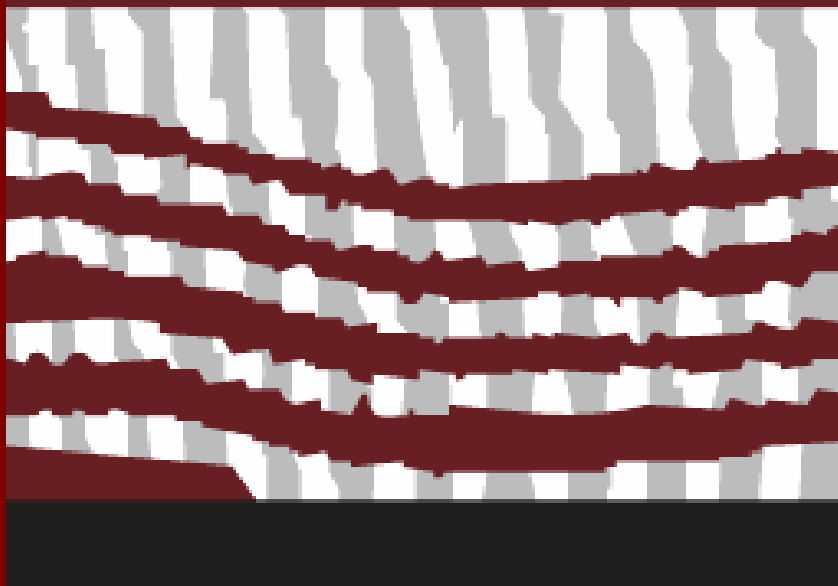


**AIATSIS
NTRB Knowledge Management
Pilot: Agreement Making**



**REVIEW AND CLOSURE
REPORT**

April 2010 – December 2010



AIATSIS
Australian Institute of Aboriginal
and Torres Strait Islander Studies

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Abbreviations

| | |
|----------------|--|
| AIATSIS | Australian Institute of Aboriginal and Torres Strait Islander Studies |
| FaHCSIA | Department of Families, Housing, Community Services and Indigenous Affairs (Pilot funding partner) |
| NNTT | National Native Title Tribunal |
| NTRB | Native title representative body or service provider |
| PPD | Project partner deed |

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1. Executive Summary

1.1 Project background and description

The NTRB Knowledge Management Pilot: Agreement Making ('the Pilot') investigated options for the development and implementation of a legal precedents database for NTRBs. The primary objective of the Pilot was to increase efficiency and effectiveness for NTRBs engaging in the future act agreement making process. An ancillary objective of the Pilot was to test possibilities for increased communication and coordination among NTRBs in relation to agreement making.

The Pilot was initiated in response to ongoing calls from NTRBs for the provision of such a resource, as well as related recommendations made by the Australian Government, the Aurora Project and others.

A Working Group of five NTRBs provided strategic guidance during the Pilot and acted as the primary information source.

1.2 Pilot closure summary

The Pilot concluded on 31 December 2010, to make way for the post-Pilot expansion phase. The Pilot demonstrated the viability of the project premise, and was concluded on the basis that all outputs were delivered on time and within budget.

The primary output was the development and implementation of an 'NTRB Legal Precedents Database'. This output was implemented ahead of schedule following successful progress against project objectives, including project scoping and information gathering. Information dissemination has been under way since the online launch of the database, giving project participants several months to test the prototype system and commence performance against planned outcomes.

1.3 Lessons learnt

Pilot highlights included:

- Very positive Working Group feedback on the prototype database (which in turn played an important role in the 'buy-in' reflected in an almost tripling in project participation for the post-Pilot phase);
- Effective strategic guidance from the Working Group, enabling efficient and focussed progress to be made during the Pilot; and
- Successful in-house work as part of the information gathering process, allowing a solid foundation to be set in terms of populating the database with precedents.

Areas for improvement:

- Greater funding certainty would be of benefit in terms of allocation of project resources.

1.4 Summary of recommendations

Recommendations from Section 2:

- 2.6(i) The Pilot objectives are viable, subject to:
- High level NTRB support;
 - General NTRB 'buy-in';
 - Clear strategic guidance;
 - Adequate sustainability planning to ensure ongoing relevance.

Recommendations from Section 3:

- 3.3(i) Focus on practicality and simplicity to keep the project and its outputs targeted and to maximise 'utility', while at the same time allowing for ongoing evolution in project scope.
- 3.3(ii) Focus on NTRB 'buy-in' as a critical success factor. This is linked with strategic inputs (3.3(iii)), and requires effective liaison between the Project Manager and project participants to ensure the relevance of outputs.
- 3.3(iii) Obtain appropriate strategic inputs. This is central to achieving good progress given the legal and policy complexities with which the project engages, and must be obtained through close consultation with NTRBs.
- 3.3(iv) Ensure adequate lead time for major planning issues.

Recommendations from Section 4:

- 4.9(i) FaHCSIA, as the Pilot funding partner, agrees the Pilot can be closed (having fulfilled all requirements documented in the project plan) and the post-Pilot phase commenced;
- 4.9(ii) The Project Manager carries out the post-Pilot responsibilities identified at 4.8;
- 4.9(iii) The Project Manager drafts an updated communication protocol to clarify communication and consultation during project expansion;
- 4.9(iv) The Project Manager liaises with the Advisory Group, project partners, project management, and all other stakeholders as required, and continues to provide updates at FaHCSIA CEO/SPO forums;
- 4.9(v) The Project Manager continues to network, build a community of practice and act as a central contact point for NTRB agreement making matters;
- 4.9(vi) The Project Manager, in close consultation with the Advisory Group, carries out sustainability planning with a focus on performance against the 'longer term outcomes' specified at 2.2;
- 4.9(vii) The Project Manager generally manages the essential project inputs:
- strategic inputs (primarily provided by the Advisory Group);
 - content inputs (primarily sourced from project participants); and
 - funding inputs,
- with a view to project expansion and sustainability.

2. Pilot Requirements and Performance

The NTRB Knowledge Management Pilot: Agreement Making (the Pilot) commenced on 5 October 2009, and concluded on 31 December 2010. The aims of the Pilot were to:

- investigate options for the development of a national knowledge management system for NTRBs; and in support of this aim, to
- gather, collate, analyse and disseminate agreement-related information of precedential value for use by NTRBs, with a view to the development of a legal precedents database.

While some flexibility was built into these aims, the Pilot – under the guidance of the Working Group – moved very quickly to focus on one primary output: the development of a prototype information delivery system. This strategy was employed as a means to expediently test the full information dissemination process, from information gathering and database development through to online launch and database trialling. Scope was limited to resource-related precedents (primarily mining and exploration related future act agreements) to facilitate this objective.

Thus the following phases were carried out during the Pilot:

- Project initiation, planning and design, involving substantial desktop research and the use of pro bono assistance;
- Information gathering and analysis, incorporating in-house work at five NTRBs, and subsequent sanitisation and collation of the information gathered during in-house visits; and
- Implementation and testing of the prototype database.

Expansion will be the next phase; this is discussed further in Section 4 below.

The deliberately restricted scope of the Pilot saw performance achieved in accordance with the project timeline (as amended from time to time). The major outcome – database implementation – was achieved ahead of schedule. The prototype database was launched on 24 August 2010 and has been undergoing testing since that time. The launch of the prototype database enabled participating NTRBs to begin drawing on and sharing precedents contained within the database, as well as testing its information retrieval and categorisation functions.

2.1 Performance against Objectives

The four key objectives identified in the planning phase (see Figure 1 below) were to carry out:

1. Preliminary work – including planning, endorsement and settlement of legal/administrative procedures;
2. Information gathering;
3. Information analysis; and
4. Information dissemination.

Preliminary Work

Project endorsement was sought and obtained in principle from NTRBs at the FaHCSIA CEO/SPO forum in September 2009. This enabled the Pilot to formally commence on 5 October 2009. The initial project plan ('09/10 Project Plan' – attached at Appendix 1) was drafted at the same time, and formed the basis of the first FaHCSIA variation to AIATSIS funding in support of the Pilot (see below at 2.5 for the Pilot budget). The Pilot project plan has subsequently been amended from time to time to reflect Pilot developments. None of these amendments have been significant.

Preliminary work commenced immediately. The first major task was to develop a legal framework for the project. An effective legal framework was an important precondition to allow project participants to engage with the collection, sanitisation and dissemination of precedents while securing each participant's legal position and protecting the information supplied to the project. To this end, and as set out in the Pilot Interim Report, the Project Manager engaged Norton Rose to develop a 'Project Partner Deed' (PPD), to be executed by each project participant. This deed was finalised in January 2010, following which each of the Working Group Members and AIATSIS became a party to it.

In short, the basic process for the collection, treatment and subsequent use of information, as set out in the PPD, is as follows:

1. AIATSIS and the participating NTRB execute the PPD;
2. AIATSIS and the relevant NTRB then identify documents for potential inclusion in the database;
3. The Project Manager reviews these documents and modifies them as appropriate (which process may include sanitisation), before submitting them to the NTRB for 'approval';
4. In the case of each document, the NTRB then approves or declines to approve its inclusion in the database;
5. All project participants subsequently viewing any such document are in turn required to be a party to the PPD, which releases all project partners (that is, parties to the PPD) including AIATSIS from all liability or losses and liabilities incurred in connection with the access to or use of any information on the database.

In addition, the Project Manager settled a Communication Protocol with the Working Group to clarify communication and consultation processes during the course of the Pilot. This was completed in December 2009.

The final substantive element under this heading was for the Project Manager to develop a scoping proposal and settle it with the Working Group. The intent behind the scoping process was to determine the basic parameters around information gathering and analysis to pave the way for the next phase of the Pilot and to ensure, so far as possible, that the project team shared a common vision. The scoping proposal was submitted to the Working Group for comment in December 2009. The Working Group provided extensive feedback on the proposal, and the scoping process was finalised in January 2010 in time for the commencement of the first round of information gathering.

Information gathering

All precedential information accessed during the Pilot was supplied by participating NTRBs during in-house visits. The Project Manager attended five NTRBs during the first round of information gathering, carrying out this in-house work between January and April. These visits were highly productive, allowing the Project Manager to gather a significant number of precedents (see 2.3.1 for more detail) and related contextual and process information. In-house visits have been identified as key to the success of the information gathering process and played a central role in facilitating two linked objectives identified in the planning phase:

- (i) gathering relevant agreements and related documents at their source; and
- (ii) gaining access to the lawyers and others involved in drafting or using the agreements, to discuss content and process.

The in-house visits also helped to minimise imposition on NTRB time and ensure information was handled both efficiently and appropriately. As identified in the Interim Report, meeting with NTRB lawyers in person and dealing directly with relevant documents simplified and expedited the process of collaboratively identifying, gathering and collating relevant information.

Information gathering was commenced as soon as the legal framework was put in place. The Project Manager spent between one and five days at each NTRB represented on the Working Group. A more extensive description of this process is set out in the Interim Report. Information gathering was commenced later than initially envisaged (see Figure 2 below) because of the time taken to settle the PPD. However the information gathering process progressed rapidly once commenced and was very successful, with a large amount of precedents being supplied to the Pilot by the Working Group members in line with the agreed scope.

As mentioned above, the last in-house visit was carried out in April. This completed the first tranche of information gathering and thus finalised the information gathering objective. It is intended, however, that further rounds of information gathering will be carried out in the post-Pilot phase, and that information gathering will be an ongoing process for the life of the project (see 4.8 below).

