

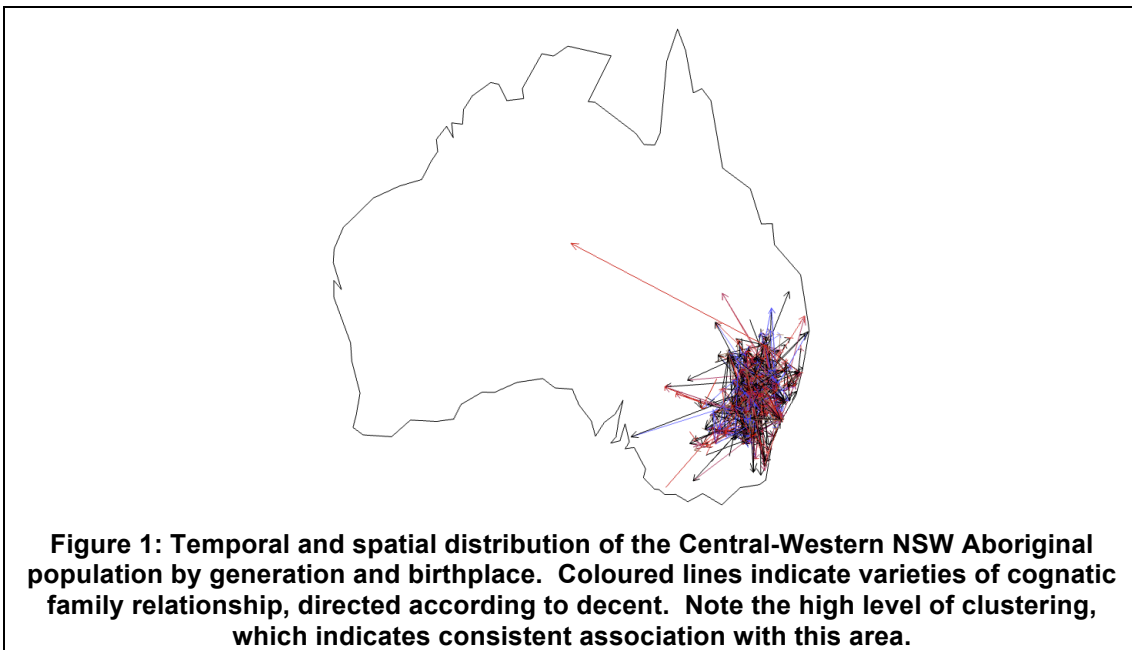
Native Title Research: What More Can Be Done?

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I want to thank the people who gave up their lives and their land for me to be here today. As a descendant of colonists and therefore a colonist myself, I owe this gratitude to the people who were here before my ancestors arrived and who sacrificed so much to them.



INTROUCTION

Anthropological research conducted in the course of executing Australia's Native Title Act¹ (NTA) generates a large volume of longitudinal data on Indigenous health, education and employment dynamics. This data represents a valuable resource for organisations that work to redress Indigenous disadvantage in these areas. However the application of native title research data to this important task is hampered by pre-defined features of the NTA, as well as by administrative conventions of the organisations that execute it. Among the most malignant of these features is a preference towards the contracting of consultant anthropologists in such a manner that the only tangible products of their work are a report, genealogy and notebooks. Legible, digitally usable data collected by anthropologists is rarely submitted together with the conclusive products of their research, and the value of these products tends to be disregarded after the resolution of the native title claims for which they were commissioned. There is an argument that 'in-house' anthropologists employed internally by native title representative bodies ('rep bodies')² are better placed to accrue research data with longer-term value and broader, non-native title applications, because such researchers

¹ Native Title Act 1993 (Commonwealth): http://www.austlii.edu.au/au/legis/cth/consol_act/nta1993187/

² Native Title Representative Bodies and Service Providers ('rep bodies') are organizations designated by the terms of the Native Title Act. They are funded by the federal government to provide expert, legal, administrative and financial support to potential native title claimants who meet the necessary criteria (<http://www.ntrb.net>).

maintain access to and contextual understanding of the data's relevance. Irrespective of the merits of this argument, rep bodies that rely on external consultants typically subordinate internal staff to those consultants, undermining their potential contributions. This paper argues that it is the management of information, rather than a management of staff expressed by a preference for either consultant or in-house anthropologists, that determines rep bodies' ability to apply their research data to broader health, education and employment outcomes for Indigenous Australians. Over the last 18 months NTSCORP has been utilizing its extensive and well-documented relational database on family history and population dynamics (see Rose 2006, 2007, 2008a, 2008b, 2009a, 2009b, 2010a, 2010b) to assist Aboriginal health service providers throughout south-eastern Australia. We now have a number of informal partners from outside the native title industry, including drug and alcohol rehabilitation, stolen generation support, domestic violence remediation and other services. These cooperative partnerships illustrate how data's value can be sustained and expanded beyond the narrow legal-administrative life of individual native title claims.

