



South Australia's State-wide Indigenous Land Use Agreement (ILUA) framework

Introduction

In most states and territories of Australia, Indigenous Land Use Agreements (ILUAs) are negotiated on a case by case basis between the relevant parties, usually traditional owners, governments and industry groups. South Australia however, has taken a more comprehensive approach to these agreements. The South Australian Government, Indigenous traditional land owners and industry stakeholders have developed a state-wide framework that streamlines ILUA processes and reduces the resources that are required for successive negotiations.

ILUAs have the potential to deliver economic and other outcomes in the absence of native title determinations. The South Australian State-wide ILUA approach offers a strategic use of resources to deliver native title outcomes for all stakeholders. While ILUAs do not replace determinations, they realise one of the SA Government's targets to 'reduce the gap between the outcomes for South Australia's Aboriginal population and those of the non-Indigenous population.'¹ The registration of ILUAs provides certainty for Indigenous land owners, industry and government interests.

It is not unusual for a single native title determination to cost tens of millions of dollars and take many years. For example, the De Rose Hill native title claim in SA went through court processes over a period of more than ten years at an estimated cost of \$15 million. These costs and commitments have made native title moribund in some states. In instances where the resources of state governments and representative bodies are expended in single litigations, other native title activity suffers. This can lead to an inequitable situation for claimant groups and others who are waiting for their native title interests to be progressed.

The agreement to develop a State-wide ILUA framework was the result of a year of discussions between the South Australian Government and Aboriginal Legal Rights Movement (ALRM). In 1999, the South Australian government initiated the State-wide ILUA process, and in 2000 the native title claimant groups agreed to engage

1 Haines, Dr. T., (Deputy Principal Negotiator, Indigenous Land Use Agreement Negotiation Team South Australian Government), *Aboriginal Employment through constructive partnership in government*, Address to the Indigenous Employment in SA: Resources Industry Forum, Adelaide, May 22nd, 2006, p2.



in the negotiations.² In effect, the State-wide framework sought to establish ILUA templates to guide negotiations across industry and interest areas.

We have a State-wide approach to the ILUA negotiations which enables a greater degree of coordination and utilisation of resources which we believe will lead to far superior outcomes than a piecemeal approach. We believe that this will result in much reduced costs in resolving native title versus litigation.³

In the seven years of operation of the State-wide ILUA negotiations, from 1999 to June 2006, nine agreements have been registered.

Indigenous Land Use Agreements

The ILUA is the agreement through which the terms and conditions for access and development on traditional Indigenous lands is negotiated. ILUAs can include provisions for the following:

- compensation for the use of land, (the focus in the South Australian negotiations has been on 'benefits');
- extinguishment of native title rights to land;
- access rights;
- native title holders agreeing to a future development; and
- a resolution of the coexistent rights of native title holder and other parties.

When registered, ILUAs bind all parties, including the native title claimants and holders, to the terms of the agreement. An ILUA has the effect of a contract even if it does not satisfy the common law requirements of such, and can through agreement have the effect of surrendering native title.

The objective is to resolve native title claims through lasting and enforceable agreements about the parties' respective rights and responsibilities over land and waters that are subject to those claims (and consent determinations of native title where appropriate), resulting in certainty in use of South Australia's land and water resources and economic, cultural and social benefits for the State.⁴

The South Australian State-wide ILUA

The parties to the State-wide ILUA include the Aboriginal Legal Rights Movement (ALRM), the South Australian Farmers Federation (SAFF), the South Australian Chamber of Mines and Energy (SACOME), the Seafood Council (SA Ltd.), the South Australian Fishing Industry Council (SAFIC), the Local Government Association (LGA) and the South Australian Government.⁵ The ALRM supports the 23 claimant

2 Agius, P., Davies, J., Howitt, R., and Johns, L., *Negotiating Comprehensive Settlement of Native Title Issues: Building a New Scale of Justice in South Australia*, Land, Rights, Laws: Issues of Native Title, AIATSIS, Vol. 2, Issues Paper No. 20, December 2002, p4.

