

## **The Aurora Project Legal Internship: Unique Practical Experience for Law Students**

*by Kate Vaughan*

During the winter break this year I undertook a legal internship, working in native title law, organised through the Aurora Project. I had seen posters around the Law Faculty for the last couple of years, and this year I did some research about the program in time to apply.

The Aurora Project coordinates legal internships, primarily with native title representative bodies located, mostly in capital cities but servicing the regional centres of some of the most isolated areas of Australia. I applied because I thought that, if I was successful, I would spend six weeks in the outback obtaining meaningful legal experience. I have been interested in doing work of that kind since commencing law at Wollongong. I romanticised that I might find a career in a non-traditional area of law outside a big city. As native title is so new, I also hoped that there would be an absence of black letter law and plenty of scope for creativity.

While my experiences with Aurora were different to most other interns, who travel to places like Broome and far north Queensland as part of the program, I still obtained an amazing insight into work as a native title lawyer. Although in many cases accommodation and transport to your placement location will be covered, due to my personal financial position (I discovered that Broome is possibly the most expensive place to live in Australia) and other work commitments, I decided to seek a placement in Sydney.

I was an assistant to three native title barristers who practice throughout Australia. I was based in their Chambers in the NSW Land and Environment Court building in Macquarie Street, Sydney. Vance Hughston SC, John Waters and Tina Jowett are highly regarded in the field, and a Google search will bring up one of their names in nearly every significant native title case or seminar since *Mabo [No.2]*.<sup>1</sup>

I assisted the barristers by carrying out research, attending court and preparing briefs and drafting affidavits for court. These skills are all practical aspects of litigation which will be helpful once I graduate. The best part about working under these three barristers, however, was being able to question them about the different career opportunities and paths to take as a legal professional. I have been inspired and motivated, particularly by Ms Jowett, to pursue a couple of different courses once I graduate. I was able to ask questions of Ms Jowett that I would not necessarily be comfortable asking lawyers in a firm or corporate environment.

The general atmosphere surrounding native title practice out outside a law firm is a little different, in that you are not billing by the minute or feeling like the smallest player in a very large operation, as even the little tasks you carry out seem helpful. The environment is open and the barristers, at least, are very approachable, perhaps because of the diverse range of interest holders they have become used to communicating with in different native title claims. Experiencing such a different legal atmosphere is one of the unique aspects of the program provided by Aurora.

Whilst I did not get to go out ‘*on country*’; talk to indigenous people living in remote areas; witness the apparent bureaucracies going on within native title representative bodies and aboriginal corporations; or even drink beer with locals at a Geraldton pub, all the things I wanted to experience, I really learned a lot about the complex funding structures and politics of native title litigation.

---

<sup>1</sup> (1992) 175 CLR 1.

## *Legal work in native title*

I have nearly finished at Wollongong University and now have a pretty broad amount of legal experience under my belt, such as obtaining a graduate position with Minters and have been working there while studying. Yet, native title law is one of the most interesting areas I have studied or worked in. The following is a snapshot of working in native title law, from a practical and procedural perspective, based on my experience.

Native title encompasses several different areas of law in practice. It was impressed upon me that the rules of evidence in native title litigation are extremely important and can be unique to this area of the law. The *Evidence Act 1995* (Cth) applies in native title litigation, but its application is sometimes difficult. Certain allowances are made, including the use of a Statement of Cultural and Customary Concerns,<sup>2</sup> the use of singing, dancing and story telling, as well as particular oral evidence; all as means aimed at settling native title claims efficiently and fairly. Anthropologist expert witnesses are particularly important here, as are other experts such as historians, linguists and archaeologists.

Administrative law also plays a part, as the State always has interests in land which will often raise constitutional and administrative questions once claims are heard in court. Further, as the *Native Title Act 1993* is relatively new, statutory interpretation can also become a feature of native title cases.

Although native title is a land and property concept separate from freehold title, western property notions still appear to heavily influence the reasoning of Federal Court judges in determining land interests of indigenous Australians.

Corporate law also plays a role, partly because the *Native Title Act 1993* provides for aboriginal corporations to hold money on trust for the community but also, because native title interests compete with other land interests such as mining, pastoral, commercial fishing and infrastructure projects.

Discrimination and heritage law can also feature in many native title cases.

Interestingly, unlike other practice areas where competing litigants will generally desire similar outcomes (for example, in corporate law both parties to a transaction will probably wish to maximise their financial outcomes), in native title there are many complicated and competing interests among litigants such as indigenous claimants, and those third party interests discussed above, and government parties, who will seek a determination that favours their interest in that parcel of land. The competing interests are rarely reconcilable. Native title lawyers thereby represent a range of parties and need to be sensitive to the many competing interests for both professional and political reasons.

In some ways it seems practising in native title demands sensitivity and ethical considerations beyond that required by lawyers in other areas of law. This feature of law also plays out in the court room. There are clear power struggles between State, claim groups and third party corporation legal representatives. Native title is a dynamic frontier where novel questions of law seem to arise everyday. Some judges are progressive, which means they develop the law rapidly and generously, while others are more conservative, avoiding sweeping changes and possible precedents. The outcomes will often depend on the judge hearing the case.

---

<sup>2</sup> *Federal Court Rules* Order 78 rule 32.

Federal native title legislation has only been in place for about 15 years, which means lawyers can never really look to the English or other common law countries for guidance. Also, funding is a big problem – it is metered out by the Federal Government in small amounts over several years, meaning that lawyers must expound a case theory early, before most of the anthropological fieldwork is undertaken with the Aboriginal people. Anthropological fieldwork is time consuming and expensive, but the evidence of Aboriginal witnesses is usually linked with complex theories about “*communal, group or individual rights and interests*” within a “*normative system*” from anthropologist expert witnesses. Although there are legal rules and legislation binding the way native title litigation is conducted and developed, it is not well settled law and there are constantly new developments. Native title certainly provides a number of challenges for lawyers in determining how to run a case.

In short, my experience working with native title barristers encouraged me to think, not only about legal questions but also, about policy in relation to land and indigenous Australians. It seems native title would be an extremely stimulating and satisfying area in which to practise as a lawyer.

### ***Aurora Project internships***

I would encourage any University of Wollongong student to consider an internship organised by the Aurora Project. The program is unique, as you can gain practical experience in both a procedural and ethnographic sense.

It is also worth noting that this internship is not one where, as a student, you simply sit and observe. One of the premises for the Aurora Project is to get help from people with some legal knowledge and training, as native title representative bodies tend to have an abundance of work awaiting completion at any given time. The Aurora Project is definitely a ‘*hands on*’ work experience opportunity.

Policy placements are also available, so whether you are interested in practice and procedure or reform, there are opportunities to gain meaningful legal work before graduating.

Aurora takes interns in both the winter and summer university session breaks. Applications for the next summer intake close on the 5 September 2008.

For more information visit: [www.auroraproject.com.au](http://www.auroraproject.com.au).