Uniting the Voices
Decision making to negotiate for Native Title in South Australia

Judith Morrison

B.A., Grad Dip (Aboriginal and Intercultural Studies) M.Litt. (Peace Studies)
PhD candidate, Murdoch University Perth, Western Australia

Independent review of
Aboriginal Legal Rights Movement Native Title Unit’s
facilitation of decision making by
South Australian Native Title Management Committees
July-October 2000

Commissioned by
Aboriginal Legal Rights Movement Native Title Unit
2001
This report may be cited as:


Project Manager for ALRM NTU: Mr Parry Agius
Project Supervisor for ALRM NTU: Dr Jocelyn Davies

Report submitted to NTU: February 2001
Publication date: May 2001

Copies of this report may be obtained from:

Mr Parry Agius, Executive Officer
Aboriginal Legal Rights Movement
Native Title Unit
Level 4, 345 King William Street
Adelaide, 5000

ISBN: 0-646-41693-6

© Aboriginal Legal Rights Movement, 2001

*The views expressed in this report are not necessarily those of the Aboriginal Legal Rights Movement or its Native Title Unit.*
“My expectation of a good Australia is when White people would be proud to speak an Aboriginal language, when they realise that Aboriginal culture and all that goes with it, philosophy, art, language, morality, kinship is all part of their heritage. And that’s the most unbelievable thing of all, that it’s all there waiting for us all. White people can inherit 40,000 or 60,000 years of culture, and all they have to do is reach out and ask for it.”

KUMANTJAYI PERKINS
ACKNOWLEDGMENTS

Many people contributed to the decision making process which is the subject of this report and, either directly or indirectly, to the development of the report itself.

Particular acknowledgments are due to:

Native Title Management Committee members and their families;
The Board of the Aboriginal Legal Rights Movement Inc;
The Hon Trevor Griffin, SA Attorney-General, and his staff;
Dale Perkins, President of the SA Farmers Federation;
Bob Goering, in his former role as Chief Executive Officer of the SA Chamber of Mines and Energy;
Andrew Secker and members of the SA Government Indigenous Land Use Agreement Team;
Chris Uren, in his former role as Acting Manager of the National Native Title Tribunal Adelaide Registry, and other Tribunal staff;
George McKenzie of Finlaysons as legal adviser to SA Chamber of Mines and Energy;
Mike Gaden, in his former role as Chair of the SA Farmers Federation Indigenous Issues Committee and Natural Resources Committee delegate;
Parry Agius and the staff of the Native Title Unit and of the Unit’s Statewide Native Title Negotiations Secretariat;
Dr Richie Howitt of Macquarie University as Principal Consultant to NTU for the decision making process;
Dr Jocelyn Davies of Adelaide University as consultant to NTU and Project Supervisor for this report;
NTU Technical Advisory Group members and other consultants to NTU.
National Native Title Tribunal and National Parks and Wildlife SA for Figure 1.
EXECUTIVE SUMMARY

The purpose of this Report is to present an independent review of a process instituted by the Native Title Unit (NTU) of Aboriginal Legal Rights Movement (ALRM). The Report reviews the NTU’s preparations to consult with native title claimants in South Australia about their prospective participation in statewide negotiations, focusing on the period from July to October 2000. During this time, ALRM was in receipt of funding from the SA Attorney-General’s Department to support the prospective involvement of native title claimants in a negotiating process.

The Report sets out a chronology of events leading up to and during this period, and incorporates evaluations of the events within the period based on review of available sources, including archive material, comments made by Native Title Management Committee (NTMC) members, and interviews with NTU staff and consultants. Using these data, the Report independently assesses whether the process undertaken by NTU provided the NTMCs with adequate opportunities to come together and consider the proposal to participate in statewide negotiations relating to their present and future relationships, as Aboriginal people, with others in the state of South Australia. The Report incorporates perspectives and recommendations for matters that should also be given attention in planning for later stages, depending on the progress of the statewide negotiations.

ALRM is the Native Title Representative Body (NTRB) in South Australia, a function that is undertaken through its Native Title Unit (NTU). Between July and October 2000, the NTU used funding from the SA Attorney-General’s Department to consult with all Native Title Management Committees (NTMCs) in SA. The purpose of the consultations has been to allow the NTMCs to make an informed decision about entering into statewide native title negotiations, and as a means to achieve this goal, to form a ‘united voice’ body to represent all their interests in the prospective negotiations.