3 AIATSIS Native Title Conference, *Implementing the SA ILUA State-wide Negotiations*, Dixon, I., Agius, P., and Hall, P., Coffs Harbour, New South Wales, June 2005.

4 State of South Australia Indigenous Land Use Agreement Negotiating Team, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Native Title Report 2006*, 23 January 2007.

5 South Australian Government, *South Australian Indigenous Land Use Agreement State-wide Negotiations, Who is involved?* available online at www.iluasa.com.



groups who are represented through the Congress of Native Title Management Committees.

The objectives of the State-wide ILUA are outlined in the *South Australian Indigenous Land Use Agreement State-wide Negotiations Strategic Plan 2006-2009*. They are:

- recognition of native title interests;
- certainty for all interest holders;
- recognition and better protection of Aboriginal heritage;
- Aboriginal cultural sustainability;
- better economic outcomes for Aboriginal people; and
- a framework for sharing responsibility in caring for land, protecting the fishing environment, and managing land and water.⁶

The State-wide ILUA process is jointly funded by the South Australian Government and the Australian Government. The policy commitment of the SA Government to Indigenous families and communities includes the promotion of 'economic opportunities and independence' and 'capacity-building initiatives in the mining, pastoral, fishing, aquaculture, tourism and arts industry sectors.'⁷ The State-wide ILUA negotiations have been integral to realising this policy objective.

It has been necessary since 1999, when the ILUA negotiation initiative started in South Australia, progressively to engage with major industries in order both to consider their interests in Aboriginal land claims and to negotiate benefits for the claimant groups. The industries involved in negotiation could potentially offer employment for Aboriginal people both as an incentive to settlement and as a real pathway to sustainable development. This three-way partnership – between Government, industry and the Aboriginal community – has grown increasingly stronger, with each partner in the discussion benefiting from the inputs and the outputs of the others.⁸

The State-wide negotiating process

The negotiations for the State-wide ILUA framework are independently chaired and project managed by an external consultant.⁹ Since the commencement of negotiations in 2000, each party has come to the negotiation table as an equal partner. The negotiations are governed by a meeting protocol which sets out clear instructions for the form, scope and conduct of discussions. The *SA ILUA State-wide Negotiations Meeting Protocol* has been operating since 2001 and has been updated three times to reflect additions and changes to processes.¹⁰ There are *Guidelines for Organising Workshops* for ILUA Negotiations and a *Glossary of Key Terms* used to

6 South Australian Government, *South Australian Indigenous Land Use Agreement State-wide Negotiations Strategic Plan 2006 – 2009*, available online at: www.iluasa.com.

7 The South Australian Government, *Doing it right, the South Australian Government's commitment to Aboriginal families and communities in South Australia*, Key Principle 7.

8 Haines, Dr. T., (Deputy Principal Negotiator, Indigenous Land Use Agreement Negotiation Team South Australian Government), *Aboriginal Employment through constructive partnership in government*, Address to the Indigenous Employment in SA: Resources Industry Forum, Adelaide, May 22nd, 2006.

9 State-wide negotiations are chaired and project managed by Ian Dixon of Dixon Partnerships Solutions.

10 State-wide ILUA Negotiating Parties, *South Australian Indigenous Land Use Agreement State-wide Negotiations Meeting Protocol*, June 2006.



guide negotiations.¹¹ Discussions occur at a number of levels in recognition of the fact that parties understand that:

- there are a number of issues relating to native title that were common to many or all native title claims;
- their constituents needed to be directly involved in decision making;
- their constituents differed widely in their level of understanding of native title issues and of the technicalities involved in resolving them; and
- some sensitive issues could only be discussed or decided on by land users and others at the local level, not by people outside the area.¹²

The State-wide negotiating framework comprises a Main Table for discussion between representatives of the key stakeholders on major issues and process. The Main Table is responsible for monitoring progress, confirming agreed outcomes and providing direction. Side Tables were established for each of the industry groups and for the local government sector. An additional three tables include: a Relationship to Land and Water Table; a Heritage Table; and a Parks Table.¹³ Discussions from Side Tables are canvassed at the State-wide level with the native title claimants.

