

NATIONAL PARTNERSHIP AGREEMENT ON NATIVE TITLE

Council of
Australian
Governments

An agreement between

- the Commonwealth of Australia and
- the State of Victoria

This Agreement will contribute to the achievement of settlement agreements with native title claim groups to resolve native title claims and improve the quality of native title outcomes for all parties.

National Partnership agreement on Native Title

INTERGOVERNMENTAL AGREEMENT ON FEDERAL FINANCIAL RELATIONS

PRELIMINARIES

1. This National Partnership agreement (the Agreement) is created subject to the provisions of the Intergovernmental Agreement on Federal Financial Relations and should be read in conjunction with that Agreement and subsidiary schedules. In particular, the schedules include direction in respect of performance reporting and payment arrangements.
2. This Agreement will contribute to the achievement of Settlement Agreements with Native Title Claim Groups which will resolve native title claims and improve the quality of native title outcomes.
3. This Agreement will be implemented consistently with the objectives and outcomes of all National Agreements and National Partnerships agreed by the Parties. In particular, the Parties are committed to addressing the issue of social inclusion, including responding to Indigenous disadvantage (for example, the reform commitments provided in the National Indigenous Reform Agreement) and those commitments are embodied in the objectives and outcomes of this Agreement.

PART 1 – FORMALITIES

Parties to this Agreement

4. This Agreement is initially between the Commonwealth of Australia (the Commonwealth) and the State of Victoria (the State). The Commonwealth will determine any contribution it makes to Settlement Agreements with States and Territories on a case-by-case basis and extend this Agreement accordingly.
5. In entering this Agreement, the Parties recognise that they have a mutual interest in improving outcomes in native title and need to work together to achieve those outcomes.

Term of the Agreement

6. This Agreement will commence as soon as the Commonwealth and the State sign the Agreement and will expire on 30 June 2015, unless terminated earlier or extended as agreed in writing by the Parties.
7. This Agreement is an offer of Commonwealth financial assistance to the State under section 200 of the *Native Title Act 1993* (Cth) (Native Title Act).
8. The Implementation Plan agreed between the Commonwealth and the State will commence as soon as it is agreed, or at a date specified in the Implementation Plan.

Enforceability of the Agreement

9. The Parties do not intend any of the provisions of this Agreement to be legally enforceable. However, that does not lessen the Parties' commitment to this Agreement.

Delegations

10. The Commonwealth Attorney-General is authorised to agree or amend Schedules, including an Implementation Plan, to this Agreement and to certify that payments may be made on the achievement of performance benchmarks specified under this Agreement.
11. The Victorian Attorney-General is authorised to agree or amend Schedules, including an Implementation Plan, to this Agreement.

Interpretation

12. For the purposes of this Agreement:

- (a) **Claim**: a native title determination application made under section 61 of the Native Title Act.
- (b) **Consent Determination**: a determination about whether native title exists in accordance with sections 87 or 87A of the Native Title Act. To avoid doubt, a consent determination can determine that native title does or does not exist.
- (c) **ILUA**: an Indigenous Land Use Agreement as that term is defined in section 253 of the Native Title Act.
- (d) **Native Title Claim Group** has the meaning provided under section 253 of the Native Title Act.
- (e) **Settlement Agreement**: the full and final resolution of a Claim, to which the Commonwealth is a party, by way of:
 - a Consent Determination (and any associated orders made by the Federal Court of Australia (the Court) in accordance with sections 87(4) and 87A(4) of the Native Title Act), and/or
 - written agreement recorded in an ILUA that the Native Title Claim Group will withdraw their Claim permanently and will not bring any further Claims over the area covered by their claim and the ILUA.

Full and final resolution in this definition only occurs when the ILUA or Consent Determinations that resolve the Claim have been registered or determined, respectively.

