



CENTRE FOR NATIVE TITLE ANTHROPOLOGY

WRITING ABOUT CONNECTION

Thursday 22nd and Friday 23rd March, 2012

The Women's College
College Road, University of Queensland

Workshop Program

DAY 1

THURSDAY 22ND MARCH, 2012

8:30-9:00 Arrival Tea and Coffee

9:00-9:30 **Welcome and Introductions**

Nicolas Peterson
Director, Centre for Native Title Anthropology, ANU

David Trigger
School of Social Science, University of Queensland

9:30-10:15 **Session 1: Writing within a policy environment, a national snapshot**

Pamela McGrath, Research Officer CNTA

This session provides a state-by-state summary of current state government and NTRB policies and approaches towards the researching of native title claims across the country. Drawing on the experience and knowledge from among workshop participants, this session explores the value different stakeholders within various jurisdictions currently attribute to written anthropological evidence when attempting to resolve native title claims.

10:15-10:45 **Session 2: Writing to a legal brief (1)**

David Martin, Anthropol Consulting

There are significant differences between writing anthropology (e.g. for a professional journal) and writing an anthropological report to meet the complex requirements of native title law and State and

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Territory policy frameworks. This presentation and the following one aim to inform early-career anthropologists about some of these differences, since while they may not necessarily be involved in writing them, earlier career anthropologists in NTRBs or NTSPs may have purview of or be asked to review reports by other anthropologists. The presentations focus on key requirements in expert reports around such factors as the nexus between ethnography, the conclusions to be derived from it, and the reasoning by which those conclusions are reached; the writing style and report structure utilized; the relevance and utility of social-scientific models; and the use of the 'canonical' texts of Radcliffe Brown, Elkin, Tindale et al.

10:45-11:15 Morning Tea

11:15-12:45 Session 3: Writing to a legal brief (2)

David Martin
Pamela McGrath

The session continues from the preceding one. There is also a discussion of certain differences between writing a 'connection report' (and preparing other ancillary materials) for (in the first instance) the relevant State or Territory government for consideration in reaching a consent determination, and writing an 'expert report' for the purposes of litigation. Important differences in how 'connection' and 'expert' reports are assessed are also addressed.

This session draws on various examples of native title report briefs and contents pages, to further elucidate effective ways of writing and structuring reports in order to address the ethnographic reality of Aboriginal life worlds while meeting the expectations of legal briefs.

12:45-1:30 Lunch

1:30-3:00 Session 4: Writing about Contemporary Laws and Customs

Kingsley Palmer, Appleby Consulting
Expert Reports: Authors and Others

This paper examines issues of authorship and research in the context of contested native title claims or disputes that develop between indigenous parties in relation to a claim. A difficulty facing many Representative Bodies is a practical one: given the huge work load and the limited availability of suitably qualified senior consultants how can expert reports be prepared? Kingsley examines some of the implications for those who are involved in researching a claim or other native title inquiry. Drawing on the example of the Single Noongar Claim (Western Australia) and the production of the expert anthropological report filed on behalf of the applicants in this case, he considers the vulnerability to discovery and consequential involvement in litigation of co-researchers and the undesirability of having multiple experts giving evidence for the claimants. He then discusses how some of these difficulties may be obviated through careful research planning, the prior definition of roles and subsequent robust co-authorship arrangements.

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Lee Sackett, Consultant Anthropologist/University of Queensland

Making sense of laws and customs for the Matu-Yankunytjatjara Claim

Using material researched and assembled for a connection report on the Antakirinja Matu-Yankunytjatjara Native Title Claim (Determined in 2011), I relate how I went about making sense of, and writing up, the differing past and present interpretations and perspectives regarding laws and customs relating to rights and interests in country. In the event, the differing interpretations and perspectives were three in number. First, there were the differing interpretations arrived at by earlier researchers, AP Elkin, Norman Tindale, Annette Hamilton and Robert Layton among them. Second, there were the differing perspectives held and put forth, sometimes quite forcefully, by claimants and their immediate forebears. Third, there were differences between the ethnographic record, on the one hand, and claimants' statements about contemporary law and custom, on the other.