Indigenous engagement in the SA State-wide ILUA process

Crucial to the process has been the full participation of traditional owners. As a result of discussions amongst the 23 claimant groups, the traditional owners decided that they needed to constitute their own negotiating group to participate in the State-wide negotiations. The ALRM clarified its role with respect to the negotiations. It stressed from the outset that its role was not to negotiate on behalf of the claimants, but rather to provide advice and support in the form of funding for meetings, travel costs, sitting fees, training and information to claimants. The Congress of South Australian Native Title Management Committees (the Congress) was specifically established and recognised as the peak negotiating body for the 23 claimant groups. The Congress is constituted by delegated representatives of the 23 Native Title Management Committees (NTMCs) of the claimant groups.

Some aspirations and needs require coordinated responses at the broader regional or State-wide scale. One of the most important aspects of the State-wide process that enables such scales to be approached is the establishment of the Congress of Native Title Management Committees.¹⁴

11 **AIATSIS Native Title Conference**, *Implementing the SA ILUA State-wide Negotiations*, Dixon, I., Agius, P., and Hall, P., Coffs Harbour, New South Wales, June 2005, pp6-11.

12 **State-wide ILUA Negotiating Parties**, *South Australian Indigenous Land Use Agreement State-wide Negotiations Meeting Protocol*, June 2006, p5, available online at: www.iluasa.com.

13 **For more information about the roles and responsibilities of the Main Table and the Side Tables**, see the *South Australian Indigenous Land Use Agreement State-wide Negotiations Strategic Plan 2006 – 2009* and also *AIATSIS Native Title Conference, Implementing the SA ILUA State-wide Negotiations*, Dixon, I., Agius, P., and Hall, P., Coffs Harbour, New South Wales, June 2005, p3.

14 **ALRM Native Title Unit**, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Native Title Report 2006*, Email, 2 March 2007.



In the early phases of the negotiation process, traditional owner groups had concerns that entering an ILUA would result in the extinguishment of native title.¹⁵ Some believed that ILUAs were separate from native title and would make their claims redundant.

It was clear that the claimants did not trust ILUAs... they said that they are different to native title, that they water down Aboriginal people's rights and that they mean the extinguishment of native title. Aboriginal people stated... they would not enter into any talks if extinguishment was going to be a condition of the agreements.¹⁶

In consultations with the Congress and its constituent Native Title Management Committees, the ALRM decided that it would be best not to use the term ILUA when discussing the State-wide framework. At a meeting in 2000, the Native Title Management Committees decided that they would work towards a process that they would refer to as the 'State-wide Native Title Settlement Agreement'.¹⁷ Changing the terminology in the early stages of the negotiations gave the claimant groups some certainty that they would not be disadvantaged by the State-wide framework. As negotiations continued and claimant groups gained greater understanding of the relationship of ILUAs to native title, they were able to engage with the concepts and the terminology of Indigenous Land Use Agreements.

All State-wide meetings involved the Congress, which meant 'that Aboriginal people who live in vastly different landscapes, from sand hills to mountain ranges to the coast' would be represented.¹⁸ Discussions had to be based on a foundation of mutual respect for each others' cultural differences. The Congress decided that there was a need for internal meeting protocols to ensure that traditional law was not breached in matters including who has authority to speak for country. Translators and interpreters were used in negotiations so that Indigenous stakeholders were able to speak to government and industry in their own languages.¹⁹ Diagrams, drawings and models were also useful in presenting complex issues and explaining structures for decision making.

One of the NTMC members, Mr Dean AhChee produced his own diagram of what the negotiation process would look like 'Anangu way.' Later he painted it and it has been endorsed by the NTMCs as a logo for the Congress.²⁰

The complexity of bringing together large groups of different traditional owner interest groups is exemplified by an early challenge for the Congress. During 2000, when the proposal for State-wide negotiations was first presented, the Congress representatives had to resolve the question as to whether they had authority to

15 Davies, J., *Submission No. 11*, Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, *Operation of the Native Title Act, Inquiry into Indigenous Land Use Agreements*, p3.

