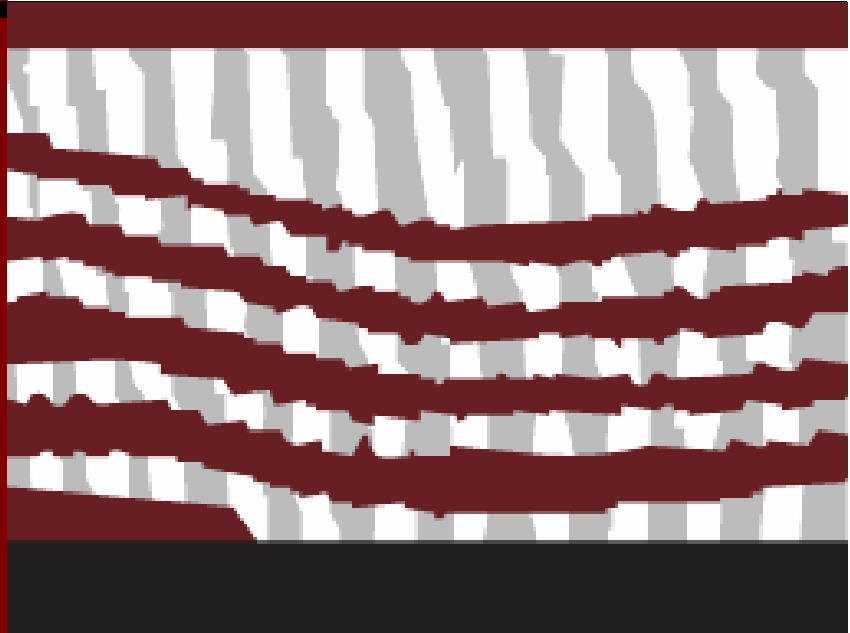


AIATSIS
Native Title Research Unit
Activity Plan 2009-2012



**Native Title Research
and Policy Advice
2009-2012**



Activity Group: Information, Resources and Professional Development

Activity 1: Information Services

Native title in the News	Monthly summaries of news items of relevance of native title delivered to subscriber list electronically and published on the NTRU website. This service collates news items from regional services that are not otherwise easily accessible.
What's New	Monthly compilation of information on native title determinations and related case law; Indigenous land use agreements; significant events; reviews, reforms and inquiries, reports and publications; professional development and employment opportunities, delivered to subscriber list electronically and published on the NTRU website.
Native Title Newsletter	Published six times per year the <i>Newsletter</i> includes information collated for <i>Native title in the news</i> , <i>What's new</i> and the <i>Native title resource guide</i> as well as feature articles on current native title issues, interviews with and articles by Indigenous claimants and holders and distributed both electronically and in hard copy to subscriber list and published on the NTRU website.
Native Title Resource Guide	Annually updated web-based information resource documents providing jurisdictional analysis of native title policy law and outcomes, involving information sharing agreements with key stakeholders. Statistics updated to 31 December each year. This resource will be revised from a website to PDF documents to decrease resources required for the annual update and enable an annual native title overview document to be archived. This will incorporate elements of the proposed native title year in review publication.
Native Title Research Unit Website	Information will be regularly updated and reviewed, including an annual update of broken hyperlinks to improve access to web resources.

Activity 2: Native Title Resources

Indigenous Land Use Agreements summary	A regularly updated summary document of Indigenous Land Use Agreements providing hyperlinks to ILUA information on the NNTT and ATNS websites and highlighting the subject matter covered by each ILUA. Also includes national statistics.
Determinations summary	A regularly updated summary document of native title determinations providing hyperlinks to determination summaries on the NNTT and the ATNS websites and relevant case law on the Australasian Legal Information Institute (Austlii) website. (An additional link to the determination summary information on the Office of Native Title website is also provided for determinations in Western Australia). Also includes national statistics.
Registered Native Title Bodies Corporate summary	A regularly updated summary document of RNTBCs providing details about RNTBC type (agent or trustee) and relevant native title determination information. Additional information about the RNTBC can be accessed through the hyperlinks provided to the Office of the Registrar of Indigenous Corporations (ORIC), the Austlii website (where available); the NNTT and ATNS websites. Also includes national statistics.
Research resources	This activity includes a range of resources created by the NTRU to assist with native title research including research resource pages and annotated bibliographies. The NTRU is currently conducting a review of research