PART 2 – OBJECTIVES, OUTCOMES AND OUTPUTS

Objectives

13. Through this Agreement the Parties commit to the objective of the efficient resolution of Claims through Settlement Agreements that:
 - (a) achieve sustainable economic and social outcomes for Native Title Claim Groups;
 - (b) recognise Native Title Claim Groups' relationship with traditional lands;
 - (c) reduce the cost and time of native title litigation; and

- (d) contribute to reconciliation between Indigenous and non-Indigenous Australians.

Outcomes

- 14. This Agreement will facilitate the following outcomes:
 - (a) The full and final resolution of Claims through Settlement Agreements within the term of the Implementation Plan, which is a Schedule to this Agreement.
 - (b) Increased social inclusion of Indigenous Australians through enhanced recognition of the culture of Native Title Claim Groups, including their connection to land and waters.
 - (c) An improvement in the quality of native title outcomes so that they contribute to the 'Closing the Gap' building blocks and targets in the National Indigenous Reform Agreement.
 - (d) Contributions to Indigenous economic participation and sustainable long term Indigenous economic development by concluding Settlement Agreements that grow the Indigenous land estate and asset base.
 - (e) Enhancement of Indigenous leadership and governance and self-determination, facilitates Indigenous engagement with Government programs and the private sector and contributes to overcoming Indigenous disadvantage and resetting the relationship with Indigenous Australians.
 - (f) Provision of certainty of land tenure over land and water.

Outputs

- 15. The objectives and outcomes of this Agreement will be achieved by the Parties contributing to benefits to be provided to Native Title Claims Groups under Settlement Agreements that are detailed in the Implementation Plan. This includes the State planning, negotiating, resolving and implementing those Settlement Agreements.

PART 3 – ROLES AND RESPONSIBILITIES OF EACH PARTY

- 16. To realise the objectives and commitments in this Agreement, each Party has specific roles and responsibilities, as outlined below and in the Implementation Plan.

Role of the Commonwealth

- 17. The Commonwealth agrees to be accountable for the following roles and responsibilities:
 - (a) assessing and determining the extent to which the Commonwealth will provide a financial contribution to the State for benefits to be provided to Native Title Claim Groups under Settlement Agreements that achieve the objectives and outcomes of this Agreement;
 - (b) working with the State to develop an Implementation Plan;
 - (c) providing a financial contribution to the State to enable benefits to be provided to Native Title Claim Groups under Settlement Agreements, in accordance with Schedule A and the Implementation Plan; and
 - (d) monitoring, evaluating and reviewing the State's performance in planning, negotiating, resolving and implementing Settlement Agreements, in accordance with the Implementation Plan.

Role of the State

18. The State agrees to be accountable for the following roles and responsibilities:
 - (a) planning, negotiating and resolving Settlement Agreements with Native Title Claim Groups that achieve the objectives and outcomes of this Agreement, including working with the Federal Court, National Native Title Tribunal and Indigenous communities as required;
 - (b) working with the Commonwealth to develop an Implementation Plan;
 - (c) providing benefits (including a financial contribution) to Native Title Claim Groups under Settlement Agreements, in accordance with Schedule A and the Implementation Plan;
 - (d) implementing benefits under Settlement Agreements, in accordance with the Implementation Plan;
 - (e) managing all financial and operational risks associated with Settlement Agreements, in accordance with the Implementation Plan; and
 - (f) reporting to the Commonwealth on the planning, negotiation, resolution and implementation of Settlement Agreements, in accordance with the Implementation Plan.
19. The Victorian Treasury will on-forward any funding in a timely manner to the Victorian Department of Justice in accordance with this Agreement and the Implementation Plan, and in accordance with the payment arrangements outlined in *Schedule D — Payment Arrangements of the Intergovernmental Agreement on Federal Financial Relations*.