16 Agius, P., Davies, J., Howitt, R., and Johns, L., *Negotiating Comprehensive Settlement of Native Title Issues: Building a New Scale of Justice in South Australia*, Land, Rights, Laws: Issues of Native Title, AIATSIS, Vol. 2, Issues Paper No. 20, December 2002, p7.

17 Davies, J., *Submission No. 11*, Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, *Operation of the Native Title Act, Inquiry into Indigenous Land Use Agreements*, p4.

18 Agius, P., Davies, J., Howitt, R., and Johns, L., *Negotiating Comprehensive Settlement of Native Title Issues: Building a New Scale of Justice in South Australia*, Land, Rights, Laws: Issues of Native Title, AIATSIS, Vol. 2, Issues Paper No. 20, December 2002, p7.

19 The meetings were translated into Yankunytjatjara-Antakirinya, a Western desert language.

20 Agius, P., Davies, J., Howitt, R., and Johns, L., *Negotiating Comprehensive Settlement of Native Title Issues: Building a New Scale of Justice in South Australia*, Land, Rights, Laws: Issues of Native Title, AIATSIS, Vol. 2, Issues Paper No. 20, December 2002, p8.



negotiate matters on behalf of their native title claim groups. The Congress adopted an 'opt-in' system whereby each separate NTMC is given an opportunity to debate issues and consider its local position in separate workshops. Each NTMC is then able to present its decision and reasoning to the full Congress representative group. The separate NTMC workshops are a powerful mechanism for decision making, allowing groups to work through the State-wide issues in the context of their own local issues and concerns. One of the NTMC members described this approach as 'not leading us like sheep, but forcing us to make *our* decision'.²¹

Differences in communication and governance between Indigenous and non-Indigenous parties have been an ongoing challenge. Indigenous and non-Indigenous parties have committed to learning about each others' cultures and traditions through activities such as role reversals. This has helped to promote *cooperative negotiation*. The focus on communication and governance has helped industry parties understand that the Congress is the authority and it drives the negotiations (not the ALRM). In turn the Congress and their constituent NTMCs are learning about the opportunities and challenges in the different industry sectors.

The development consent and information provisions were an important component in the success of the State-wide negotiations. At a meeting of the Congress, attended by the State Attorney General in 2000, the delegates resolved that 'any proposal to sign-off an agreement with the South Australian Government will require specific authorisation following the giving of informed consent by relevant claimants or their delegated representatives'.²² This process gave the traditional owner groups certainty about processes for agreement-making in the initial stages of negotiations.

The State-wide templates

One of the fundamental outcomes of the State-wide ILUA process has been the development of ILUA templates in the following areas: pastoral, minerals exploration, petroleum conjunctive agreements, fishing and aquaculture, local government, outback areas and parks. The templates are designed 'as useful practical guides to the parties in their attempts to resolve native title'.²³ For example, the Outback Areas ILUA template provides a heritage survey formula that engages traditional owner consultants for the purposes of heritage clearance.

The Local Government ILUA template is similar in concept and content to that of the Outback Areas ILUA. The Local Government ILUA template outlines a process whereby exchange for 'benefits' provides certainty of the validity of acts done that may have been invalid, the removal of the right to negotiate, acknowledgement of the finality of compensation, heritage provisions, and agreement to the degrees

21 Agius, P., Davies, J., Howitt, R., and Johns, L., *Negotiating Comprehensive Settlement of Native Title Issues: Building a New Scale of Justice in South Australia*, Land, Rights, Laws: Issues of Native Title, AIATSIS, Vol. 2, Issues Paper No. 20, December 2002, p9. Emphasis added.

22 Native Title Conference, *Different Visions, Different Ways: Lessons and challenges from the native title negotiations in South Australia*, Agius, P., Jarvis, S., Howitt, R., Alice Springs, Northern Territory, 3-5 June 2003, p10.

