Report to the National Native Title Tribunal

Capacity of Anthropologists in Native Title Practice

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Abbreviations used

AAS	Australian Anthropological Society Inc
AASNet	Australian Anthropological Society's electronic bulletin board
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ALRA	*Aboriginal Land Rights (Northern Territory) Act* (Cth) 1976
ANU	Australian National University
ATSIS	Aboriginal and Torres Strait Islander Services
CAEPR	Centre for Aboriginal Economic Policy Research
DEST	Department of Education, Science and Training
HECS	Higher Education Contribution Scheme
NNTT	National Native Title Tribunal
NTRB	Native Title Representative Body
UWA	University of Western Australia

Acknowledgments

I wish to acknowledge the input and assistance of many individuals in the preparation of this report.

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Finally, I am most appreciative of the support, advice and patience of Dr Klim Gollan, of the National Native Title Tribunal, in his role as Manager of this project.

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Executive Summary

Profile of anthropologists working in native title

1. A survey of native title practitioners was conducted for the project, and for reasons outlined in the report, it is assumed that the profiles established for the survey sample correspond broadly with those of anthropologists working in native title more generally.

2. The survey indicated that older and relatively well-qualified practitioners dominate native title anthropology. A significant proportion of those surveyed (53 percent) were aged over 50, and 72 percent of this group had higher degrees, while most anthropologists aged under 30 (over 80 percent) were women who did not have higher degrees. The demographic profile of native title practitioners posed a serious threat to anthropological involvement in native title work.

NTRB anthropologists

3. All respondents aged under 30, and a substantial proportion (45 percent) of those aged between 30 and 39, worked for Native Title Representative Bodies (NTRBs). The majority (58 percent) of respondent NTRB anthropologists were under 40 years old, and the younger (under 30) NTRB anthropologists were overwhelmingly female.

4. Relatively few (less than 30 percent) of NTRB anthropologists had higher degrees, or had more than 5 years experience in native title work, and a quarter of them had less than one year's experience.

5. NTRB anthropologists were significantly less likely to have had experience working in land rights than their colleagues in the academy or working as consultants; only 25 percent of them had experience in this related arena, compared with between 60 and 70 percent of their colleagues.

Consultant anthropologists

6. Consultant anthropologists were dominated (60 percent) by practitioners over 40 years old. In comparison with NTRB anthropologists, there was a far higher proportion of consultants who held higher degrees (75 percent as compared to 26 percent), and almost all consultant anthropologists had between 5 and 10 years experience in native title work. Seventy percent of consultants had also worked in the land rights area, and 90 percent of them worked in areas of practice other than native title.

7. The survey data thus indicate that consultants as a group tend to be older and more experienced practitioners with diverse practices, who do not simply focus on native title work.

Academic anthropologists

8. Anthropologists working in the academy were predominantly older (87 percent were aged 40 or over) and better qualified than their consultant counterparts and (most particularly) those working in NTRBs. They were also proportionately more experienced in native title-related work, with almost all having between 5 and 10 years experience in this area. Two thirds of them

had worked in land rights, and all of them researched or worked in areas other than native title.

Anthropologists in native title practice

9. Anthropologists undertake a wide range of pure and applied work in native title practice.[1] Consultants worked on both field and desktop research, and almost all were involved in the preparation of 'connection reports'. Around 70 percent had undertaken peer review and other assessment of claims, and roughly two thirds had been involved directly in either litigation or mediation of claims. Thirty percent of consultants had worked on either or both theoretical and policy issues in native title, but few were involved in either management or non-anthropological work in relation to claims.

10. NTRB anthropologists are heavily involved in research for claims and connection documentation. However, survey data demonstrate that anthropologists working in NTRBs were much more likely than either their consultant or academic colleagues to be working in non-anthropological aspects of native title work (such as field research logistics and claim management), and were less likely to be working on litigation or mediation of claims or the preparation of connection reports than consultants. While they otherwise had role profiles which were not dissimilar to consultants, some NTRB anthropologists felt that they were merely adjunct workers to the more pivotal roles accorded consultant anthropologists.

11. Academic anthropologists' native title work was much more focussed on theoretical and policy matters than their NTRB and consultant colleagues, but apart from being little involved in management or non-anthropological native title work, had relatively similar role profiles to consultants. A relatively lower proportion however stated that they were involved in either field or desktop research, mainly because of the greater focus on theoretical and policy issues in the academy.

12. There have been concerns expressed that anthropologists are selective in the clients for whom they work, and in particular that a common ideological position of those in the profession means that few are prepared to work for other than Indigenous interests. The survey data collected for this project data lend some credence to the view that there is a tendency, although not very strong, amongst anthropologists to work preferentially for Aboriginal interests.

13. Whether or not native title work can provide anthropologists with a positive contribution to the development of their careers is crucial to attracting and

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[1] For the purposes of this report, 'pure' anthropological research refers broadly to that which is focused primarily on theoretical issues. It is usually, although not always, carried out in universities, and is generally not directly funded by commercial interests. The results of 'pure' research are most commonly published in academic journals and books. 'Applied' anthropological research is usually commissioned by external parties, whether commercial organisations, Indigenous organisations, or government, and is focused in such areas as policy, land rights and native title litigation, and so forth. The results of 'applied' research are often to be found in consultancy reports, and may not be publicly available. However, much 'applied' research is published, for example that from the Centre for Aboriginal Economic Policy Research. In practice, the division between 'pure' and 'applied' research is far from hard and fast, each feeding into and informing the other.

maintaining good quality professional anthropological involvement in native title practice. Only 20 percent of consultants saw native title work as enhancing a career in anthropology—the same proportion as for those in the academy. Rather more NTRB anthropologists, 30 percent, viewed their native title work positively in this sense. For consultants, 40 percent were of the view that native title work actually limited their anthropological careers, and a further 40 percent either ventured no opinion or were ambivalent about the issue.

Native title anthropology within the wider discipline

14. Anthropological native title practice in the form of delivering 'services' in the recognition and management of native title itself, has of course to be seen as embedded within a wider system which includes research on theoretical and policy issues concerned with native title (by those based both in the academy and outside it), and crucially includes wider research and the teaching of anthropology within the universities.

15. The state of anthropology in native title practice is thus of necessity closely linked to that in the academy, and therefore to factors in the social sciences and ultimately modern western society more generally. The move in anthropology towards post-modernism for example has left the necessarily more positivistic anthropology of applied native title practice somewhat exposed within the academy.[2]

16. There is a degree of tension between applied practitioners and those in the academy, and related to this some strain between 'Aboriginalist' anthropology and anthropology more generally. There is a pervasive view amongst applied native title practitioners that their form of anthropology is considered marginal or dismissed by many in the academy.

17. On the other hand, the capacity of academics to attract revenue to cash-strapped university departments through consultancy work is valued for the revenue, if not for the intrinsic value of the work.

Preparation of anthropologists for native title work

18. Anthropologists play a wide range of roles in native title practice, particularly consultants and those employed in NTRBs. They therefore require a correspondingly wide range of skills and knowledge in order to be able to undertake their work in a competent and professional manner.

19. A key question in this regard is what aspects of these roles can legitimately be seen as a component of specifically *anthropological* practice per se, what might be seen as components of native title practice not specifically confined to anthropologists, and what might be seen as aspects of general professional competence.

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[2] The meaning of 'post-modernism' for the purposes of this report is discussed on page 36. Positivism places science in a privileged position; assumes the possibility of a scientific understanding of human and social behaviour; assumes the separation of knowledge and power; and assumes the possibility of objectivity and impartiality (*Online Dictionary of the Social Sciences*, at http://socialsciencedictionary.nelson.com).

20. Specifically anthropological skills include a strong academic anthropology background, a good knowledge of the relevant ethnographic literature, knowledge of Aboriginal land tenure and its interpretation through native title law, fieldwork techniques and methods, archival and library research skills, report writing skills, an understanding of research ethics and intellectual property issues, the ability to interpret legal and historical texts, and knowledge of genealogical methods.

21. Skills that are relevant to general native title practice include cross-cultural competence and experience, knowledge of native title heritage and evidence law, and an understanding of processes such as mediation.

22. Aspects of general professional competence for NTRB anthropologists include good interpersonal skills, managing contracts with consultants, excellent verbal and written skills, good management and team work skills including the capacity to be able to effectively mediate relations between consultants and NTRB lawyers, and the capacity to understand and work with NTRB organisational politics.

23. Many of these skills are also required by anthropologists whether they work in NTRBs or as consultants, although timeframes for work might differ as could the expected quality and level of the work produced.

24. The critical views of applied native title research in some areas in the academy may be reflected in part in the numbers of anthropology graduates who see native title practice as part of a viable and rewarding career. As well as these more 'attitudinal' matters, there is a core question as to whether anthropologists are being (and should be) prepared in Australian universities with the skills to equip them for native title work.

25. The place for training in anthropological native title practice (for consultants and those in NTRBs and government agencies etc) is not in Bachelors degrees but rather should lie in special purpose courses. Providing detailed advice on the content of such courses, who should deliver them, is well beyond the scope of this project and should be the subject of further detailed consideration. There are precedents for the development of courses of the type which would be appropriate for native title anthropological practice.

Supply and demand factors

26. It has not been possible within the resource and time limitations of this project to collect definitive information on the take-up of anthropology graduates in the various areas of native title practice. However, indicative information was gathered which suggested that of over 100 anthropologists working in Australian universities, fewer than 20 were actively engaged in native title practice. There are a total of 45 staff native title anthropologist positions within NTRBs nation-wide, and in all probability fewer than 20 anthropologists are employed in government agencies in relation to native title issues.

27. Neither did the limitations of this project allow systematic data to be collected on whether the demand for anthropologists with appropriate qualifications and experience was met. There has been some legal commentary concerning difficulties experienced by NTRBs in obtaining suitable assistance from qualified anthropologists.

28. In the absence of detailed investigation, it is not possible to determine whether there are in fact shortages of anthropologists and if so, whether they relate to an inadequate supply of professionals per se, or to claim management issues including ensuring that appropriate lead times are provided to consultants.

29. Anecdotally, there would appear to be a shortage of suitably qualified and experienced anthropologists (and other professionals) in NTRBs. This is borne out by the preponderance of younger, relatively inexperienced anthropologists in those organisations.

30. It would appear that some NTRBs in particular have difficulty in attracting and keeping qualified staff, and a number of the positions are not filled. The widespread knowledge within the profession regarding the difficulties in working in these environments, and the fact that relatively few current practitioners see native title as a viable and attractive career option must further impact on the choices of those who are looking for work as anthropologists within NTRBs.

31. Similar issues are very likely to impact on the availability of consultant anthropologists, over and above whether there is in fact an absolute shortage of suitably qualified individuals. Anecdotally, many NTRBs do have problems in finding appropriate consultants such that (for instance) increasingly tight Federal Court deadlines can be met, but establishing the parameters and causes of any such shortage would require further research.

32. Department of Education, Science and Technology data would seem to indicate that nationally there would appear to have been more than enough graduates with Bachelors and higher degrees in anthropology produced from 1993–2001 from whom practitioners could be drawn to meet any supply-side deficiencies in the native title system.

33. Any lack of appropriately qualified anthropologists for applied native title research, and the dominance of consultancy anthropology by those aged over 50, must therefore be due to factors other than a sufficiently large pool of anthropologists from which to draw recruits to native title practice. These factors include matters such as the contested status of applied work generally in some areas in the academy, the move in many institutions away from any particular focus on Australianist anthropology, the fraught politics of Aboriginal Australia generally and native title in particular, and concerns about the interaction between anthropologists and the law including the potential being involved in litigation.

Challenges facing native title anthropology

34. The report identifies a number of challenges facing native title anthropology.

Professionalising native title anthropology

35. Anthropology by its very nature is a somewhat idiosyncratic enterprise which requires successful practitioners to themselves be self-consciously positioned outside the general thinking of the western societies from which they generally come. This and other such factors arguably contribute to long-existing conflicts within the Australian Anthropological Society (AAS), including the ongoing debate about its professionalisation.

36. At the level of *practice* (as opposed to that of anthropological theorising), they also contribute to a certain form of entrenched amateurism within anthropology as a form of professional practice, as distinct from anthropology as a discipline within the academy. This in turn means that anthropology is ill equipped to engage as an equal with the other professions involved in native title practice—most particularly, the law—and with the requirements of an increasingly bureaucratised system of recognising and administering native title.

Relationship with the law and legal practice

37. The law poses challenges to anthropology at many levels, and the relationship between native title anthropology and the law (and between anthropologists and lawyers) is not infrequently an uncomfortable one.

38. Common anthropological ways of thinking and writing in materials contributed to debate within the discipline do not necessarily prove appropriate in the context of preparing 'connection reports' for native title litigation or mediation.

39. It is crucial that anthropologists and other experts understand the role of expert witnesses as per the Federal Court's guidelines in order that their evidence is given due weight. A reading of the judgments, and practical experience, should encourage an interdisciplinary approach to these issues.

40. Challenges for anthropologists are posed by lawyers in other ways as well. Inappropriate or inadequately scoped instructions are not infrequently given to both consultant and NTRB anthropologists, including insufficient time to conduct the research involved.

41. There is anecdotal evidence from anthropologists working within NTRBs which suggests that professional tensions between legal and anthropological perspectives on claim facilitation and assistance is an ongoing issue. There is a clear need for effective cross-disciplinary communication and a capacity to work as a team rather than in disciplinary silos. Few forums or opportunities have been consistently provided to achieve this, either by the major institutions of the native title system or by relevant professional associations.

42. While there has rightly been a focus on anthropologists implementing Federal Court directions relating to the roles of expert witnesses, there have been claims made that there have been instances of lawyers pressuring anthropologists into writing reports in terms which they professionally and ethically disagreed with. Anthropologists in such situations have felt powerless and unrepresented when raising their concerns on matters of professional ethics.

A diverse and changing native title environment

43. An additional set of challenges is posed for anthropology by continuing changes in the native title environment. These relate both to ongoing developments in native title law itself, as courts provide findings in relation to foundational concepts, and to the gradual move from mediation and litigation to agreement making, native title management etc over the next decades. Anthropological practice will need to adapt to these changes.