Information analysis

Following completion of the information gathering process, the Project Manager was in possession of some 100 precedents and related documents, as supplied by Working Group members. Completion of the information analysis objective required the Project Manager to carry out a number of tasks. The first was to ensure that each precedent supplied was appropriately sanitised and to confirm this with the relevant NTRB in each case in accordance with the terms of the PPD. The second task in furtherance of this objective was to collate the information contained in each precedent to enable both the document and specific categories of information within the document to be retrieved from the database according to specified parameters, once uploaded. This was a time consuming process, and further rounds of information analysis may need to incorporate new strategies to enable the Project Manager to cope with the workload (see below at 2.6 for further information on this recommendation). All NTRBs on the Working Group indicated they were happy with the outcomes of the sanitisation and collation processes. These processes were commenced from the time information gathering commenced, and - following NTRB consent - were completed in August 2010, prior to the database going live.

Information dissemination

Substantive performance against the information dissemination objective commenced following the launch of the prototype database on 24 August 2010. Once registered on the system, Pilot participants were able to log in and access the precedents gathered during the first round of information gathering via the online database. The prototype database exceeded its design parameters and generated positive feedback from the Working Group (see 2.3.1 below for a more detailed description of the database as the primary Pilot output).

In addition, it is noted that during the course of the Pilot the Project Manager began receiving an increasing amount of queries from NTRB lawyers on agreement-related information. This can be seen as an ancillary outcome against the information dissemination objective, and it is important that this function is recognised as an important aspect of the Pilot in its own right. In addition, it is an important component of the knowledge management process more broadly, in that the Project Manager can act as a focal point in the development of an NTRB-wide community of practice in agreement making. Several recommendations for the next phase of the project in relation to this element are therefore made – see 2.6 below.

Figure 1 – Work Breakdown Structure

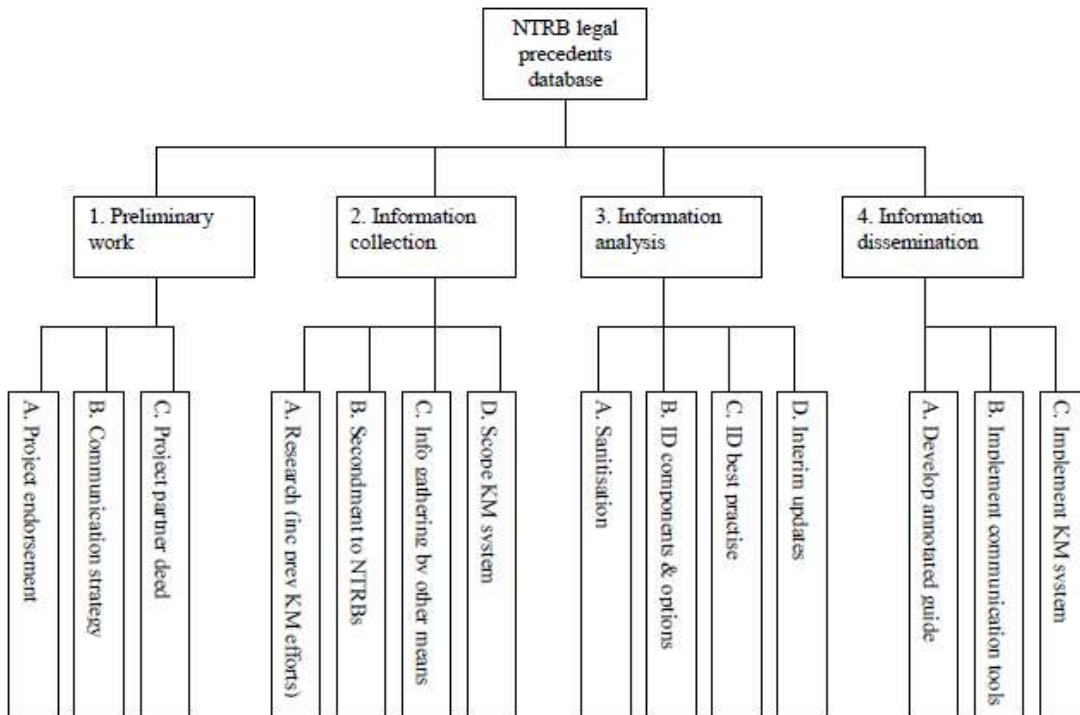
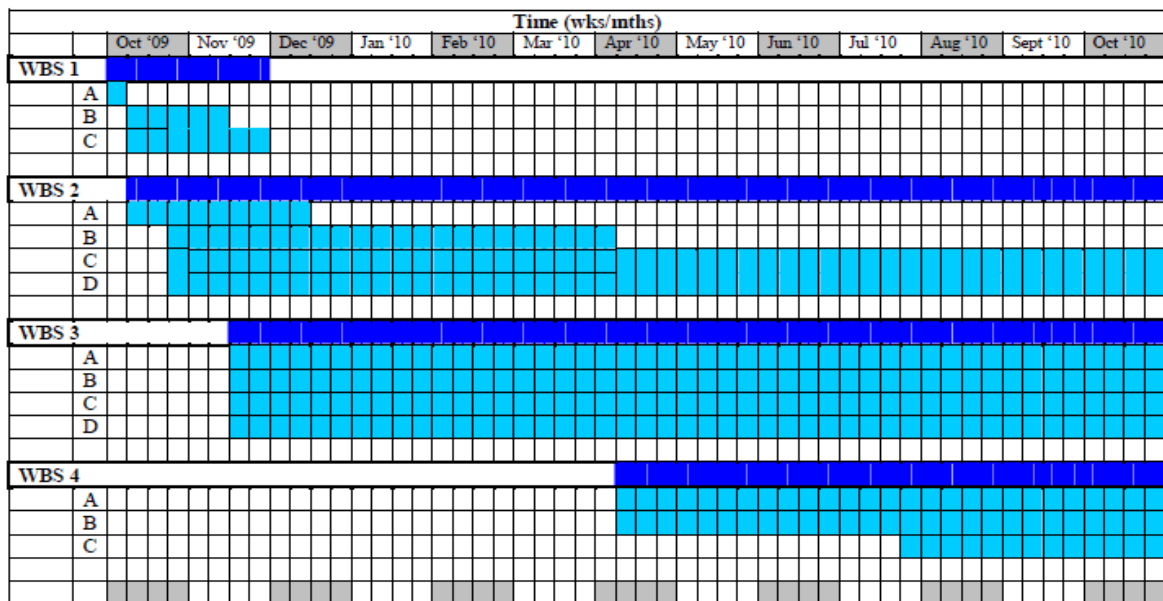


Figure 2 – Original Pilot timeline



2.2 Performance against Outcomes

The primary outcomes set out in the 09/10 Project Plan were straightforward:

1. Improve the effectiveness and efficiency of agreement making for NTRBs, and
2. Test whether it might be possible to facilitate communication and coordination among NTRBs in relation to agreement making.

In practice, the Pilot revealed that outcome 1 above can be broken down into two sub-categories:

- 1.1 Immediate/short term outcomes, which broadly involve the dissemination of 'best practice', offsetting consultant costs, enabling assessment against benchmarks (so that, for example, the operation of individual clauses in different areas can be evaluated), decreasing transaction time, boosting implementability, facilitating information sharing, and storing of corporate knowledge;
- 1.2 Longer term outcomes, which relate to the maintenance and expansion of the database over time as a 'live' resource, along with incremental consolidation of an agreement making community of practice among NTRBs.

Working Group members reported progress against the immediate/short term outcomes described above from the time the database went live. The letter from Native Title Services Victoria (attached at Appendix 3), for example, indicates that the prototype database is already performing against outcomes as an information dissemination tool. Positive feedback against outcome 1.1 has been received from all Working Group members. In summary, feedback indicated that the database:

- provides users with access to useful information about agreement content and agreement making processes across the NTRB sector;
- assists with the retention of corporate knowledge otherwise at risk of being lost due to the high turnover of NTRB staff;
- boosts transactional efficiency, not only in terms of time but also monetarily, where the database obviates the need to engage independent experts;

- assists lawyers to identify, employ, benchmark and disseminate 'best practice'.

On the other hand, progress during the Pilot in terms of the longer term outcomes has been more limited. Several Working Group members expressed particular interest in testing the extent to which progress can be made against these outcomes over time. It is anticipated that the most significant progress in terms of the longer term outcomes will be made over the next 24 months of the project. See below at 4.4 and 4.9 for information on risks and recommendations on this point.

In addition to the broader long term objectives, one respondent identified that a specific longer term outcome offered by the database was improved agreement implementation. This would be given effect where database serves as a central point for evaluating the operation of specific clauses in different scenarios.

Performance against outcome 2 – facilitating coordination and communication among NTRBs – commenced from the inception of the Pilot and was solidified when the prototype database was launched. By virtue of participating in the Pilot, the NTRBs in the Working Group directly contribute to outcome 2 by participating in the development of a centralised resource. The Working Group representatives have also served a critical function in championing the Pilot within the NTRB sector and most recently have played a central role in the expansion of the project to incorporate seven new NTRBs.

The letter of support from Native Title Services Victoria to FaHCSIA at Appendix 3 cites the ability of the database to 'facilitate meaningful communication between NTRB lawyers on specific matters'. It is intended that communication at this level between NTRBs is consolidated over time as a part of this project (see 4.1 below for more detailed recommendations on this point).

2.3 Performance against Outputs

2.3.1 The database

The so-called NTRB Legal Precedents Database is the primary Pilot output.

The following is a description of the database in its prototype form, as at the end of the Pilot. The intent is for it to expand significantly, both quantitatively and qualitatively, in the post-Pilot phase.

i. Logging in and security

The database is hosted online at <www.ntrbprecedents.org.au>. The login page at this URL cannot be accessed, however, until the database administrator (currently the Project Manager) configures the system to allow access from the proposed user's IP address. This is a security measure to protect the integrity of the login process and ensures that the system can only be accessed from recognised computers. It also has the unavoidable by-product of preventing users from accessing the system from home computers.

Maintaining the security of the information on the database was identified by the Working Group from the outset as a primary consideration. The above feature was therefore developed in response to this design requirement.

The login page also requires users to agree to specified terms of access. This is achieved via a 'click through' agreement requiring users to check a box stating that they have read and agree to the terms of access before entering the database. The terms of access put the user on notice that AIATSIS provides access to the database on the understanding that the user will adhere to the following conditions:

"1. Your access to the Project Database is conditional on your acceptance and compliance with the following terms of access:

1.1 You warrant that you have the authority and permission to access this database (the Project Database) on behalf of an organisation who has contracted with the Australian Institute of Aboriginal and Torres Strait Islander Studies, ABN 62 020 533 641, (AIATSIS), to be a participant (a Project Partner) in the Native Title Representative Bodies Knowledge Management Pilot: Agreement Making Project (the Project).

1.2 You agree that the Project Database is made available on an 'as is' basis and AIATSIS and the Project Partners make no warranties as to the accuracy, currency or completeness of the Information.

1.3 You acknowledge that information within the Project Database is not intended to constitute legal advice and you must make your own enquiries and seek professional legal advice before relying upon any content of the Project Database.

1.4 You agree that no intellectual property rights subsisting in the Project Database pass to you as a result of your access to and use of the Project Database.

1.5 You must not publish or otherwise communicate to the world at large any information obtained through the Project Database without seeking the prior consent of AIATSIS.