	resources and will modify content and/or formatting to provide better access to and add value to the information provided as required. This may involve amalgamating some resources, and creating new resources.
Annotated case list	An annually updated annotated list of native title cases since the <i>Mabo</i> decision. This resource will be integrated into the proposed native title law/agreements precedents database.
Rights and interests resource	The structure and content of this resource will be modified to provide more detailed information about the rights and interests identified by the Court in successful determinations of native title and may be integrated with 2.4 and 2.5 above.
RNTBC toolkits	Annually updated national, state and territory toolkits providing jurisdictionally specific information about: claimant determinations recognising native title; registered native title bodies corporate; potential funding sources; training providers; networks, organisations and programs that may be useful to RNTBCs; and links to relevant legislation, organisations and publications. The toolkits will be update at least once per year and the NTRU will seek to engage state and territory governments more directly in the provision of information for these resources.
RNTBC profiles	The NTRU will produce profiles for new RNTBCs providing descriptions of each organisation as well as relevant determinations and agreements. Updated or additional information (such as links to agreements or documents provided by RNTBCs) will be added to 'old' profiles as opportunity allows.

Activity 3: Presentations and Publications

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 <i>Land, Rights, Laws: Issues of Native Title</i> Issues Paper Series.
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.
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 peer reviewed and are generally between 20,000 - 40,000 words in length.
Research reports	The NTRU publishes a research report series including workshop and project 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.
Case summaries & analysis	Timely summary or analysis of determinations and procedural cases of precedential value. Depending on length and complexity, may be published in the <i>Native Title Newsletter</i> 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.
External	NTRU research staff may be invited to contribute, or may complete

publications	manuscripts to be published as authored, co-authored or edited books and/or papers to be published as book chapters or journal articles.
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.
Submissions	AIATSIS contributes submissions to Parliamentary inquiries and other review processes relevant to native title. On some occasions representatives of AIATSIS are also requested to appear before such inquiries. Where possible copies of AIATSIS submissions and statements are made available online. Hyperlinks to the relevant inquiries are also provided to enable access to submissions from other stakeholders where available.

Activity 4: Access to AIATSIS collections

Access services	Assisting NTRBs/NTSPS and other native title stakeholders to access native title related information in the AIATSIS collections.
AIATSIS materials listing	Listing of recently catalogued AIATSIS material with relevance to native title prepared for the Native Title Newsletter (6 times per year).
Collections development	The NTRAO contributes to the development of the AIATSIS native title collections through the acquisition of materials; promoting deposit of materials into the AIATSIS collections; working with Library staff on priorities for digitisation and; the enhancement of collection records.
Native Title Collections Management Assistance	The NTRAO will assist NTRBs and NTSPs with their collection management by facilitating access to AIATSIS and other institutional expertise.
Native Title Collections Management Assessment	On request from NTRBs/NTSPS the NTRAO may assess up to two (2) NTRBs/NTSPs native title collections per year and develop recommendations for collections management.
Native Title Collections Management Training	In partnership with the AIATSIS AVA and Library and in collaboration with other archive institutions such as the National Film and Sound Archive and the National Archives of Australia, the NTRAO could assist in providing a basic training program for NTRB/NTSP staff in principles and practice of collections management, hosted by the AIATSIS NTRAO in Canberra. Direct costs to be paid by participating NTRB/NTSP.

Activity 5: Technical workshops

NTRU workshops/forums	<p>The NTRU will convene or co-convene/co-ordinate up to three (3) workshops/forums each year at low cost/contribution. These will be finalised following confirmation of research activities for each financial year, but may include:</p> <ul style="list-style-type: none"> ▪ 'Connection' in southern Australia ▪ Broader land settlements ▪ Economic development
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FaHCSIA Forums	The NTRU will liaise with FaHCSIA to coordinate forums and provide special workshops or sessions at FaHCSIA sponsored CEO, Senior Professional Officer Forums, Field Officers or other forums where practicable.
Aurora Training Workshops	The NTRU will continue to collaborate with the Aurora Project providing specialist advice and /or sessions in training programs/workshops.

Activity 6: Native Title Conference

Public conference program	Development and delivery of a public conference program that engages with a broad range of native title stakeholders, involves key institutions, provides for Indigenous only sessions and maintains or exceeds a target of 50% Indigenous presenters.
NTRB conference program	Development and delivery of a NTRB/NTSP conference program that addresses priority issues in native title practice and incorporates expertise through specific technical sessions.
Indigenous program	The Indigenous Talking Circles are an important part of the conference program. These sessions provide an opportunity for Indigenous delegates to talk among themselves about the impact of the native title process on their communities. The sessions are not open to non-Indigenous delegates.
Cultural program	The cultural program includes Indigenous dance and music performance; art and craft exhibitions as well as a welcome to country for Native Title Conference delegates. The cultural program highlights the culture of the local conference hosts. This program may also include a trade fair where artworks, crafts, publications and other items are available for purchase
Distribution of papers and follow-up	All presenters in open sessions are asked to submit written papers. All papers made available to the NTRU will be published on the Conference website.