Introduction

44. Late in 2003 the National Native Title Tribunal (NNTT) sought Expressions of Interest for a consultant to undertake research and provide a report to the Registrar on;

    (a) An assessment of the present roles that anthropologists play in Native Title processes, and an assessment of their preparedness for those roles,

    (b) An assessment of the required skills sets for different professional services (eg. Mediation, litigation, policy analysis, heritage assessment, etc),

    (c) An assessment of the capacity of the present Australian anthropological consultants to meet the needs for field-based reporting and analysis in Native Title proceedings, including specifically, 'connection reporting',

    (d) An assessment of take-up profile of graduates in anthropology in salaried positions relating to Native Title.

45. It was the Registrar's intention that such research would support strategic planning in the agency and provide an informed commentary to stakeholders in the Native Title process about the role of anthropological consultants.

46. The Registrar anticipated that the research would cover both quantitative and qualitative information. Anthropos Consulting Services successfully tendered for the work which was undertaken as a limited consultancy.

47. The research methodology involved;

- Development by Anthropos of a questionnaire to capture quantitative data as well as some qualitative material (see **Attachment A**). The questionnaire was self-administered and provided to participants on an anonymous basis. The results were analysed and are described in detail below.
- Confidential interviews were conducted by telephone with a selected group of anthropological practitioners with the aim of providing qualitative data on critical matters identified through the questionnaire.
- NNTT research and library staff provided assistance through identification of relevant literature on anthropology and anthropologists in native title (see **Attachment B**. Some of these references are more directly relevant than others).
- NNTT staff also contacted State, Territory and Commonwealth government departments where native title is dealt with as core business. A range of government departments within State/Territory jurisdictions are concerned with native title issues but usually as an adjunct to core business.
- Training of anthropologists for native title research is another key issue identified for the report. Commentary on training and skills sets required of

anthropologists in native title is drawn largely from responses to the survey. Supplementary comments were elicited in focussed interviews with senior practitioners.

- ATSIS commissioned a report in 2002 to canvass the range of existing courses including the scope for further accredited university units or short-courses allied to native title. Dr Rolf Gerritsen surveyed all major Australian universities with the capacity to develop and deliver such tailored courses. While the project was never finalised, draft reports indicated a range of difficulties within the university sector that would make such courses difficult to realise. In general, universities have showed little general interest either for initiating short-courses or units linked to a relevant degree.3
- During the period of the consultancy a debate amongst anthropologists emerged on the Australian Anthropological Society's electronic bulletin board (AASNet). This has provided a useful source of qualitative information pertinent to this project.

48. The limited resources available for undertaking the consultancy and the ambitious nature of some of the terms of reference, have meant that the report has not been able to canvass all terms of reference with equal thoroughness.

Survey of anthropologists working in native title

49. In order to ascertain both quantitative and qualitative information relevant to the project brief as systematically as possible, it was agreed with the NNTT that a survey would be conducted of anthropologists working in the native title area. During October 2003, Anthropos developed a questionnaire with contributions from the NNTT (specifically with regard to privacy and confidentiality requirements) and from senior anthropological practitioners. A disclaimer accompanied all finalised questionnaires. The disclaimer dealt with the privacy and confidentiality issues in the management of information supplied in completed surveys.

Dissemination of the questionnaire

50. Information about the project and the questionnaire was posted several times on AASNet. This forum has over 450 subscribers (some of who live overseas, although not all are anthropologists). As well, Anthropos directly contacted anthropological colleagues to advise them of the project.

51. In addition, the questionnaire was available electronically on the Anthropos website (http://www.anthropos.com.au). The website provided a summary of the project's aims, information on its sponsorship, and a statement concerning the confidentiality of the information provided.

52. Links to the questionnaire were accessible in two electronic formats—Rich Text Format (rtf) and Portable Document Format (pdf)—and contacts were provided for those who, for whatever reason, had difficulty in downloading the

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[3] Although as this report was being finalised, a proposal for a Graduate Certificate in native title and heritage management was being developed at the University of Western Australia

document and wished to have it posted to them. In all, about 10 hard-copy questionnaires were posted or directly given to anthropologists. Web site statistics suggest that there were some 150 unique views of the relevant pages on the Anthropos website.

Representativeness of the survey sample

53. We estimate that the number of returned questionnaires—fifty-five—equated to between half and two-thirds of the field of current anthropological native title practitioners. This estimation is based on our professional knowledge of the composition of the three major sectors in which anthropologists currently work in native title; (a) the Academy (that is, those anthropologists working in universities who worked in the native title area, whether in pure or applied research[4] or through undertaking consultancy work); (b) Native Title Representative Bodies (NTRBs); and (c) Consultants (both full time and part-time).

54. Consistent with this initial estimate of the response rate, a telephone survey we subsequently conducted identified a total of 45 positions for native title anthropologists nationwide within NTRBs (although not all of these are currently filled). A total of 19 anthropologists employed in NTRBs responded, which we estimate, just under 50 percent of positions actually filled.

55. A possible fourth sector of engagement for applied anthropologists in native title is in government through employment by a Commonwealth, State or Territory agency or department, or in private industry such as mining companies. It did not prove feasible within the resource limitations of the project to ascertain how many anthropologists are currently employed in salaried positions within private enterprise in relation to native title issues, although anthropologists have worked for major resource companies, as discussed on page 24 below. A telephone survey of government agencies with native title as part of their core business (excluding the NNTT itself) indicated that nationally only some eight people were employed within government who were anthropologists, or who had graduated with a combination of anthropology and another discipline such as law (see page 24 below). Only one response to the survey was received from anthropologists working in government on native title-related matters.

56. Questions are always raised by a sampling methodology that relies on voluntary participation of survey subjects. By definition, respondents are those who are motivated to take the time to participate, and those motivations have the potential to skew the sample and thus to compromise research findings. Furthermore, the number of respondents was relatively small (although it exceeded expectations); the total of fifty-five anthropologists who responded to the survey, roughly evenly divided between consultants, those working for NTRBs, and those based in the academy, as shown in Figure 1 below. As mentioned above, only one anthropologist working outside these categories (that is, directly employed by government or private enterprise) responded to the survey.

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[4] See footnote 1, page 2 for a discussion of the use of the terms ‘pure’ and ‘applied’ research.

57. This sample size limits the kinds of analysis that can be undertaken; for example, it prohibits certain forms of cross-tab analysis that could examine the interplay between different factors in the sample. However, our assessment of the total numbers of anthropologists working in the native title area suggests that the survey respondents totalled between half and two thirds of those actually engaged in this area. Furthermore, the general characteristics of the survey sample, in terms of such factors as its gender balance, age, experience and employer, are in general accordance with our expectations and experience. Therefore, while we would caution against an over-determinative generalizing about native title anthropological practice in Australia on the basis of this survey alone, it is our view that it provides useful data in conjunction with other sources, both qualitative and quantitative. Our analysis has proceeded on this basis.

The debate on AASNet

58. A further source of important qualitative information was derived from a discussion on AASNet, the electronic discussion forum operated by the Australian Anthropological Society Inc (AAS), the profession's national association. AASNet is sponsored by AAS but is an internet email-based forum whose membership is open to other scholars and interested people and which generally serves as a forum for notification about job vacancies in native title and anthropology, new publications, establishing contact with colleagues, and canvassing discussion on theoretical and practice issues. In general AASNet operates on an as-needs basis with postings spontaneously generated by, and responded to through individual input. Discussions and debates are not mediated by a facilitator and issues are initiated by individuals.

59. Between September and December 2003, a frank and lively debate occurred on AASNet around a number of key issues relevant to the current practice of anthropology in native title and the future of the discipline more broadly. The debate was initiated by a posting (from David Martin) raising the wider issue of the role and direction of the Australian Anthropological Society. It ultimately involved responses from a range of anthropologists, from those working in native title to those with no involvement or interest at all, and from graduate students to senior anthropologists. The scope of the issues canvassed was expansive, and reflected deep (and sometimes acrimonious) divisions within the discipline. The serious concern for answers to underlying questions, and the fact that some of them are raised regularly, speaks to the nature of the professional identity of the discipline in Australia.

60. Much of the content of this debate focused on the role and status of anthropology in native title within the university and in the discipline more broadly. Consequently, pertinent comments are included in the report where relevant. These comments elucidate major themes in the debate by exposing tensions within the professional climate in which anthropology is currently contributing to the native title arena. The debate also identifies key personal and professional challenges for those working in native title, while also hinting at the challenges those contemplating work in native title will inevitably face from many of their anthropological colleagues.

Age, gender and qualification profile of native title practitioners

61. This section is based on information provided by the survey of native title practitioners. We assume, for reasons outlined previously, that the profiles established for the survey sample correspond broadly with those of anthropologists working in native title more generally.

Age, gender and employment characteristics

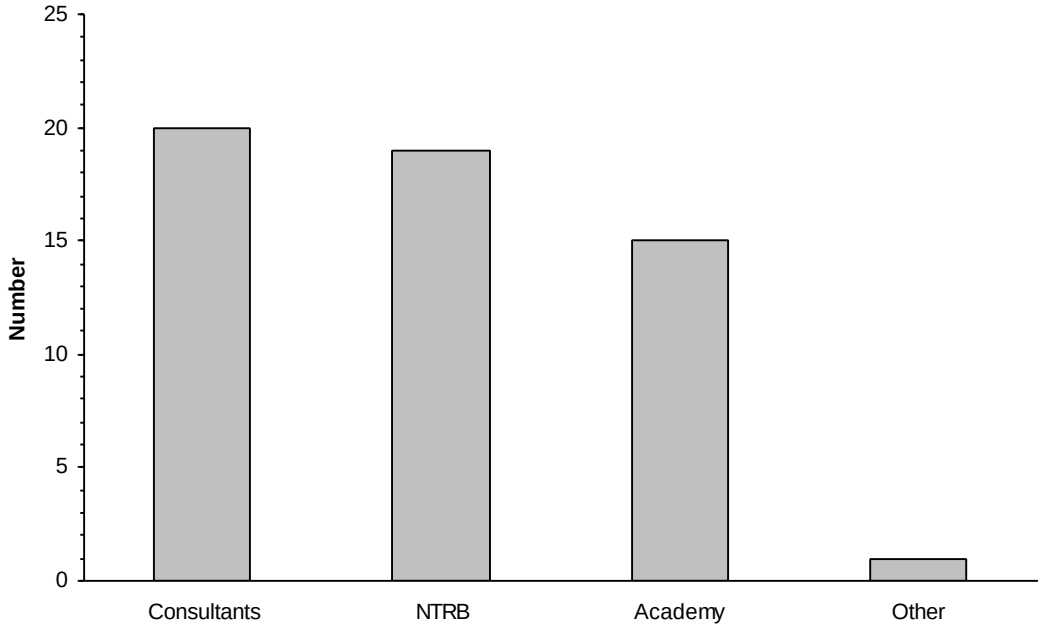

Figure 1 Respondents to survey by primary employment

62. Respondents to the survey were balanced between the genders; 28 males and 27 females completed it. A breakdown of respondents in terms of gender and age is shown in Figure 2 below.

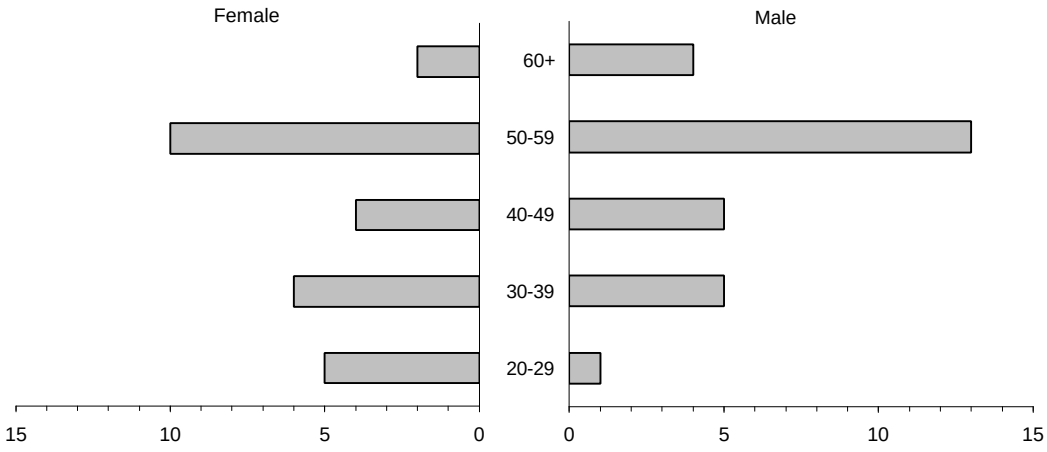

Figure 2 Respondents by age and gender

63. This figure and its underlying data indicate that a significant proportion of those surveyed (53 percent) were aged over 50, and 72 percent of this group had higher degrees, while most anthropologists aged under 30 (over 80 percent) were women.

64. The next series of graphs allow us to further characterise anthropologists in terms of their primary employment status—as part or full-time consultants, employees of NTRBs, or as based in the academy. Figure 3 and Figure 4 present the same data, but allow us to clearly show the employment categories for each age range (Figure 3), and the age ranges of those in each employment category (Figure 4).