1.6 You must comply with any reasonable directions given by AIATSIS in relation to your use of the Project Database."

2. Release and Indemnity

2.1 You agree to release all Project Partners and AIATSIS from all liability for losses (direct and indirect, consequential and special losses) and liabilities incurred, including all costs actually payable to legal representatives (whether or not under a costs agreement) and other expenses incurred in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal) incurred by you arising from or in connection with your access "to the Project Database and use of any information contained therein."

Figure 3 – Database login page

NTRB PRECEDENTS

Username

Password

I have read & agree to the [Terms of Access](#)

Log In

[Register](#) | [Lost your password?](#)

1. Terms of Access
Your access to the Project Database is conditional on your acceptance and compliance with the following terms of access:

- 1.1 You warrant that you have the authority and permission to access this database (the Project Database) on behalf of an organisation who has contracted with the Australian Institute of Aboriginal and Torres Strait Islander Studies, ABN 62 020 533 641, (AIATSIS), to be a participant (a Project Partner) in the Native Title Representative Bodies Knowledge Management Pilot: Agreement Making Project (the Project)
- 1.2 You agree that the Project Database is made available on an 'as is' basis and AIATSIS and the Project Partners make no warranties as to the accuracy, currency or completeness of the Information.
- 1.3 You acknowledge that information within the Project Database is not intended to constitute legal advice and you must make your own enquiries and seek professional legal advice before relying upon any content of the Project Database.
- 1.4 You agree that no intellectual property rights subsisting in the Project Database pass to you as a result of your access to and use of the Project Database.
- 1.5 You must not publish or otherwise communicate to the world at large any information obtained

ii. Home page

The database home page sets out the two primary features of the database (searching and browsing) as well as the ancillary features (which include a user guide, contacts, news, an external links page and the terms of access). It is expected that additional features will be added and the existing features upgraded during the next phase of the project (see '*vi. Working Group feedback*' in this section, and 4.8 below).

Figure 4 – Database home page



iii. *Function*

There are two primary means to retrieve information from the database: searching using specific search terms, and browsing.

The 'browse' function is in fact divided into two separate options: browsing agreements and browsing clauses. These functions are available via the homepage or the tabs at the top of each page.

The 'Browse Agreements' function allows the user to either browse all agreements in the database, or apply a filter to browse a specific category or categories of agreements (see Figure 5).

The 'Annexures & miscellaneous' section in effect forms a separate category, into which all documents that do not fit into one of the 'Agreement type' parameters (at

1.7) have been placed. The ‘Annexures and miscellaneous’ section therefore contains a wide assortment of documents, many of which are drawn from annexures to other documents. Placing these annexures and related documents in a discrete category allows them to be browsed independently of their parent documents, although in each instance the parent document is also identified.

Like search results, ‘Browse Agreements’ results are displayed in a table. By default this table displays documents alphabetically by document name. However, the user can click on any of the other column headers in the table – such as ‘year’ or ‘commodity’ – to order the search results according to that parameter instead.

Figure 5 – Browsing agreements

Browsing All Agreements

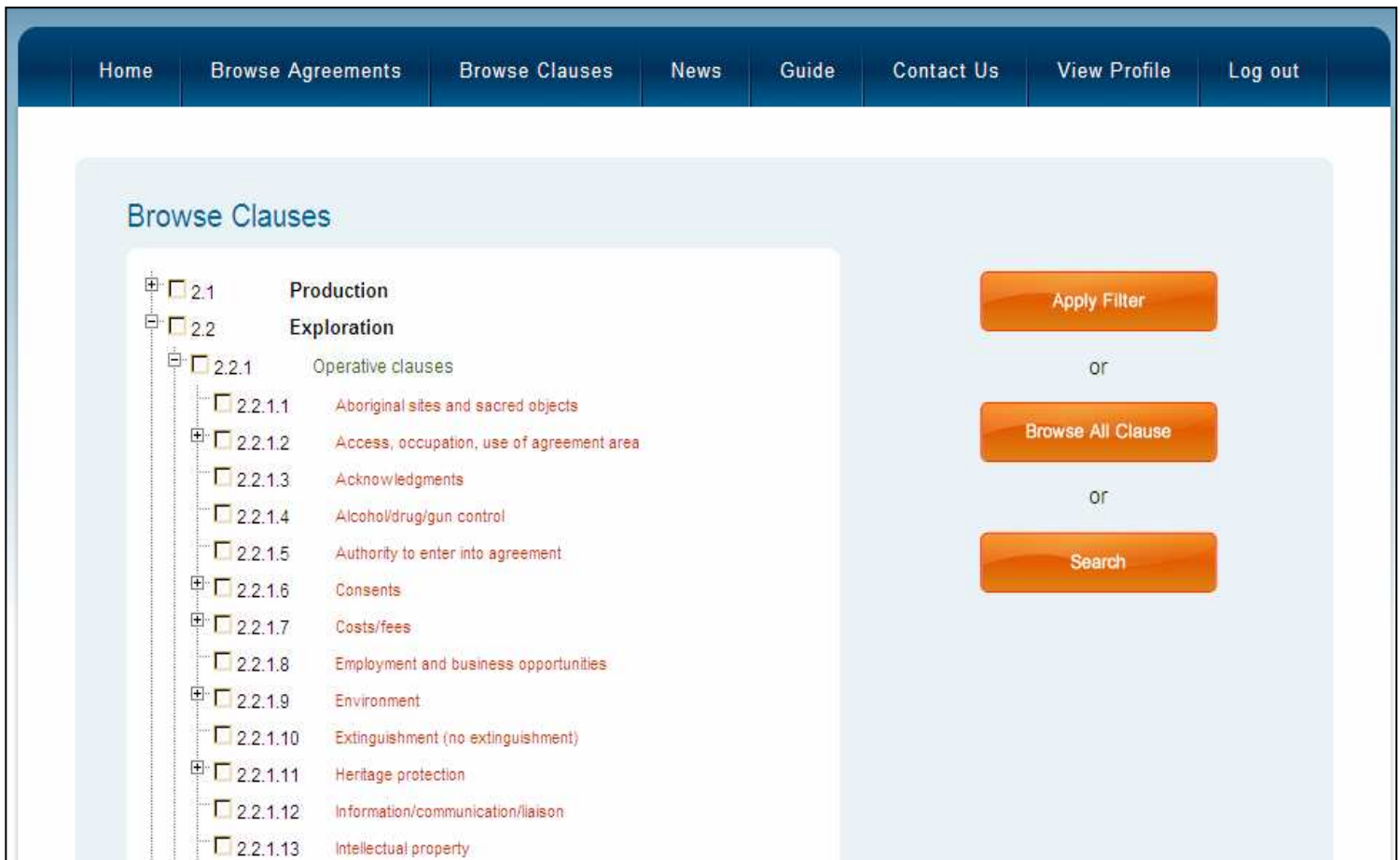
| Document Title | Year | Commodity | Native Title Category | Other Property Interest | Jurisdiction | Activity | Agreement Type | Misc |
|---|------|-----------|-----------------------------------|-------------------------|--------------|-------------|---|------|
| A1 - Petroleum exploration permit | 2007 | Oil & gas | Determined – exclusive possession | Indigenous lease | | Exploration | Consent deed/ancillary deed, ALRA agreement | |
| A10 - Mineral exploration agreement (heritage only) | 2009 | General | No claim | | | Exploration | | |
| A11 - Mineral exploration agreement | 2009 | General | Claimed | | | Exploration | Consent deed/ancillary deed | |

The ‘Browse Clauses’ function allows the user to browse all categories of clause in the database independently of their parent document (see Figure 6). Thus, while the ‘Browse Agreements’ function allows the user to locate, for example, all exploration agreements on the database from 2009, the ‘Browse Clauses’ function allows the user to locate all clauses of a particular category in all agreements – for example environmental protection clauses.

As with the ‘Browse Agreements’ function, a filter allows a specific category or categories of clause to be isolated.

As with the above, ‘Browse Clauses’ results are displayed in a customisable table.

Figure 6 – Browsing clauses



The search function is accessible via the database home page, and retrieves a given search term according to the following:

Search content:

- Document title
- Clause title
- Clause text
- Summary
- All above

Search pattern:

- Any
- All
- Exact

As with browsing results, search results are displayed in a customisable table.

Figure 7 – The search function

The screenshot displays a web application's search interface. At the top is a navigation menu with links: Home, Browse Agreements, Browse Clauses, News, Guide, Contact Us, View Profile, and Log out. Below the menu is a search box with the following fields:

- I want to search for:** A dropdown menu currently set to "Clause Text".
- Using:** A dropdown menu currently set to "Any of these words".
- Search Terms:** A text input field containing "airborne survey".
- Search:** An orange button to execute the search.

Below the search box, the "Search Results" section shows "Showing 1 - 20 results out of 34 search results". A table displays the first seven results:

| Document Title | Year | Commodity | Native Title Category | Other Property Interest | Jurisdiction | Activity | Agreement Type | Misc |
|---|------|-----------|-----------------------------------|-------------------------|--------------|-------------|---|------|
| A1 - Petroleum exploration permit | 2007 | Oil & gas | Determined – exclusive possession | Indigenous lease | | Exploration | Consent deed/ancillary deed, ALRA agreement | |
| A10 - Mineral exploration agreement (heritage only) | 2009 | General | No claim | | | Exploration | | |
| A11 - Mineral exploration agreement | 2009 | General | Claimed | | | Exploration | Consent deed/ancillary deed | |
| A12 - Mineral exploration agreement | 2009 | General | Claimed | | | Exploration | Consent deed/ancillary deed | |
| A13 - Mineral exploration agreement | 2009 | General | Determined – exclusive possession | | | Exploration | Consent deed/ancillary deed | |
| A14 - Mineral exploration agreement | 2009 | General | Determined – exclusive possession | Aboriginal Lands Trust | | Exploration | Consent deed/ancillary deed | |
| A15 - Petroleum exploration agreement | 2009 | Oil & gas | Determined – exclusive possession | Aboriginal Lands Trust | | Exploration | Consent deed/ancillary deed | |

iv. Content

As at the end of the Pilot, the database contains mineral production, exploration and infrastructure agreements relating to native title land in three Australian jurisdictions. It also contains heritage, costs and access agreements. All precedents are sanitised and do not include references to specific payments or other sums of money, persons or places.

The database also contains a number of precedents sometimes used as attachments to agreements, including access procedures, various deeds of covenant, heritage protection procedures and environmental procedures.

In terms of categories of information, there are over 180 separately searchable categories of clause and eight primary categories of agreement. The former include intellectual property, training and reversion of infrastructure clauses in addition to many others.

In total, as at the Pilot completion date, the database contains 109 precedents, comprising almost 2,000 separately searchable data entries.

Usage statistics

The prototype database is not currently able to produce a detailed breakdown of user activity. (Implementation of this function, however, is a priority for the next phase.) The database software currently indicates that each of the participating NTRBs, in addition to carrying out standard browse and search functions, downloaded an average of 34.25 precedents each during the four month trial period leading up to the culmination of the pilot.

v. Other features

The database is scalable and easily modifiable, so that it can adapt to users' requirements over time. Thus, while it currently focuses on future act agreements for resource-related activities, it has the potential to encompass a wide number of other topics such as forms, template letters, other categories of agreement, legal opinions and so on. It also incorporates a function allowing NTRB staff (with the requisite authority) to upload documents themselves.

vi. Working Group feedback

Six weeks after the online launch of the prototype database, feedback was taken from the Working Group NTRBs. To maximise opportunities to respond, feedback was taken both formally, via completion of a questionnaire, and informally via discussions with users during follow-up in-house visits or telephone conversations. The combined feedback focussed on the following:

- The content and functions offered by the database are unique; the database has therefore been described as 'extremely valuable' or 'critical', as has its continuation and expansion (others referred to the 'huge potential' of the system);
- The database is a vehicle for users to gain awareness of agreement making practices or outcomes in jurisdictions or areas other than their own representative area;
- The database has sparked discussion within legal or agreement making teams as novel approaches or clauses have been discovered;
- The database assists NTRBs to meet 'best practice' agreement standards;
- The database is 'well designed' and easy to navigate and use; the search and browse functions are effective in their current form;
- The feedback unanimously asserted a desire to see the resource expand and more participants become involved to increase the quantity and quality of content.

