



The Gallop Government's native title scorecard

Prepared by the Western Australian Aboriginal Native Title Working Group (WAANTWG) on behalf of the State's Native Title Representative Bodies, March 2003

"Scraps at the table"

Premier Geoff Gallop: *"This Government has a different approach and it is dealing with that question by respecting the rights of indigenous people. When I move around the State of Western Australia and meet indigenous people, I do so with absolute passion and pride because they come up to me and talk about their needs and interests knowing that they are with us on the kitchen table of Western Australian society. They are equal partners in the Western Australian family that is looking for solutions for the future; they are not outside the dining room taking what the previous Government delivered them by way of legislative scraps."* State Parliament, December 13, 2001.

Introduction

The State Government has fundamentally failed in its commitment to the Indigenous people of Western Australia.

Despite encouraging pre-election promises and policy statements, the State Government's performance on native title has been extremely poor. Indeed, there has been a significant deterioration in performance since mid-way through 2002.

The State has taken an increasingly narrow, legalistic approach to native title and has consistently refused to engage and mediate with representative bodies and claimants. This has led to huge costs, unnecessary delays and immense frustration.

The Native Title Representative Bodies have lost complete confidence in their ability to deal with the Office of Native Title on even the most basic of issues.

The onus is now on the State Government to put its words into action by ending its hostile approach and to negotiate just and decent outcomes for Aboriginal people in a range of land and social justice issues.

Native title performance

The State Government's approach to consent determinations has been extremely legalistic and its approach to NNTT-initiated mediation of native title claims has been very poor and erratic.

Generally, outcomes, procedures and moral commitment have fallen well short of Labor Party rhetoric that it would take a more human and balanced approach to native title issues.

PROMISE:

By resolving native title issues through negotiation and agreements, Labor will cut currently projected expenditure on native title litigation by at least \$2 million.

REALITY:

The State is still vigorously opposing native title in both claims litigation and future act litigation. Expenditure on native title litigation will not have reduced and is likely to have increased. WAANTWG is seeking further information on precise figures.

PROMISE:

State Government promises to deliver 10 consent determinations by June 2003.

In a media statement on October 19, 2001, Eric Ripper says the Government hopes to settle most of the 130 outstanding native title applications by negotiation.

In a speech on June 27, 2002, Mr Ripper says: "Native title consent determinations are the most visible manifestations of the process of agreement making and we are close to signing off on further determinations. It is my ambition that within a year we will have delivered native title justice in 10 (consent) determinations."
(Eric Ripper on June 27, 2002)

PROMISE:

Labor will review the status of negotiations on all active native title applications in Western Australia

PROMISE:

Labor will make extensive use of the NNTT's mediation role and resources to make more effective progress on these negotiations.

"We intend to make maximum use of the resources of the National Native Title Tribunal. That body was established to resolve native title issues by way of mediation or arbitration and we will hold the Tribunal to its mission."
Eric Ripper, April 19, 2001.

REALITY:

After more than two years in power, there have only been four consent determinations, two of these initiated by the previous government. The Government now refuses to say how many consent determinations will be delivered in that timeframe. Further, the Government is in breach of its undertakings to further negotiations in respect of numerous claims with all NTRBs.

REALITY:

The Government may have reviewed the status of its negotiations, but it has not informed any other parties, including claimants, of the status of this review. Participants in the native title process have no idea of the priorities of the government. Further, where there were pre-existing cooperative processes for agreeing joint priorities with NTRBs, these have been abandoned.

REALITY:

The State is not using the expertise and resources of the NNTT – much to the frustration of the NNTT. Indeed, it regularly cancels meetings with the NNTT and reneges on existing arrangements.

For example, the NNTT's program of meetings for mediation of Goldfields claims, including a suggested timeframe for concluding mediations, has been shunned by the Office of Native Title.

More often than not the Office of Native Title has chosen not to attend mediation meetings arranged by the NNTT in both Perth and Kalgoorlie.

PROMISE:

Labor will enter negotiations with WAANTWG with the aim of concluding a framework agreement.