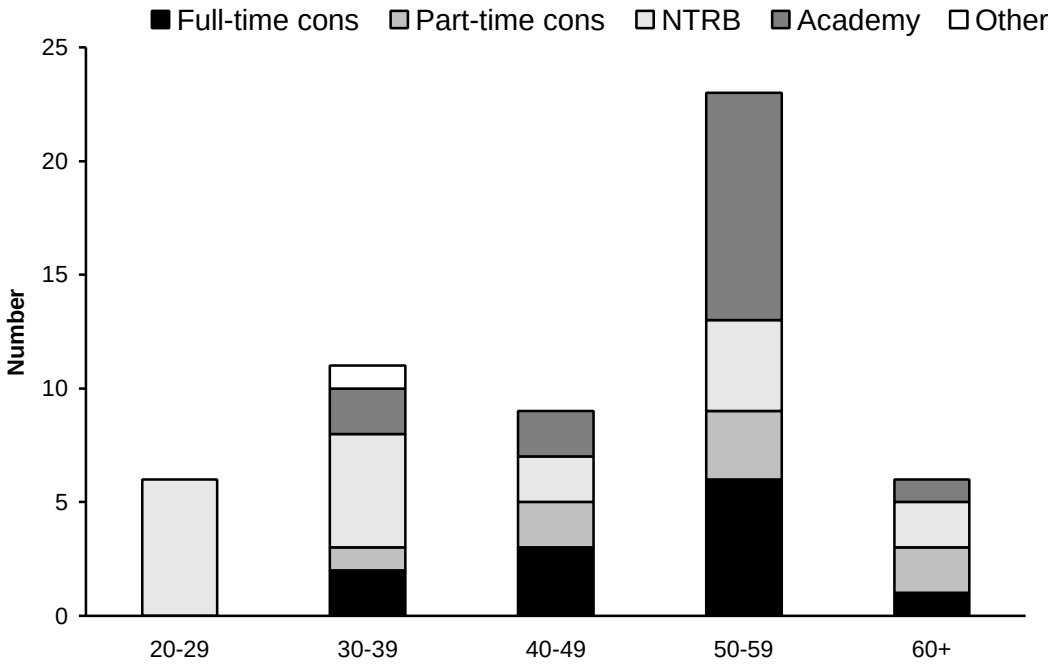

Figure 3 Respondents by primary employment and age group (a)

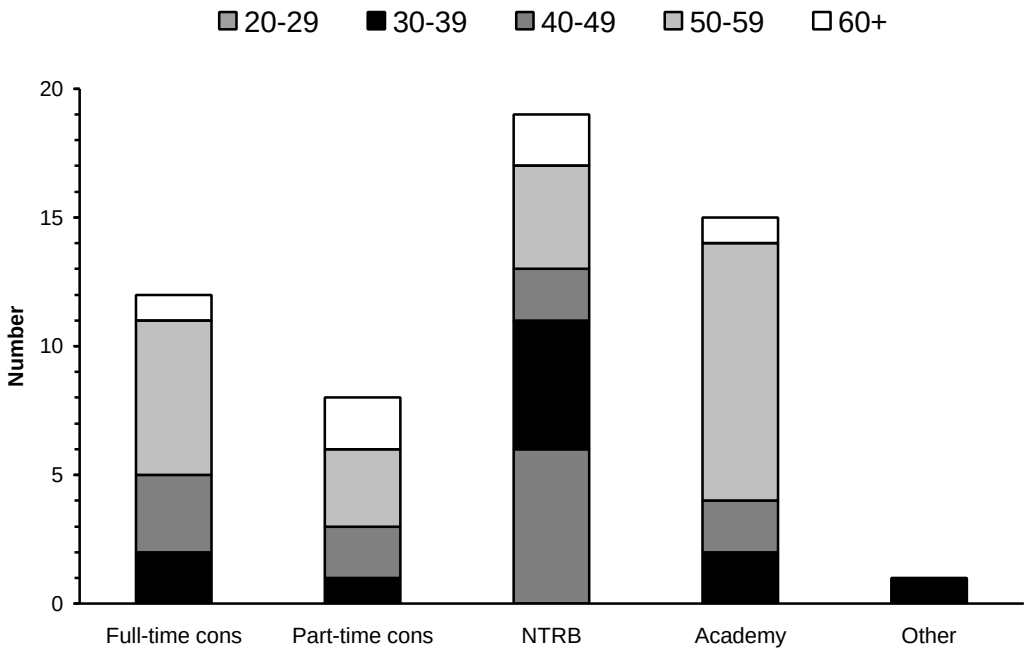

Figure 4 Respondents by primary employment and age group (b)

Employment, qualifications and experience

65. Figure 5 below provides a breakdown of respondents in terms of gender, age and qualifications in terms of whether the individuals concerned have lower degrees, or have a higher degree as well. Figure 6 shows the qualifications for each employment category.

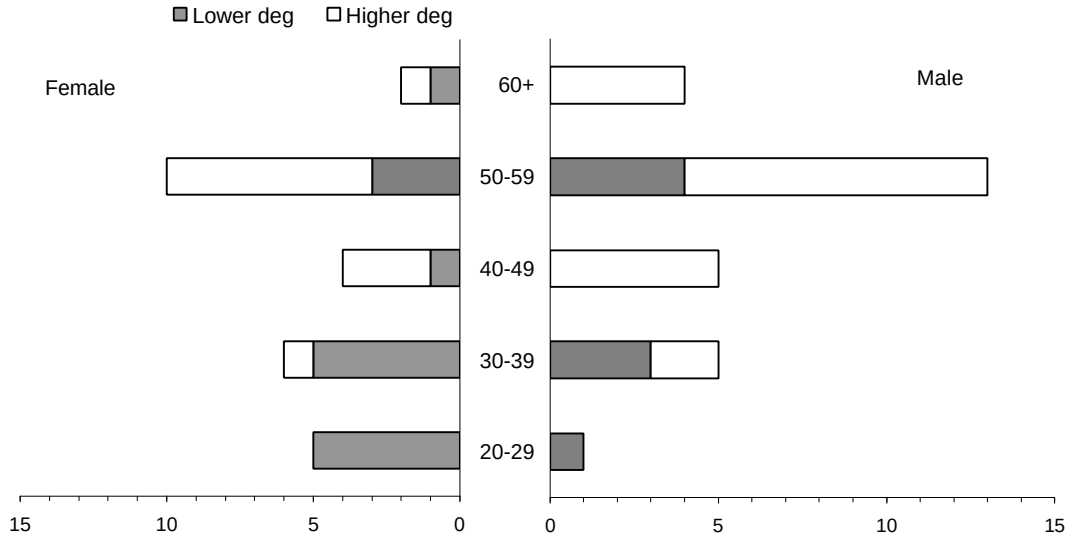

Figure 5 Respondents by age, gender and qualifications

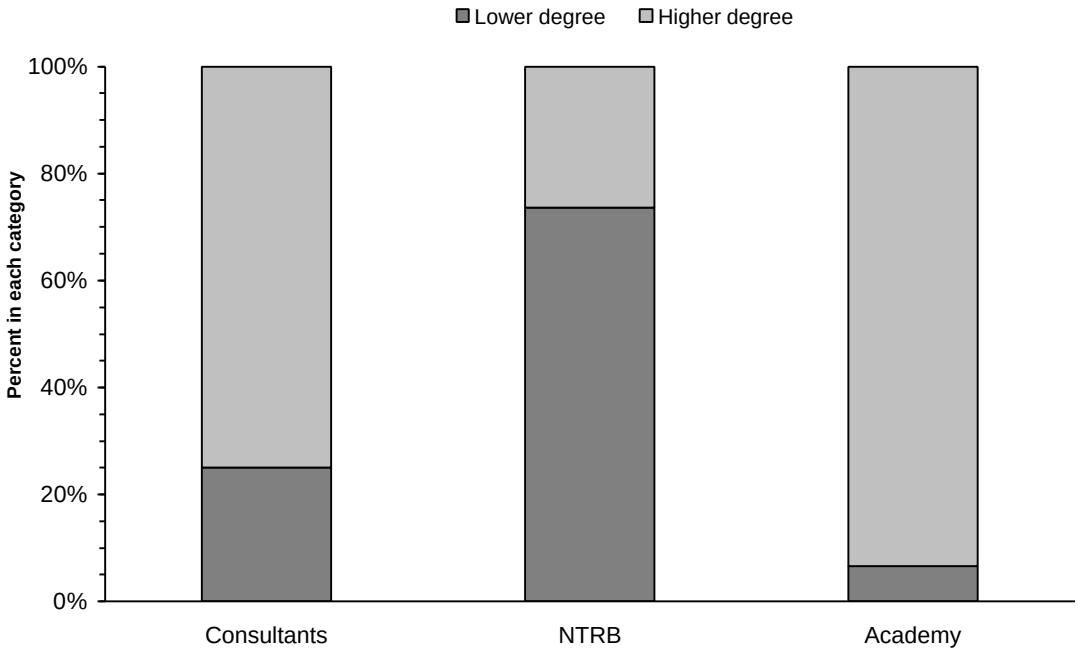

Figure 6 Respondents by primary employment and qualifications

66. Perhaps not unexpectedly, no respondent under 30 had a higher degree in anthropology, but few of those aged between 30 and 39 (27 percent) had higher degrees either. With the caveat discussed above that the survey sample structure is taken to be representative of that of anthropologists working in native title more generally, these data suggest that native title anthropology is dominated by older and relatively well-qualified practitioners. Most junior anthropologists (those less than 30 years old) were female and as

noted above not unexpectedly did not have higher degrees. While there was a better gender balance in those aged between 30 and 39, few of them had higher degrees either.

67. Professional development, peer support and mentoring are crucial issues for all anthropologists, but particularly those working as consultants who do not have a base in the academy and those based in NTRBs. Anthropologists in both categories are more likely to be professionally isolated for much of their working lives, and in the case of NTRB anthropologists more likely to be relatively inexperienced. For this reason, the NNTT is currently resourcing a small pilot mentoring program for junior NTRB anthropologists. This project is due to be finalised by the middle of 2004, and its effectiveness is yet to be formally evaluated.

68. The survey therefore also sought information on whether native title practitioners in the various categories undertook professional development more generally, gained additional qualifications, and published in the native title field, all hallmarks of whether they were committed to or had access to means of enhancing their skills and participating in the dissemination of information and ideas in the field. These data are shown in Figure 7.

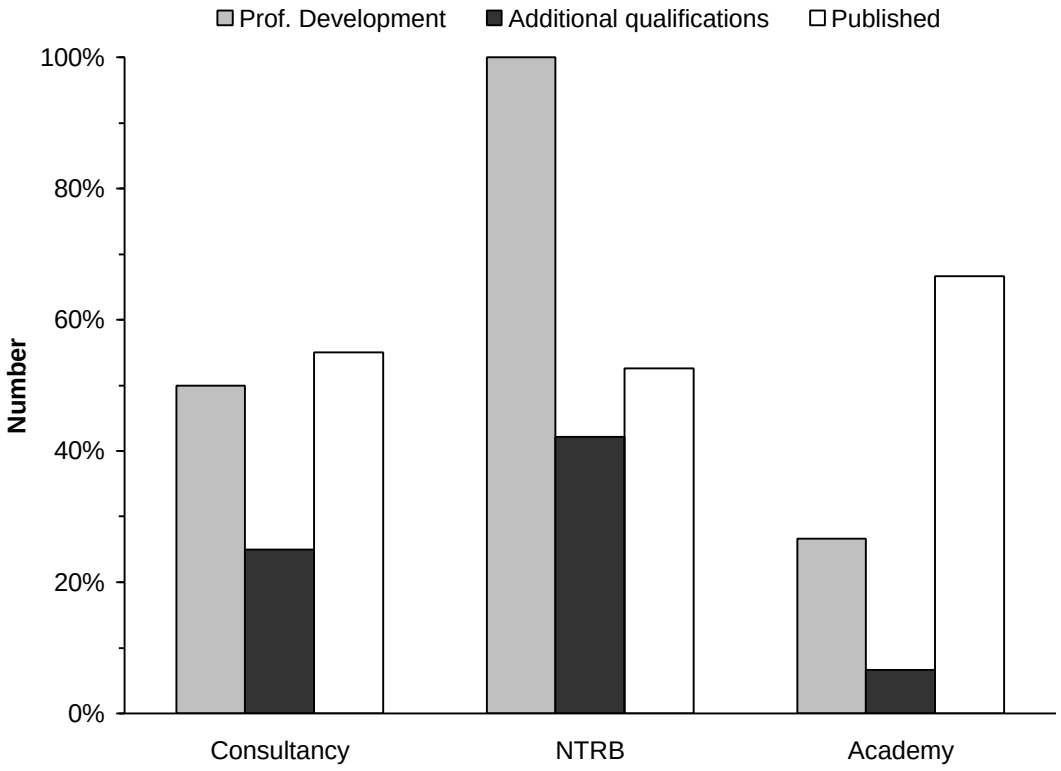

Figure 7 Primary employment by career development

69. Unfortunately, the questionnaire was not worded specifically enough, and respondents under the categories of 'professional development' and 'additional qualifications' included a wide range of formal and informal skill enhancements. For example, all NTRB anthropologists stated that they had undertaken professional development, although this in most cases related to technical and management courses (e.g. in information technology) rather than to their anthropological work itself, and the additional qualifications were

mostly not related to anthropology either. It is noteworthy and encouraging however that while two thirds of those respondents in the academy had published on native title issues, over half of those working both in NTRBs and as consultants had also done so.

70. In their survey responses, anthropologists working in NTRBs listed a number of mechanisms through which they maintained professional connections with the discipline and developments in native title, despite the isolation in which many worked. NTRB anthropologists sought assistance and advice from other colleagues, senior NTRB anthropologists or other management, and external anthropologists who are experts in the field. Some had sought advice through AAS contacts. However, one respondent observed that 'finding appropriate help is in itself a major research exercise'.

71. Conferences were seen as very important 'galvanisers', although workloads and in some cases lack of NTRB resources preclude most NTRB attending more than one or two. One respondent saw the NNTT's recent publications as highly significant resources, and others mentioned Australian Institute for Aboriginal and Torres Strait Islander Services (AIATSIS) and Centre for Aboriginal Economic Policy Research (CAEPR) discussion papers and other relevant literature, AASNet, keeping abreast of new judgments, and general contact with anthropological and legal colleagues as mechanisms by which they were able to maintain an up-to-date knowledge of developments in native title.

72. However, the exigencies of the day-to-day workloads on NTRB anthropologists (which included for many involvement in a wide range of non-anthropological work as discussed on page 19 below), and what is seen by many as a systematic downgrading of anthropological knowledge in NTRB native title work, meant that such core professional activities were relegated to the optional or spare time categories.

Experience in native title and related work

73. Figure 8 below charts the years of experience of respondents in native title work in each employment category.

74. This relative inexperience of NTRB anthropologists in comparison with their colleagues in the academy or who work as consultants can also be seen in the diversity of work undertaken, and in the proportion who have worked in Commonwealth, State or Territory land rights matters, as shown in Figure 9.

75. Here, it is apparent that a high proportion of both consultant anthropologists and those in the academy worked in areas other than native title, in contrast to those in NTRBs—again, not unexpectedly, since native title is the core business of NTRBs. Questionnaire responses indicated that there was a much greater diversity of non-native title work amongst academic and consultant anthropologists than for those in NTRBs, whose non-native title anthropological work centred around such matters as heritage clearances. It is also apparent that there has been a quite significant cross-fertilisation between work in the land rights area and that in native title for both consultant and academic anthropologists, but (consistent with their general comparative youth and lack of experience), relatively fewer NTRB anthropologists had also worked on land rights issues.