No negative feedback was received.

A significant number of suggestions for improvement and expansion were also received during the feedback process:

- i) It would be useful to expand database content to include other categories of precedential information, including:
 - a) Precedents relating to litigation in the Federal Court and NNTT;
 - b) Template retainer agreements;
 - c) Template resolutions for ILUA and claim authorisation meetings (cross-referenced to relevant case law and NTA provisions);
 - d) Development of a Law and Customs; Rights and Interests matrix to assist in evidence collection in support of native title claims, which could be

- usefully accompanied by precedent law and expert affidavits appropriately sanitised;
- e) Template terms of reference for various types of consultant contracts used in native title;
 - f) A legal opinions database.
- ii) Various additions to the function of the database, including:
- a) An online forum to allow NTRB lawyers to discuss issues or share knowledge;
 - b) A page with the contact details of a nominated agreement making contact person from each participating NTRB;
 - c) A benchmarking or scoring system to identify 'best practice'.
- iii) Also, several additional sources of agreement making information were put forward for potential inclusion or reference in the database, including:
- a) The Model Mining Development Agreement (MMDA) Project (International Bar Association);
 - b) The IBA Community Toolkit: Negotiation and Implementation of Impact and Benefit Agreements (Canada); and
 - c) The book *Mineral Agreements and Royalties* (Karl Harries, Canadian Institute of Mining, Metallurgy and Petroleum, 2003).
- iv) Finally, a number of specific or technical measures were proposed to streamline database functionality (these measures will not be enumerated here; they have, however, been incorporated into internal planning for database improvement and expansion).

For recommendations in relation to the above feedback, see 4.8.2 below.

Note also the user feedback in terms of Pilot outcomes reported above at 2.2 – both short and longer term.

2.3.2 Other outputs

Desktop research carried out as part of the information gathering objective led to the development of two primary research outputs. The first, entitled 'Knowledge management in native title', examines the application of knowledge management in the context of native title agreement making. The second, entitled "'Best practice" in native title agreement making: An overview of current commentary', seeks to isolate the elements of best practice in the context, as currently promulgated. These research outputs can be found at appendices 2 and 3, respectively, to the Pilot Interim Report. An ancillary output was research feeding into AIATSIS' submission in response to the FaHCSIA/AGD discussion paper 'Leading practice agreements: maximising outcomes from native title benefits'.

An additional Pilot output was the PPD itself, which formalised the legal framework for the Pilot and which will continue to fulfil this role for the life of the project (described above at 2.1). The PPD is attached at Appendix 4. The first task for the next phase of the project will be for all new project participants to become a party to the PPD (see 4.8 below).

2.4 Performance against Timeline

The Pilot timeline was formalised in the project plans agreed for the financial years 2009-2010 (see the 09/10 Project Plan, attached at Appendix 1) and 2010-2011 ('the 10/11 Project Plan', attached at Appendix 2). It is noted these timelines were subject to ongoing revision during the course of the Pilot, consequent on discussions with the Working Group and the Pilot funding partner (FaHCSIA). However for the purposes of this report the timelines reported against are those set out in the 'the 09/10 project plan' and the 'the 10/11 project plan'. Finally, it is noted that in the post-pilot phase commencing 1 January 2011 a new timeline will once again be developed.

In addition to timelines contained in the 09/10 and 10/11 project plans, a more detailed timeline in the form of a Gantt chart was developed at Pilot commencement for internal reporting purposes (see Figure 2 above). Although this timeline became superseded, it forms a useful reporting benchmark. It is also noted there has not been significant deviation from the original milestones.

The following table sets out the Pilot timeline as contained in the 09/10 and 10/11 project plans, as well as actual performance against that timeline.

Table 1 – Pilot tasks and performance

| Month/year | Task | Performance |
|---------------------|--|--|
| Oct 2009 | Obtain NTRB support at CEO/SPO forum | Completed |
| | Produce project plan | Completed (noting ongoing project plan amendment) |
| | Obtain legal advice | Completed (noting ongoing legal advice taken as need arises) |
| Nov 2009 | Hold first Working Group meeting | Held 10 November 2009 |
| | Scoping and research to address legal issues, preliminary list of precedents targeted and preliminary information management database | Scoping proposal completed November 2009; Working Group response to scoping proposal finalised January 2010 |
| Dec 2009 – Feb 2010 | NTRB hosted work – information gathering | First in-house visit undertaken 1-5 February 2010. Remaining in-house visits undertaken 22 March, 29 March – 1 April and 12-14 April respectively. |
| | AIATSIS progress and financial reports to FaHCSIA | Completed |
| Mar – Apr 2010 | Analysis of information gathered | Completed (ongoing) |
| | AIATSIS progress and financial reports to FaHCSIA | Completed |
| May 2010 | Report on outcomes to date including explanation of best practice identified; as part of this agreement making guide may be developed if results justify | Agreement making guide not developed as fell expressly outside project scope as amended (based on Working Group preference) |

| | | |
|----------------|--|--|
| Jun 2010 | Deliver workshop at Native Title Conference if appropriate | Presentation delivered at Conference, entitled 'Knowledge management, native title and the NTRB agreement precedents project' |
| | AIATSIS progress and financial reports to FaHCSIA | Completed |
| Jul – Aug 2010 | NTRB-hosted work – further information gathering | Not completed. Follow up in-house visits were carried out in October 2010. This delay was due to Pilot resources being diverted to the following task |
| | Develop final information delivery system | All tasks relating to this output completed (including engagement of consultants, design and construction of database, registration of domain name, online launch and registration of users) |
| Sept 2010 | Analysis and recommendations | Completed (ongoing) |
| | AIATSIS progress and financial reports to FaHCSIA | Not completed (due to amendment of project plan as Pilot completion date extended from 4 October to 31 December 2010) |
| | Complete final information delivery system prior to end Variation period, to extent permitted by project outcomes to date. | Completed, Working Group testing under way ahead of schedule |
| Oct – Dec 2010 | Reality test information delivery system in liaison with Working Group and NTRBs, amend, update and carry out further research as required | Working Group testing under way and interim database improvements carried out |
| | Begin planning for project up-scaling, revise/enlarge project scope and prepare for/begin work on second tranche of information gathering | Completed |

The information in Table 1 demonstrates that performance against the Pilot timeline progressed rapidly once the preliminary work was carried out, and once planning crystallised into a focus on the development of a single primary output (in the form of a prototype database focussing on resource-related precedents). The fact that the Pilot performed generally on schedule – and ahead of schedule in terms of the primary output specifically – was predicated on the clarity of the Pilot objectives, which in turn derived from the effective strategic guidance of the Working Group.

2.5 Performance against Budget

The Pilot performed within budget (see Table 2).

**Table 2 – Pilot budget and expenditure
(5 October 2009 – 31 December 2010)**

| | Budgeted | Expenditure |
|---|------------------|--------------------|
| Income | | |
| Operational | | |
| 1 st funding round (23 Nov 2009: 1051/9773) | \$150,909 | \$150,909 |
| 2 nd funding round (24 Sept 2010: 1051/5479) | \$36,956 | \$36,956 |
| TOTAL INCOME | \$187,865 | \$187,865 |
| Expenditure | | |
| Operational | | |
| Salaries | | |
| Research Fellow EL1 | \$122,878 | \$117,137 |
| Research Assistant | | \$981 |
| Subtotal salaries | \$122,878 | \$118,118 |
| Services | | |
| Professional advice | \$28,000 | \$31,805 |
| Travel | | |
| Fares | \$19,000 | \$8,869 |
| Corporate support - AIATSIS | \$16,987 | \$16,987 |
| TOTAL EXPENDITURE | | \$175,779 |
| Surplus / Deficit | | \$12,086 |

Overall, the above indicates an underspend of \$12,086. This reflects a decision to set aside travel funds for the immediate post-Pilot phase. During 2011 the project will be funded at the same level as during the Pilot, despite planned expansion to incorporate seven additional NTRBs and several new areas of content. This expansion in project scope, both quantitatively and qualitatively, will necessitate significant additional expenditure on travel and consultant costs.

It is also worth clarifying that the 'professional advice' component was comprised of two elements: legal advice and web application development. Just over \$10,000 was spent obtaining legal advice from Norton Rose during the Pilot, primarily in relation to development of the Project Partner Deed, but also on development of the 'click through' terms and conditions for database access. The remainder of this line item went towards IT consultant costs, in the form of engagement of the web application developers Oskey Interactive to develop and implement the online database. Significant savings were made on IT costs due to the fact that a large part of the database design and information architecture was developed in-house at AIATSIS, minimising the amount of work needing to be outsourced.

See 4.2 for Pilot closure activities required for ongoing financial and resource management.

2.6 Recommendations

Based on the Pilot requirements and performance reported above, the following recommendation is made:

2.6(i) Pilot premise viable

The outcomes achieved as at Pilot completion demonstrate the viability of the project¹, subject to the following:

- High level NTRB support;
- General NTRB 'buy-in';
- Clear strategic guidance;
- Adequate sustainability planning to ensure ongoing relevance.

¹ The primary outcomes the Pilot aimed to test (as stated in section 2.2 above) are (i) improving the effectiveness and efficiency of agreement making for NTRBs, and (ii) facilitating communication and coordination among NTRBs in relation to agreement making.

3. Lessons Learnt

3.1 Pilot highlights

In terms of user feedback, the most significant outcome of the Pilot was the immediate benefit to database users in terms of information sharing, dissemination of 'best practice' and facilitation of transactional efficiencies. In addition, users reported existing and potential financial benefits by virtue of the database providing some functions otherwise only available via the engagement of external consultants. These considerations in combination have provided the basis for a strong 'business case' for participation in the project, evidenced by the fact that seven new NTRBs have committed to participating in and financially supporting the project. Based on the success of the Pilot the participation rate is set to expand to over 75% of NTRBs nationally in the post-Pilot phase.

A related Pilot highlight was the effectiveness of the strategic guidance provided by the Working Group. The decision to test the full project life-cycle (from pre-planning to database implementation) by restricting the project scope enabled rapid progress to be made. This enabled the database to be launched ahead of schedule and within budget. This places the project in an excellent position for post-Pilot expansion. Lessons learnt in relation to this are that high-level NTRB support for the project is important, and best facilitated through close liaison and in-house work where possible.

To follow on from this point, the in-house work carried out during the Pilot has been a key element of the process generally, and in particular to the success of information gathering. In-house work enables direct and efficient engagement, allows the Project Manager and NTRB staff to take a flexible but focused approach to identifying and gathering information. At the same time it provides the opportunity for broader discussion and brainstorming. Another benefit is that in-house visits allow engagement with a good mix of NTRB staff: senior NTRB staff to champion and direct the project, as well as NTRB staff more broadly to discuss technical and practical issues, provide detailed feedback and carry out day-to-day reality testing.