"Our community cannot afford the social and financial costs of sorting these issues out through litigation, so we must find ways to reach agreements that respect everyone's rights."
Premier Geoff Gallop,
August 20, 2001.

PROMISE:

Labor will review the State Government policy guidelines for negotiation of native title claims

PROMISE:

In December 2001, the Government received the recommendations of the Wand Review.

"The review will provide the Government with recommendations on the best way to achieve an environment where native title agreements are the norm rather than the exception," said Deputy Premier Eric Ripper.

REALITY:

A Draft Framework Agreement was provided to the State Government in late May, 2001. There has been no response so far.

REALITY:

The Government has reviewed its policy guidelines, through the Wand Review, but has not implemented any significant changes. Indeed, it has not even articulated a policy response to the review.

REALITY:

More than 15 months later, there has been no significant action on this major review.

The Wand Review makes important recommendations such as:

Greater consultation in compilation of connection reports. This has not occurred. Indeed most completed connection reports that have been submitted to the State are languishing – there has been no response

Enhanced access to Government records. This has not occurred.

Overhaul of State land use and management laws to integrate processes for recognition of native title and other rights of traditional owners. There is no sign of this occurring in a meaningful way.

Public education campaign to encourage agreement making, This is a lower order promise and, in any event, has not occurred.

PROMISE:

In December 2001, the Government also received the report of the technical taskforce on mineral and land titles, which aimed to find a fresh approach to balancing native title and mining rights. The Government said it would shortly be considering the report.

REALITY:

More than 15 months later, the Government has yet to formally endorse the report. The only specific action that has emerged has been funding to speed up the processing of mineral tenement applications – although some representative bodies have still not received this funding for future act officers.

PROMISE:

Labor will vigorously promote and sponsor the negotiation of Indigenous Land Use Agreements.

REALITY:

While there have been a number of ILUAs implemented in WA, none have been directly initiated by the State Government.

PROMISE:

The State Government will end the negative and litigious approach to native title by pursuing mediation and negotiated outcomes.

“This Government will be pursuing agreements to settle native title issues and makes no apologies for it. It’s only through negotiation, compromise and agreement that we will make any real progress in resolving native title issues.”
Eric Ripper, April 19, 2001.

REALITY:

The Government is taking an overly technical and legalistic approach to the settling of native title matters and there are constant delays in responding to connection reports. Further, the Government is refusing to co-ordinate State agencies. The Office of Native Title is seen as operating under a siege mentality and lacks the capacity to engage with the State’s own agencies, let alone external interests.

The Government has also failed to comply with previously agreed schedules with the State and the courts as to the progressing of claims.

State Government promises to negotiate and compromise are not matched by the Office of Native Title.

Example 1: The ONT has refused to attend meetings of the Goldfields Native Title Liaison Group.

The Liaison Group (representatives of Aboriginal people, State government, local government, miners, pastoralists, and State departments eg. DOLA, CALM) was initiated as a forum at which native title stakeholders could discuss land access matters and consent determinations, thereby improving understanding and lessening the likelihood of unnecessary litigation and conflict.

The State Government’s Office of Native Title refused to attend Group meetings and instructed representatives of Government Departments (DOLA, CALM) that they were not to presume to represent the State’s position at any of the Group meetings. This meant there was no effective Government participation in these meetings.

At the instigation of the representatives of the Government departments who were in attendance, on several occasions the Group secretariat wrote to the Office of Native Title pleading for its attendance at the meetings.

In contrast with the Labor Government’s non-attendance, the previous Coalition Government’s native title unit was a willing participant in Group meetings.

Example 2: The South West Aboriginal Land and Sea Council (SWALSC) has experienced significant difficulties in engaging the Office of Native Title in progressing mediation protocols.

The problem was highlighted by comments from Justice French in the Federal Court on February 12, 2003:

His Honour Justice French: “...the Tribunal says that since May 2002 it has attempted on four occasions to convene meetings between the SWAL and SC and the state. The state has declined to attend those meetings for a number of reasons...The tribunal held a regional planning session with the SWAL and SC on 24 January this year. The state declined to attend. Mr Creewel, is the state still disengaged from this matter in relation to dealing with the SWAL and SC which after all is the representative body in the area?...”