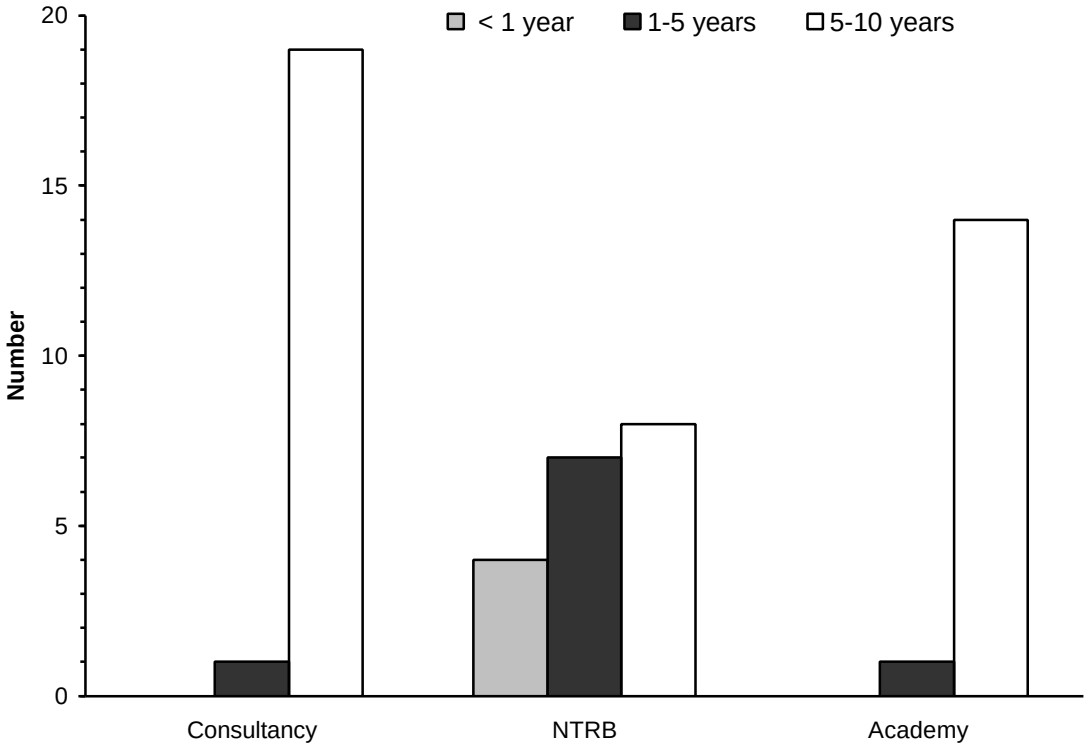

Figure 8 Primary employment by years of experience in native title

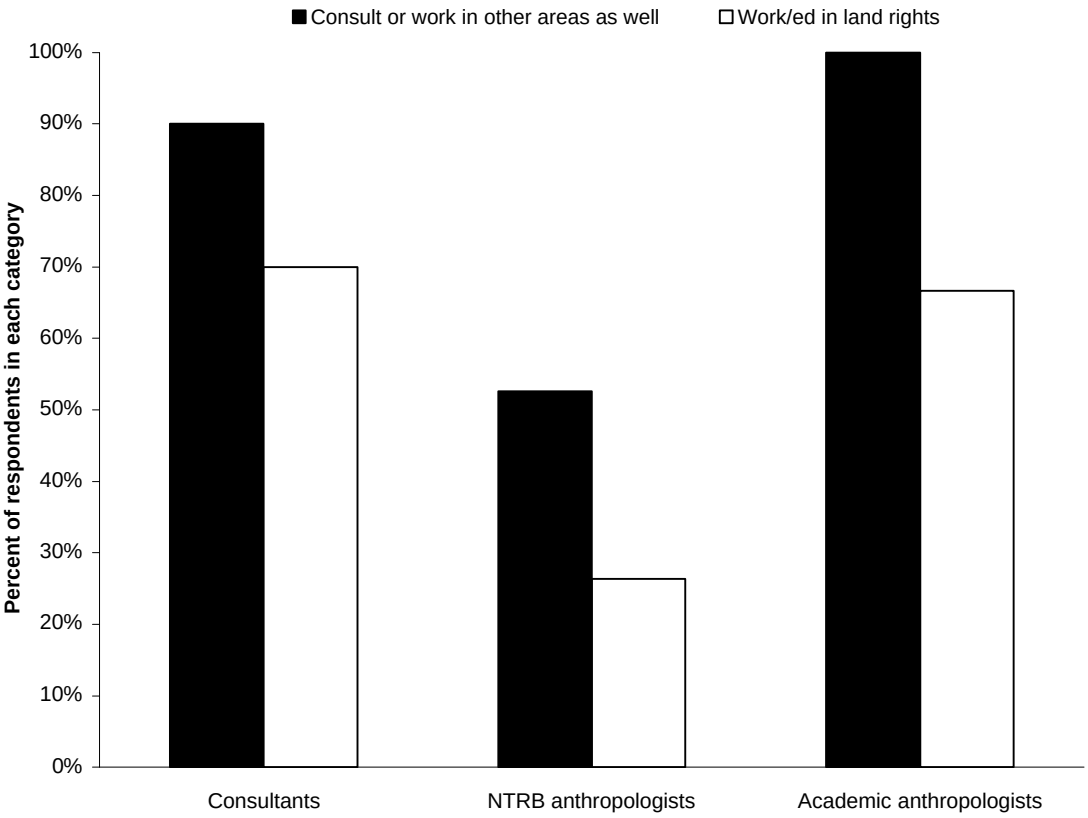

Figure 9 Focus on land rights and native title by category of employment

The place of junior anthropologists

76. Given that the data suggest a profession dominated by older practitioners, an apparent feeling of some alienation by junior anthropologists is of concern. For instance, one area of debate in the AASNet discussions concerned whether junior anthropologists should be included in academic and professional forums such as the Annual Conference. In this context, it should be noted that a recently graduated anthropologist who is involved in the NNTT/ATSIS mentoring pilot presented a paper for the first time at an Annual conference.

77. Such participation is undoubtedly a learning experience and an important aspect of developing competence in the profession. Furthermore, the questionnaire indicates that most anthropologists in NTRBs are largely female and less than 30 years of age, with at best an honours degree and limited fieldwork experience. The desire to exclude such people may be argued on the grounds of academic quality but in terms of an opportunity for professional development it is less likely to be defensible. Nevertheless not everyone agrees…

> It is also a mistake to put postgraduate students straight out of the field into a national conference in the hope that their 20 minute talk will help them. It doesn't. At the end of their PhD, when they have arguments and a position, yes …. (October 31 2003).

78. In response to the above opinion, a new graduate wrote:

> I agree that there needs to be a strong commitment to the quality of the material accepted and presented at conferences …. what concerned me, however, was the division between postgraduates and 'other' anthropologists, implicit in the comments. It hints at the divisiveness evident throughout the discipline as a whole, between those who can speak with legitimacy and those whose voices are marginalised due to their rank, or history or affiliation or personality or whatever (8 November 2003).

79. Another view expressed by a recent doctoral fellow strongly supported the inclusion of graduates in conference programs, and provided a host of positive reasons for postgraduates to be writing and presenting papers in such forums. Yet the question is not settled and a range of responses is likely. Nevertheless, the writer concluded with another point of observation, indeed, in light of the findings in the survey of critical importance to anthropologists in native title;

> Even the greyest greybeard needs to know what the future of the profession will look like (10 November 2003).[5]

80. The significance of this point is that within native title practice the same pattern is evident; anthropologists are disproportionately an aging cohort with insufficient replacements evident in the next generation.

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[5] 'Greybeard' is a term that refers to a senior anthropologist (and implies the person is male). The label developed from a practice in Land Councils under the ALRA in the 1980s of engaging a senior anthropologist to give evidence or to provide an overview paper supporting and commenting on the claim book.

Summary of profiles

81. Relevant characteristics of the survey sample that can be drawn from this data can be summarised for each category of professional work as follows:

NTRB anthropologists

82. All respondents aged under 30, and a substantial proportion (45 percent) of those aged between 30 and 39, worked for NTRBs. The majority (58 percent) of respondent NTRB anthropologists were under 40 years old, and the younger (under 30) NTRB anthropologists were overwhelmingly female. Relatively few (less than 30 percent) of NTRB anthropologists had higher degrees, or had more than 5 years experience in native title work, and a quarter of them had less than one year's experience. NTRB anthropologists were significantly less likely to have had experience working in land rights than their colleagues in the academy or working as consultants; only 25 percent of them had experience in this related arena, compared with between 60 and 70 percent of their colleagues. This of course is not unexpected, given that they were a much younger and less experienced group in general, but does reinforce the general relative inexperience of NTRB anthropologists.

Consultant anthropologists

83. Consultant anthropologists on the other hand were dominated (60 percent) by practitioners over 40 years old. In comparison with NTRB anthropologists, there was a far higher proportion of consultants who held higher degrees (75 percent as compared to 26 percent), and almost all consultant anthropologists had between 5 and 10 years experience in native title work. Seventy percent of consultants had also worked in the land rights area, and 90 percent of them worked in areas of practice other than native title. The survey data thus indicate that consultants as a group tend to be older and experienced practitioners with diverse practices, not simply focusing on native title.

Academic anthropologists

84. As could be expected, anthropologists working in the academy were predominantly older (87 percent were aged 40 or over) and better qualified than their consultant counterparts and (most particularly) those working in NTRBs. They were also proportionately more experienced in native title-related work, with almost all having between 5 and 10 years experience in this area. Two thirds of them had worked in land rights, and all of them (as expected) researched or worked in areas other than native title.

Anthropologists in native title practice

85. This section outlines the roles played by anthropologists in native title work (primarily on the basis of information provided in the survey), provides some discussion of the preferences that consultants expressed regarding which clients they would work for, presents some practitioners' views on whether native title anthropology provides a career path for anthropologists, and presents limited data on the salaried employment of anthropologists in native title-related work.

Anthropologists' roles

86. Anthropologists who responded to the questionnaire undertake a wide range of pure and applied work. These are shown in Figure 10 below. All consultants worked on both field and desktop research, and almost all were involved in the preparation of 'connection reports'. Around 70 percent had undertaken peer review and other assessment of claims, and roughly two thirds had been involved directly in either litigation or mediation of claims. Thirty percent of consultants had worked on either or both theoretical and policy issues in native title, but few were involved in either management or non-anthropological work in relation to claims.

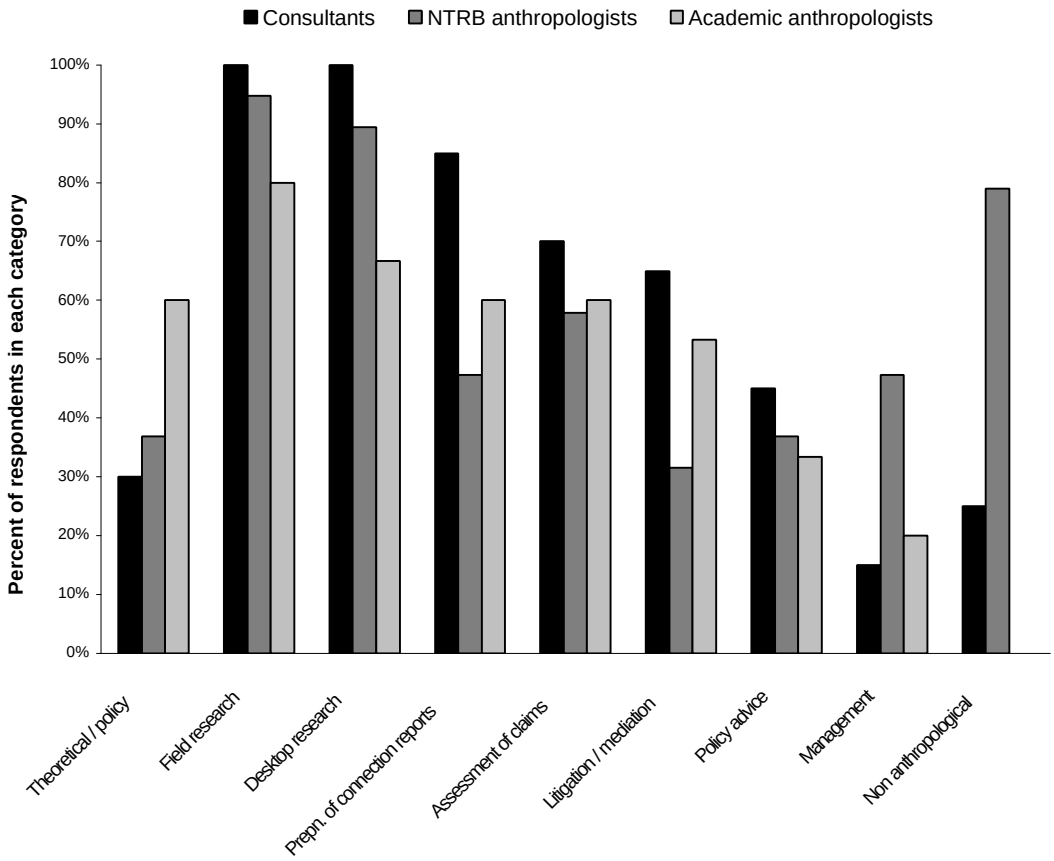

Figure 10 Types of native title work undertaken

87. It would be expected that NTRB anthropologists would be heavily involved in research for claims and connection documentation. However, survey data demonstrate that anthropologists working in NTRBs were much more likely than either their consultant or academic colleagues to be working in non-anthropological aspects of native title work (such as field research logistics and claim management), and were less likely to be working on litigation or mediation of claims or the preparation of connection reports than consultants, but otherwise had role profiles which were not dissimilar to consultants.

88. Some NTRB respondents felt that they were merely adjunct workers to the more pivotal roles accorded consultant anthropologists—and were unhappy about this. Such views are captured in the following comment;

> In-house anthropologists (are) becoming 'assistants' to consultants. That is, often we are not able to follow through on a claim/project because we are spread too thinly across

many projects. Thus when extensive field work is required for a particular claim, often it is the external consultant who is allocated the task. In-house anthropologists are therefore relegated to 'assistant' status, even though they may have had several years' experience working in the field of native title with the NTRB. This also contributes to the perceived lack of professional status accorded to in-house anthropologists by the legal fraternity.

89. Academic anthropologists' native title work was much more focussed on theoretical and policy matters than their NTRB and consultant colleagues, but apart from being little involved in management or non-anthropological native title work, had relatively similar role profiles to consultants. Interestingly, however, a relatively lower proportion said they were involved in either field or desktop research, mainly because of the greater focus on theoretical and policy issues in the academy.