3.2 Areas for improvement

A significant amount of time at the end of the Pilot was taken up settling the post-Pilot funding process with the funding partner, and extant and prospective NTRB participants. It is acknowledged that any significant transition between project phases will consume project resources (primarily time). Nonetheless the transition in this case could have been carried out more efficiently.

The central issue in the present case relates to the question of certainty. Late changes to the project funding structure by the funding partner introduced a degree of uncertainty which had a knock-on effect for project planning. Following approximately three months of discussions the post-Pilot funding structure was satisfactorily resolved, shortly prior to the Pilot completion date.

Greater funding certainty would be of benefit in terms of allocation of project resources.

3.3 Recommendations

Based on the lessons learnt during the Pilot, the following recommendations are made:

3.3(i) Focus on practicality and simplicity

Practicality emerged as an important approach during the Pilot, and was an important element of the rapid progress made against project outputs. The focus on the practicality or 'useability' of the database reduces the risk of contributing to information overload and increases ease of use, while maintaining an emphasis on security. As mentioned in the Interim Report, this approach fits well with the findings arising from desktop research carried out early in the Pilot. This research found that there is a high volume of extant agreement making information, but that much of it has limited practical applicability and may in fact add to – rather than mitigate – the identified legal and policy complexities.

The related simplicity objective engages with the fact that knowledge management discourse itself is extensive. This fact, in combination with the multifaceted nature of native title agreement making, creates significant scope for over-complexity in the project. Given this is the first initiative of its kind, and given also that the project will ideally undergo several years of development and evolution, a focus on simplicity is important, particularly in the early stages.

Based on the foregoing, it is recommended that practicality and simplicity continue to underpin project outputs.

3.3(ii) Obtain appropriate 'buy-in'

This project is driven by the NTRB sector, which is the primary source of strategic and content input, as well as a proportion of the funding inputs. The corollary is the fact that NTRBs resources are generally limited, both financially and in terms of staff time. Obtaining appropriate 'buy in' is therefore important. The Pilot was successful in this regard, but it will be important to maintain engagement at this level over the life of the project. It is recommended that two primary factors are pursued in furtherance of this. First, it is important to secure effective strategic inputs (see 3.3(vi) below). Second, the Project Manager must liaise effectively with each participating organisation to ensure the broad relevance of project outputs and to foster a community of practice around agreement making. These measures will help to maintain the relevance of the project (and in particular the database) over time, thereby ensuring the utility of the project for participants.

3.3(iii) Effective strategic inputs

Effective, high-level advice obtained through close consultation with NTRBs is (and will remain) a key determinant of the success of the project, and reflects the fact that the project is driven by the NTRB sector itself. High level input is important primarily because of the complexity of the subject matter the project engages with: at the national level native title agreement making involves many jurisdictions and regulatory frameworks, as well as widely varying subject matter, and it evolves rapidly. These factors present the project with a wide array of options and topics for potential consideration and it is thus important that clear strategic choices are made.

3.3(iv) Ensure adequate lead time for major planning issues

This primarily relates to lessons learned in relation to funding, and the effect of funding uncertainty on project planning. Adequate lead time is important in addressing such issues.

4. Pilot Closure Activities

The various activities required to close the Pilot and commence the post-Pilot phase are set out in this section.

4.1 Pilot team and management

The Pilot team was comprised as follows:

- Dr Lisa Strelein, Director Research Programs, AIATSIS – Project Director
- Joe Fardin, AIATSIS Research Fellow: Agreement Making – Project Manager
- Richard Potok, Director, Aurora Project – Project Advisor
- Native Title Research Unit, AIATSIS – project support

Project management during the Pilot was carried out by:

- The Pilot Working Group of five NTRB representatives, and
- The AIATSIS Native Title Research Advisory Committee and AIATSIS corporate infrastructure.

The Project Manager also provided updates at the six-monthly FaHCSIA CEO/SPO Forum.

Both the project team and project management will be slightly restructured in the post-Pilot phase. A new Project Manager will be taking over the project as of 28 February 2011. A recruitment and handover process has been put in place to cater for this transition and in particular to ensure that project knowledge is adequately captured.

The project management team will be varied to include a representative from each of the new NTRBs joining the project in the post-Pilot phase. As such the Working Group in place during the Pilot phase will be disbanded and an Advisory Group comprised of one representative from each participating NTRB will be constituted instead.

4.2 Financial management

Table 2 above shows the budget for the Pilot phase (5 October 2009 to 31 December 2010) (see 2.5 above).

Table 3 below shows the projected budget for the 2011 calendar year. FaHCSIA has committed to contribute \$90,000 to the Project for the 18 months from 1 January 2011 to 30 June 2012 (the 18 month funding period is to bring the project funding cycle in line with the financial year). In addition, eleven NTRBs have each committed \$5,000 to support the project during the first 12 months of the post-Pilot phase, and AIATSIS will separately invoice each participating NTRB for this amount per calendar year. Projected project costs and project revenue for the 2011 calendar year are set out in the Table 3 (see 4.8.4 below), and responsibility for managing the project budget will continue to fall to the Project Manager.

An important matter to be catered for in the post-Pilot phase is that, with a 140% increase in NTRB participation, travel expenditure is likely to increase accordingly – and yet this has not been met with a corresponding increase in the travel budget for the next project phase (see 4.8.4 below). This has been catered for to some extent

by the savings made against the travel allocation in the Pilot phase. However travel is not the only aspect of the project for which scope is set to expand over the next twelve months, and as such the Project manager will need to pay close attention to travel expenditure. This is particularly so given travel to NTRBs to carry out in-house work will remain a core aspect of the project during this period.

4.3 Issues Management

Pilot closure must be formalised on finalisation of this report. This will be given effect once FaHCSIA, as the Pilot funding partner, agree with the Pilot closure process and subsequent post-Pilot expansion plans.

4.4 Risk management

A number of risks were identified as having the potential to affect the performance of the Pilot. These risks will continue to have relevance to the project in the post-Pilot phase, to a greater or lesser extent.

Risk: NTRB participation/ability to participate

This risk is to be addressed primarily by the project participants. It is noted that the Pilot Working Group played a central role in championing the project within the NTRB sector and encouraging additional NTRBs to become involved in the post-Pilot phase.

It was recognised from the outset that a measure of the success of the Pilot would be the level of 'buy-in' from NTRBs, given NTRBs are the drivers of the project, the primary source of precedents, and the primary stakeholders. It was also recognised that NTRB staff resources are generally limited and difficult to apply to external projects. The success of the Pilot, both in terms of the level of precedents sourced and the tripling in NTRB participation at the end of the Pilot phase (including the commitment by NTRBs of funds to support the project) demonstrates that this risk has been effectively addressed to date.

This risk will nonetheless continue to apply in the post-pilot phase, and it will be the responsibility each participating NTRB, working closely with the Project Manager, to ensure that participation is maximised and effectively facilitated in each case.

Risk of confidentiality of agreements precluding inclusion in database

This risk is to be managed primarily by the Project Manager, acknowledging that some documents – whether or not sanitised – are more amenable to dissemination as precedents than others. One strategy employed during the Pilot was to target the least sensitive documents for use as precedents. It is intended that procedures for addressing confidentiality issues will evolve over time, ensuring that a broad range of information can be appropriately handled and disseminated.

Risk of mismanagement of sensitive information

Management of this ongoing risk will be a priority for the Project Manager. During the Pilot the likelihood of this risk was assessed as low, based on the preventative measures in place, but the potential negative consequences high in the event that

information was mismanaged. These factors will continue to apply in the post-Pilot phase.

Risk that sanitisation process ineffective/too effective

It will be the ongoing responsibility of the Project Manager to ensure that the sanitisation process continues to be carried out effectively. This requires an understanding both of the document itself, and the context in which the document was designed to operate. Consultation with the relevant NTRB may be required in the case of a complex document to ensure the level of sanitisation is appropriate.

Risk of problems with coordination of knowledge management information

This risk primarily applied at the Pilot phase and its ongoing relevance will diminish over time. It was described in the Interim Report as a risk that national coordination of agreement making and related knowledge management information among NTRBs may not be practicable or effective. The performance of the Pilot, as set out in the present report, demonstrates that this risk has largely been obviated; coordination at this level was a prerequisite for the implementation of a functioning database. Nonetheless, it will be the Project Manager's ongoing responsibility to ensure that this coordination continues to be carried out effectively, especially as the project expands.

Risk of cost/time overrun

Monitoring and management of this risk is the responsibility of the Project Manager. There is an increased risk of cost overrun during the post-Pilot phase, given the project budget is not being increased despite the significant expansion in project scope. Ongoing monitoring of budget performance and further amendment of the project plan may be necessary.

Risk of misapplication of precedents

It is primarily the responsibility of database users themselves to ensure precedents are not misapplied. The risk of misapplication is inherent in any system of precedents, and a level of judgement is required when drawing on such a system to ensure the best solution in a given context.

To assist users in this regard, the Project Manager will ensure that precedents are annotated where relevant to explain both content and context. This information should be sourced during each round of information gathering (primarily at in-house visits).

Risk that database not sustainable

Perhaps the most important risk factor to emerge during the Pilot is the question of keeping the project 'live' and relevant over time. Some Working Group members indicated that internally, practice around keeping precedents current is not well done and that establishing a database itself is only the first step. Keeping the NTRB Legal Precedents Database up to date will be a significant test over the life of the project.

While it is the responsibility of the Project Manager to develop strategies to mitigate this risk, close liaison and direction from project participants will be required to ensure sustainability. It is likely different strategies will be needed for different NTRBs

or regions, reflecting the differing agreement making environments in which NTRBs operate. See also below at 4.9 for recommendations on this issue.

4.5 Asset management

The domain name <ntrbprecedents.org.au> was registered to AIATSIS on 18 August 2010 (see Certificate of Registration at Appendix 5). The domain name licence will remain valid for a period of two years. The Project Manager will therefore need to manage and renew this licence, as required, following Pilot completion.

4.6 Communication management

Lines of communication will need to be managed through the transition from Pilot to post-Pilot phase due to the team restructuring that will take place. As mentioned above at 4.1, the project management team will be varied at this time to include a representative from each of the new NTRBs joining the project. These representatives will collectively form an Advisory Group which will replace the Working Group for post-Pilot purposes. The Project Manager will be responsible for managing this transition, and in particular ensuring that lines of communication remain clear and major decisions are made in consultation with the Advisory Group.

4.7 Records management

A range of electronic and hard copy documents were received by the Project Manager from NTRBs during the course of the Pilot as part of the information gathering process. The sole purpose of obtaining these documents was for sanitisation, collation and uploading onto the database as precedents pursuant to the terms of the PPD. These documents therefore do not become the property of AIATSIS at any stage. All copies of documents dealt with by the Project Manager as part of the information gathering process are either returned to the relevant NTRB or destroyed at the end of the process. In accordance with this, electronic documents obtained from NTRBs are not stored on any shared drive on AIATSIS' internal system, nor are hard copies filed with the AIATSIS Registry.

4.8 Post-Pilot responsibilities

4.8.1 Database maintenance

The Project Manager will be responsible for maintaining the project database into the foreseeable future. Maintenance of the database in its current form will include the following elements (noting that a range of modifications are proposed for the database, as set out in the next section):

- Update the 'Latest News' section weekly;
- Register new users as required;
- Upload new precedents gathered in the course of the project, following sanitisation and collation;
- Maintaining and updating the various web pages, as required, including links, contact details, and the user guide;

- Liaising with the web application developer (Oskey Interactive) and The Australian Domain Name Administrator as required. The total annual cost of maintaining the web application hosting plan, as quoted by Oskey Interactive, is \$740 plus GST.