The key to the SA Government developing interest and support for negotiated approaches to native title rights and interests was the prospect that any agreements negotiated would carry authority and certainty. NTU has been able to offer assurances of certainty and Aboriginal community authority in negotiated agreements, and the prospect that it could do so in a unified approach to negotiations across the state. This authority has its origins in the certification process for each native title claim application, which ALRM’s NTU is responsible for implementing as part of its functions as a Native Title Representative Body (NTRB) under the Native Title Act 1993 (Cwlth), as amended in 1998. The certification process can give assurance that each claim application has the support of the members of the native title group and that the membership of the group is clearly identified. The Indigenous Land Use Agreement (ILUA) mechanisms of the Native Title Act further promote certainty by establishing the binding legal status of ILUAs.

Native Title Management Committees (NTMCs) are a critical component in an organisational structure which provides assurance of Aboriginal community authority in statewide negotiations. They are the groups within each claimant community that have been established to manage the interface between their native title claim issues and the concerns of other stakeholders and to speak on behalf of the
entire claimant group about the management of the claim. Their authority stems from their establishment, through support and facilitation provided by the NTU, during meetings held as part of the certification process for each native title claim application. Each NTMC is appointed and endorsed by their entire claim group to act as delegates on their behalf. Their establishment is intended to promote confidence that when other parties talk with and negotiate with a NTMC, they are dealing with authorised representatives of the entire claim group.

In early October 2000, most NTMCs decided in principle to be part of the statewide negotiations process and to further develop a structure and operational protocols for their united voice body. With this decision, NTMCs have shown their willingness to engage with the SA government, the South Australian Farmers Federation (SAFF), the South Australian Chamber of Mines and Energy (SACOME) and ALRM’s NTU, who are already represented at ‘Main Table’ meetings concerned with the development of statewide negotiations.

Key features of the consultation process
The in-principle decision of NTMCs to participate in statewide negotiations relating to native title had an eighteen month preparatory period. In May 1999, the SA Government approached ALRM with a tentative proposal that native title claimants consider negotiating a statewide Indigenous Land Use Agreement (ILUA). Informal talks took place between the SA Government, SAFF, SACOME and NTU about the proposal. The parties agreed that an ILUA would provide an alternative means for having native title recognised and meaningfully incorporated into practices, policies and legislation. A statewide ILUA would alleviate the need to have each individual native title claim determined through the Courts.

NTU made it clear to proponents of the negotiation proposal that its own function is to assist claimants progress their individual native title claims and not to make decisions on claimants' behalf. This is because, in accordance with Aboriginal customary law, only Aboriginal people themselves, whose native title rights are unique within each claim, can talk authoritatively and make decisions about their traditional country. As an Aboriginal organisation, NTU has established policies in keeping with this principle of customary law. Even though the Native Title Act provides that NTU may make certain decisions on behalf of claimants in relation to native title as part of its functions as an appointed Native Title Representative Body, NTU needs to comply with the principles of Aboriginal customary law if it is to be effective in representing the native title interests of claimants. Thus NTU requires that claimants themselves make all decisions about their native title rights, including decisions about negotiating a statewide ILUA.

ALRM was allocated some initial funding from the SA Attorney-General’s Department, and this allowed the appointment of a Technical Advisory Group (TAG) consisting of consultants with diverse skills, who could advise NTU about the statewide negotiations proposal. It also allowed initial consultations between NTU and NTMCs.

NTU convened two statewide initial meetings of NTMCs about the proposal in Port Augusta, one in December 1999, the other in February 2000. Members of the SA Government’s ILUA Negotiations Team were guests for part of the first meeting, and the Attorney-General attended the second, in response to a request from NTMC representatives at the first meeting. At the meetings, NTMC representatives indicated that they needed more information and more
assurance from the SA Government that an outcome of negotiations would be recognition of native title. They also expressed concern about the proposed negotiations in view of the fact that the SA government was also proceeding with legislation to give effect to ‘10 point plan’ amendments set out in the revised Native Title Act (1998) by confirming the extinguishment of native title on various classes of leasehold land. At the second meeting, the NTMCs authorised the NTU to further develop the consultative process. In June 2000, ALRM secured funding through the SA Attorney-General’s Department to allow a consultative process to develop.

