

First Nations Legal & Research Services

Workshop on Lawyers and Anthropologists working together in Native Title

Tuesday 10 June 2025

with Rob Blowes SC

Proposed Discussion Items

1. Some introductory remarks – experience of anthropology and anthropologists in the legal contexts of land rights and native title (Resource materials #1 & 2).
2. Some general comments about the respective roles of, and relationships between, lawyers and anthropologists in land rights and native title contexts. Professionalism, patience, communication, understanding and respect all required.
3. How should lawyers brief experts and what is the role of the lawyers in reviewing and providing comments on research/anthropological reports for use in native title matters.
4. How to describe ‘the society’ for native title research and litigation purposes:
 - How do lawyers see the ‘society’ questions as opposed to anthropologists?
 - Which aspects of ‘normative society’ are necessary to be proven from a legal perspective?
5. Issues around apical ancestors and claim group composition
 - In some situations, FNLRS researchers currently work to assessment briefs that are aimed at, among other things, understanding ‘all those who hold, or may hold, native title’ to a potential claim area (in order to meet, e.g., the requirements of ILUA registration). This generates a broad ‘study area’ across which research is focussed. Discuss the following issues that may arise from this approach:
 - How might a claim team approach the crystallising of ‘study areas’ into ‘claim areas’ from both anthropological and legal perspectives?

- What do lawyers need from research reports to be able to progress from a 'potential claim group' to an actual claim groups able to provide instructions in Victoria's areas presently without recognition of native title? Authorisation issues.
 - What are some useful approaches to considering the inclusion or exclusion of potential apical ancestors within a claim area in relation to the 'society' question?
 - What are some useful approaches to considering traditional boundaries within a claim area in relation to the 'society' question?
6. From the legal perspective, how does one approach the perceived or potential conflict of interests that arise for in-house researchers vs consultants and what are some ways in which in-house anthropologists and claim teams avoid or minimise such conflict.
 7. At the FNLRS/CNTA workshop in May, Judge O'Bryan suggested that lawyers should guide researchers to focus on admissible evidence but did not define that clearly. What is the role of barristers/lawyers in deciding if evidence is admissible and what does this mean for researchers.
 8. How should lawyers assist anthropologists/experts in preparation for litigation/cross examination and when should this occur?
 9. Judgements that are important for anthropologists/ researchers to consider regarding anthropological theory or practice (e.g. the extent of ongoing importance of "society" requirement, connection evidence, physical presence on country, their role in the court process and exposure to positive and negative findings about conduct). See e.g., *Malone on behalf of the Western Kangoulou People v State of Queensland (No 6)* [2025] FCA 363 and previous decisions in that matter; *Stuart v South Australia* [2025] HCA 12.