4.8.2 Database expansion

In addition to the foregoing, a number of additions and upgrades are proposed for the database during the post-Pilot phase. During 2011 it will therefore be the responsibility of the Project Manager to consider, consult on and where useful implement Working Group and Advisory Group recommendations for database expansion or improvement, to the extent permitted by the project resources. Recommendations and feedback to date include the following:

- (i) Expansion of the database to include new categories of precedential information, including (as set out at 2.3.1 above)
 - Precedents relating to litigation in the Federal Court and NNTT;
 - Template retainer agreements;
 - Template resolutions for ILUA and claim authorisation meetings (cross-referenced to relevant case law and NTA provisions);
 - Development of a Law and Customs; Rights and Interests matrix to assist in evidence collection in support of native title claims, which could be usefully accompanied by precedent law and expert affidavits appropriately sanitised;
 - Template terms of reference for various types of consultant contracts used in native title;
 - A legal opinions database.
- (ii) Addition of new functions to the database, including
 - An online forum to allow NTRB lawyers to discuss issues or share information;
 - A section containing contact details for a nominated agreement making contact person from each participating NTRB; and
 - A benchmarking or scoring system to identify 'best practice'.
- (iii) Implementation of the various specific and technical measures received, with the aim of streamlining database functionality. This is to include implementation of a function in the database allowing more detailed user statistics to be recorded and made available to database administrators.

4.8.3 Project expansion

In addition to the post-Pilot responsibilities relating to the database itself, the Project Manager will be required to manage the transition of the project more broadly from Pilot to post-Pilot phase. Initially, this will require particular attention to be given to communication management. Additional tasks will include:

- ensuring as a priority that all new project participants become a party to the Project Partner Deed
- constituting the Advisory Group (based on nominations from each participating NTRB);
- arranging database login and access details for new participants; and
- scheduling in-house visits and carrying out subsequent rounds of information gathering focussing on categories of precedent identified as strategic priorities.

4.8.4 Project budget 2011

The project budget for 1 January to 31 December 2011, as projected at the time of Pilot closure, is set out in Table 3 below. It is noted that project revenue may be subject to change, if additional NTRBs join the project or if funding is obtained from other sources for further expansion. It is also noted that as at Pilot closure funds in the amount of \$35,409 remain to be sourced.

Table 3 – 2011 Budget (calendar year)

| | | 2011 calendar year |
|-----------------------------------|----------------------------|--------------------|
| Project Costs | | |
| Operational | | |
| Salaries | | |
| | Research Fellow EL1 | \$97,190 |
| Subtotal salaries | | \$97,190 |
| Services | | |
| | Professional advice | \$20,000 |
| Travel | | |
| | Fares | \$15,000 |
| Corporate support - AIATSI | | \$13,219 |
| TOTAL COSTS (Ex GST) | | \$145,409 |
| Project Revenue | | |
| | FaHCSIA funding | \$60,000 |
| | NTRB funding | \$55,000 |
| | Funds to be sourced | \$35,409 |

4.9 Pilot closure recommendations

Based on the Pilot closure activities reported above, the following recommendations are made:

- 4.9(i) FaHCSIA, as the Pilot funding partner, agrees the Pilot can be closed, having fulfilled all requirements documented in the project plan, and the post-Pilot phase commenced;
- 4.9(ii) The Project Manager carries out the post-Pilot responsibilities identified above at 4.8;
- 4.9(iii) The Project Manager drafts and updated communication protocol to clarify communication and consultation during project expansion;

- 4.9(iv) The Project Manager liaises with the Advisory Group, project partners, project management, and all other stakeholders as relevant, including continuing to provide updates at FaHCSIA CEO/SPO forums;
- 4.9(v) The Project Manager continues to network, build a community of practice and act as a central contact point for NTRB agreement making matters;
- 4.9(vi) The Project Manager in close consultation with the Advisory Group carries out sustainability planning, with a focus on performance against the 'longer term outcomes' specified above at 2.2;
- 4.9(vii) The Project Manager generally manages the essential project inputs with a view to both expansion and sustainability of the project:
 - Strategic inputs (primarily provided by the Advisory Group);
 - Content inputs (primarily sourced from project participants);
 - Funding inputs.

5. Appendices

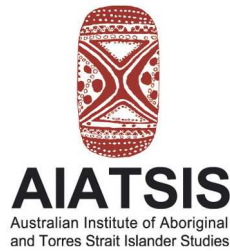
Appendix 1: Project Plan 2009-2010

Appendix 2: Project Plan 2010-2011

Appendix 3: NTSV Letter of Support

Appendix 4: Amended Project Partner Deed and Letter

Appendix 5: Domain Name Certificate of Registration



PROJECT PLAN 2009-2010

NTRB knowledge management pilot: Agreement making

Rationale

Agreement making is a priority for the native title sector and for the Australian Government. At the recent Native Title Ministers Meeting in Adelaide it was recognised that native title can provide opportunities and outcomes for Indigenous people through facilitation of broader settlement packages. The Guidelines for Best Practice devised by The Joint Working Group on Indigenous Land Settlements has similarly structured its directives based on this principle, recognising that practical and sustainable outcomes are desirable. In addition, the recent Australian Government discussion paper on optimising benefits from native title agreements recognises that agreements arrived at within the native title framework 'now constitute a major form of engagement between Indigenous people, industry and governments'.¹

It is generally acknowledged, however, that significant challenges and opportunities remain in improving the effectiveness and efficiency of agreement making. Among other things, these challenges and opportunities engage with issues of capacity, transparency and confidentiality.

This project responds to calls for resources to address these issues. The project will collate, analyse and disseminate agreement data of precedential value for use by native title representative bodies and service providers (NTRBs). In doing so the project will investigate the viability of developing a national knowledge management system to ensure the sustainability and accessibility of the data and analysis collected from this project.

¹ Attorney-General's Department, Discussion Paper – Optimising benefits from Native Title Agreements, at http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenoulawandnativetitle_Nativetitle_DiscussionPaper-OptimisingbenefitsfromNativeTitleAgreements#submissions.

Project partners

- Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)
- Aurora Project
- Funding partner: Department of Families Housing Community Services and Indigenous Affairs (FaHCSIA)

Project team

- Project Manager: Mr Joe Fardin, AIATSIS Research Fellow: Agreement making, AIATSIS
- Project Director: Dr Lisa Strelein, Director Research programs, AIATSIS
- Project Advisor: Mr Richard Potok, Director, Aurora Project
- Project support : Native Title Research Unit, AIATSIS

Project management

Working Group of NTRB representatives and project partners

- The engagement of NTRBs in this project is essential, in terms of both design and implementation. It is proposed that a working group of interested NTRB staff be established. This group will be integral to the development of the project; the intention is for it to actively contribute to the work of the project during its lifespan.

AIATSIS Native Title Advisory Committee, AIATSIS corporate infrastructure

- As part of the AIATSIS native title program funding agreement with FaHCSIA, this project will be subject to the oversight of the AIATSIS native title advisory committee and will be supported by the corporate infrastructure of AIATSIS as a commonwealth agency, including our Audit and Risk committee and Governing Council.

Method and deliverables

Based on preliminary project discussions, the following method is proposed:

1. Seek project endorsement and initial input at NTRB CEO/SPO forum;
2. Develop a communication strategy in consultation with NTRBs, and establish a working group comprised of NTRB representatives and project team members;
3. Develop agreed protocols governing information sharing and the overall conduct of the project;
4. Seek copies of NTRB template future act agreements (mining/exploration) and develop preliminary information management database;
5. Seek access to final agreements or clauses from within those agreements;

6. Identify content headings, common components and options for treatment of content;
7. Report on outcomes including explanation of best practice as identified, consider development of annotated guide explaining the content and context of those agreements and/or selected clauses or similar;
8. Identify and develop effective communication methods and tools for the coordination and dissemination of precedents among NTRBs;
9. Distribute project outputs;
10. Identify and develop a knowledge management system for the distribution of template agreements or clauses, and coordination of legal information amongst NTRBs. This is to be a closed system for NTRB access only.

Project timeline

October 2009

- Obtain NTRB support at CEO/SPO forum
- Produce project plan
- Legal advice re information sharing and the relationship between project participants

November 2009

- Hold first working group meeting
- Scoping and research addressing the following:
 - o Confidentiality and IP
 - o Preliminary list of components & Agreement classification – class and scale
 - o Preliminary information management database (excel/filemaker)

December 2009 – February 2010

- NTRB hosted work – information gathering
- AIATSIS progress and financial reports to FaHCSIA

March – April 2010

- Analysis
- AIATSIS progress and financial reports to FaHCSIA

May 2010

- Report on outcomes to date including explanation of best practice identified; as part of this agreement making guide may be developed if results justify

June 2010

- Deliver workshop at Native Title Conference if appropriate
- AIATSIS progress and financial reports to FaHCSIA

July-August 2010

- NTRB-hosted work – further information gathering
- Develop final information delivery system

September 2010

- Analysis and recommendations
- AIATSIS progress and financial reports to FaHCSIA

- Complete final information delivery system prior to end Variation period, to extent permitted by project outcomes to date.

Risks and mitigation

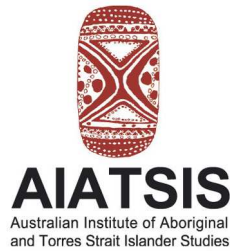
There are four key areas of risk in the successful delivery of the project:

1. Confidentiality of agreements prohibiting access: This risk is implicit in the project rationale. We expect that some material will be provided voluntarily by NTRBs but understand that a large amount of the necessary material will be subject to some confidentiality concerns. We are exploring legal options and protocols to address these issues, including periods of secondment and sanitisation of agreements and clauses, amongst other strategies.
2. NTRB participation: A measure of the success of the project will be the 'buy in' from NTRBs. This project responds to calls from NTRBs for this kind of resource, but we acknowledge that resources and time of NTRB staff is limited and difficult to apply to external projects. We will address this by ensuring that collection of data will be undertaken in situ; that is the research fellow will spend time at NTRBs rather than relying on NTRBs to come to us.
3. Jurisdictional differences: It is intended that the database be a national resource, however we understand that regional differences in law and practice will require careful consideration in how the data is analysed and presented.
4. Knowledge management coordination: This project will test whether national coordination of this kind of information among NTRBs is practicable and effective. To this end, the project will engage with large national/multinational law firms to get advice on models and methods of knowledge management that may assist in developing an appropriate knowledge management system for NTRBs to share information about agreements.

Contact

For further information or to comment on this project please contact:

Joe Fardin
Research Fellow: Agreement Making
joe.fardin@aiatsis.gov.au
02 6246 1160



PROJECT PLAN 2010-2011

NTRB knowledge management pilot: Agreement making

Rationale

Agreement making is a priority for the native title sector and for the Australian Government. At the recent Native Title Ministers Meeting in Adelaide it was recognised that native title can provide opportunities and outcomes for Indigenous people through facilitation of broader settlement packages. The Guidelines for Best Practice devised by The Joint Working Group on Indigenous Land Settlements has similarly structured its directives based on this principle, recognising that practical and sustainable outcomes are desirable. In addition, the recent Australian Government discussion paper on optimising benefits from native title agreements recognises that agreements arrived at within the native title framework 'now constitute a major form of engagement between Indigenous people, industry and governments'.¹

It is generally acknowledged, however, that significant challenges and opportunities remain in improving the effectiveness and efficiency of agreement making. Among other things, these challenges and opportunities engage with issues of capacity, transparency and confidentiality.