Consultants' preferences for types of native title work

90. Concern has been expressed by some commentators that anthropologists are selective in the clients for whom they work, and in particular that a common (if unwritten) ideological position of those in the profession means that few are prepared to work for other than Indigenous interests.

91. It is beyond the brief of this project to explore this issue in detail. However, information was sought in the questionnaire from consultants and those in the academy as to the clients who had actually approached them and for whom they had actually worked, as well as on the factors which may have influenced this decision. Data are shown in Figure 11 below.

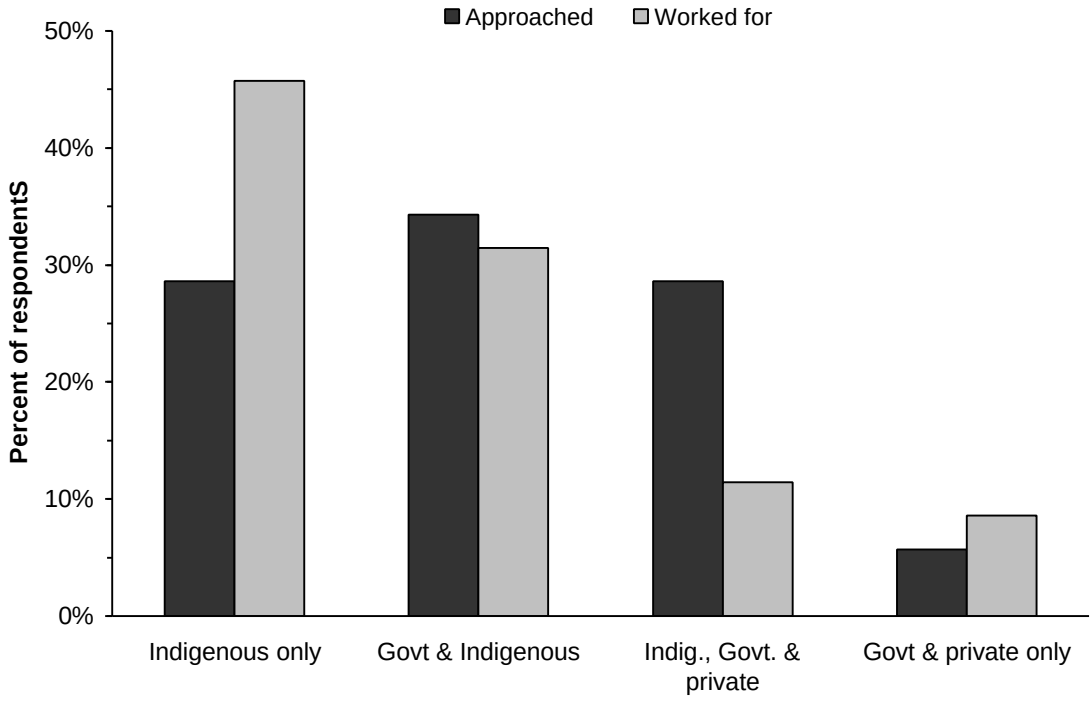

Figure 11 Responses to approaches by potential clients

92. These indicate that while just 29 percent of consultants and academics had only been approached by Indigenous interests for native title work, 46 percent of respondents in fact had worked only for Indigenous interests. Consistent with these data, somewhat fewer had worked for both government and Indigenous parties (31 percent) than had been approached by them (34

percent) and fewer worked for all three categories of Indigenous, government or private parties (11 percent) than had been approached by them (29 percent).

93. On the face of it, these data lend some credence to the view that there is a tendency amongst anthropologists to work preferentially for Indigenous interests—particularly of course when one also considers those who work directly for Indigenous interests in NTRBs.

Native title work as a career option

94. As will be discussed later in this report (see page 28ff), there are widely divergent views amongst anthropologists about the status of applied work in general as legitimate anthropological practice, and about that of native title work in particular. In the case of native title practice, this divergence of views is exacerbated by what is seen by many anthropologists (not unreasonably it could be argued) as the domination of both theorising native title and its practice by the law. Such ambivalence is particularly marked in the academy—and it is the anthropologists in the academy who have produced the current generation of younger anthropologists, and who will produce the next generations. Whether this ambivalence is a factor in graduates choosing, or rejecting, native title research and practice as a viable and rewarding career choice could not be explored within the limitations of this project, but it would not be unreasonable to assume that it would be a factor. It is not coincidental that a substantial number of the new graduates working in NTRBs come from universities such as the Australian National University (ANU) and the University of Western Australia (UWA) where native title practice is actively supported.

95. Anecdotally, another factor which in my own experience limits the number of anthropologists who are willing to engage in native title practice, is the often highly fraught and contested political arena in which the work is conducted. This relates not only to the contested position of native title claims in the broader Australian community, but also to the often conflict-ridden and not infrequently highly ad hominem nature of Indigenous politics. NTRBs can be particularly difficult and challenging places for younger and less experienced anthropologists, and these challenges include learning to deal personally and professionally with the complex and fraught politics of NTRB Boards and claimants—and indeed on occasion race politics—often with little support and guidance.

96. For anthropologists employed in NTRBs there are additional workplace professional matters which impact directly on views about working there, and which are currently only partially exposed as younger colleagues seek informal advice and assistance. These matters include the terms and conditions of NTRB employment. Most NTRB employers work under a negotiated Australian Work Place Agreement or Certified Agreement to which they may be asked to provide input during negotiations. Few of the junior anthropologists in NTRBs have previous experience to negotiate advantageous terms and conditions, not least because very little publicly available data exists on employment issues, such as salary range, terms and conditions of leave, leave in lieu, capacity for flexible working conditions, study, occupational health and safety, dispute resolution, and so forth.

97. A further factor which in our experience limits the number of anthropologists working in native title practice is the apprehension at being involved in litigation, either as its subject (that is, in proceedings taken against anthropologists) or as expert witnesses. The Hindmarsh Island matter played a not insignificant role in the former regard, as well as polarising the profession. Anthropologists working in native title are a relatively small group, and the adverse experiences of both more junior and senior consultant and academic practitioners as expert witnesses quickly become the stuff of common knowledge and discussion. A posting to the AASNet debate made reference to this issue.

> The Court system and litigation represent a serious and public threat to the status and reputation of anthropology and anthropologists in Australia. The laws of evidence and the adversarial system and cross examination threatens to publicly question, challenge, embarrass, and potentially de-value or ridicule anthropologists and the discipline on a national scale (involving all layers of government and multiple parties). Legal practices and procedures associated with litigation (particularly in relation to legal privileging etc) silences Australia's largest ever 'bursts' of research activity and inquiry into Aboriginal Australia threatening the very essence of what it is to be a social science, accumulating information across the discipline, developing research methods, and increasing knowledge and understanding.

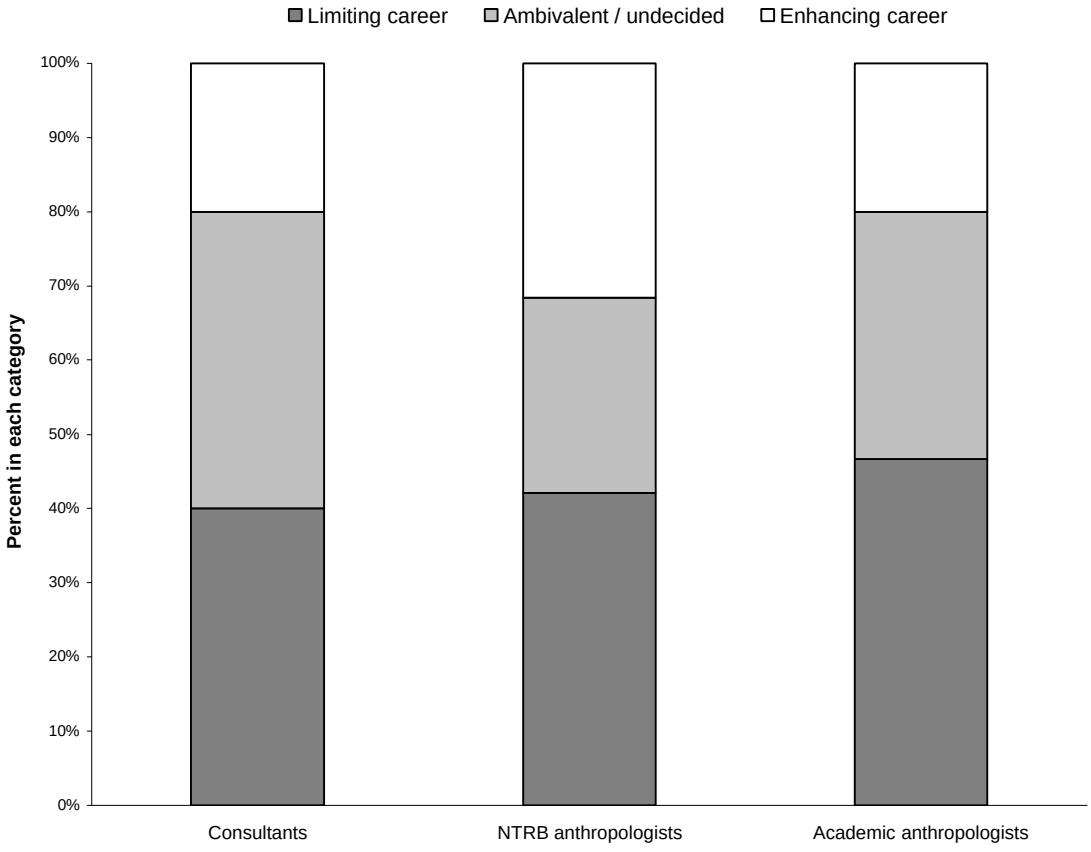

Figure 12 Views on native title and career options

98. Whether or not native title work can provide anthropologists with a positive contribution to the development of their careers (as opposed to realising no particular personal goals apart from being in employment and earning an

income) is, we suggest, crucial to attracting and maintaining good quality professional anthropological involvement in native title practice.

99. Respondents to the survey were therefore asked their views as to whether they saw native title work as limiting their careers or enhancing it. Perhaps surprisingly, response rates to this question did not vary significantly between the categories of employment, as is evident from Figure 12 above. What is significant however, is that only 20 percent of consultants saw native title work as enhancing a career in anthropology—the same proportion as for those in the academy. Rather more NTRB anthropologists, 30 percent, viewed their native title work positively in this sense. It is possible that this correlates with the relatively shorter experience and youth (and thus possibly enthusiasm) of NTRB anthropologists. For consultants, 40 percent were of the view that native title work actually limited their anthropological careers, and a further 40 percent either ventured no opinion or were ambivalent about the issue.

Take-up profile of anthropology graduates in salaried native title work

100. It has not been possible within the resource and time limitations of this project to collect definitive information on the take-up of anthropology graduates in the various areas of native title practice. However, indicative information was gathered by means of telephone interviews, conducted by both NNTT and Anthropos staff.

101. A survey conducted by Professor Annette Hamilton towards her keynote address to the AAS Annual Conference in 2002 (subsequently published as Hamilton 2003), identified 113 anthropologists working in Australian universities. Based on our own knowledge of those academics who work or research and publish in native title, we would estimate that of these 113, fewer than 20 were actively engaged in native title practice. Of these, 15 responded to the survey.

102. Information provided by NTRB personnel in telephone interviews indicated that there were a total of 45 staff anthropologist positions within NTRBs nation-wide (including the Torres Strait Regional Authority's Native Title Office, Native Title Services Victoria, and New South Wales Native Title Services Ltd). The number of anthropologists varied between seven in one case and none in another, with the majority having just one or two staff anthropologists. Results from the survey discussed elsewhere in this report (see page 15) indicate that while there are certainly some experienced anthropologists working within NTRBs, most were under 40 years of age, many were relatively new graduates who were overwhelmingly female, and relatively few had higher degrees.

103. The responses to the questionnaire included only one anthropologist from a government agency. The membership register of the Australian Anthropological Society showed that as at July 2003, only some 12 of its members could be readily identified as working for government departments or agencies. However, most of these were based in research institutions such as the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) or national, State and Territory museums. For example, the research undertaken by two anthropologists based at AIATSIS includes matters of direct relevance to native title practice and theory.

104. Telephone interviews by NNTT staff seeking more definitive information on anthropologists employed in government agencies in relation to native title issues were not especially productive. It was noted that native title is not dealt with as part of core business in many government departments in State and Territory jurisdictions. For those areas within the Commonwealth, State and Territory jurisdictions that do deal with native title as core business, the following figures were provided to the NNTT or to Anthropos:

Government	Salaried anthropologists
Commonwealth	9[6]
New South Wales	Nil
South Australia	1 anthrop., 2 law / anthrop. graduates
Queensland	1 (currently being recruited)
Northern Territory	Nil
Australian Capital Territory	Nil
Western Australia	Nil
Victoria	2

Table 1 Anthropologists employed by government in native title

121. There are anthropologists who work, or have worked, for major resource companies, but their roles do not appear to have been focussed on native title matters. While Rio Tinto for example does employ anthropologists, this is in relation to broader development and community engagement issues; where there are specific native title issues which require anthropological expertise, company policy is to engage it through NTRBs.[7]

Skills required for native title practice

122. Previous discussion has noted the wide range of roles that anthropologists in various categories play in native title practice, particularly consultants and those employed in NTRBs (see page 19 above). It is clear from this wide range of roles that anthropologists need to have a correspondingly wide range of skills and knowledge in order to be able to undertake their work in a competent and professional manner. A key question in this regard is what aspects of these roles can legitimately be seen as a component of specifically

6 The National Native Title Tribunal employs two anthropologists with doctorates in its Central Registry, as well as one with a Masters degree and two others with anthropology majors elsewhere in the organisation. Aboriginal and Torres Strait Islander Services (ATSIS) currently employ two anthropologists in senior management levels who have direct involvement in native title policy formulation and program delivery. We were advised that the Native Title Unit within the Attorney-General's Department employs two people with anthropology degrees in salaried positions to perform native title policy work, but they are not employed specifically as anthropologists.

7 Bruce Harvey, Rio Tinto, pers. comm.

anthropological practice per se (e.g. the analysis of Aboriginal relationships to traditional country), what might be seen as components of native title practice not specifically confined to anthropologists (e.g. an adequate knowledge of developments in native title law), and what might be seen as aspects of general professional competence (e.g. management and interpersonal skills).

