

NATIONAL GUIDING PRINCIPLES FOR NATIVE TITLE COMPENSATION AGREEMENT MAKING

Endorsed-in-Principle by Native Title Ministers

PREAMBLE

The Commonwealth, states and territories acknowledge the legal entitlement of native title holders to compensation on just terms for past and future compensable acts attributable to the states, territories or Commonwealth for any loss, diminution, impairment or other effect of the act on their native title rights and interests.

While litigation may in some cases be necessary and appropriate, governments will use their best efforts to settle native title compensation matters by agreement where possible.

The timely resolution of native title compensation liability helps promote reconciliation with Aboriginal and Torres Strait Islander peoples based on fairness, self-determination, empowerment and free, prior and informed consent. It recognises the significance of native title rights to support the economic empowerment of Aboriginal and Torres Strait Islander peoples and their social, cultural and environmental well-being.

These principles have been developed as part of a coordinated cross-jurisdictional approach to native title compensation by governments. They provide a basis for a collaborative approach to be developed with native title holders across each of the jurisdictions, with involvement of the Commonwealth as required. It is noted that native title compensation is an emerging area and that the principles will be influenced by and, in some cases, dependent upon the resolution of key legal and policy issues, including funding arrangements for native title holders, valuation methodology and agreement-making approaches. Some further test cases may be required to clarify legal issues. The Commonwealth, states and territories will continue to work together and with the National Native Title Council to discuss and seek resolution of those and other emerging issues to inform engagement with native title holders.

PRINCIPLES

1. Native title compensation claims will be resolved through **negotiation and agreement**, wherever possible.
2. Negotiations will be conducted in **good faith** and founded on mutual trust, respect and understanding. Parties recognise the importance of appropriate resourcing to support the **parity and equity** of negotiation positions.
3. Governments will work to ensure, where possible, there is **consistency within and across jurisdictions and with national best practice** in approaches to assessing, valuing and resolving native title compensation.
4. The conduct of negotiations between the parties will be **transparent**, while ensuring material is **handled appropriately and with sensitivity**.
5. All efforts will be made to ensure the negotiation and agreement-making process will be **robust, efficient and timely**.
6. Agreements should represent a **full, fair and just** settlement for native title holders.

7. Agreements should be negotiated and agreed with the **free, prior and informed consent** of all native title parties to the settlement.
8. The **aspirations of native title parties will** inform agreement making, including resolving compensation through non-financial benefits. With the agreement of native title parties, **regional responsiveness** may also be appropriate, and opportunities for **whole-of-country** or **regional settlement** agreements can be explored.
9. For future compensable acts, where practicable governments should consider options that may reduce the extent to which acts affect native title.
10. Negotiated compensation agreements will provide **certainty** for governments and native title parties as far as is reasonably practicable. Agreement benefits will be provided **without unreasonable delay**.