This project responds to calls for resources to address these issues. The project will collate, analyse and disseminate agreement data of precedential value for use by native title representative bodies and service providers (NTRBs). In doing so the project will investigate the viability of developing a national knowledge management system to ensure the sustainability and accessibility of the data and analysis collected from this project.

The pilot phase of this project will reach completion on 5 October 2010. If the pilot phase is successful, and contingent on the success of applications to FaHCSIA for further funding, the project

¹ Attorney-General's Department, Discussion Paper – Optimising benefits from Native Title Agreements, at http://www.ag.gov.au/www/agd/agd.nsf/Page/Indigenoulawandnativetitle_Nativetitle_DiscussionPaper-OptimisingbenefitsfromNativeTitleAgreements#submissions.

will be rolled out more comprehensively – ideally attracting a participation rate of 75% or more of NTRBs nationally.

Project partners

- Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)
- Aurora Project
- Funding partner: Department of Families Housing Community Services and Indigenous Affairs (FaHCSIA)

Project team

- Project Manager: Mr Joe Fardin, AIATSIS Research Fellow: Agreement making, AIATSIS
- Project Director: Dr Lisa Strelein, Director Research programs, AIATSIS
- Project Advisor: Mr Richard Potok, Director, Aurora Project
- Project support : Native Title Research Unit, AIATSIS

Project management

Working Group of NTRB representatives and project partners

- The engagement of NTRBs in this project is essential, in terms of both design and implementation. It is proposed that a working group of interested NTRB staff be established. This group will be integral to the development of the project; the intention is for it to actively contribute to the work of the project during its lifespan.

AIATSIS Native Title Advisory Committee, AIATSIS corporate infrastructure

- As part of the AIATSIS native title program funding agreement with FaHCSIA, this project will be subject to the oversight of the AIATSIS native title advisory committee and will be supported by the corporate infrastructure of AIATSIS as a commonwealth agency, including our Audit and Risk committee and Governing Council.

Method and deliverables

Based on preliminary project discussions, and building on work carried out and outcomes achieved during the pilot phase, the following method is proposed:

1. Continue to seek copies of NTRB agreements of precedential value (including future act agreements and other types of agreement) and/or clauses from within those agreements and add these to the information management database;

2. On termination of the pilot phase, and if further funding for the project is made available, expand the scope of the project to include not only mining and exploration agreements (as identified during the pilot phase), but also other categories of agreement as identified by project participants;
3. Continue to identify content headings, common components and options for treatment of content;
4. Continue to report on outcomes as appropriate – both to FaHSCIA and to NTRBs (and more broadly if/where relevant);
5. Continue to distribute project outputs;
6. Identify possibilities for new inputs and outputs, as well as ways to improve existing elements;
7. Refine the knowledge management system on an ongoing basis to reflect points 2, 3 and 7 above, and to reflect the fact that this is intended to be a ‘live’ resource. This will remain a closed system for NTRB access only.

| |
|-------------------------|
| Project timeline |
|-------------------------|

July-August 2010

- Finalise first round of sanitisation and collation;
- Develop and implement information delivery system in prototype form.

September 2010

- Analysis and recommendations;
- AIATSIS progress and financial reports to FaHSCIA;
- Complete information delivery system prior to end Variation period, to extent permitted by project outcomes to date.

October 2010 - December 2010

- Reality test information delivery system in liaison with Working Group and NTRBs, amend, update and carry out further research as required;
- Begin planning for project up-scaling, revise/enlarge project scope and prepare for/begin work on second tranche of information gathering;

January 2011 – April 2011

- Produce research product/s reflecting on project ;
- Consider possibilities for other outputs including relating to the knowledge management system as part of sustainability planning;
- Identify new agreement categories to be targeted for inclusion in the database in collaboration with Working group and NTRBs;
- Continue information gathering, sanitising & collating as relevant and begin rolling out process with all other participating NTRBs. This will involve further NTRB-hosted work as relevant.

April 2011 – June 2011

- Information gathering, collation and sanitisation – continue as required (possibly with APS3/4 support);
- Consolidate networks and communication, assess possibilities for project succession ;
- Assess options for final ownership of database, project information and products;

Risks and mitigation

The four key areas of risk affecting the successful delivery of the project remain the same as identified in the pilot phase, although their relative significance has shifted:

1. NTRB participation: A measure of the success of the project will be the ‘buy in’ from NTRBs. This project responds to calls from NTRBs for this kind of resource, but we acknowledge that resources and time of NTRB staff is limited and difficult to apply to external projects. We will address this by ensuring that collection of data will be undertaken in situ; that is the research fellow will spend time at NTRBs rather than relying on NTRBs to come to us.
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Contact

For further information or to comment on this project please contact:

Joe Fardin
Research Fellow: Agreement Making
joe.fardin@aiatsis.gov.au
02 6246 1160



Native Title Services Victoria Ltd

ABN 27 105 885 149
Level 2 642 Queensberry Street (PO Box 431) North Melbourne VIC 3051
ph (03) 9321 5300 fax (03) 9326 4075 www.ntsv.com.au

psimmons@ntsv.com.au

11 November 2010

Ms Libby Bunyan
Director Native Title Policy
Indigenous Programs Branch
FaHSCIA
GPO Box 9820
Melbourne VIC 3001

Sent via email to Libby.Bunyan@fahcsia.gov.au

Dear Libby

NTRB Legal Precedents Database

I write in support of the NTRB Legal Precedents Database which has been recently established by Joe Fardin through AIATSIS, with funding from FaHSCIA.

NTSV has participated in this project by being a member of the working group. NTSV has contributed future act agreements to the database and has provided feedback to Joe during the development of the database.

NTSV believes the database is a highly valuable tool as it provides an inexpensive and fast means of accessing templates or precedents for clauses not previously drafted by NTSV or for which NTSV is looking for alternatives. The database is already easy to use and quite comprehensive and its usefulness will only increase the more agreements are included on it.

The database has already provided us with access to useful information about agreement content and agreement making processes in other NTRBs which will be used to inform and improve the way we prepare agreements. Further, it has the potential to facilitate meaningful communication between NTRB lawyers on specific matters.

We understand the creation of the database is almost complete however we see a need for an ongoing position to be funded to:

1. maintain the database, ideally adding more agreements over time;
2. address any problems that may arise from time to time with its operation;
3. promote the use of the database to NTRBs/NTRB lawyers; and
4. expand the database as necessary.

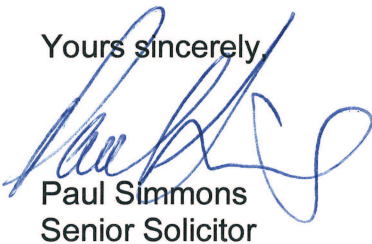
The types of additional functions we believe the database could usefully be expanded to provide include:

- Online forum for discussion between NTRB lawyers of questions related to future act agreements, precedents, general queries.
- Section providing access to legal (or other expert) advices on various native title matters.
- Integration of scale or scoring system to identify 'best practice' clauses.

NTSV supports further funding of the project to ensure its continuation as we believe it will provide invaluable assistance to NTRB lawyers in drafting future act and native title agreements. Ensuring the database is available to all NTRBs will greatly assist NTRBs to provide accurate, comprehensive advice in an efficient manner.

If you would like to discuss the content of this letter further please contact me on 03 9321 5300.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Paul Simmons', is written over the typed name and title.

Paul Simmons
Senior Solicitor

[Insert Party A contact]
[Insert Party A name]
[Insert Party A ABN]
[Insert Party A address]

Dear [Party A contact person]

Native Title Representative Bodies Knowledge Management Pilot: Agreement Making

The Australian Institute of Aboriginal and Torres Strait Islander Studies (**AIATSIS**) coordinates and operates the Native Title Representative Body Knowledge Management Project: Agreement Making (**the Project**).

The Project involves the submission by Project participants of legal documents including agreements, advices, contracts and court materials as well as other information to form a central database for use by other Project participants.

[Party A] wishes to participate in the Project and become a 'Project Partner' as that term is defined in the Project Partner Deed enclosed with this letter (**the Project Partner Deed**).

By signing this letter [Party A] accepts and agrees to comply with the terms and conditions of the Project as set out in the Project Partner Deed.

Please sign one copy of this letter and return it to Joe Fardin, AIATSIS Research Fellow, at the above address.

Please contact Joe Fardin on (02) 6246 1160 if you would like to discuss this matter further.

Regards

Mr Russell Taylor
Principal
AIATSIS

Signed, sealed and delivered for and on behalf of [*PartyA*], ABN [*insert PartyA ABN*] by its authorised representative in the presence of

.....
Signature of authorised representative

.....
Date

.....
Name of authorised representative

.....
Date

.....
Signature of witness

.....
.....

Witness name and address

Dated

Native Title Representative Bodies Knowledge Management Pilot: Agreement Making

Project Partner Deed

Parties

Australian Institute of Aboriginal and Torres Strait Islander Studies
ABN 62 020 533 641

And

Project Partners

Deed dated

Parties **Australian Institute of Aboriginal and Torres Strait Islander Studies** ABN 62 020 533 641, a body corporate established under section 4 of the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989* (Cth) and having its principal place of business at Lawson Crescent, Acton in the Australian Capital Territory
(AIATSIS)

and

Project Partners

Introduction

- A. AIATSIS is launching the Native Title Representative Body Knowledge Management Pilot: Agreement Making (**the Project**) with the objective of developing and disseminating information of precedential value for use by Native Title Representative Bodies and service providers (**NTRBs**).
- B. The Project will involve the submission by Project Partners, and collation by AIATSIS, of legal documents including advices, contracts and court materials as well as other information to form a central knowledge management database (**the Project Database**) for use by NTRBs.
- C. The Project Partners are NTRBs who intend to contribute to the Project and to utilise the Information included in the Project Database.
- D. The Parties agree to co-operate in accordance with the principles set out in this Deed to achieve the objectives of the Project as summarised in Recitals A and B.
- E. AIATSIS will lead the Project Partners and be responsible for coordinating the Project.

It is witnessed

1. Definitions and interpretation

1.1 Definitions

In this Deed:

- (1) **Applicable Laws** means the relevant laws, regulations, codes, rules and standards that may govern the conduct of the Parties under this Deed;
- (2) **Confidential Information** means information which is subject to an obligation of confidence (express or implied);

- (3) **Deed** means this document, including any schedule or annexure to it; and
- (4) **Information** includes deeds, agreements, advices, practice notes, court documents, historical data and any other information which may be of value to Project Partners and has been approved under clause 4.5 for inclusion in the Project Database;
- (5) **Intellectual Property** or **Intellectual Property Rights** includes any:
- (a) copyright;
 - (b) design, patent, trademark, semiconductor, circuit layout or plant breeder rights (whether registered, unregistered or applied for);
 - (c) trade, business, company or domain name; and
 - (d) know-how, inventions, processes, confidential information (whether in writing or recorded in any form);
- and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields and any application or right to apply for registration of any of those rights;
- (6) **Legal Professional Privilege** includes privilege recognised at common law and under the Commonwealth, State and Territory Evidence Acts;
- (7) **Project Partners** refers to:
- (a) NTRBs that have executed this Deed and that will be contributing to or otherwise partaking in the Project; and
 - (b) NTRBs that:
 - (i) agree to be bound by the terms of this Deed after the date on which the Deed is first executed by a Project Partner; and
 - (ii) are notified by AIATSIS to existing Project Partners under clause 1.3(4);
- (8) **Parties** means the parties to this Deed, being AIATSIS and the Project Partners;
- (9) **Preliminary Content** includes deeds, agreements, advices, practice notes, court documents, historical data and any other information which may be of value to the Project Partners as "Information" but has not been authorised by a Project Partner under clause 4.5 for inclusion in the Project as Information;
- (10) **Privacy Legislation** means the *Privacy Act 1988* (Cth) and any State and Territory acts dealing with privacy and the protection of personal information and any associated regulations or subordinate legislation;
- (11) **Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
- (12) **Use** includes reproduce, modify and adapt but does not include publication or communication to the public at large.