23 Local Government Association of South Australia, *Agreeing on Native Title, Indigenous Land Use Agreements – A Local Government Template*, June 2006, available online at http://www.lga.sa.gov.au/webdata/resources/files/ILUA_Local_Government_Template_and_Explanatory_Documentation.pdf, accessed 15 March 2007.



of extinguishment of native title. Both the Outback Areas and Local Government ILUAs have provided land and infrastructure assets as well as associated business and commercial opportunities. Of the two, only the Local Government agreement provides employment quotas.²⁴

Pastoral ILUAs are agreements with the South Australian Farmers Federation. These agreements standardise conditions of traditional owner access to pastoral properties by for activities such as hunting, gathering, performing ceremonies and maintaining cultural sites. In economic terms, access to traditional lands is important for traditional owners in order to harvest the fauna and flora that forms part of the customary economy. Due to various factors such as drought, fuel and labour costs, and an increasingly competitive international market, the pastoral industry is becoming less viable as profits cannot be guaranteed from year to year. As a result, pastoral templates do not offer employment quotas, though they do provide opportunities for training, employment and tourism ventures.

The mineral sector

There are preliminary signs that the minerals industry will provide tangible outcomes for Indigenous South Australians, though at this stage mineral activity has been limited to exploration. South Australia has developed a Minerals Exploration template and a Conjunctive Petroleum template. While no mining ILUAs have been registered to date, there has been considerable State-wide activity. The South Australian Chamber of Mines and Energy (SACOME), the Primary Resources and Industries South Australia (PRISA), the Gawler Ranges Native Title Group and the Antakirinja and Arabunna peoples are parties to four ILUA's, which pertain to mineral exploration. These agreements were negotiated using the Minerals Exploration ILUA template as a guide. The agreements contain provision for:

long-term benefits to the traditional owners, including the preservation of Aboriginal heritage, access payments and a commitment to use all possible endeavours to develop work, training and educational opportunities around the resources industry.²⁵

Minimal economic benefit for Indigenous people is derived at the exploration stage, though some income can be derived from fees for exploration agreements and the employment of traditional owners in heritage clearance. In anticipation of future mining activity, the minerals industry is enthusiastic about training an Indigenous work force. To this end, the minerals industry has recently become a principal partner in the study centre located at Port Augusta which will provide relevant training for people who are interested in employment in the mining and minerals sector. The minerals industry is also supporting after-school educational support projects for SA Indigenous students who have the capacity, interest and potential to complete their secondary education.²⁶

24 ALRM Native Title Unit, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Native Title Report 2006*, Email, 2 March 2007.

25 Government of South Australia, *Indigenous Agreement for Mineral Exploration in Gawler Ranges*, 20 November 2005, available online at: http://www.iluasa.com/dl/Gawler_Ranges_Mineral_Exploration_Signing_of_Agreement.pdf. News Release.

26 More information on the Port Augusta Education Partnership can be found online at: www.pff.com.au.



In 2005 a Memorandum of Understanding between the Australian Government and the Minerals Council of Australia (MCA) was signed 'to work together with Indigenous people to build sustainable, prosperous communities in which individuals can create and take up social, employment, and business opportunities in mining regions.'²⁷ The MoU sets a national target to engage 3,000 Indigenous people in the minerals industry by 2020; South Australian parties are working towards a South Australian specific Memorandum of Understanding to support this aim. The State Government has committed \$8.9 million to establish a Heavy Engineering and Minerals Resources Skills Centre to commence in 2007; an Indigenous training component will be incorporated within the Centre.

In order to ensure that the approaches to Indigenous engagement in the minerals industry are appropriate and effective, an Indigenous Engagement Taskforce (the Taskforce) has been established. The Taskforce was established under the auspices of the Minerals and Energy Division of Primary Resources and Industries South Australia (PRISA). It has a role to address issues as they arise for both the industry and for Indigenous people with regard to:

- ensuring the integration of strategies and coordinated pathways to achieving Indigenous employment goals;
- engaging directly with industry, governments and community, gathering and sharing information, planning, setting up pilot sites, identifying best practice in Indigenous employment and promoting effective programs to overcome identified barriers; and
- reporting on performance to government, Indigenous groups and industry and recommending additional measures to meet targets.²⁸

No mining ILUAs have yet been registered in South Australia. This is due in part to the existence of s 9B of the *South Australian Mining Act 1971* which provides that the function of mediation and arbitration be carried out by the South Australian Environment Resource and Development Court rather than the National Native Title Tribunal.²⁹ It is the aim of the State-wide ILUA stakeholders to resolve this issue.