123. The survey sought information on what knowledge, skills and training NTRB staff anthropologists felt were needed to perform competently in their native title work, and how this compared with what was needed in consultancy work. What could be seen as specifically anthropological skills listed by respondents included a 'strong academic anthropology background', a good knowledge of the relevant ethnographic literature, knowledge of Aboriginal land tenure and its interpretation through native title law, fieldwork techniques and methods, archival and library research skills, report writing skills, an understanding of research ethics and intellectual property issues, the ability to interpret legal and historical texts, and knowledge of genealogical methods.

124. Skills that were seen as relevant to general native title practice included cross-cultural competence and experience, a knowledge of native title heritage and evidence law, and an understanding of processes such as mediation.

125. Aspects of general professional competence listed by NTRB-based respondents included good interpersonal skills, managing contracts with consultants, excellent verbal and written skills, good management and team work skills including the capacity to be able to effectively mediate relations between consultants and NTRB lawyers, and the capacity to understand and work with NTRB organisational politics.

126. Many of these skills were seen as being required by anthropologists whether they worked in NTRBs or as consultants, although timeframes for work might differ as could the expected quality and level of the work produced. One survey respondent stated that:

> (the work requirements of consultants and NTRB anthropologists are) exactly the same. Research, report writing and management of institutions, information, people etc is required right from the outset. Prior understanding of Indigenous socio-cultural experiences within a specific geographical area is highly recommended … be prepared!

127. The primary role of staff anthropologists was said by another respondent to be the management of consultancy processes for research, mediation and so forth, and the articulation of that work with the legal process, as well as education of NTRB staff in the role of anthropology. On the other hand, it was clear from the survey that a significant majority (over 80 percent) of NTRB anthropologists were directly involved in the preparation of connection reports.

Demand for native title anthropologists

128. Systematic data could not be collected within the limitations of this project on whether the demand for anthropologists with appropriate qualifications and experience was met. There has been some commentary in one directions hearing concerning the apparent difficulty one NTRB had in obtaining suitable

assistance from qualified anthropologists.[8] However, in the absence of detailed investigation, it is not possible to determine whether such apparent shortages of anthropologists relate to an inadequate supply of professionals per se, or to claim management issues including ensuring that appropriate lead times are provided to consultants.

129. Anecdotally, there would appear to be a shortage of suitably qualified and experienced anthropologists (and other professionals) in NTRBs. This is borne out by the preponderance of younger, relatively inexperienced anthropologists in those organisations. This too may not simply be a simple supply-side issue. From long-term observation of newspaper advertisements for anthropologists and other professional staff in NTRBs, it would appear that some NTRBs in particular have difficulty in attracting and keeping qualified staff. As has been previously discussed, there are multiple informal information exchange mechanisms within a small profession like anthropology, and adverse experiences of individuals within particular organisations can quickly become common knowledge. The fact that relatively few current practitioners in any category in the survey saw native title as a viable and attractive career option must further impact on the choices of those who are looking for work as anthropologists within NTRBs.

130. Similar issues are very likely to impact on the availability of consultant anthropologists, over and above whether there is in fact an absolute shortage of suitably qualified individuals. Again anecdotally, many NTRBs do have problems in finding appropriate consultants such that (for instance) increasingly tight Federal Court deadlines can be met, but establishing the parameters and causes of any such shortage would require further research.

Native title anthropology within the wider discipline

131. This limited project does not entail an investigation of the state of anthropology in Australia. However, in order to understand the capacity of anthropologists to play effective roles in the native title arena, it is necessary to outline certain current dynamics in the profession. These concern, in essence, a degree of tension between applied practitioners and those in the academy, not unrelated to this some strain between 'Aboriginalist' anthropology and anthropology more generally, and the differential health of the discipline across the various universities.

132. Professor Annette Hamilton outlined a number of the challenges facing Australian anthropology at a keynote address to the 2002 annual conference of the Australian Anthropological Society, subsequently published in The Australian Journal of Anthropology (Hamilton 2003).[9] Many of the issues raised by Professor Hamilton are directly relevant to those underlying this project. She argued inter alia:

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[8] See pp 45-7 of the transcript of the Directions Hearing before Justice Kiefel on 28 July 2003, regarding various claimant applications in the representative area of the Gurang Land Council.

[9] A version of this paper is available on the Society's website, at www.aas.asn.au.

> The past two decades have seen a number of challenges to anthropology at the institutional level, and the loss of a significant number of staff positions as academics retire and are not replaced. The primary reasons for this are simple: the student demand for the area of study is not high enough to justify the number of positions, given competitive conditions. The question will be asked: do universities need Anthropology departments? Why? Some universities fund their Arts/Social Sciences areas much more generously than others, and as a result some departments remain strong, while others enter into a steady decline as they find themselves unable to increase student numbers or even to deal with those they have, with traditional approaches and techniques.
>
> Where history was willing to embrace the interdisciplinary visions and possibilities arising from the decomposition of the traditional "knowledge systems", anthropology to a significant degree ignored them, on the grounds that whatever this form of knowledge was, it was "not anthropology". Thus where psychology entrenched itself by embedding its graduates into vocational outcomes, history laid claim to the broad vision of human societies on a world scale, as providing a humanistic knowledge appropriate to all educated people. Anthropology has resisted both possibilities. In terms of vocational outcomes anthropology in Australia and Britain has tended to deny or downplay the legitimacy of an anthropology in the service of "the real". To advocate anthropology as a "useful" activity is viewed in some circles as tainted, something lower down the scale of human worth than the scholar sitting in his study. In part this is because "the real world" has not turned out to be as anthropologists thought it should be.

133. Many of the themes raised by Professor Hamilton were also taken up in the discussion on AASNet.

134. Challenges to anthropological work in native title do not come from within the academy alone. For example, prominent Aboriginal leader Noel Pearson has publicly stated that anthropologists working in native title are part of a 'B grade industry' and issued a scathing criticism of what he sees as their incapacity to contribute effectively to the national debate on how native title is to be conceptualised.[10] Pearson has contrasted the Australian situation in this regard unfavourably with that in Canada for example. This criticism may be seen as being directed specifically at anthropologists within the academy who (in Pearson's view) have either failed entirely to inform an appropriate conceptualisation of native title, or who have 'hijacked' it by erroneous conceptualisations.[11]

Role and functions of the professional body (AAS)

135. The AASNet debate illustrated a clear linkage between debate over the status of anthropology in universities and the current profile and role of the professional association, and a tension between those who saw anthropology as quintessentially a discipline based in the academy and those who argued for the place of applied work as a legitimate form of anthropological practice.

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[10] Noel Pearson 'Native title's day in the sun is over' *The Age* 28 August 2002.

[11] It is arguable however, irrespective of the merits of particular constructions of native title, that the inability of anthropologists to impact on native title law reflects as much the relative status of law and anthropology and in particular the dominance of 'black letter law' as it does any intrinsic failings of anthropologists *per se*.

The latter dynamic is currently exacerbated by the capacity of applied work to provide employment at a time when university-based anthropological research and teaching is a threatened field of employment. The role and status of the professional association is also entangled in these same arguments.

136. Issues facing the profession as a whole are, naturally, reflected in the national professional society. One contributor, for example, complained of the parochialism of the AAS annual conference, and its failure to 'internationalise' its perspective and to be incorporative of the diversity of anthropological interests. The matter of 'diversity' is a flash point in contemporary AASNet debates and centres on what some argue is the dominance of applied fields, including within AAS professional activities. Over some years complaints have accumulated around the perception that the annual AAS conferences are dominated by Aboriginalist interests. The following posting in the AASNet debate is far from untypical of such views:

> I acknowledge that the whole conference should not be organised around one theme, but needs to incorporate the diverse initiatives of its members. I do not think that is currently happening. It seems that native title and the anthropologists working with Australian Aborigines have the upper hand as keynote speakers and in plenary sessions. I know there are the exceptions ... (October 31 2003).

137. However, a posting in the AASNet debate suggested that the facts did not substantiate this view:

> …. (Person X) is not quite right in saying that the annual conferences (or at least the last one) are dominated by Aboriginalists. At a rough count, they numbered 28 out of 58. Twenty-eight is quite a lot, admittedly, but Aboriginalists make up quite a large component of the profession ... However, at no time was this the only choice of session. One could have gone through the entire conference without ever hearing about Aborigines ... (4 November 2003).

138. Others active in the AASNet debate warned of tendencies, already evident in some quarters, for anthropologists to want to prescribe what kinds of anthropological debate and work should be aired at the annual conference, arguing that hegemony operates to favour one form of inquiry over another.

> …when I initially tried to arrange the 2001 AAS conference forum on Roger Sandall's 'The Culture Cult', one invitee wrote to me and said that, if AAS was in the business of giving 'airplay' to Roger Sandal, then it had finally swayed them in their decisions to not attend the conference. Part of the problem is that what counts as 'interesting' or 'exciting' work or debate is too often judged from a cloning mentality—'What's really good and worth fostering is the kind of stuff that I do or like'. Of course, in this respect, internationalising AAS is no guarantee of opening it up intellectually. One can just as easily clone on a global scale. We need to more readily acknowledge the limitations of our individual and club-based biases here if we really aim for genuine pluralism ... (1 November 2003).

139. It is evident that the active role played within the Society thus far by applied anthropologists and others working in areas of Aboriginal Australia has been a cause for concern and some adverse comment within the Society and the broader profession. The consequences can be seen in the following posting on AASNet;

> I was called a 'native title hack' at the Adelaide AAS conference in 1996 … From that day forward I've considered myself an 'applied anthropologist' to some, this label is just as good an insult. I get the impression, or have had the impression for a number of years, that if one gets their hands dirty doing native title they lose any hope of being considered 'professional'. The other thing that seeps through to the surface appears to be that the bosses in AAS are or have been from this applied end and this is not cool to those who don't want to join[12]…(25 October 2003).

140. Other organisational issues were also a point of focus in the AASNet debate and took up the theme of the relationship between annual conferences, the status of the AAS as an organisation and organisational change. One commentator sought to contextualise the broad arguments being debated with some realism by citing the practicalities in making AAS an effective association.

> …at present AAS is struggling with more basic issues; for example, apathy, poor membership numbers, insufficient interest to have contested annual executive elections, members who are so indifferent they don't know whether in fact they are members or not, and poor turn-outs when a group such as the Clearing House opens new professional and personal development opportunities for people. In other words we need the human infrastructure to implement the vision. We also need to understand how the system operates—that there is a connection between membership, funds, and a capacity to act in providing opportunities and professional support and advocacy (25 October 2003).

141. This push for 'professionalisation' of the Society—that is, moving it from being an amateur and voluntary association whose core business lies largely in organising the annual conference to one which truly represents and advocates the interests of its members and the profession of anthropology in its varied practices—is viewed with indifference or even a degree of hostility by many anthropologists.

The relationship between academic and applied anthropology

142. Several contributors to the AASNet debate addressed current trends within universities in relation to the position and status of anthropology. They argued that anthropological units in undergraduate teaching are constantly under threat and linked this in part to a process gaining momentum in the smaller universities for merging disciplinary boundaries.

> At an institutional level one of the crises facing anthropology is the collapsing of honours courses into multi-disciplinary courses. You would never tell the physics department that it has to merge its undergraduate, honours and postgraduate courses with chemistry or maths but the current rationalisation processes do not acknowledge such subtleties in the social sciences, why can't anthropologists be put together not just with sociology but with social work and leisure and tourism.
>
> The other major transformation is the emergence of MA courses which I believe are eating away at Honours programs and are producing students who really have an undergraduate understanding of anthropology and sometimes not even that.
>
> The growth of the MA courses is related to a desire for a more 'practical' anthropology which in turn is related to another profound change we are witnessing in

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[12] Another aspect of the debate on AASNet concerned whether people were willing to join AAS as many felt it was not 'worth it'; that is, the status and value of the national professional body was questioned.

> Australian anthropology, namely the growth of consulting anthropology. It is changing what counts as fieldwork and the terms of intellectual debate. Consulting anthropologists are developing their own agendas and these are now starting to feature in the ordinary sessions of the AAS conference….. (31 October 2003).

143. There are a number of matters which could be drawn from such an argument; for instance, the identified changes in course content and disciplinary mergers are seen to impact heavily on anthropology. Another noteworthy point is the contributor's view that consulting anthropology has a limited scope to offer intellectual debate in the academy. This view contrasts with findings from the questionnaire that a significant proportion of consulting anthropologists currently working in native title are senior people (aged between 50 years and 60 plus), well qualified, who publish in the area of native title and many of whom are full-time academics.

144. Another set of comments in the AASNet debates addressed issues surrounding the sometimes fraught relationship between university management and academics and how this was impacting on the capacity of anthropology to flourish inside the academy.

> I agree with Annett Hamilton that even if it is the majority form of employment, consulting anthropology cannot be the tail that wags the academic anthropological dog. Although I see some movement of consulting anthropologists back into the academy… on both short and long term bases, here at (this university) and elsewhere, I wonder whether members of AAS can think how we can increase the opportunities for full-time consultants to engage in academic activities. They have to be able to see something intellectually and academically challenging in what they do as contract anthropologists ... some of the discussion indicates that few people really have an idea about what 'native title anthropology' is and that its practitioners may not have been effectively portraying this to the rest of the anthropological community. I know one thing—no anthropology done in this country is subject to as much thorough scrutiny as native title research. Do those not involved in it directly have the luxury of ignoring it, given that it has the potential to greatly affect the way in which the public views anthropology? (November 2003).

145. Views were also offered on changes in the relationships amongst academics themselves and pressures to perform in the tertiary sector.

> ….the University is promoting a kind of entrepreneurial leadership where, again, the interests of the discipline are not as important as taking advantage of externally-funded research opportunities ... it appears as if more and more young anthropologists coming into positions in the University are doing so via short-term externally funded projects of this sort … if we do not promote the learning of basic anthropological methodology and theory at both the undergraduate and graduate level, we will be bequeathing to consulting anthropology a generation of badly trained practitioners, the legal consequences alone of which should give us pause. The more non-anthropology Honours students we continue to admit to the higher degree programme, the more we contribute to this problem (November 2003).

146. Clearly, the question of competency in applied anthropological work is linked to broad internal issues within universities. Such issues impact on and redefine the status of disciplines such as anthropology.

147. Other commentary on this question on AASNet linked wider tertiary sector changes to the relative position of anthropology within the academy *vis a vis*

other social sciences, the size of the profession in Australia (issues raised by Hamilton in her paper), and the factors which create and sustain passion and commitment to the discipline among anthropologists.