1.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a Party includes the Party's executors, administrators, successors and permitted assigns;
 - (e) a thing includes the whole and each part of it separately;
 - (f) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
 - (g) dollars means Australian dollars unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (5) A provision of this Deed must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.

1.3 Parties

- (1) If a Party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A Party which is a trustee is bound both personally and in its capacity as a trustee.
- (4) Third party NTRBs may become Project Partners at any time by agreeing to be bound by the terms of this Deed. AIATSIS will, after a NTRB agrees to the terms of this Deed, notify existing Project Partners of the addition of the new Project Partner to the Project.
- (5) Each Project Partner agrees to extend the rights and benefits it grants to Project Partners who are Parties to this Deed on the date that it is first executed, to NTRBs who subsequently become Project Partners under clause 1.3(4).

2. Duration

- 2.1 Each individual Project Partner commences to be bound by this Deed on the earlier of the date:
- (1) the Deed is signed by that Project Partner;
 - (2) the Project Partner approves Preliminary Information for inclusion in the Project;
 - (3) the Project Partner accesses Information contributed to or stored in the Project Database or
 - (4) the Project Partner otherwise commences participating in the Project,
- and will terminate on the earlier of the effective date of:
- (5) the Project Partner's notice under clause 9 of its intention to withdraw from the Project; or
 - (6) AIATSIS's notice under clause 10 of its intention to terminate the Project.

3. Governing Principles of the Project

- 3.1 The Parties acknowledge that the purpose of the Project and this Deed is to facilitate the sharing of knowledge amongst NTRBs.
- 3.2 Each Party agrees to:
- (1) cooperate fully with all other Parties to ensure the long term success of the Project;
 - (2) conduct all negotiations between the Parties in absolute good faith;
 - (3) pay its own costs and outlays connected with the Project and the negotiation and execution of this Deed;
- 3.3 The Project Partners acknowledge that AIATSIS will direct and lead the coordination and development of the Project.

4. Review of Preliminary Content

- 4.1 AIATSIS (through its authorised representative) will attend each Project Partner to assist in the identification and preparation of Preliminary Content for submission in the Project. This process may include the modification of Preliminary Content for standardisation purposes and for the purpose of removing content which, if submitted by the Project Partner, may be in breach of the Project Partner's warranty under clause 5.1.
- 4.2 Upon completion of AIATSIS's review of a Project Partner's Preliminary Content, the AIATSIS authorised representative will present to that Project Partner the Preliminary Content (as modified by AIATSIS as the case may be) which AIATSIS would like to include in the Project.
- 4.3 AIATSIS makes no warranties or representations that the Preliminary Content identified and prepared by AIATSIS and provided to a Project Partner under clause 4.2 is suitable for inclusion in the Project as Information.

- 4.4 A Project Partner must review the Preliminary Information as provided by AIATSIS under clause 4.2 and notify AIATSIS within 21 days of receiving the Preliminary Information (subject to an extension granted by AIATSIS under clause 4.6) if any of the Preliminary Content:
- (1) contains any Personal Information;
 - (2) contains any Confidential Information;
 - (3) is subject to Legal Professional Privilege;
 - (4) contains Intellectual Property Rights, including moral rights, of any person; and
 - (5) is otherwise not suitable for the inclusion in the Project.
- 4.5 If a Project Partner does not notify AIATSIS under clause 4.4, the Preliminary Content will be deemed approved by the Project Partner for submission and inclusion in the Project Database as Information.
- 4.6 A Project Partner may seek an extension to the 21 day review period under clause 4.4 by providing a written request to AIATSIS no later than 5 days before the expiry of the review period.

5. Inclusion of Information in the Project Database

- 5.1 A Project Partner, in approving Information under clause 4.5, warrants that:
- (1) the Information does not contain any Personal Information or, if the Information does contain Personal Information, the Project Partner has obtained the prior express consent of the individual to whom that Personal Information belongs to permit the inclusion of the Information in the Project Database and the dissemination amongst and Use of the Personal Information by the Parties;
 - (2) the Information does not contain any Confidential Information;
 - (3) the Information is not subject to Legal Professional Privilege;
 - (4) the inclusion of the Information in the Project Database and the Use of the Information (in whole or in part) by the Parties will not infringe the Intellectual Property Rights, including moral rights, of any person; and
 - (5) the inclusion of the Information in the Project and any use of or access to the Information by the Parties in accordance with this Deed will not breach any Applicable Laws.
- 5.2 The Project Partner grants to AIATSIS and all other Project Partners a non-exclusive, royalty-free, perpetual, sub-licensable licence to Use the Information for the purposes of the Project.
- 5.3 If a Project Partner becomes aware or reasonably suspects that the Information or any Use of the Information by the Parties:
- (1) breaches an obligation of confidence,
 - (2) infringes the Intellectual Property Rights of any person;
 - (3) breaches the Privacy Legislation;

(4) constitutes a waiver of Legal Professional Privilege; or

(5) otherwise breaches any Applicable Laws,

the Project Partner must immediately notify AIATSIS.

- 5.4 AIATSIS must, within seven days of receiving notice from a Project Partner under clause 5.3, remove the offending Information from the Project Database. The Project Partners acknowledge that any removal of Information from the Database may not prevent other Project Partners from Using or storing that Information if accessed by Project Partners prior to the Information's removal from the Database.

6. Use of Information by Project Partners

- 6.1 Each Project Partner may, upon completion of the Project Database, access and Use Information provided by other Project Partners.
- 6.2 Each Project Partner acknowledges that the Parties make the Information available on an 'as is' basis and the Parties make no warranties as to the accuracy, currency or completeness of the Information.
- 6.3 The Project Partners acknowledge that the Information is not intended to constitute legal advice and each Project Partner must make its own enquiries and seek professional legal advice before relying upon the Information.
- 6.4 A Project Partner must not assert ownership over any Intellectual Property Rights subsisting in the Project or the Information (except to the extent that Intellectual Property Rights subsist in Information contributed to the Project by that Project Partner).
- 6.5 A Project Partner must not publish or otherwise communicate to the world at large any Information obtained through the Project without seeking the prior consent of AIATSIS. For the avoidance of doubt, this clause 6.5 does not prevent the disclosure of Information to clients by Project Partners in the course of providing legal advice and services to clients.
- 6.6 The Project Partners must comply with any reasonable directions given by AIATSIS in relation to the Use and return of Information.

7. Release and Indemnity

- 7.1 Each Project Partner ("the releasing Project Partner") releases the other Project Partners and AIATSIS from all liability for losses (direct and indirect, consequential and special losses) and liabilities incurred, including all costs actually payable to legal representatives (whether or not under a costs agreement) and other expenses incurred in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal) incurred by a Project Partner arising from or in connection with:
- (1) the releasing Project Partner's involvement in the Project;
 - (2) the releasing Project Partner's access to or Use of any Information; and
 - (3) any access to or Use of Information originating from the releasing Project Partner by AIATSIS or other Project Partners.

8. Publicity

- 8.1 The Project Partners acknowledge the right for AIATSIS to use each Project Partner's name, trade marks or logos and to make public statements about the Project and the Project Partners' involvement in the Project.

9. Withdrawal from the Project

- 9.1 A Project Partner may withdraw from the Project at any time by giving 14 days' written notice to AIATSIS.
- 9.2 The Project Partners acknowledge that withdrawal from the Project does not require AIATSIS to return any or all of the Information originating from the withdrawing Project Partner.

10. Termination of the Project

- 10.1 AIATSIS may in its absolute discretion discontinue the Project by giving written notice to the Project Partners.
- 10.2 The Project Partners acknowledge that termination of the Project does not require AIATSIS to return any or all of the Information originating from the Project Partners.
- 10.3 The Parties acknowledge that on the termination of this Deed under clauses 9 or 10 the Parties continue to be bound by the obligations relating to the objective of the Project, Use of Information, warranties and exclusions of warranties in relation to Information and Preliminary Content, releases and indemnities, return of Information by AIATSIS and waivers and any other obligations which by their nature are intended to survive this Deed.

11. Relationship of the Parties

The Parties agree that:

- (1) nothing contained in this Deed constitutes any of them as agent, partner or trustee of any other of them, or creates any agency, partnership or trust for any purpose whatsoever; and
- (2) except as otherwise specifically provided in this Deed, a Party does not have any authority or power to act for, or to create or assume any responsibility or obligation on behalf of, any other Party.

12. Entire understanding

This Deed:

- (1) is the entire agreement and understanding between the Parties on everything connected with the subject matter of this Deed; and
- (2) supersedes any prior agreement or understanding on anything connected with that subject matter.

13. Variation

An amendment or variation to this Deed is not effective unless it is in writing and signed by the Parties.

14. Waiver

- 14.1 A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 14.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 14.3 A waiver is not effective unless it is in writing.
- 14.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

15. Notices

- 15.1 A notice or other communication connected with this Deed (**Notice**) has no legal effect unless it is in writing.
- 15.2 In addition to any other method of service provided by law, the Notice may be:
- (1) sent by prepaid post to; or
 - (2) delivered at;
- the address of the addressee set out in this Deed or subsequently notified.
- 15.3 If the Notice is sent or delivered in a manner provided by clause 15.2, it must be treated as given to and received by the Party to which it is addressed:
- (1) if sent by post, on the 2nd business day (at the address to which it is posted) after posting; or
 - (2) if otherwise delivered before 5pm on a business day at the place of delivery, upon delivery, and otherwise on the next business day at the place of delivery.

16. Governing law and jurisdiction

- 16.1 The law of the Australian Capital Territory governs this Deed.
- 16.2 The Parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and of the Commonwealth of Australia.

17. Execution of counterparts

- 17.1 This Deed may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same deed.

END OF DOCUMENT

Domain Name Certificate of Registration



*Certificate of Registration
of .au Domain Name*

This is to certify that

ntrbprecedents.org.au

was on 18th Aug 2010

registered to AUSTRALIAN INSTITUTE OF ABORIGINAL & TORRES STRAIT ISLANDER STUDIES
ABN 62020533641

for a period of two years, subject to the terms and conditions of the domain name licence and according to .au Domain Administration Limited's published policies from time to time.

Issued by Distribute IT Pty Ltd ABN 88 101 292 237 as an auDA Accredited Registrar

on 18th Aug 2010

A handwritten signature in black ink, appearing to be "M. Smith", is written over a light blue horizontal line.

Authorised Signatory

IMPORTANT NOTICE

It is auDA policy that domain name registrants must notify their registrar of any changes to their contact details or other registration information.

Failure to do so may result in revocation of the domain name licence.