3:00-3:30 Afternoon Tea

3:30-5:00 **Session 5: Writing About Change**

Sally Babidge, University of Queensland

Writing about Significant Social Change

Shifts apparent in national legal and judicial opinion are relevant to a consideration of writing about tradition, continuity, and change. Recent challenges to the Native Title Act 1993 (NTA) such as the Native Title Amendment (Reform) Bill 2011, have sought to reform the NTA (especially proposals at 61AA) in order to address its shortcomings, most especially meeting the promises of the preamble. While the Bill has not been successful, statements and public comment by former Federal Court Judges, the Chief Justice and the Attorney General (all in 2009), have also criticised the NTA in regard to matters of 'the burden of proof' and unnecessary emphasis on 'pre-sovereignty' as the high watermark of tradition. Such national comment may be considered relevant to the interpretation of the requirements at section 223 of the NTA and thus to the ways in which we approach this section of anthropology reports. However, while national opinion may be shifting, the problem remains that in order to meet the current demands of section 223, talk of change must not veer too far from evidence of continuity. Sally will discuss the ways in which she has approached the explanation of social change in regard to one connection report produced in the last couple of years. She will discuss how she approached the intersecting methodological problems of protracted research time, claimant geographical spread, and many claimants' limited physical connection to or experiential knowledge of country.

David Trigger

Issues of change and succession in the Waanyi native title claim

Change and continuity in native title matters commonly involves geographic movement into territories previously mapped as the country of another group. Issues arising for the researcher include whether such change can be regarded as licit succession in terms of traditional custom and law. If so what is the relevant society for native title purposes? How do we know when succession is completed? How do we deal with strategic amnesia in regard to the histories of such changes? David explores these issues through the example of the Waanyi native title claim.

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DAY 2

FRIDAY 23RD MARCH, 2012

9:00-9:30 **Reflection on Day 1 discussions**

Pamela McGrath

9:30-10:45 **Session 6: Value-adding to Writing**

Nicolas Peterson

Pamela McGrath

This participatory session explores a range of strategies that authors can deploy in order to improve the quality and accessibility of their written work, to the benefit of all involved. Drawing on examples from their own work, Nic and Pam will facilitate a discussion about the use of maps, images, genealogies in reports, and discuss the importance of copy editing, proofing and peer reviewing.

10:45-11:15 Morning Tea

11:15-12:45 **Session 7: Writing About 'Society'**

Tony Redmond, Consultant Anthropologist

'Society' in Flux

Many of the outstanding native title claims across Australia were originally conceptualised in terms of the level at which rights and interests in land are exercised by groupings of claimants at a range of scales, rather than the level at which the body of law and custom legitimating those rights and interests is held and reproduced. Claimants, Native Title Representative Bodies and respondent parties have continued to struggle with reconciling the various levels at which Aboriginal groups coalesce and become differentiated from one another. Since the Yorta Yorta High Court decision in 2002, Indigenous Australians claiming native title under the Native Title Act 1993 (Cth) have had to demonstrate that their current 'society' is the same society as that which existed at the time of colonisation. Since the rights and interests in land and waters that can be recognised under the NTA are said to stem from the 'laws and customs' of the society that was in existence at sovereignty a lot hinges on how 'society' is understood. What emerges strongly from the ethnographic record is that traditional Aboriginal societies contracted and expanded in different contexts. In this presentation Tony demonstrates how to define native title societies in a way which adequately acknowledges this fact.

Ray Wood, Consultant Anthropologist

'Society' as Networked Groups

Despite the simplicity of the Court's definition of a native title society as "united in and by laws and customs" (Yorta Yorta FC [49]) and from which these laws and customs "arise", identification of the claimants' society has become problematized, with courtroom battles fought over whether a case involves a single large society or multiple small societies. Consultancy briefs often ask anthropologists to show that a claimant group of ten families is a complete society, or the 'tribe' it identifies with is, or, more recently, to identify a cultural bloc as the society. All these approaches are misleading: e.g. small claimant groups may be "united in and by laws and customs" but are never alone the site in which

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these laws and customs are reproduced (“arise”). Some cultural blocs may fit the Court’s definition, but the functional society of many groups is either not culturally homogenous or is smaller than any such bloc. In this paper Ray argues that the focus instead needs to be on the active network of groups with which the claimants are engaged. It is by such transactional activity, and not in common rules alone, that a group’s network is united by laws and customs, and so is its functional society.

12:45-1:30 Lunch

1:30-3:00 **Session 8: Writing about Conflict and Contradiction**

Nic Peterson

Who owns the ACT?