The main mechanisms through which the consultations took place between the NTU and the NTMCs about entering into statewide negotiations were three meetings of all NTMCs across the state. These meetings, which were called ‘Congress’ meetings, took place between late August and early October 2000. Experiences and lessons learned from two prior pilot workshops held in July with some NTMCs led the NTU to make a radical change in their program, and make changes to some of its detailed planning about how the consultations would occur. This involved changes:

- from a set of regional meetings of NTMCs to three consecutive statewide meetings
- from using training as a tool to raise awareness about the process of negotiation to adopting a facilitated decision making approach
- from consulting about a proposal to establish a ‘reference group’ comprising two representatives from each NTMC and a negotiating team drawn from that reference group, to a much more open agenda that would encourage NTMCs to make their own decisions about participating in the negotiations and about how they might be represented.

The three Congress meetings themselves were also conducted in a format that was different from that initially envisaged by the NTU when the timetable for the meetings was developed in June and July. This was in response to issues and concerns raised by NTMC representatives during the pilot meetings. Generally, the Congress meetings held to their planned overall structure, which was:

- Congress # 1 (August 26-27th at Port Augusta) Provision of information.
- Congress # 2 (Sept 11-13th at Hahndorf) Discussion about procedures.
- Congress # 3 (October 6-8th at Coober Pedy) Decision making.

Within this broad framework, agendas were flexible. This was an important contributing factor to the outcomes of the Congress meetings. Their structure and their flexibility made the consultative process possibly unique and unprecedented in Australia to date.

The Congress meetings brought together groups of approximately 150 NTMC members and proxies representing some 19 native title claim communities whose country is in South Australia. They represented Aboriginal people from communities which could be described as traditional, semi-traditional or urban. The Congress meetings were the first time that the NTMCs had talked together on such a scale about native title and related issues.

While the consultations which developed through the Congress meetings had a clear central purpose, in the evolving process
there could not be a strong central mechanism. The consultations have required those involved to operate outside of generally accepted structures, in order to allow claimants to make their own decisions and choices about the way forward. This meant that those involved in facilitating the process were operating in anticipation of a new outcome. This required a simultaneous letting go and building up of appropriate mechanisms. As the process developed, the integrity and capability of key players in the process, particularly the Executive Officer of the NTU, Mr Parry Agius, and the team of staff and consultants he assembled, and their responsiveness to issues and concerns raised by NTMC representatives, were important factors in developing trust in the process. A primary goal was to give recognition to basic principles that there is an obligation under Australian law to develop the means for native title rights to practically co-exist with other rights.

The process was dynamic, and the NTMCs themselves responded to develop their own sense of ownership, accountability and decision-making capacity through the Congress meetings. Important factors in this were:

- Workshop sessions during the Congress meetings where NTMCs discussed information presented and the issues thus raised, and reported back to the main meeting of all NTMCs through their spokespeople.
- Feedback sessions at the start of each Congress meeting where NTMC members could raise issues or concerns.
- Attention by NTU staff and consultants to researching, to provide answers to questions raised by NTMC members.
- Use of interpreters to interpret between English and Western Desert languages for all discussion and presentations in the Congress meetings. This was the first time in South Australia that statewide meetings on Aboriginal issues had given such strong attention to language issues even though it was a common practice at local or small meetings of some NTMCs.
- NTMCs were encouraged to develop their own protocols for running the meetings so that their various Aboriginal traditions in decision-making could be respected and upheld and allow the meetings to operate smoothly.
- Final decision making at Congress # 3 was a result of each NTMC making an autonomous decision rather than voting by all individuals present.
- Progressive reporting of meeting discussions and outcomes occurred during the meeting - with printed copies of notes available to NTMC members ‘on the day’.
- Meeting reports and typed copies of all issues raised by NTMCs and all questions raised, with answers, were mailed out to all NTMCs so that information from the meetings could be shared with other claimants.
- Encouragement for NTMCs to spread information to members of their communities between Congress meetings was assisted by a regular printed newsletter and a bi-lingual video newsletter.
- Use of visual presentation techniques, which proved to be a valuable tool in order for people to understand complex information.