148. But it is also clear that if the number of applied anthropologists working in Australia is relatively limited, there is a similar trend occurring in other areas of applied anthropological fieldwork. Indeed, the observations quoted below (in keeping with the results of the survey of native title anthropologists) suggest that older experienced practitioners may be the mainstay in all fields of applied work.

> We (anthropologists) are a small group within the academy and the main forms of employment outside are involving Aboriginal people in Australia are politically fraught and tend to create an environment (politically and, in my opinion intellectually) where these issues are considered more important than others. Well, presumably they are for those who have to deal with them, but for those who do not, they often appear parochial. The politicization of the work also means that people cannot always write about subjects that they want to, that they have to be careful not to raise criticism of Aboriginal institutions that might be used against them etc etc…[13]

> ….The lecture that Annette (Hamilton) gave at Canberra was in some ways trying to deal with the numbers issue. In the current academic climate I think that we have to have pragmatic responses. We cannot really work to improve and expand anthropology as a discipline unless we do. I think that many of .. (X's) criticisms are a simple reflection of the fact that not having a large (ish?) group of people who share theoretical interests and views about what is intellectually important tends to make one feel marginal and defensive … Why, when Melanesia has been such a crucial region for anthropological research, when there are extraordinary and alarming things happening there that are (should be?) of compelling interest to Australian scholars, are the numbers of people working there (also) dwindling? (5 November 2003).

Anthropology in the academy

149. Anthropological native title practice in the form of delivering 'services' in the recognition and management of native title itself, has of course to be seen as embedded within a wider system which includes research on theoretical and policy issues concerned with native title (by those based both in the academy and outside it), and crucially includes wider research and the teaching of anthropology within the universities. It is in the universities that new generations of anthropological graduates and post-graduates are produced.

150. As has been discussed previously, the keynote address by Professor Hamilton and a number of contributors to the AASNet debate raised the important matter of the health of the discipline of anthropology within the academy itself. While there are multiple issues which bear on that matter, including the perceived relevance or otherwise of anthropology to the fundamental concerns of our age, one measure of this (and of the more limited question of the potential availability of anthropologists for native title work) can be gained from the numbers of anthropology graduate and

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[13] This is an interesting comment, but it is not substantiated by the results of the questionnaire. Many anthropologists working in native title do in fact publish, and perhaps most noteworthy, these include anthropologists employed by NTRBs.

postgraduate completions each year nationally and from each of the universities where it is taught. The NNTT sought and was provided with relevant data from the University Statistics Section of the Department of Education, Science and Training (DEST).

151. DEST provided data on a number of fields of study for each university, and aggregate data for each State and Territory and nationally, from 1988 to 2001. However, for the purposes of this project, only completions in anthropology degrees have been examined rather than degrees in cognate areas such as Aboriginal studies, linguistics and history, and only the years 1993–2001 considered since this corresponds to the 'native title era'.

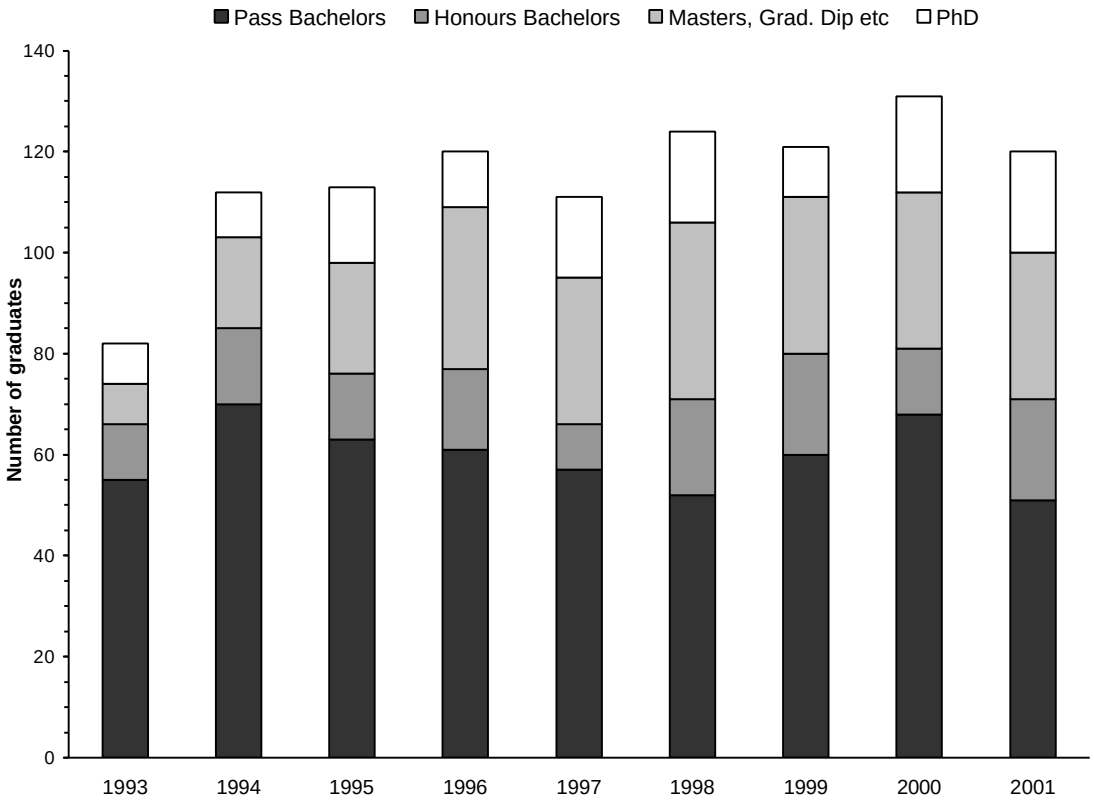

Figure 13 Anthropology graduates nationally, 1993–2001

152. The national aggregated data are presented in Figure 13 above. They show reasonably constant numbers of graduates and postgraduates completing their degrees each year from 1994 to 2001—on average, 76 graduates in anthropology with Bachelor degrees, 28 with Masters or Graduate Diplomas, and 15 with PhDs.

153. However, these data do not tell the full story regarding national completions of Bachelors degrees. For example, the DEST data does not include any pass or honours Bachelors degrees from ANU, which comprises (along with UWA and Macquarie University) one of the major centres from which anthropologists graduate. An explanation of this anomaly would appear to lie in the way the ANU classifies its Bachelors degrees, and reports on completions to DEST. Dr Nicolas Peterson of the School of Anthropology and Archaeology at the ANU, observed:

> The arts degree at ANU is composed of two majors. A person who takes a major in anthropology does not emerge with a BA (Anthropology) but rather a BA Arts. There are a few named degrees in the Arts Faculty but anthropology is not one of them. Strangely, there have been no records kept until the last couple of years that indicate what majors a person has taken. So one has to guess at the number of people taking a major in anthropology. This is very difficult to do. However, on the basis that most classes for the last ten years have had at least 30 people in them, and some many more, and on the number of people who have majored in Aboriginal Studies (1988: 39; 1990: 18; 1993: 24). I would have thought that 30-40 would be quite a conservative number. If those taking an Aboriginal Studies major were added to the anthropology major the number now would be around 50, at least, I would guess. It seems the University will be in a position to provide numbers on majors from 2005 (N. Peterson, pers. comm.)

154. I have not ascertained whether this apparent classification issue has implications for institutions other than the ANU. However, even if not, the data charted above if anything understate the numbers of anthropology Bachelors graduates each year.

155. What is also significant from the DEST data for the purposes of this project is that nationally there would appear to have been more than enough graduates with Bachelors and higher degrees in anthropology produced from 1993–2001 from whom practitioners could be drawn to meet supply-side deficiencies in the native title system.

156. Any lack of appropriately qualified anthropologists for applied native title research, and the dominance of consultancy anthropology by those aged over 50 identified in the survey, must therefore be due to factors other than a sufficiently large pool of anthropologists from which to draw recruits to native title practice. These factors, I suggest, include matters raised elsewhere in this report (e.g. page 21, and immediately below) and others, such as the contested status of applied work generally in some areas in the academy, the move in many institutions away from any particular focus on Australianist anthropology, the fraught politics of Aboriginal Australia generally and native title in particular, and concerns about the interaction between anthropologists and the law including the potential being involved in litigation.

Views of native title practice within the academy

157. The divergent views within the profession regarding applied anthropological work more generally are reflected in those on native title practice. One respondent to the survey suggested:

> I think that the anthropology of native title is strong in Australia. However, from my reading of the debates within the discipline and general conversations with colleagues, there is some resistance to it, based on a traditional divide between applied and 'pure' anthropology and the fear that the anthropology of native title is becoming increasingly dominant, to the point of muting other areas of specialisation within the discipline. In addition, the anthropology of native title suffers from not being an attractive topic for many undergraduate students (who currently seem to prefer such subjects as 'myth and ritual' or 'sorcery, shamanism and magic'!).

158. Another contributor felt that native title work was 'regarded somewhat contemptuously' within his/her institution but went on to observe:

> I think it is also accepted that there are some very good anthropologists, very experienced in fieldwork and very adept at negotiation and mediation with and between the multitude of native title interest groups. Unfortunately, these people are generally working independently but may be engaged as expert witnesses by land councils, industry groups and governments in the NT milieu. It's just a shame that those very effective and experienced anthropologists are so few in number.

159. This theme of marginality or dismissal of native title practice (as opposed to theorising) was repeated by a number of other respondents based in the academy. One referred to "… a bizarre mixture of dismissal and jealousy is not uncommon (especially perceptions of income from consultancy)". Another respondent summarised the views within the discipline as follows:

> … sneered at by those who don't do it. The low status of applied native title research reflects the lower status of applied research generally. There is an academic component (for example in writing, publishing, theorising) to native title, which is more respected, but often only undertaken by anthropologists with an established academic track record.

160. On the other hand, the capacity of academics to attract revenue to cash-strapped university departments through consultancy work is valued for the revenue, if not for the intrinsic value of the work. A respondent who felt that the position of native title within the particular institution was 'currently marginal' also observed:

> But the university is keen to 'hire out' people like myself now that there is enormous pressure on them to gain outside earnings. Undertaking a major native title contract is the equivalent of gaining a large grant and this is reflected in the figures generated by the relevant bean counters. If I were to promote native title more in the department, it would, I suspect, be welcomed as a potential bums on seat/money-in-the-purse generator.

161. Conversely, there were several respondents in the academy who were more positive about the place and status of native title research and applied work in their universities, feeling that its status within their institutions was quite high. In one case, it was stated that both staff and students in the particular department had a high level of involvement. In another, the significant place accorded native title research was in part because of participation of several related academic disciplines involved, and that a specific centre allied to the department focused on native title research and peer review of reports.

162. One respondent noted however that while native title research was strong in his/her own institution, one could see its lower status elsewhere where applied anthropology generally is treated as a 'second class part of the discipline', and another similarly observed that while it was recognised in the university as useful applied work and potentially good financially, it was resented by some colleagues because they felt excluded from it, and it was not viewed highly as an intellectually important area.

163. The divide between applied native title work and more theoretical research was addressed by a number of respondents. One was of the view that more attention was needed to profile the contribution native title anthropology could make to theoretical debate. Another observed that while native title application work was now probably in decline, other applied issues related to native title

were emerging as important. While most of the focus in the last ten years had been on applied work, native title was very much a 'Cinderella' in the context of teaching and research.

164. A pertinent and thoughtful comment was made by a senior full-time consultant who had had a previous career in the academy:

> Some do it; some don't. Some like it; some don't. Some actually hate it; others don't ... It seems to me that the native title anthropology industry has carved out a strong profile, even if we are not an especially unified bunch of practitioners. It probably remains true that 'doing native title' will never have the standing of other professional work, particularly in relation to publishing in prestigious journals, etc. But then again, such standing is becoming less important right now due to the quantification of measures of work, including publications. It seems to me, if not to others, that a serious academic profile and an 'applied' profile related to native title are perfectly compatible and that this compatibility is widely recognised, notwithstanding obvious prejudice against the latter. But anthropologists are a very diverse and cavalier bunch. We shouldn't expect universal acceptance of native title work, although I have to say that I suspect that many who do not practice it have no idea how intellectually stimulating or challenging the work can be.

Preparation within the academy of anthropologists for native title work

165. There may be valid criticisms of the views of applied native title research in some areas in the academy, and these views may be reflected in part in the numbers of anthropology graduates who see native title practice as part of a viable and rewarding career. As well as these more 'attitudinal' matters however, there is a core question as to whether anthropologists are being (and should be) prepared in Australian universities with the skills to equip them for native title work. For instance, few anthropologists in NTRBs felt that they had been prepared for the roles they played through their university education and qualifications.

166. This is a complex matter, and any extended treatment of it is well beyond the scope of this report. However, a number of brief observations germane to this question can be made.

167. Firstly, anthropology in the academy over the past several decades has been profoundly impacted by both wider changes in society (e.g. those arising through globalisation) and by related changes in the social sciences more generally. Until the mid-twentieth century, anthropology's focal interests were small-scale non-western societies. In the post-colonial world of newly independent states, formerly colonies of European powers, the role and interests of anthropology were directly challenged by post-colonial critiques. Within the discipline internal changes were also occurring. In particular from the 1960s existing anthropological discourse and epistemology were challenged by feminism and new ethical perspectives associated with applied work and development studies. By the mid1980s-90s other epistemological and pedagogical concerns were influencing fieldwork and ethnographies requiring anthropologists to situate their work in wider intellectual contexts and to scrutinise themselves and their own positions in anthropological interpretations.

168. A strong imperative developed within ethnographic writing to be critically reflexive of the ethnographer's own role in, and impact on, the collection and interpretation of field data. For the first time in the discipline, ethnographers were expected to critique their own subjectivity including their gender identity, biography and history. This resulted in extensive soul searching and turmoil within the discipline as anthropologists discussed and debated whether ethnography was actually a form of fiction writing or indeed a particular form of hegemony rather than a social science. While the reflexive debates are of less concern in current anthropological writing there remains an element of self-consciousness to the enterprise. This necessarily impacts on native title anthropology with its necessary reference to the overwhelmingly positivistic framework of the law.