This case study will examine how Nic went about compiling a report for the ACT Chief Minister’s Department in relation to a highly conflicted native title claim application over the ACT in 1998. Conflict over who are the traditional owners of the ACT area has been very public for many years with the divergent views of the main parties aired in the local press on many occasions. For institutions in the ACT, a day-to-day practical problem has been, who to invite for a welcome to country, as representatives of the two main groups will not share the same platform and complain if a person from the other group is invited. Such is the conflict that the ANU, which several years ago issued an instruction to staff to have a welcome to country at all public events acknowledging the Ngun(n)awal, has now, on the advice of the National Centre for Indigenous Studies, reissued its advice instructing us not to mention the Ngun(n)awal but just that the event is being held on Aboriginal land. Today the situation is even more complicated than it was in 1998 and nowhere nearer solution. In this presentation Nic explains the methodology he used to compile his report and talks about the sources of conflict and the difficulties around resolving them.

John Morton, Consultant Anthropologist

Writing about Conflict and Contradiction: a Victorian Example

Native title claims are rarely conflict free, especially in relation to claim group composition, and some disputes about group membership may be so intractable that they appear to threaten the very survival of claims. Yet conflict and contradiction are intrinsic to social life, so anthropologists should be well equipped to deal with them in their writing. Even if claim groups have to be defined as 'normatively united bodies', there is always scope to describe and analyse situations where traditional principles conflict or claimants disagree about legitimate customary practice. To illustrate this matter I discuss one particular dispute (relating to a Victorian claim) and the strategies I employed in addressing it across three reports completed in rapidly changing contexts between 2006 and 2009.

3:00-3:30 Afternoon Tea

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3:30-4:30 **Session 9: Connection Research Afterlives**

David Martin
Pam McGrath

This session aims to explore possible uses for connection research and reports and associated anthropological knowledge (including the usefulness of the authoring anthropologist) following a determination of native title. These factors may vary between cases where a determination has been reached by consent, and where it has involved litigation. The discussion will include the opportunities and constraints associated with returning material to claimants following a determination, strategies for the protection and dissemination of material, and the application of anthropological knowledge gained through connection research in other contexts, such as Aboriginal governance and community development and natural resource management schemes.

4:30-5:00 **Closing Remarks**

Nic Peterson
Pam McGrath

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Presenters' Biographies

Dr. David Fernandes Martin

David Martin is an applied anthropologist working through Anthropos Consulting and a visiting scholar at the School of Archaeology and Anthropology at the ANU. He was previously a Visiting Fellow at the Centre for Aboriginal Economic Policy Research (CAEPR), and for a decade prior to that a Research Fellow there. He has provided policy advice on settling native title claims and undertaken reviews of connection reports for Native Title Representative Bodies as well as for government agencies in Western Australia, South Australia and Victoria. He has also researched at CAEPR on the capacity of mining agreements to deliver sustainable development outcomes for Aboriginal people. David is actively involved in outreach for the profession of anthropology, and has been involved in mentoring anthropologists in Aboriginal organisations and government agencies. He is a forceful advocate for the practice of an 'engaged anthropology' which is not just concerned with academic critique and analysis, but is actively involved in development and other contemporary issues.

Prof. David Trigger

David Trigger is Professor of Anthropology and Head of School of Social Science at The University of Queensland. His research interests encompass the different meanings attributed to land and nature across diverse sectors of society. His research on Australian society includes projects focused on a comparison of pro-development, environmentalist and Aboriginal perspectives on land and nature. In Australian Aboriginal Studies, Professor Trigger has carried out more than 35 years of anthropological study on Indigenous systems of land tenure, including applied research on resource development negotiations and native title. He is the author of more than 60 major applied research reports and has acted as an expert witness in multiple native title claims and associated criminal matters involving Aboriginal customary law. Professor Trigger is the author of *Whitefella comin': Aboriginal responses to colonialism in northern Australia* (Cambridge University Press) and a wide range of scholarly articles. His most recent book is a co-edited cross-disciplinary collection titled: *Disputed territories: land, culture and identity in settler societies* (Hong Kong University Press).

Dr John Morton

John Morton is an associate of the Anthropology Program at La Trobe University and works as an independent consultant anthropologist. He has more than 30 years' experience working in the field of land rights and native title and has assisted with the documentation of the native title claims in Victoria, Queensland, NSW, WA and the Northern Territory, including Alice Springs (DG6002/1996), Bandjalang # 1 (NG6034/1998), Yulara (DG6023/1998), Gournditch-Mara (or Gunditjmarra) (VID6004/1998), Gunai/Kurnai (VID6007/1998 & VID482/2009), Kurnai Clans (VID398/2005), Mandandanji (QUD366/2008), Kariyarra (WAD 6169/1998 & WAD 232/2009) and Karingbal (QUD23/2006 & QUD473/2006).