DUPLICATIVE RESEARCH AND DATA SILOS

The issues surrounding the management of native title research data crystallize into two questions which emerge from, and can be solved by, the radically altered technological landscape that has evolved over the 18 years since the NTA's inception:

1. Given that 18 years is inarguably enough time to collect the data necessary to prove the existence native title throughout Australia, what role do social anthropologists continue to play in the industry?
2. Given that social anthropologists *have* been conducting continuous research for the last 18 years, why is the bulk of the collected data residing in paper-form in filing cabinets and document boxes in numerous physical locations around Australia, inaccessible not only to other native title anthropologists working on related claims, but practically inaccessible also to native title claimants themselves.

In this paper I will propose the following two answers to these questions:

In answer to the first, I argue that we anthropologists are still beavering away in the native title industry because representative bodies, the Federal Court, the National Native Title Tribunal and various crown solicitors keep asking us to perform the same tasks over and over again. This is not a malevolent plan devised to slow to a grinding halt, via duplication, the progress of evidence collection and analysis. Rather it is a problem that is built into the competitive and litigious character of the NTA itself, an act which is based on an administrative model that was favoured by the Australian government of 1993, before the information revolution had occurred and before we understood the meaning or potential of research techniques such as crowd-sourcing and cloud computing. The era of the NTA's inception was one in which the internet did not exist in Australia, in which information was treated in terms of discrete units, and in which those actors with the most legal- and market-effective units of information could prevail in terms of a native title outcome. But beyond the administrative walls of the native title industry, this era has passed. Today we understand the potential power of information sharing more clearly than ever, so why would we *not* encourage the distribution of that information among the service providers whose job it is to support Indigenous advancement?

The answer to the second question follows from the first. The inaccessible and duplicative research that emerges from the current process negatively affects not just the decision-making of courts and tribunals, but also the efficiency of representative bodies themselves. Native title service providers will often commission multiple anthropological reports which review the same literature, document the same genealogies, and refer to multiple interviews with the same claimants, but with inconsistent rigour and clarity and consequently at great cost to government, corporate stakeholders as well as clients, both in terms of time and money. This is inevitably due to one or both of two collective failings: Either, the information collected for and contained within each anthropological report is siloed behind so-called 'Chinese-walls', based on out-dated and misdirected concepts borrowed from legal

firm administration, where legal privilege requires lawyers to keep from each other documents which might actually assist the others' cases. Or, more frequently, rep bodies do not possess the technology and in-house expertise to organise the research which they have previously commissioned, in such a way that it might be quickly and accurately accessed and deployed when new, related claims and negotiations need to be set in motion. Irrespective of whether this siloing is deliberate or accidental, this 'locking-up' of extremely valuable information hampers the support which native title research could be lending to Indigenous health, education and employment programmes, not to mention native title outcomes.

RESEARCH COMPETITION IN THE ERA OF CROWD-SOURCING AND CLOUD COMPUTING

As several authors have pointed out (see particularly Ritter 2009), the federal government's intention in establishing multiple rep bodies around Australia and even within each state and territory, was to generate competition between them and to encourage the best performing in attracting more clients, higher skilled employees and more funding. The successful organizations would also expand along business lines to fill areas of the native title 'market' where others were not providing an effective service, it was thought. This same business model applied not just to rep bodies but also to prescribed bodies corporate (PBCs)³, set up following successful claims in order to administer the proceeds. In both applications the failures of this model have been well documented. Following an AIATSIS-sponsored 2006 PBC workshop, the Institute's NTRU Director Lisa Strelein and PBC Project Officer Tran Tran reported in 2007 that:

“One proposal [for dealing with these failures] was for a dedicated PBC support service to be established in order to assist all PBCs through capacity building and providing expert advice. The support service could also enable the pooling of resources and promote opportunities for communication and networking. However, there is a risk that a third order of organisations may lead to an increase in competition for scarce resources (including qualified staff) within the native title system” (Strelein & Tran 2007:19).

