



Bringing parties together

NATIVE title mediation is unlike negotiation in other areas of life, where just two players may be brought together to argue their opposing views.

In native title, parties can be numerous and diverse, and relationships complex.

A claim recently settled for the Thalanyji people by the Federal Court in Onslow, in WA's Pilbara region, demonstrated this difference.

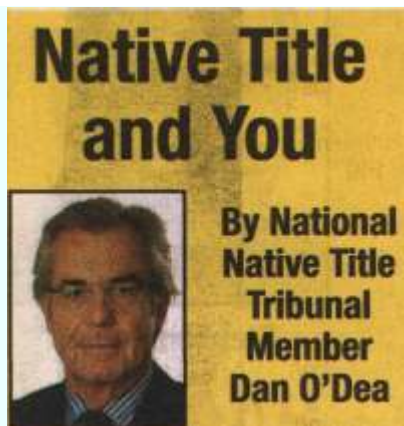
The claim involved more than 35 other parties, ranging from local, State and Commonwealth governments to representatives from the mining, pastoral, pearling, fishing and telecommunications industries.

The consent determination recognised non-exclusive rights and interests over 11,120 sq km of land and was a happy ending for the local Indigenous people, who had submitted their first claim in the area in 1999.

But it was also a positive outcome for the other parties to the claim, who for nearly 10 years had been working with the Thalanyji people to reach agreement on native title.

That number of respondent parties to native title claims is not unusual, but in fact typical. What it shows is how unusual and challenging the mediation of native title claims can be.

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pastoralists, fishers or miners, they still have their individual concerns and approaches.

'Herding cats' is a cliché that sometimes comes to mind.

The Thalanyji case is one that illustrates how managing all these disparate interests is critical to successful outcomes.

In Thalanyji, the parties represented divergent interests, but shared a common commitment to achieving a positive outcome.

The Tribunal was able to support this commitment through its mediation process, which gives each party an opportunity to be heard – as well as to listen to the aspirations of others.

The Thalanyji determination is a reminder that native title applications aren't all the same and that they can affect many, very different players.

Other recent examples include Australia's 100th determination, for the Gunitjmarra people in Victoria's western district, which involved 27 groups representing hundreds of individual parties with interests in the claimed area, including the Commonwealth Government, miners, farmers, fishers and beekeepers.

The Gunitjmarra people's rights and interests were recognised over 140,000 ha of land and waters while also protecting the rights and interests of all the parties.

The Eastern Kuku Yalanyji people's claim in



north Queensland, over 126,900 ha in the World Heritage Daintree area, was resolved in December 2007 with a consent determination.

This claim affected more than a dozen other parties, including local shire councils, miners, environmental authorities, farmers and service providers such as Telstra.

These resolutions come after many years of carefully negotiated mediations which begin after the

native title application is lodged and those with interests in the area have asked to be a party to negotiations.

The Tribunal is responsible for bringing all parties together to help them work out an outcome that benefits everyone. Our specialist expertise in native title mediation, interpretation of native title law and mapping of country helps us achieve this goal.

It is worth noting too, that the mediation of native title is different from other forms of mediation for reasons other than the number of

parties. Native title mediation involves parties who usually don't know each other and haven't interacted much in the past.

Importantly, they usually haven't been in dispute with each other before and it is the claim that brings them into a potential conflict.

The starting point of the mediation is to assist the parties to gain an understanding of each other's rights and interests within

the native title process and to avoid the confrontation and uncertainty of litigation, where results are imposed and many practical issues are not resolved.

Through mediation, the Tribunal is able to engender new relationships and partnerships, such as Indigenous land use agreements (ILUAs), which can provide a structure for the ongoing co-management or use of the land subject to the claim.

In the Thalanyji claim, five body corporate pastoral ILUAs were to be registered after the determination hearing.

In the Eastern Kuku Yalanyji claim, the determination followed the signing of 15 ILUAs which established a co-operative approach to land ownership, use and management and community development.

The Gunditjmara people and the State of Victoria reached an ILUA during the mediation of their claim, which established how they would exercise their rights and interests in the determination area.

The Tribunal's mediation process makes possible both the recognition of native title through the court's determination as well as partnerships and opportunities that arise from agreements, including ILUAs that are forged with the various parties along the way.