

South Australian State Wide Agreement Approach

Overview

Resources

Discussion Papers

South Australia considers Native Title resolution to be closely related to social and economic outcomes for Indigenous Australians. Consequently, creating equitable and sustainable arrangements for the co-existence of Indigenous and non-Indigenous rights and interests is fundamental to the state's approach for resolving Native Title. While a large portion of South Australia's Native Title issues remain to be addressed, the state aims to resolve 75 percent of Native Title claims by 2014.

South Australia strongly emphasises resolving Native Title through negotiation and discussion rather than through court litigation. The South Australian Framework emphasises the resolution of Native Title claims either by the negotiation of Indigenous Land Use Agreements (ILUAs) or by a consent determination.

Indigenous Land Use Agreements (ILUAs)

ILUAs are agreements made under the *Native Title Act 1993* (Cth) that govern how a body of land or water will be used or managed. These are legally binding agreements and are registered with the National Native Title Tribunal.

ILUAs can clarify the relationship between various parties' rights and interests, and create certainty in the use and management of land and water resources. The way such rights and interests are exercised can be managed in a way that best meets all parties' needs.

The introduction of ILUAs has led to the development of the South Australian Native Title Resolution process - a coordinated, state-wide approach to negotiating Native Title and related outcomes. This is an inclusive process that brings together peak bodies that represent the interests of miners, pastoralists, fishers, local government, the Aboriginal Legal Rights Movement (representing 23 Native Title claimant groups), Councils, and the South Australian State Government. Discussions and negotiations provide an opportunity for the negotiating parties to develop positive, mutually beneficial and sustainable relationships.

Consent determinations

A consent determination involves the Federal Court giving legal effect to an agreement already negotiated between the parties to the Native Title claim. The parties must reach agreement on the nature and extent of Native Title rights and interests in the claim area before applying to the Court for a determination.

Claimants must provide evidence to demonstrate the continued existence of Native Title, which is likely to require significantly less time and cost than that required to prepare a claim for trial. Evidence presented for a consent determination is rigorously examined and must meet the requirements of the *Native Title Act 1993* (Cth), however the overall financial and human costs for all parties are likely to be substantially lower than those of litigation.

A Federal Court determination increases the social and legal recognition of the claimants' association to land and waters, and establishes the claimants' rights and interests as valid against the whole world.

The resolution of Native Title issues in South Australia can be achieved through ILUAs or consent determinations alone, or through a combination of both. A clear objective of the South Australian Framework is to provide an alternative to litigation wherever possible.

The approach adopted by Australia works to integrate Indigenous and non-Indigenous land management systems, and has the potential to yield superior cultural, social, economic and environmental outcomes for Indigenous communities, industry sectors and the government.

RESOURCES

Native Title South Australia: "Native Title in SA".

http://www.nativetitlesa.org/Native_Title_in_SA.34.0.html

Government of South Australia: "Consent Determinations in South Australia: A guide to preparing Native Title reports". 2004.

http://www.iluasa.com/dl/Consent_Determinations_in_South_Australia.pdf

Indigenous Land Use Agreements South Australia: "South Australian Native Title Resolution"

<http://www.iluasa.com/default.asp>

DISCUSSION PAPERS

Agius, Parry, Jocelyn Davies, Ritchie Howitt & Lesley Johns, 2002, 'Negotiating Comprehensive Settlement of Native Title Issues: Building a New Scale of Justice in South Australia' *Land, Rights, Laws: Issues of Native Title* Vol 2, No 20, Native Title Research Unit, AIATSIS, Canberra.

Agius, Parry & Howitt, Richie. 2003, 'Different Visions, Different Ways: Lessons and challenges from the native title negotiations in South Australia', paper presented at the Native Title Conference 2003, Alice Springs NT 3-5 June 2003. Available at:

<http://ntru.aiatsis.gov.au/conf2003/papers/agius.pdf>

This paper criticises Australia's current Native Title system as more commonly affirming Aboriginal dispossession rather than returning country to Aboriginal people. Various lessons and challenges arising from the South Australian approach to Native Title settlement are examined, and the authors propose ten core principles for agreement building. The authors advocate grassroots social and political engagement of Aboriginal people and building their self-government capacity from the bottom up. The authors also argue that agreement making must be about building interpersonal relationships and ensuring strong community participation rather than being reduced to a legal definition.

"Implementing the South Australian Indigenous Land Use Agreement (ILUA) Statewide Negotiations". Paper presented to the AIATSIS Conference June 2005.

http://ntru.aiatsis.gov.au/conf2005/papers/DixonI_AgiusP_HallPpaper.pdf

This paper examines in detail the South Australian ILUA Statewide Negotiations. Specific topics include how the negotiations work in practice, the unique aspects of the South Australian approach to Native Title settlement, challenges that have arisen, key success factors, what the negotiation process has achieved (including legislative changes brought about by the Statewide ILUA process), and future directions. Finally, sector-specific ILUAs (minerals exploration, pastoral, local government, and fishing and aquaculture) are examined.

“Negotiating Comprehensive Settlement of Native Title Issues: Building a new scale of justice in South Australia”. Issues Paper no. 20 in *Land, Rights, Laws: Issues of Native Title*, Volume 2, December 2002.

<http://ntru.aiatsis.gov.au/ntpapers/IP20v2.pdf>

Abstract: This paper discusses the statewide framework agreement process in South Australia from its inception in 2000. The framework agreement process seeks to comprehensively address Native Title claims across South Australia by negotiating agreements between claimant, government, industry, and other stakeholders. This process offers not just an alternative to litigation, but an opportunity to rebuild the capacity of Indigenous people to be self determining and to hold each other accountable in parallel under customary law and contemporary governance institutions. Close attention to this, and to inclusive decision making processes, is emphasised as critical to securing lasting outcomes from negotiations. This paper was written prior to the High Court decision in *Western Australia v Ward* which has subsequently drawn attention to the inappropriateness of pursuing litigation to resolve Native Title applications.