**CNTA Workshop: Working Collaboratively for Native Title outcomes**

First Nations Legal and Research Services

606/425 Smith St, Fitzroy VIC 3065

15-16th May 2025

**Day 1 will be live streamed by Right Angles Events Management. A link will be sent out prior to the event and once available.**

**For any questions about this event please contact CNTA: Julie.Finlayson@anu.edu.au**

**Day 1 15th May**

9.00-9.30 CNTA and FNLRS: **Welcome and Introduction to the workshop by Ms Nisha Jholl** **(PLO/Acting CEO)**

9.30-10.15 **Tom Keely SC (Barrister):** “Effective working relationships between lawyers and expert anthropologists”?

An effective working relationship between a lawyer and an anthropologist requires each to have a good understanding of their respective roles and obligations.  The lawyer is bound by duties to the Court and to the client, and also by particular provisions in the *Federal Court of Australia Act 1976* (Cth).  The anthropologist’s role is as an independent expert witness and, as such, he or she is bound by the Court’s Harmonised Expert Witness Code of Conduct.

The presentation will consider the nature of these obligations and how they impact on the relationship between the lawyer and the anthropologist.  It will also include some tips designed to establish and maintain the relationship as an effective one.  Finally, it will address some of the potential pitfalls of being an anthropologist in native title and associated matters, including those considered by Charlesworth J in *Munkara v Santos NA Barossa Pty Ltd (No 3)* [2024] FCA 9.

A short paper will be available for circulation a few days after the workshop.

**10.15-10.45 Morning tea**

10.45-11.30 **Justice O’Bryan**: **fireside chat** with **Sheree Sharma** (PLO QSNTS)

11.30-12.30 **Petronella Vaarzon-Morel (anthropologist): ‘the Western Desert Cultural Bloc’; uses and contestations of the anthropological concept in native title claims**

This presentation provides an overview of the history of the anthropological concept of the “Western Desert cultural bloc” and its application in native title claims. Drawing primarily on 2 case studies, that of the Yulara native title compensation claim and the De Rose Hill native title claim, the presentation will analyse characteristics attributed to Western Desert society, including traditional beliefs, laws and customs, language, kinship, local group formation, and relations to land. In doing so, the presentation will highlight areas of contestation and differing views on the utility of the concept of the Western Desert cultural bloc in the context of native title claims.

**12.30-1.30 Lunch**

**1.30 – 2.30 Two papers on succession - (Northern Territory; Queensland)**

**Jitendra Kumarage (anthropologist):** ‘*Everyone came from somewhere else’* – talking about inheritance of, and succession to, country in native title

Some claimant groups are demonstrably not the same as those people who were first recorded as present in parts of their claim area. Ideologies of being on country from ‘time immemorial’ clash with the reality of the depletion and extinction of some groups and the takeover of their country by others. Drawing on evidence from land claims and native title claims in the Northern Territory, I argue that succession is merely one of the many ways of inheriting country in traditional Aboriginal society. Succession to the country of depleted local groups is entirely uncontroversial, as is inheriting country through other means such as incorporation.

I go on to consider how we can explain inheritance and succession when native title claims in parts of the country that were impacted earlier by colonisation are prosecuted by and on behalf of language-identified groups. I argue that a change in identification of country, or of the self-identification of people who have inherited country, should also be considered uncontroversial if it is in accordance with the traditional laws and customs of the region.

**Richard Martin (anthropologist):** Succession presents an obvious evidentiary challenge in proving native title. *Rainbow on behalf of the Kurtjar People v State of Queensland (No 2)* [2021] FCA 1251 considered the issue of whether and how the Kurtjar people had succeeded to the claim area, and by what processes.

This matter was interesting as a consideration of these issues in a litigated claim outside the Northern Territory. In this presentation I discuss some useful literature about succession, the relevant processes in the Kurtjar claim, and the various ways in which succession was challenged.

**2.30-3.15 Dayne O’Meara:(anthropologist): Kinship in Native Title: Making the most of genealogical research**

Genealogies are key aspects of any native title claim, but they are useful for far more than simply showing claimants’ descent from apical ancestors. This workshop provides an overview of foundational concepts in the anthropological study of kinship and how these can be applied in native title law across Australia.

Case studies will consider the legal and practical impacts post-determination of the ways in which genealogical research is conducted and presented during claims. Particular attention is also paid to the ways that normative principles arising out of ‘reaction, continuity and re-creation’ can be gleaned from genealogical research with the cognatic descent groups described by Peter Sutton as ‘families of polity’.

**3.15-3.30 afternoon tea**

**3.30-4.15 Kevin Murphy (anthropologist): the ‘society” question**.

**Society as “distraction”: implicit assumptions in the questions often asked of native title anthropologists, and some thoughts on how we might respond.**

I take the word “distraction” from Mortimer’s judgement at paras 267 and 455-6 of the attached (see below).

