Pressure points and leverage in negotiating a just native title settlement

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Pressure points and leverage in negotiating a just native title settlement

- The real picture
- ‘Flash points’
- Leverage, focussing on practical opportunities
- My perspective
The real picture

• Native title is now key to:
  – ‘Outsiders’ identifying native title holders
  – Financial sustainability for native title holders
• ‘Just terms’ settlement
• Settlements are more often then not negotiated
The real picture

• Harsh reality for negotiations:
  – Power imbalance
  – Time pressures
  – Fragility
The real picture

- One (part) of the solution is better resourcing
- Another part of the solution is to reform the law
- Another reform could be to move toward a more interests based treaty-like system for nation building and co-existence
- These legal/political turning points are unlikely for the immediate future, although not impossible
The real picture

• All is not lost.
• There are opportunities to find leverage to get the best deal possible.
• In order to find opportunities for leverage, parties need to understand what is important each other
• These are the ‘flash points’ in native title negotiations.
Flash points

• For (simplified) example, buying a house:
Flash points

- Flash points can be obvious, or they can be more subtle.
- Sometimes what a party may publically represent is ‘significant’, may not be as important as they say.
Flash points

• Flash points can change internally.
Flash points

• Flash points can also change in time.
Flash points

• Potential flash points from the view of the various negotiating non-native title parties.
There are many parties to a negotiation.

I will talk about three:

- State government
- Large publically listed project proponent
- Smaller project proponent

***Remember, this is my perspective.
• State Government
  – Some obvious and big differences between States/Territories.
  – Often different views between departments within the same government.
  – Want a ‘clean slate’.
Flash points

• Publically listed company
  – Layers of decision making.
  – Ultimately answerable to shareholders.
  – So, in my experience risks to reputation are of the upmost importance to these companies.
Flash points

• Smaller project proponent
  – Usually the person you are dealing with is the person responsible for the viability of the project itself.
  – Immediate concerns about getting a project up and running (or at least ready to go) is often a primary issue.
  – Access to land that means a project may be able to start is essential for these companies.
Flash points

• Again, all is not lost.
• Each of these issues are opportunities for parties to leverage a fairer deal.
• Basic principle: If you give up something/give something, there should be an exchange
• This is about the parties being able to justify the time and cost of getting to a better deal.
Finding leverage

• These are broad examples.
• A lot of these ideas aren’t new.
• But, some of these suggestions may be helpful in your context, but always seek advice.
# Finding leverage

<table>
<thead>
<tr>
<th>Party</th>
<th>Potential flash point</th>
<th>Possible leverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
<td>Departmental overlap</td>
<td>Try and get political support from a Department</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Start building networks</td>
</tr>
<tr>
<td></td>
<td>‘Clean slate’ for secure tenure</td>
<td>Is there a legitimate tenure issue?</td>
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<tr>
<td></td>
<td></td>
<td>Consider seeking Court assistance</td>
</tr>
<tr>
<td></td>
<td>Resolve compensation</td>
<td>Are the parties too far apart? If so, consider your rights.</td>
</tr>
<tr>
<td>Party</td>
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<td>Possible leverage</td>
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<td>--------------------------------------------------------</td>
</tr>
<tr>
<td>Large publicly listed co</td>
<td>Layers of decision making</td>
<td>Promote accountability</td>
</tr>
<tr>
<td></td>
<td>Answerable to shareholders</td>
<td>Do the shareholders know what’s going on?</td>
</tr>
<tr>
<td></td>
<td>Reputation</td>
<td>Is there a risk? Tread VERY carefully.</td>
</tr>
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<tr>
<td>Small project proponent</td>
<td>Project viability</td>
<td>Ask for information (and provide information) about viability. Get project independently assessed.</td>
</tr>
<tr>
<td>Efficiency in access to land</td>
<td>Explain your internal process</td>
<td>Assistance with administration</td>
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</tbody>
</table>
Finding leverage

• These is a lot of overlap.
Conclusion

• The ‘real’ picture for native title settlements and negotiations.
• Pressure points, or flash points, focussing on the three negotiating parties
• Examples of how those flash points can be used as opportunities to get a better deal.
Further information

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