



Alternative approaches

MOVES by some state governments to settle native title claims by negotiating directly with traditional owners about matters beyond native title, demonstrate that alternative approaches can be taken to resolve native title claims.

The Western Australian Government and the Noongar people's representative body, the South West Aboriginal Land and Sea Council, signed an agreement in December that confirmed their commitment to negotiate an alternative settlement to resolve Noongar native title claims in the state's south-west region.

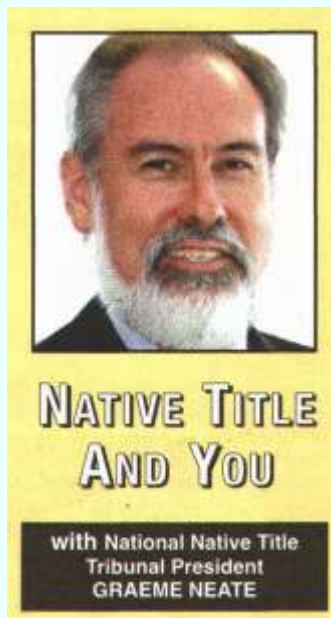
The parties agreed to a two-year plan to negotiate a settlement package, likely to include recognition of the Noongar people's traditional ownership of the land, economic benefits, a revised heritage regime, land and joint management of some national parks.

In June 2009, the Victorian Government announced it had developed a Native Title Settlement Framework to allow traditional owners to negotiate directly with the state to settle native title claims, rather than go through the courts.

The aim of the Victorian framework, when implemented, is for faster resolution of claims, stronger partnerships with Indigenous people and better outcomes, including increased economic opportunities.

These moves align with the commitment made in August last year at a meeting of Commonwealth, state and territory native title ministers to take a flexible approach when working to achieve a broad range of practical and sustainable outcomes through native title processes.

All ministers agreed that the ultimate aim was to achieve real



outcomes for Indigenous people and to provide certainty for other land users.

Alternative settlements enable stakeholders to make progress in ways to suit their local needs, and such settlements can be especially valuable where few native title rights will be recognised or it will be difficult to prove that native title survives.

In 2008, the native title ministers established a Joint Working Group on Indigenous Land Settlements to develop policies advocating broader and regional land settlements.

Guidelines

The group also developed Guidelines for Best Practice in Flexible and Sustainable Agreement Making. These guidelines were released in August 2009 to assist governments around Australia in their negotiations.

Practical guidance on the behaviours, attitudes and practices that can achieve the efficient resolution of native title claims, from the early

stages of negotiations through to implementation, is included in the guidelines.

For more than a decade the *Native Title Act* has provided for the kind of agreements now being sought by the states and the Commonwealth.

In 1998 amendments to the Act added section 86F, which allows parties to negotiate agreements about action being taken to settle a native title claim. The 'agreement to take action' may involve matters other than native title, such as those contemplated by the Victorian framework. The Indigenous Land Use Agreement (or ILUA) provisions, which were also introduced in 1998, provide a way to give legal effect to the outcome of those negotiations.

Further amendments in 2009 (sections 87 and 87A) enable the Federal Court to make orders about things other than native title where parties reach an agreement. According to the Australian Government, agreements could include such things as economic development opportunities, training, employment, heritage, sustainability, and the benefits for parties. We have yet to see how the parties and the Court will use this power.

The challenge to all people involved in the native title system is to reduce the time taken to resolve native title claims, while also ensuring agreements deliver enduring outcomes that are appropriate for the parties' circumstances.

Economic and cultural gains can be made through determinations of native title and agreements about a broader range of matters. Such settlements and the positive relationships formed during negotiations can ensure agreements are strong, ongoing and sustainable.



Noongar people outside WA Parliament in December last year after the signing of the agreement to negotiate an alternative settlement to resolve Noongar native title claims in the state's south-west region. *Photo courtesy of SWALSC*