My intention is to give a general intro on the *society* concept by contrasting the assumptions that are commonly inferred by native title lawyers with an anthropological appreciation of social differentiation and variously scaled groupings, then compare what Chief Justice Mortimer says in Warral and Ului with the dogma that informs the Drury Federal Court decision. I’ll go on to think through the practical consequences of responding to lawyers when they put questions to anthropologists that are informed by the same dogma.



**End of day 1…**

**Grace Darling Hotel** for May 15th 6pm.

[**Address**](https://www.google.com/search?sca_esv=b657747ebb3c27f5&sxsrf=AHTn8zpX_7mdfH3tzNnI9fX8-vLenMqFFw:1743557338563&q=grace+darling+hotel+address&ludocid=15784464520864933251&sa=X&ved=2ahUKEwjA5b2embiMAxVC5TQHHZtfEAEQ6BN6BAhMEAI)**:**114 Smith St, Collingwood VIC 3066

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Current booking numbers are at 30, under the name 'FNLRS'.

**Day 2**

**Morning session:9.00-9.45**

**Panel session: Post-determination issues – the challenges and experiences in two Prescribed Body Corporate.**

**Anthropologists - Corey Hermann; Sanna Nalder**

**Sanna Nalder** will first describe the Robe River Kurama Aboriginal Corporation PBC first, including its funding sources, board structures and related decision-making processes. She will use this foundation to discuss how is structured in relation to its strategic plan and through the projects it runs.

**Corey Hermann** will provide a contrast account of issues he encountered during his time as anthropologist with another Indigenous west Australian PBC. Corey is currently a staff anthropologist with YMAC.

**9.45-10.30 David Martin (anthropologist): What can anthropologists contribute to the design and ongoing governance of PBCs & other Native Title corporations?**

In this presentation, David Martin draws on ideas first put into the public domain in Mantziaris and Martin (2000; *Native Title Corporations: a legal and anthropological analysis*) and in the sections on PBCs and Trusts in the CNTA website [www.cnta.org.au](http://www.cnta.org.au)

He casts an anthropological eye over widely reported and distinctive ethical, political and ‘cultural’ values which Aboriginal people can bring to their participation in the establishment and governance of PBCs, trusts and other entities and relationships. He then turns to the implications of such factors for the design and operation of culturally sustainable governance systems, before opening the session up to questions and a dialogue on the issues raised.

**10.30-11.00 morning tea**

**11.00-11.45 Felicity Thiessen /Tony Eales (Director, Indigenous Country and Governance unit AIATSIS): Overview of AIATSIS training available for native title lawyers and web resources**

AIATSIS’s Indigenous Country and Governance (ICG) unit undertakes research and other activities of benefit to the native title system and in particular Native Title Representative Bodies, Service Providers and Prescribed Bodies Corporate.

Since 2017, we have delivered the NTRB Legal Workshop which is attended by lawyers from native title representative bodies (NTRBs), native title service providers (NTSPs), prescribed bodies corporate (PBCs) and land councils performing functions under s 203B of the Native Title Act 1993 (Cth) (NTA).

The Workshop fosters a community of practice while providing for the development of technical skills. It also facilitates the accrual of ten (10) continuing professional development (CPD) points, the minimum required by each State and Territory legal practice board for the maintenance of practising certificates.

**11.45-12.30 Mick O’Kane (FNLRS Research Manager):**

***Language areas = Claim Boundaries?***

The **‘language areas equal claim boundaries’** equation is a popular and attractive notion in native title because it presents a simple conflation of language area and native title claim group boundaries.

Discussion of this equation is particularly relevant in Victoria, where native title claims are becoming more hotly contested through the Court (an occurrence not seen in Victorian since Yorta Yorta) and are creating complexity as the State of Victoria plans a Treaty with Victorian Traditional Owner groups.

Unfortunately, this equation is often proven inadequate for the purposes of native title connection standards. It obscures the importance of the ways in which social structures in Aboriginal societies operate as conduits through which rights and interests (or law and custom) descend from generation to generation.

This presentation will highlight a trend observed in recent native title discourse in Victoria in which the linguistic methodology of lexico-statistical analysis has been relied upon as a means of settling longstanding questions concerning local organisation, traditional boundaries, and group formation.

We argue that this methodology is ill-suited to the native title process and is a poor means by which to analyse and describe Aboriginal land tenure, sociality, group membership, and association to country generally.

The presentation will focus on issues relevant to native title related analyses concerning large areas of central, North-Eastern and South-Eastern Victoria.

**12.30-1.30 Lunch**

**1.30-3.00 Afternoon session is for Research Managers Only**