169. Second, as part of these changes in the theoretical orientations of anthropology, there has been a move away from a concern with what used to be called 'social structure'. Anthropology, like other social sciences has experienced the full force of post-modernism as a paradigm for interpreting and understanding experience. A central tenet of post-modernism is that no single truth or view of a social situation exists. Instead an observer can only know the 'truth' of a situation through the lens of his or her own subjectivity, and even this only provides a partial explanation. Post-modernism has tended to sideline the classical anthropological focus arguing that holistic understandings of the social world are unachievable.

170. University teaching of anthropology has been affected by the shifting and contested debates concerning the validity and form of social scientific inquiry. One result of such upheaval has been the impact on anthropological teaching. Former mainstays of anthropological method are often dropped from core course content or moved to the background. The teaching of kinship studies and the use of the genealogical methods, and instruction in rigorous field techniques for recording ethnography are viewed as either difficult subjects to teach or of little relevance in the post-modern environment. Indeed, the centrality of the ethnography in the anthropological enterprise has been replaced by the post-modernist concern with the positioned observer.

171. In addition, the teaching of anthropology in universities is increasingly subject to the pressures of inter-faculty competition for student numbers with its associated financial consequences including the link to designated teaching positions. Consequently, the importance of ensuring viable student enrolments has required the 'sexing up' of classical anthropology. Clever, innovative ways of teaching a truncated form of classical kinship studies occurs in some cases; otherwise, the subject is typically not offered at all.

172. A number of senior anthropologists working in native title have decried the loss of classical subjects formerly central to anthropological method, pointing out the unhappy consequences of impoverished and often inadequate native title research. Their view of a less than adequate intellectual training is substantiated in peer review of connection documents.

173. Nonetheless, even if it is the case that anthropologists emerge from universities under-prepared for at least certain aspects of native title practice—most particularly perhaps mediation and litigation—it would be wrong to lay the blame for this at the feet of university undergraduate

teaching. There is a strong argument, to which I subscribe, that university anthropology degrees should not be seen as 'training' for any particular area of practice (native title or other), but rather as equipping graduates with the fundamental concepts of anthropology as a discipline that can enlighten our understanding of the core existential dilemmas confronting human groups and societies. This training in anthropology as a social science, with an emphasis on rigour, independence, critical enquiry, robust evaluation of the full range of evidence, and a commitment to ethical practice, is the essential basis on which the particular skills necessary for native title practice must be built.

174. This view is consistent with that made by senior anthropologists within the academy, for example Professor Hamilton in the address discussed previously, and Dr Nicolas Peterson, Reader in the School of Archaeology and Anthropology at the Australian National University and with long experience in both land rights and native title, who writes:[14]

> The issues facing younger anthropologists, freshly out of university and plunged into often extremely complex situations in Indigenous organisations, are not ones for which they are prepared during their university years. The reason for this lack of preparation is that those students likely to work with Indigenous Australian organisations are only a small proportion of the students who enter honours years in most anthropology departments, although the University of Western Australia may be an exception. Further, at the Australian National University, we feel that the pedagogical priority is to broaden and deepen people's theoretical understanding of anthropology and social science at this stage in their careers.
>
> Thus most honours and even MA students are rarely prepared for the complexity of the situations they are like to be placed in quite quickly after obtaining a job in an Indigenous organization. Indeed it is questionable whether they really could be comprehensively prepared in such a way as to be able to handle the kinds of problems they are likely to meet in any formal course. Normally, in large organisations, people are mentored from within the organization. In the case of most of the Indigenous organizations involved in native title this is not possible, because the organizations are very small and there are often no senior people with the kind of relevant professional knowledge and expertise—there tend to be only one or two people in the various professional occupations required by the organisations. Further the skills of these people in personnel management, for which they are rarely trained, are often quite poor.

175. If these views are accepted, then the place for training in anthropological native title practice (for consultants and those in NTRBs and government agencies etc) is arguably not in Bachelors degrees but rather should lie in special purpose courses. Providing detailed advice on the content of such courses, who should deliver them, is well beyond the scope of this project and should be the subject of further detailed consideration.

176. However, it is worth noting that currently, the Department of Anthropology at the University of Western Australia is considering developing and delivering staged courses leading to a Graduate Certificate and a Graduate Diploma in

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[14] N. Peterson, discussion paper drawn up for participants in the NNTT / Anthropos Mentoring Project, 2004.

native title and cultural heritage research. This department is highly proactive in applied anthropology with a particular focus on native title. The Centre for Anthropological Research associated with this department has in the past offered intensive three day courses concerned with anthropological issues in native title, directed at professional research staff of NTRBs, private consultants, and government and industry personnel. Additionally, the Centre has offered professional development courses in native title to staff of government agencies, as has Anthropos Consulting Services. As a further instance, for a number of years Dr Peter Sutton and subsequently Dr Julie Finlayson (then of Anthropos) ran professional development courses in native title through the Anthropology Department at the University of Adelaide.

177. There are therefore precedents for the development of courses of the type which would be appropriate for native title anthropological practice. Important questions remain to be considered in detail however. These include whether the courses should be accredited, how (and by whom) they should be resourced, and very importantly, whether there is the demand for such courses to make them viable. For example, there are currently only some 45 positions for anthropologists in NTRBs, and we estimate that the number of consultants currently working in native title probably lies between 40 and 50 nationwide—many of whom in any event are senior practitioners as our survey has shown. Even if there is a potential pool of other professionals (including lawyers) working in NTRBs, private practice, and government agencies who would be interested in such courses (as is suggested by those attending Anthropos' courses) there is still only a limited pool of those who may be interested in the area. Additionally, the young anthropologists in NTRBs who arguably may stand to benefit the most from such professional development in all likelihood already have Higher Education Contribution Scheme (HECS) debts to pay off, and may not be willing to incur further debts.

Challenges facing anthropology in native title practice

178. A number of the challenges facing anthropology have been directly or implicitly addressed in the foregoing discussion. In this final section of the report, these are expanded and systematised under a number of headings

Professionalising native title anthropology

179. There is (in my view at least) an argument that anthropology by its very nature is a somewhat idiosyncratic enterprise which requires successful practitioners to themselves be self-consciously positioned outside the general thinking of the western societies from which they generally come. This observation was also made by Nicolas Peterson, in the following terms, in the paper previously cited:

> … there is some truth to anthropologists being quite individualistic with a tendency to be social outsiders. As a result they are not great joiners nor enormously enthusiastic group collaborators nor easily organised into collective activities. The result is that once people leave the formal structures set up by university teaching, they have to rely mainly on personal networks

> because of the general weakness of the professional association and the limited communication amongst people in the discipline.

180. Such factors arguably contribute to long-existing conflicts within the Australian Anthropological Society, such as those manifested in the AASNet discussion, and including the ongoing debate about its professionalisation alluded to previously (page 27ff). At the level of *practice* (as opposed to that of anthropological theorising), they also contribute (in my own view) to a certain form of entrenched amateurism within anthropology as a form of professional practice, as distinct from anthropology as a discipline within the academy. This in turn means that anthropology is ill equipped to engage as an equal with the other professions involved in native title practice—most particularly, the law—and with the requirements of an increasingly bureaucratised system of recognising and administering native title.

Relationship with the law and legal practice

181. One respondent felt that the challenge for anthropologists was …

> being heard, or heard effectively, above the hubbub. However, the legal fraternity's ability or willingness to listen is very uneven. It is important to see that there is a common language which provides the basis for both law and anthropology.

182. There is perceived by many, indeed probably most, anthropologists to be a widening schism between native title as shaped by the Native Title Act and native title law and 'native title' as it exists within the 'Aboriginal domain'. The law poses challenges to anthropology at many levels, and the relationship between native title anthropology and the law (and between anthropologists and lawyers) is not infrequently an uncomfortable one. From the perspective of anthropologists, the requirement that they mould their accounts of Aboriginal connections to traditional country into a form which is in accordance with and intelligible to native title law can be seen as affronting core principles of anthropological social enquiry. Demands for systematicity and definitiveness in accounts of Aboriginal law and custom and the requirement that they be established as 'traditional' sit uneasily with contemporary anthropological understandings of Aboriginal cultures, in which what Francesca Merlan termed 'epistemic openness' is a core feature.[15] The dominance of the law in the conceptualisation of native title has aroused adverse comment amongst anthropologists, and criticism of those in the profession who are seen as acceding to the law's restrictive account.[16] Elements of this debate mirror issues in applied anthropology in Australia more generally where legislative frameworks determine the parameters of the anthropological contribution.

183. Common anthropological ways of thinking and writing in materials contributed to debate within the discipline do not necessarily prove appropriate in the

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[15] F. Merlan, 1998. *Caging the Rainbow: Place, Politics, and Aborigines in a North Australian Town,* Honolulu, University of Hawai'i Press.

[16] For example, see J. Weiner, 2003. 'The law of the land: a review article', *The Australian Journal of Anthropology* 14(1), pp 97-110*,* which proffers a trenchant critique of Mantziaris, C. and D. Martin 2000. *Native Title Corporations: a Legal and Anthropological Analysis,* Sydney, Federation Press.

context of preparing 'connection reports' for native title litigation or mediation. The 'positioned observer' of post-modern anthropology has little place in the requirements of the Court, to take a particular instance. Yet, the Courts are increasingly demanding that experts' reports do conform with the requirements of the law, including those of native title law. Lingren J in Harrington Smith obo Wongatha People v State of WA (no 7) [2003] FCA 893, stated at 19:

> Lawyers should be involved in the writing of reports by experts: not, of course, in relation to the substance of the reports (in particular, in arriving at opinions to be expressed): but in relation to their form, in order to ensure that the legal tests of admissibility are addressed. In the same vein, it is not the law that admissibility is attracted by nothing more than the writing of a report in accordance with the conventions of an expert's particular field of scholarship.

184. He further stated at 27

> Unfortunately, however, in the case of many of the present reports, it is difficult to avoid the impression that no attempt at all has been made to address the criteria of admissibility of expert opinion evidence. …My impression is that in some cases, beyond the writing of the initial letter of instructions to the expert, lawyers have left the task of writing the reports entirely to the expert, even though he or she cannot reasonably be expected to understand the applicable evidentiary requirements….

185. It has of course been exacerbated by the Hindmarsh Island heritage protection matter, which has taken an enormous toll on public credibility of the anthropological profession. Internally, the Hindmarsh Island case created profound rifts amongst colleagues, within the professional association and in raising questions in the minds of prospective anthropologists about working in Aboriginal affairs. Attempts by opponents to argue the professional liability of anthropology (and anthropologists) in such cases have undoubtedly made students and current practitioners alike wary of consultancy work in the Australian Aboriginal field. Correspondingly, it has emphasised the risks of litigation in such applied work and thus the importance of carrying professional indemnity insurance.

186. There is no doubt that there continues to be a range of personal views amongst anthropologists about the advocacy question, and the survey results in terms of practitioners' responses to approaches from potential clients discussed previously (page 20), suggests that there is still some reluctance to work for other than Aboriginal interests, and could lead to the inference that the 'advocacy position' is still current in the discipline. There has been useful discussion and publication around this issue, including that initiated and facilitated by AAS.[17]

187. Anthropologists may take some comfort from the recent judgment of Sundberg J in Neowarra v State of WA [2003] FCA 1402—but before his Honour made findings in favour of accepting and relying on the experts' statements, they had to submit to cross-examination and critical submissions.

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[17] Eg see papers on this and related questions from the Adelaide University conference, July 2001 - *Expert Evidence in Native Title Court Cases: Issues of truth, objectivity and expertise* published on the AAS website, at www.aas.asn.au

On the other hand, it seems that some expert witnesses have been held to be manifestly advocates for the claimants and have attracted critical comment from the Court (e.g. see O'Loughlin J in De Rose v South Australia). It is crucial that anthropologists and other experts understand the role of expert witnesses as per the Federal Court's guidelines—a view that Emeritus Professor Bruce Rigsby has been urging on anthropologists for some time—in order that their evidence is given due weight. A reading of the judgments, and practical experience, should encourage an interdisciplinary approach to these issues.

188. Challenges for anthropologists are posed by lawyers in other ways as well. Inappropriate or inadequately scoped instructions are not infrequently given to both consultant and NTRB anthropologists, including insufficient time to conduct the research involved. These failings can be the result of poor understandings of anthropological methods including the fact that knowledge of Aboriginal systems is communicated through social relations built on familiarity and trust. Working with a group of claimants for the first time and being expected to have identified and researched their specific native title parameters in a period of ten days with includes both field research and report writing is totally unrealistic—yet is drawn from actual experience with terms of reference given to an anthropologist.

189. There is anecdotal evidence from anthropologists working within NTRBs which suggests that professional tensions between legal and anthropological perspectives on claim facilitation and assistance is an ongoing issue. A benign view is that the conflict is based on mutual misunderstandings of professional ethics and methods. If this is the case, then professional development courses aimed at honing the particular professional skills and expertise of a single discipline may miss the mark in terms of what is need in applied work. The silo approach to skill development may be warranted for some matters, but what is certain is the greater need for effective cross-disciplinary communication and a capacity to work as a team rather than in disciplinary silos. Few forums or opportunities have been consistently provided to achieve this, either by the major institutions of the native title system or by relevant professional associations.

190. A disturbing development in native title research conveyed to Anthropos including during the course of interviews for this project, was situations where anthropologists claimed to have been pressured by lawyers into writing reports in terms which they professionally and ethically disagreed with. Anthropologists in such situations have felt powerless and unrepresented when raising their concerns on matters of professional ethics. Indeed, those in such situations said their issues and their work were subsequently marginalised and in at least one case, resolution was only possible through leaving the organisation concerned.

A diverse and changing native title environment

191. An additional set of challenges is posed for anthropology by continuing changes in the native title environment. These relate both to ongoing developments in native title law itself, as courts provide findings in relation to foundational concepts, and to the gradual move from mediation and litigation

to agreement making, native title management etc over the next decades. Anthropological practice will need to adapt to these changes.

Other challenges

192. Further challenges to native title practice have been discussed in the body of this report. Interest in Aboriginal issues in graduate work is limited and probably reached its zenith in the mid-1980s fuelled by research conducted for claims under the Aboriginal Land Rights (Northern Territory) Act (ALRA). Many senior anthropologists were mentored in the techniques of applied fieldwork through opportunities to work for Northern Territory Land Councils under the ALRA. These land claims are now concluding.

193. A major challenge is posed for native title anthropology by the demographics of its practitioners, which has implications for the supply of anthropologists over the next 10 years.

194. Providing means through which anthropologists can build on their university training in the discipline for work in applied practice is a challenge both for anthropology and for those requiring the services of anthropologists.