Progress in registering ILUAs in South Australia

While initial progress in registering ILUAs in South Australia has been slow, the pace is now beginning to accelerate. The ILUA templates have assisted in streamlining negotiations with relevant parties as well as checking off relevant ILUA provisions. In December 2003 there was one registered ILUA in South Australia, by 2006 a further eight ILUAs have been registered. There are an additional 14 to be submitted

27 *Memorandum of Understanding between the Minerals Council of Australia and the Commonwealth Government (1 June 2005 - 2010)*, Canberra, 1 June 2005, available online at: http://www.minerals.org.au/__data/assets/pdf_file/11514/MCA_Commonwealth_MOU.pdf.

28 *Co-operative Change, consultant on behalf of the SA ILUA State-wide Negotiating Parties, Report of the Indigenous Employment in South Australia Resources Industry Forum*, Adelaide, South Australia, 22 May 2006.

29 *Mining Act 1971 (SA) Part 9B*.



for registration in the near future and some 51 ILUAs are currently contemplated by the parties. The *South Australian Strategic Plan* outlines a target of resolving 75 percent of all native title claims by 2014.³⁰

Claim Name	Subject Matter	Registration Status
Adnyamathanha #1	Parks ILUA (Vulkathunha Gammon Ranges ILUA)	ILUA registered
Antakirinja	Mineral Exploration ILUA#1	ILUA registered
Antakirinja	Mineral Exploration ILUA#2	ILUA registered
Arabunna	Mineral Exploration ILUA	ILUA registered
Gawler Ranges	Mineral Exploration ILUA	ILUA registered
Ngadjuri (Claim not registered)	Ngadjuri pastoral ILUA	ILUA registered
Narungga (Claim not registered)	Local government ILUA	ILUA registered
Yankunytjatjara/ Antakirinja	Todmorden pastoral ILUA	ILUA registered
Narungga (Claim not registered)	Port Vincent Marina	ILUA registered

Legislative change

The State-wide ILUA process has also become a catalyst for State-wide policy and legislative change. Amendments to the *National Parks and Wildlife Act 1972* make provision for co-management of national parks and conservation areas by the State Government and Indigenous groups. Some states have struggled to come to agreement on similar matters. For example, traditional owner groups in Queensland have been lobbying the Queensland Government for national park

³⁰ Principal Negotiator, ILUA Negotiation Team SA Attorney-General's Department, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Native Title Report 2006*, Email, 27 February 2007.



joint management provisions without success. The Queensland *Aboriginal Land Act, 1991* (Qld) is currently under review and joint management provisions are not included in this review, despite it being a major aspiration of traditional owner groups.³¹ In light of Queensland's experience, it would appear that one of the main advantages of a State-wide process is that all parties can negotiate their land aspirations in a forum that has authority to achieve agreed legislative and policy outcomes.

Consent determination policy

Discussions between the ALRM and the South Australian government, under the auspices of the SA State-wide ILUA process, have resulted in the development of a Consent Determination Policy.³² This policy provides details about the State Government requirements for connection materials in applications for determinations of native title under the Native Title Act 1993. The Main Table parties adopted this policy in October 2004. There are several advantages to this policy, namely, it provides a degree of certainty about the nature of the connection requirements including regulations to ensure confidentiality of sensitive materials.

