories etc; or policy related products such as guidelines, briefing papers or policy advice.
- Practice papers**
 - Aim to provide practical advice on emerging or problem areas of native title law specific to native title practitioners. The format of publication is dependent upon audience, content, complexity and length of advice.
- Research monographs**
 - The NTRU publishes a research monograph series focusing on specific issues within native title. They may be either theoretical or practice based. Research monographs are generally between 20,000 - 40,000 words in length.
- Research reports**
 - The NTRU publishes a research report series including: workshop and research reports. These reports are often subject to peer review or review by participants involved in workshops and are generally between 6,000-12,000 words in length.

All NTRU publications are made available online and are also distributed to our subscribers.

Activity 4: Access to AIATSIS collections

Access services

- The Native Title Research and Access Officer facilitates access to the AIATSIS collections for native title purposes.
- AIATSIS will continue to liaise with the NNTT and NTRBs about new regional case management practices to identify efficiencies for the delivery of materials for connection.
- Listing of recently catalogued AIATSIS material prepared for the Native Title Newsletter (6 times per year).
- Together with the Library, Audio-Visual Archives and the AIATSIS Research Program the NTRAO will assist with the identification of AIATSIS site records information relevant to native title claims.

Collections development

- Acquisition of materials, promotion of the deposit of materials into the AIATSIS collections and enhancement of records.

Collections Access & Management Project

- The final report of the Future of Connection Material Project was completed in 2008. Implementation of the recommendations arising from this project will be pursued, subject to available resources. Pilot project proposal for QLD NTRBs to be amalgamated submitted separately.

Publications audit and listing

- The NTRU publications listing will be updated annually (in collaboration with the AIATSIS library). This will include published material such as books, issues papers and discussion papers, as well as project reports, workshop reports and submissions to inquiries.

Activity 5: Technical workshops

Technical workshops and forums provide opportunities for claimants and NTRB/NTSDA staff to discuss emergent policy and practice issues. In some instances such forums may be closed to NTRB/NTSDA participants only where matters are sensitive or strategic. In other circumstances, coordination of communication across the system is desirable. Forums may be coordinated with OIPC sponsored forums. Additional sponsorship or support may be required for certain workshops where participants are unsupported (e.g. PBCs/claimant groups).

AIATSIS will convene/coordinate up to **three (3) forums** each year. Planned forums for 2008-09 include:

Agreements & negotiation	This workshop will involve representatives from native title groups, NTRBs and NTSDAs, industry and government involved in native title agreements. It will examine the meaning of negotiation and a range of approaches to negotiation which will then be discussed in terms of their relevance to best practice in the native title context.	October 2008
Connection thresholds &/or alternative settlements	This workshop will involve representatives from claimant and native title holding groups, state government, the National Native Title Tribunal and the Courts to examine threshold interpretation issues and possible reform of the system to improve the process and legal requirements of proof.	March 2009
PBC case study participants workshop	A workshop for PBC case study participants will be convened to evaluate the tools and recommendations arising from the projects.	April 2009
National meeting of PBCs	A second national meeting of PBCs will be convened to consider findings of the PBC case studies, to become familiar with the PBC tools arising from the project and discuss planning approaches.	June 2009
Other forums	<p>Follow up workshops</p> Where necessary AIATSIS will convene or participate in follow-up workshops or meetings in priority research areas. <p>FaHCSIA Forums</p> AIATSIS will liaise with FaHCSIA to coordinate forums and provide special workshops or sessions at FaHCSIA sponsored CEO, Senior Professional Officer Forums, Field Officers Forums where practicable. <p>Aurora Training Workshops</p> AIATSIS staff will continue to collaborate with Aurora to deliver expert advice to workshops during 08-09.	As required

Activity 6: Native Title Conference

The Conference is the primary professional development and capacity building opportunity for staff working in the native title system and there is evidence to support a direct correlation between attendance at the conference and staff retention in NTRBs.

The Conference will be run on a break even budget (including NTRU staff time). That is, operational expenditure equals income generated, with a subsidy of \$50-75,000 provided by FaHCSIA as part of this funding agreement. FaHCSIA receive recognition as the 'primary sponsor'. The bulk of expenditure is per head conference package for venue and catering.