Activity 7: Indigenous fellows/visitors, NTRB/NTSP secondments and student internships

NTRU internships	The NTRU will continue to offer placements to Aurora interns and participate in other internship programs as requested.
Indigenous fellows/visitors & NTRB/NTSP secondments	The NTRU will continue to identify opportunities and potential funding sources to support Indigenous fellows/visitors & NTRB/NTSP secondments.

Activity Group: Best practice and system analysis – priority projects

Summary of research activities

Broader land settlements

The Commonwealth Attorney General has signalled the need for developing innovative policy options for progressing broader and/or regional land settlements that complement the *Native Title Act 1993 (Cth)* and the work of the Federal Court of Australia. It has established a Joint Working Group on Indigenous Land Settlements to report at the 2009 Native Title Minister's Meeting.

This project aims to address the relevant objectives of:

- developing principles or best practice models to support flexible non-technical approaches to settling native title claims;
- developing appropriate minimum threshold for proof of connection in broader/alternative land settlements;
- developing understanding of the notion of 'right people for country' for broader/alternative land settlements;
- analysing the frameworks developed in Victoria and other state government policies;
- examining the implementation of broader land settlements such as Yalanji and Gunditjmara and sharing lessons learned about ways to ensure the delivery of practical, sustainable benefits through native title settlements;
- developing initiatives to overcome impediments to the resolution of native title matters, including the resolution of overlapping claims; and
- analysing native title compensation issues within the context of broader land settlements.

The project will involve the production of an annotated bibliography of existing research materials concerning broader/regional agreements and agreement-making.

The project will also involve a series of workshops and conference sessions, beginning with an examination of appropriate connection approaches for southern Australia.

Prescribed bodies corporate

The AIATSIS PBC project (2006-2009) focused on identification of aspirations of PBCs, planning to meet identified aspirations, structures for governance, and transition to CATSI Act. This research program will focus on consolidating outcomes from case study research and policy recommendations for the PBCs sector, including greater involvement of the States and Territories.

Research priorities include:

- developing integrated community planning and development models that engage PBCs at the outset to overcome perceptions of native title as impediment to development;
- Analysing the potential role of PBCs in regional governance, particularly in the light of regional mega-Shire Councils in the NT and QLD;
- Examining partnerships with industry and/or state governments to engage PBCs in service provision;
- Identifying factors contributing to PBC sustainability or failure; and
- Examining native title and broader community education/communication strategies and PBC membership responsibilities.

The project will also include continued Government stakeholder meetings etc and participation in regional and State RNTBC meetings.

Native title policy

1. Native Title Funding: The 2009-10 budget resulted in a significant increase in funding for the native title sector, specifically to improve the capacity of the NTRB/NTSPs. This project will review the impact of additional funding for the NTRB/NTSP sector.

The research process will require

- Collection of base line qualitative and quantitative data on the expected impact of additional resources in the NTRB sector, looking at the intended use and benefit of such resources;
- Periodic review of outcomes and any measurable improvements against baseline expectations;
- Analysis of any change in the performance of the system over time; and
- Recommendations for future funding needs.

2. Contributions to policy debates, inquiries and reviews: Research and analysis will be conducted on topical native title policy issues and engagement in policy review and reform processes through submissions and participation in relevant fora and the provision of policy advice and recommendations.

Economic development & business planning

In her 2008 Mabo Lecture Minister Macklin identified native title as critical to Indigenous economic development and the Australian Government recognises that properly structured property rights to land are a key component of expanding commercial and economic opportunities for Indigenous Australians. This project examines the current barriers and opportunities that native title offers for Indigenous economic development through:

- Analysis of restrictions on economic development in native title context, including assumptions about tenure, and the leveraging opportunities of exclusive and non-exclusive native title. This analysis will be contextualised by development and governance discourses.
- Examination of native title holder preferences for matching environmental-economic development opportunities, including government policy and program innovations around ecologically sustainable development. For example, the 2006-2009 AIATSIS PBC Project identified the Indigenous Protected Areas program (Department of Environment Water Heritage and the Arts) as a key program for native title holders. This research will also include the creation of a map to document the expanding overlap between IPAs and RNTBCs, as well as an annotated bibliography.
- Exploring issues relating to leveraging finance and business promotion.
- Examination of issues related to accumulation and personal wealth creation.
- Examination of mobility and regional economies/diaspora interests in native title land.
- Building on tax research examining options for corporate design of native title entities and PBC case study workshops provide analysis and recommendations in relation to business planning.