Shared roles and responsibilities

20. The Commonwealth and the State share the following roles and responsibilities:
 - (a) consulting as appropriate on the implementation of this Agreement;
 - (b) negotiating new or revised Schedules, including Implementation Plans, to this Agreement; and
 - (c) conducting evaluations and reviews as appropriate under this Agreement.
21. The Parties will meet the requirements of Schedule E, Clause 26 of the Intergovernmental Agreement on Federal Financial Relations, by ensuring that prior agreement is reached with the Commonwealth on the nature and content of any events, announcements, promotional material or publicity relating to activities under an Implementation Plan, and that the roles of both Parties will be acknowledged and recognised appropriately.

PART 4 — PERFORMANCE BENCHMARKS AND REPORTING

Performance indicators

22. Achievement of the objectives and outcomes of this Agreement will be informed with reference to performance indicators specified in the Implementation Plan to this Agreement.

Performance benchmarks

23. The State agrees to meet performance benchmarks specified in the Implementation Plan to this Agreement.

24. The key performance benchmark is the conclusion of Settlement Agreements, resulting in full and final resolution of a Claim, in accordance with the Implementation Plan.
25. Where Settlement Agreements include or are by way of an ILUA, the ILUA must be registered in accordance with the Native Title Act. Settlement Agreements should also comply with any other Commonwealth and Victorian legislation relevant to native title agreements. The provision of a Commonwealth financial contribution will be conditional upon the achievement of this benchmark.

Reporting arrangements

26. The State will provide reports to the Commonwealth on, against the agreed performance indicators and benchmarks in accordance with the Implementation Plan.

PART 5 – FINANCIAL ARRANGEMENTS

Financial contributions

27. The Commonwealth will provide a financial contribution to the State to enable benefits to be provided to Native Title Claim Groups under Settlement Agreements in accordance with the Implementation Plan.
28. The Commonwealth's financial contribution to the State amounts to its total contribution to the full and final resolution of each particular Claim with the relevant Native Title Claim Group, as outlined in the Implementation Plan. This includes any Commonwealth compensation liability under the Native Title Act in relation to those Claims.
29. The Commonwealth and State's estimated financial contribution to the operation of this Agreement will be included as a commercial-in-confidence schedule to this Agreement (Schedule A).
30. National Partnership payments to the State will be paid in accordance with *Schedule D – Payment Arrangements* of the Intergovernmental Agreement on Federal Financial Relations.

Project management risk

31. Having regard to the agreed estimated costs of the Settlement Agreements specified in an Implementation Plan, the Commonwealth's financial contribution will not exceed the State's financial contribution for benefits available under those Settlement Agreements.

PART 6 – GOVERNANCE ARRANGEMENTS

Dispute resolution

32. Any Party may give notice to the other Party of a dispute under this Agreement.
33. The relevant Ministers will attempt to resolve any dispute in the first instance.
34. If a dispute cannot be resolved by the relevant Ministers, it may be referred by a Party to COAG for consideration.

Review of the Agreement

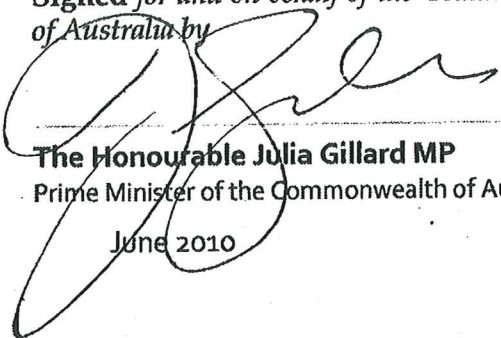
35. The Agreement will be reviewed on an annual basis with regard to progress made by both Parties in respect of achieving the agreed objectives and outcomes, in accordance with the Implementation Plan.

Variation of the Agreement

36. The Agreement may be amended at any time by agreement in writing by both Parties.
37. A Party to the Agreement may terminate their participation in the Agreement at any time by notifying the other Party in writing.

The Parties have confirmed their commitment to this agreement as follows:

*Signed for and on behalf of the Commonwealth
of Australia by*



The Honourable Julia Gillard MP
Prime Minister of the Commonwealth of Australia

June 2010

*Signed for and on behalf of the
State of Victoria by*

The Honourable John Brumby MP
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