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Dr. Kingsley Palmer

Kingsley has worked in many areas of Aboriginal Australia including the Northern Territory, Queensland, Western and South Australia. Formerly Senior Anthropologist with the Northern Land Council in Darwin, he was appointed Director of Research at the Australian Institute of Aboriginal Studies in Canberra in 1985. He subsequently became Deputy Principal of that organisation, a post he filled until 2001. He is now a private anthropological consultant. Kingsley has prepared expert reports for many native title claims over the last decade or more and has given evidence in the Federal Court in relation to some of them. He is currently working on or is involved in applications for the recognition of native title or other native title matters in the Northern Territory, South Australia, Western Australia and Queensland.

Dr. Lee Sackett

Lee Sackett lectured, principally in the Anthropology of Aboriginal Australia, at Adelaide University for 20 years. Following this, he for three years was Manager of Land Tenure at the Central Land Council, Alice Springs. There he researched and reported on three Aboriginal Land Claims. For the past 14 years he has worked as a Consultant Anthropologist, specialising in Native Title Claim research. He has worked on Native Title Claims in: the Pilbara, the Western Desert, Central Australia, Northwest Victoria, the Gulf Country, the Mount Isa Region and South East Queensland. He has reviewed claim materials for a number of Representative Bodies and for the states of Western Australia, South Australia, Queensland and New South Wales.

Prof. Nicolas Peterson

Nicolas Peterson is the Director of CNTA and lectures in anthropology in the School of Archaeology & Anthropology at ANU. He has been involved with anthropological research with Indigenous communities since the early 1960s, most notably in northeast Arnhem Land with Yolngu speakers, and in central Australia with Warlpiri speakers. He has a long standing interest in land and sea tenure and has worked on twelve major native title and land claims. This involvement began in 1973 when he was appointed as Research Officer to the Royal Commission in to Aboriginal Land Rights (the Woodward Commission) and continued in the native title era with the preparation of the test case for native title in the sea in collaboration with Dr Jeannie Devitt (the Yarmirr case). Most recently he has completed a native title consent determination for Mt Doreen Station in the Northern Territory in collaboration with Dr Anna Kenny.

Dr. Pamela Faye McGrath

Pam was a key collaborator in the establishment of the Centre for Native Title Anthropology at the ANU where she is currently employed as a Research Fellow. She has been involved with native title for over a decade, initially as a staff anthropologist with native title representative bodies in Victoria and Western Australia. In 2011 Pam completed a PhD in Interdisciplinary Cross-Cultural Research which examined the visual history of Ngaanyatjarra families in the Western Desert of Western Australia. She has authored and collaborated on a number of native title connection reports and maintains an ongoing practice as an independent consultant working with native title groups in the Pilbara region.

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Dr. Sally Babidge

Sally is currently a teaching and research academic in anthropology in the School of Social Science, the University of Queensland. Her book, *Aboriginal family and the state: the conditions of history* (2010, Ashgate), focused on the contemporary history and practice of Aboriginal family, particularly in Queensland. Her native title consultancy and applied research since the late 90's parallels those interests and includes some earlier work in Western Australia.

Dr. Ray Wood

Ray Wood has worked as a consultant anthropologist since the 1980s, primarily in Aboriginal land studies in the Northern Territory, Queensland, and New South Wales. He has published in Aboriginal linguistics and is the author of numerous native title reports to Aboriginal representative bodies, the Federal Court and state governments relating to Arandic Central Australia, Cape York Peninsula, Torres Strait, Southeast Queensland, north coast NSW and to a lesser extent southern South Australia and Western Australia.

Dr. Tony Redmond

Tony has had 18 years broad experience in native title research. He has worked as a consultant to the Kimberley Land Council, Central Land Council, Cape York Land Council, the North Queensland Land Council, Queensland South Native Title Services and other representative bodies conducting native title research. He researched his PhD thesis with Ngarinyin people and their neighbours in the northern Kimberley region and later worked as an expert witness in the Federal Court of Australia on the Wanjina Wunggurr Wilinggin Native Title Claim which was successfully litigated in 2002-4. In addition to his applied native title research he continues to conduct academic research into transforming local economies, Indigenous relationships with pastoralists, traditional cosmologies, sung traditions, contemporary mortuary rituals and bodily experience of time and country.
