



Pressure points and leverage in negotiating a just native title settlement

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Michael Pagsanjan

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- 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 than 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.

Flash points

- 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.

Flash points

- 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 utmost 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

Party	Potential flash point	Possible leverage
State	Departmental overlap	Try and get political support from a Department Start building networks
	'Clean slate' for secure tenure	Is there a legitimate tenure issue? Consider seeking Court assistance
	Resolve compensation	Are the parties too far apart? If so, consider your rights.

Party	Potential flash point	Possible leverage
Large publically listed co	Layers of decision making	Promote accountability
	Answerable to shareholders	Do the shareholders know what's going on?
	Reputation	Is there a risk? Tread VERY carefully.

Party	Potential flash point	Possible leverage
Small project proponent	Project viability	<p>Ask for information (and provide information) about viability.</p> <p>Get project independently assessed.</p>
	Efficiency in access to land	<p>Explain your internal process</p> <p>Assistance with administration</p>

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.

A group of swans is gathered on a sandy shore next to a body of water. The scene is bathed in a warm, golden light, suggesting a sunset or sunrise. The swans are in various poses, some standing on the shore and others in the shallow water. The background shows a calm lake reflecting the light, with a few more swans visible in the distance.

Further information

Michael Pagsanjan

Principal Solicitor

M: 0456 111 944

E: michael@mpslaw.com.au

W: www.mpslaw.com.au