Speaking of the benefit of a parallel research support facility, at a FaCSIA-sponsored SPO workshop in 2008, Indigenous Programs Manager Greg Roche imagined the benefit of a centralized 'flying squad' of experienced and certified native title anthropologists that could be called upon by rep bodies with confidence in the quality of the expert advice they would be received⁴. This kind of arrangement, Greg recognized, would reduce the risk posed to rep bodies with potentially insufficient knowledge about how to attract and retain the best consultants for any given claim.

These arguably good ideas share a theme: They identify major inconsistencies in the flow of information across the native title industry. They also propose some form of centralized support service that might ensure reliable delivery of this information when and where it is needed. At the same time, in Strelein & Tran's case, they recognize the associated risk of inflating the bureaucratic wastage that already plagues native title service providers.

So why develop a new layer of bureaucracy at all? Why not take the data, skills and experience that already exist in the industry and redistribute them? The answer is built into the original thinking behind and consequent ethos of the act itself, which stems from a competition paradigm. Competition is of course antithetical to cooperation. An act of legislation that enshrines competition and adversarial interaction cannot also effectively encourage cooperation. Competition works in a market because it rewards success and imposes negative pressure on failure. This is tolerable when the costs of failure are not socialized and the only result is a loss in profit. However, when failure *is* socialized, and results in a section of the population being refused a benefit that might have otherwise seen its children being educated and propelled into a comparatively happy and stable life, then the adversarial model is demonstrably unsuitable.

³[http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenoulawandnativetitle_Nativetitle_Prescribedbodiescorporate\(PBCs\)](http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenoulawandnativetitle_Nativetitle_Prescribedbodiescorporate(PBCs))

⁴ Senior Professional Officers' Forum held in Coogee, NSW on 4 March 2008.

How can these failures be addressed without succumbing to the inflationary risks posed by centralization? The answer is: by a cooperative network. It is not necessary to have a new organization or layer of bureaucracy to get information flowing within and between rep bodies. All that is necessary is the appropriate network design. Networks are made up of relationships between entities. Sometimes, especially in the dynamic administrative world inhabited by rep bodies, it is difficult to maintain inter-organizational relationships that depend on key figures within each organization. When these figures move on, as employees inevitably do, the relationships that depend on them often dissolve. This is not a flaw of the network paradigm as a whole, but rather a weakness in the current network design. If a beneficial network is weakened by an unintended dependence on a small number of key figures, then it must be redesigned to accommodate variability in staffing arrangements. A good example is the way in which the NTSCORP Research Unit deploys research interns coming through the Aurora training program⁵. When a new research intern starts with us they are allocated a limited-access security account on our research database and immediately put to work transcribing data. In this way the interns are not dependent upon me or my senior research colleagues in order to become immediately productive. This is because the network-based design of the database facilitates interns' inherent ability to review and contribute new information according to an obvious predefined relevance. The same principals apply to inter-organizational cooperation. If the relationships that facilitate information sharing are built in to organizational structure rather than left to depend on personal initiative, those relationships will survive staffing changes and the organizations will continue to evolve independently of their constituent employees.

In NSW, this network approach to research has been extended beyond the limits of our own rep body, to include NSW Link-Up, Albury-Wodonga Aboriginal Health Service, Griffith Aboriginal Medical Centre, Port Stephens Family Support Services, as well as the federal government agency, the Australian Institute of Health & Welfare (AIHW). In this collaborative network, our research staff are able to provide instant advice to external researchers who have hit road-blocks in the support they are attempting to offer their clients. The information that these 'third party' researchers are able to contribute in the course of seeking further support for their clients then feeds back into the NTSCORP research network, so that when new potential clients contact our research unit in the future, we are able to provide them with information about their personal ancestry and potential native title rights that we might not have known about otherwise.

This is an example of crowd-sourcing combined with cloud computing. Crowd-sourcing is a technique of information collection that decentralizes the task away from individual researchers, and allows users of a system to contribute the information themselves with a view to increasing collective benefit and reducing individual workload. It is a technique widely used on the Internet, the most powerful examples being Wikipedia and Twitter, where individuals share information with each other according to overlapping demand for detail, relevance and privacy. Cloud-computing is a risk-reduction mechanism that allows information to be placed on a network, either local or web-based, and either restricted or public, so that that information can be both perpetually accessible in time, even if the original repository is lost or destroyed, and omnipotent in geographic space, so that it can be contributed to and accessed from any computer with an internet connection.