The Consent Determination Policy emphasises an interrelated approach to native title. 'The intention being to progressively develop ILUAs for specific claim areas that address all sectoral interests represented by the peak bodies hence enabling resolution of the claim by withdrawal, ILUA and consent determination processes'.³³

...a negotiation program is scheduled and carried out on a case by case basis. At this commencement stage for each set of negotiations, the issue of the claim group's 'connection' is not crucial. However, as the negotiations progress, a process of preparation of connection materials by the claim group takes place so that, preferably before the negotiations conclude, the State is in a position to decide whether or not it will support a consent determination. If so, consent determination proceedings before the Court are instituted; if not, the State discusses with the claim group whether it is willing to withdraw its claim. Either way, the negotiated outcomes stand; the main point is that the claim is resolved by withdrawal or consent determination.³⁴

The Consent Determination Policy provides a starting point for ILUA discussions that do not require connection reports. A consent determination may be the ultimate outcome of ILUA negotiations, but connections materials are not the required in the initial negotiation phase.

31 *Chuulangun Aboriginal Corporation (on behalf of Kaanju People and Kaanju Homelands), Submission to Review of the Aboriginal Land Act (Queensland) 1991*, December 2004, pp 3-4.

32 *Consent Determinations in South Australia: A Guide to Preparing Native Title Reports*, Crown Solicitor's Office, Native Title Section Government of South Australia, 2004.

33 *AIATSIS Native Title Conference, Implementing the SA ILUA State-wide Negotiations*, Dixon, I., Agius, P., and Hall, P., Coffs Harbour, New South Wales, June 2005, p11.

34 *Principal Negotiator ILUA Negotiation Team, SA Attorney-General's Department, Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner – Request for information in preparation of Native Title Report 2006*, Email, 27 February 2007.



A critical factor in the development of the SA State-wide negotiation process is that the SA government has accepted the authority and governance structure established through the NTMCs. It is not requiring native title claimant groups in SA to prove their connection to country through assembling anthropological evidence in a connection report.³⁵

Conclusion

A perennial criticism of the native title process, and of agreement making between native title applicants and respondents, is the length of time that it takes to achieve resolution. The South Australian situation is no different. However it is hoped that the initial investment of time and resources will make future agreements possible in a timeline that suits all parties. Equally important will be future efforts to ensure that the State-wide ILUA process is sustainable, and that the people involved pass their knowledge to new generations of negotiators. For Indigenous native title claim groups, NTMC's and the Congress succession planning is extremely important due to the oral transmission of Indigenous knowledge. As is widely acknowledged in all areas of native title, negotiations are outliving elders who hold knowledge and have the authority to speak for country.

Agreement-building needs to proceed hand-in-hand with the process of building the capacity for institutions of Aboriginal self-government from the bottom-up. Aboriginal people themselves are the principals in such agreements not their lawyers and other representatives. In making such agreements, there are political decisions to be considered. These are properly within Aboriginal domains at the scale at which people exercise self-governance.³⁶

Other organisations, principally the NNTT and the Federal Court have a statutory duty to be satisfied that negotiations are fruitful and progressing over time. The ongoing credibility of the process is dependant on agreements that provide tangible outcomes to all parties.

Aboriginal people see ILUAs as a way of building partnerships for the future with two broad sets of objectives... to provide opportunities for Aboriginal people in South Australia with employment, education, training and business opportunities over the next 15 years... and to offer to business and industry: certainty; access; support rather opposition of local communities; and ready access to trained and skilled labour – people who are locals, who know the country and the conditions and have as much pride and reasons to help you develop resources.

... Aboriginal people are just as keen as you to see resources developed on their land... but not unreasonably. They expect to be recognised, respected and given fair value and equity in return.³⁷

35 *Inaugural Pacific Regional Meeting, International Association for the Study of Common Property, Traditional CPRs, new institutions: Native Title Management Committees and the State-wide Native Congress in South Australia*, Davies J., Brisbane, 2-4 September 2001.

36 *Native Title Conference, Different Visions, Different Ways: Lessons and challenges from the native title negotiations in South Australia*, Agius, P., Jarvis, S., Howitt, R., Alice Springs, Northern Territory, 3-5 June 2003, p4.

37 *Indigenous Employment in SA: Resources Industry Forum*, Speech by Agius, P., Executive Officer Aboriginal Legal Rights Movement South Australia – Native Title Unit, Adelaide, 22 May 2006, pp2-3.