Developing partnerships with convenors

- NTRU has liaised with NTRBs to identify location and co-convenors for 2009. It is anticipated that the conference will be co-convened with Native Title Services Victoria and held in Melbourne.

Review of conference 2008

- A meeting will be held in September 2008 to review conference planning procedures.

Public conference program

- Continue to engage with a broad range of native title stakeholders, involve key institutions and maintain or exceed target of 50% Indigenous presenters.

NTRB conference program

- Incorporate expertise through specific technical sessions.

Distribution of papers and follow-up

- All presenters will be asked to submit written papers. Indigenous presenters will be targeted and recorded in order to promote publication.

NTRB fellows/visitors and Student internships

AIATSIS will provide occasional short term visiting fellowships, including for NTRB staff, as opportunities for practitioners to critically analyse an issue and reflect on their experience. This program will be pursued during 08-09 as opportunities/funding arises. The NTRU also hosts students involved in the Aurora project and other student internship programs.

Activity Group: Best practice and system analysis – priority projects

AIATSIS is the recognised leader in the conduct of research and analysis of direct relevance to practice and policy in the native title sphere. The activities under 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.

The Best Practice and System Analysis activity group is ongoing for the duration of the agreement, but the details of the priority projects will be determined in accordance with the topical issues most in need of systemic analysis.

Four priority projects have been identified for 2008-09:

- . Prescribed Bodies Corporate
- . Taxation, Trusts and the Distribution of Benefits (includes structuring agreement, corporate design & governance)
- . Compensation and alternative settlements
- . Connection requirements - Threshold and proof

Some activity, including publication of results will continue on two additional projects

- . Indigenous decision-making
- . Native title, land and water

PRIORITY PROJECTS

Activity 7: Prescribed Bodies Corporate

This research project will be continued during 08-09 building on the research base established during 06-08 through workshops and meetings with NTRBs, native title holders (RNTBC representatives) and Australian, State and Territory Government representatives and the commencement of case studies/action research partnerships. The third phase of the project will focus on:

- . Finalising case studies/action research partnerships, with up to 5 PBCs (TSRA/TS PBCs, Djabugay, Patta, Gunditjmarra, Kimberley Traditional Lands Association) 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. This activity is also supported by the Minerals Council of Australia. The case studies may incorporate issues relevant to other research projects, for example Activities 8, 9, 10 & 11;
- . PBC National Meeting
- . PBC case study participant workshop
- . Ongoing engagement with Australian, State & Territory government agencies, including the convening of regular meetings of Commonwealth agencies; and
- . Further development of 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.

Activity 8: Taxation, Trusts and the Distribution of Benefits; structuring and implementation of agreements and corporate design

The second phase of this project 07-08 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.

Outcomes from research and workshops conducted during 06-08 highlighted the need for additional work on corporate structures and governance issues for native title groups

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. During 06-08 the NTRU will develop research

partnerships to examine and assess different corporate structures and governance models for native title claimant and holding groups.

Activity 9: 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.

Activity 10: 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 on threshold and proof issues in March 2009. A final report on this project will be published, incorporating outcomes from this workshop.

ADDITIONAL PROJECTS

Activity 11: 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 on negotiation and agreements.

Activity 12: Native title, land and water management

The NTRU will pursue ongoing research partnerships and planned publications. The NTRU will also seek to enter into new research partnerships with government agencies involved in water and natural resource management for funding for further work in this area.

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 published as part of a research partnership with the Murray Lower Darling Rivers Indigenous Nations (MLDRIN). Ground water has also emerged as 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 completed for publication during this period. 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 Climate Change

Recent discussions between AIATSIS, MLDRIN and CSIRO have mapped out a research agenda on the impacts and opportunities of climate change and ecological change along the Murray River. The project will seek additional funding in order to draw existing Indigenous knowledges of ecologies, climates and resources across the region together Indigenous experience and priorities with the government's agenda on innovation, industry, science and research.

Native Title and Joint-Management of National Parks

Based on research completed as part of the PBC case studies, Ms Bauman will finalise a paper providing a comparative analysis of joint management arrangements for native title holders. Ms Bauman is also involved in research relating to developing good governance in the Gregory National Park, which was subject to native title negotiations in the Northern Territory. This work will be carried out in association with the Northern Territory Parks and Wildlife Service, and the Northern Land Council.