



Litigation v negotiation

Agreements the quickest way to resolve native title claims

TAKING native title claims through the courts can be risky, time-consuming and costly for all parties. A judgment by a single judge might not be the final word. Sometimes parties want to appeal to a higher court.

The Full Federal Court recently handed down appeal decisions about native title for claims over areas of Perth and Broome, in Western Australia.

On 23 April, Justices Finn, Sundberg and Mansfield unanimously found that Justice Wilcox didn't apply the correct legal analysis in his interim decision that the Nyoongar People may have native title rights and interests over parts of the Perth metropolitan area.

The Full Court did not determine whether native title exists or not. It sent the case back to a single judge of the Federal Court for further hearing, almost 13 years after the first Nyoongar native title claim was lodged.

On 2 May, Justices Branson, North and Mansfield upheld Justice Merkel's 2006 finding that the Yawuru community had communal native title in areas of the Broome townsite.

The Full Court also overturned Justice Merkel's findings that native title had been extinguished in relation to some areas, including a public reserve that had not been validly created and Broome cemetery.

The judges also concluded that extinguishing events could be ignored in relation to parts of

Native Title and You



By National Native Title Tribunal President **GRAEME NEATE**

Kennedy Hill. Native title could be recognised over those areas.

Outcomes of court hearings have proven to be unpredictable. Even when the court clarifies the legal position, it may not resolve important practical issues over the land and waters.

Parties then face the job of building relationships and making the court decision work in practical ways.

Where possible, the significant time, energy and effort that would otherwise be invested in litigation should be better directed into negotiating agreements on the ground and collaborating on ways to protect, use and enjoy the land.

Negotiation quicker

On average, it takes about two years longer to pursue a native title claim through the courts than to sit down and negotiate a settlement. Currently, 21 of the 109 native title determinations made around Australia have been litigated, so it is clear that people look to agreement-making as a preferred way to resolve native title issues.

The agreement-making processes need to be improved. We should work together to find various practical ways to resolve claims with agreements that are just and enduring and which can be reached without some of the costs and delays that are often experienced.

If all parties work together, better practices can be developed and alternatives for