This network approach to information sharing has now become so technically reliable and streamlined that it could be rolled out to all rep bodies today, if organisations were willing to participate. The information that could flow across the network need not be limited to native title applications. To give one example, contained in the many thousands of death certificates that NTSCORP has collected in the course of genealogical modelling, there is over 150 years worth of epidemiological information that could contribute to the design of Aboriginal health programs in NSW. This is the basis of our relationship with the AIHW, which is seeking to improve its validation of Indigenous mortality statistics using publicly available sources such as the records collected by NTSCORP. Similarly large volumes of historical education and

⁵ Aurora: <http://www.auroraproject.com.au/aboutaurora>

employment data exist in the thousands of digitized and indexed mission, school, pastoral station and prison records contained in the NTSCORP research database.

But the myriad benefits to the native title process would be even more obvious the audience here today. These would apply firstly in border regions between neighbouring states, where rep bodies need to collaborate in order to manage overlapping claims and shared clients. Rather than relying on two discrete information sets, the two rep bodies could draw on a single resource as a basis for joint-managing their respective claims. Secondly, and more spectacularly, such a shared research network could apply to the whole of Australia. If we return to the original application, of genealogies alone, there is no technical reason preventing a single genealogy from documenting the whole of the First Australian population. If such a genealogy were modelled geospatially, as it already has been for NSW (see sample representation in Figure 1), it would very quickly demonstrate ongoing physical connection to country for all Indigenous people through their genealogical and geographic cohesion – currently one of the core legal thresholds for native title recognition (see particularly Rose 2010b). In the prevailing process by contrast, continuous physical association and social cohesion are typically lumped together in ad hoc models which, because of their unreliability, are subsumed within a large bundle of other more ambiguous tests, each of which is hammered out in a similarly ad-hoc manner on a case-by-case basis in areas as small as a few square kilometres. The results are often unnecessary and acrimonious disputes among claimants over claim ‘borders’ and exclusive rights to particular ancestors. If a single crowd-sourced and cloud-based genealogy existed for the entire continent, there would be no need to endure this laborious legal exercise. A network of contributing rep bodies could quite easily compile, maintain and expand a single genealogy which could be quickly and simply cross-checked each time a new claim or round of negotiations needed to be initiated.

CONCLUSION: TWO KINDS OF PROBLEM ON THE FRONT LINE

Rep bodies thus face two related problems, whose magnitudes vary depending on whether they rely on in-house or consultant anthropologists: in the first instance they are often caught in a trap of having to commission multiple reports very similar in content and findings, over and over again, because of artificial barriers to internal communication – so-called ‘Chinese walls’. In the latter instance, they are stuck with a procedural arrangement that prevents them from pooling and reusing data already collected by often junior staff, because the research conducted by the consultant anthropologists is presumed to be overwhelmingly superior. When I joined NTSCORP in 2005, the company’s research policy may have been characterised as in transition from a dependence on consultant anthropologists to a dependence on in-house research conducted by full-time anthropologists and historians who were part of the company itself. Since then, under the direction of Research Head Ken Lum, we have had the opportunity to complete the research for the whole of NSW as well as parts of southern QLD and northern VIC. We have successfully mapped and modelled the ancestry of almost the entire Aboriginal population of the state of NSW. This allows NTSCORP to accurately model, according to native title convention, the apical ancestors for any given claimant group at extremely short notice on solid evidentiary grounds. We achieved this using a combination of two strategies: first, by digitizing and indexing all previously completed consultant research, including reports and genealogies, and by initiating several rounds of more detailed ‘gap-filling’ research, not previously conducted by consultants or any published anthropologists working in NSW. Simultaneously, we began offering free genealogical research services to any Aboriginal people whose ancestry has already been documented, irrespective of whether they are claimants or not. We are also in the somewhat rare and extremely helpful position at NTSCORP, of having the research unit completely separated from legal administration. This allows us the true independence necessary for the provision of coherent and consistent advice to solicitors, and prevents the construction of artificial barriers in the flow of information, both within the organization and between NTSCORP and its clients.

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