Mediation and negotiation

1. Negotiation: The nature of the negotiation process in native title agreement making is critical to the success and sustainability of the agreements. This Project builds on the research of the Indigenous Facilitation and Mediation Project (2003-2006) and the Negotiation Workshop held in 2009. In partnership with the Kimberley Land Council (KLC) and negotiation expert Ciaran O'Faircheallaigh, the project will include:

- identifying good practice negotiation;
- developing materials for NTRBs around negotiating native title agreements; and
- 1-2 day workshop with traditional owners and NTRB staff.

The KLC has offered to provide their collection/archive of material regarding negotiations for development as an accessible 'hands-on package' for other NTRBs and Traditional Owners

in entering negotiations.

The NTRU will also seek pro bono contributions from high profile mainstream negotiation experts to participate in a workshop with CEOs.

2. Anthropology in mediation and dispute: Anthropologists often approach their work as having concluded once appropriate native title holder groups have been identified and 'connection' has been established. However, anthropology has much to offer in its application to decision-making and dispute management. This project will analyse the role of anthropology and anthropologists in agreement-making and identify best practice in doing so.

3. Mediation in the Federal Court: The Project will describe and evaluate new approaches to decision-making and dispute management which may be introduced by the Federal Court in its new role under the NTA.

Native title jurisprudence

Monitoring and analysis of native title jurisprudence including the publication of detailed case notes and engagement with legislative review and reform processes.

Native title, land and water

1. Water: The National Water Initiative notionally recognises the need to recognise native title rights and interests in water when determining allocation and privatisation of water. To date, no state water allocation and management system includes specific provision for native title 'uses'. Current processes, such as the La Grange basin consultation are establishing processes and protocols that will become future norms. This project will examine native title aspects of the water privatisation and management debates, including:

- Analysis of water rights and interests under existing native title determinations and their appropriate treatment under the National Water Initiative;
- Critique of the NTA treatment of water in the context of current water management and privatisation schemes
- Assessment of the appropriate prioritisation of water uses on native title land;
- Analysis of ongoing debate around the notion of 'cultural flows' and connection to the maintenance and enjoyment of native title rights and interests;
- Analysis and recommendations in relation to land and water management as enjoyment of native title.
- Contribution to debates on ecological approaches to land and water management; and
- Document best practise examples of this activity and develop recommendations for state and Commonwealth government policy and practice.

2. Native title and joint management: The NTRU has completed resources for its web site to be posted by 30 June which describe joint management arrangements of conservation areas in the States and Territories that have been achieved through native title. The documentation has revealed significant inequities across and within these arrangements. This project will;

- provide a national comparative analysis of the data on joint/cooperative management outcomes from native title; and
- develop best practice standards for co-operative or joint management arrangements of conservation areas.

3. Climate Change: The NTRU will continue to monitor debates surrounding the impact or opportunities of climate change for the native title sector, including economic opportunities, market environmentalism and the provision of environmental services.

Land tenure

Native title was recognised by the High Court as a valuable property right that was accorded protection by the common law on the principle of non-discrimination. Over the past 15 years

native title has not been successfully incorporated into state property regimes and is not well understood by land administrators. This project will explore the complexity of native title in relation to Australian tenures, including:

- Analysis and recommendations in relation to the incorporation of native title in to property and land tenure regimes in Australia;
- A critical examination of 'tenure resolution' and 'tenure reform' and the limits of native title as property;
- An examination of proposals to develop an Indigenous tenure in WA and the implementation of Indigenous tenures in Qld;
- Analysis of common law legal protection of native title, such as trespass; and
- Analysis of the challenges of 'consistent' tenures including issues involving resident Indigenous communities, community development, community benefit and compensation.

Reversal of the onus of burden of proof

Robert French, Chief Justice of the High Court, has publicly promoted the idea of a reversal of the onus of proof of connection to claim respondents from the native title applicants. Other proposals in relation to proof and continuity have also been put forward. This Project will consider the implications of these proposals, including:

- Analysing the effects of an inference or reversal of onus on the conduct of proceedings;
- Assessing the impact of changes on the approach of respondent parties to the settlement of claims;
- Implications for the management of disputes amongst native title groups; and
- And consideration of options and challenges for implementation.

Activity Group: Best practice and system analysis – priority pilot project

Agreement precedents and legal resources

Building on the existing resources compiled by AIATSIS and, more recently, work carried out in relation to joint management agreements, the NTRU proposes to develop a new agreement benchmarking and precedents resource. The project will respond to demands from NTRB/NTSPs for a database of agreement precedents and case analysis for use by NTRB/NTSPs. These resources would be developed in collaboration with Aurora, ATNS Project and NTRBs/NTSPs. The project will involve:

- an initial consultation and design phase
- travel to NTRB/NTSPs to examine to examine and collect agreements/provisions
- analysis of precedential value, good practice examples