The Report from this independent review further details the significance of different roles in the process, the principles and personal qualities of people within the NTMCs, the Government, stakeholder groups, the NTU, the TAG, and the Secretariat, that have all contributed. It also considers how their roles are likely to change as the NTMCs continue to assume
responsibility and accountability for their own decision-making in the process.

At the end of Congress # 3 the NTMCs authorised and formulated a Working Group. Subsequently, in consultation with the NTU and the TAG, the Working Group began to formulate a budget submission to the SA Government to fund the next stage of the process. The Working Group also began consideration of issues of structure, representation and protocols for the 'united voice'.

**Lessons learned**

Some of the principles articulated strongly by claimants at the Congress meetings that will necessarily underlie future development of the 'united voice' body are:

- that NTMCs/claimants/Aboriginal people only have authority to speak about their own claim and their own country.
- that the autonomy of local NTMCs within their claim area is a pre-eminent consideration and must be respected in any statewide body.
- that by working together NTMCs can be stronger in their individual claims and support one another more effectively.
- that the 'united voice' body can develop a strength of unity and accountability so that it is less susceptible to tactics or manipulations that create division and acrimony.
- that different Aboriginal communities - traditional, semi-traditional and urban - all have different ways of operating and that everyone's ways need to be respected and understood if the united voice concept is to work.
- that the united voice body can decide which issues are 'statewide' issues, and how they could be negotiated, and which issues are local claim level issues.
- that the operations of the united voice need to also support capacity building at each local NTMC level.
- that resourcing to cover travel and other associated costs will be essential to maintain a two-way process.
- that resourcing to maintain a communications and information-sharing network will be essential to maintain a two-way process.

Compared to the start of the consultation process, those formulating the budget for the next stage in the process have a far clearer understanding of specific requirements for future planning to ensure effective NTMC involvement in statewide negotiations. There are clearer understandings both about maintaining future Congress meetings and about maintaining and developing the role of the Secretariat, which will provide the infrastructure and support for claimants in the process. There is, at the end of the process, a distinctive shape to what was, at the beginning, only an abstract organisational concept. What has evolved is an effective decision-making body of NTMCs, the Congress meetings, through which a formally constituted united body for claimants will further take shape. As well, an effective Secretariat office developed within the NTU and provided the necessary support for what has evolved.

**Planning for future stages**

NTMCs and the united voice body they intend to formulate are relatively fragile units, given that they have only relatively recently been incorporated and also because they have the significant burden and the responsibility to interact between two cultural and social systems. They have not yet had the opportunity to develop well established representative structures, operational procedures and policy frameworks similar to those existing in the farming and mining sectors, and within government. These are
important considerations relevant to their capacity to enter into negotiations on an equitable basis.

Early planning has begun as to how the telecommunications and other communications networks for the NTMCs will operate. This is important, as claimants will need communications resources as soon as possible for information-sharing and networking. They will also need financial resources to cover travel and local expenses related to local networking and skills-building. As these communications and support systems develop, there will need to be monitoring to ensure that there is evenness of opportunity amongst claimant groups, and that claimants are not overwhelmed with too many tasks simultaneously.

There will be many things to address before NTMCs are in a position to negotiate. As well as material resources in order to make the process effective, claimants will need more understanding of fundamental issues concerning native title as it is understood by a wide range of people, a better understanding about which issues will be dealt with through their united body, and clarification of many of the confusions that can arise, given that native title can be dealt with through litigation, legislation and negotiation. The forthcoming process generally offers opportunities for greater clarity about diverse attitudes and motivations relating to native title. The Technical Advisory Group will be one avenue through which claimants can further develop these understandings.

There are also many further stages and processes which still need to be gone through before claimants can feel confident that they are well prepared and in a position to negotiate effectively. There will need to be time, energy and reflection given to developing reporting protocols that will link the negotiations process with the united body and then with each local claim community in a two-way process. Claimants will increasingly be looking to the Secretariat to provide support with communications, research and development. This will include liaison with other key stakeholder groups and key institutions such as the National Native Title Tribunal, and the development of better understanding between groups about each other’s needs and requirements.

The Report highlights how the dynamics of the process will require personnel and consultants involved to re-evaluate the way their accountability to claimants will be demonstrated when the united body is constituted, particularly the extent to which that accountability shall work with the NTMCs so that it appropriately encompasses Aboriginal values, protocols and worldviews.

Benchmarking will be important at every stage of the development of the negotiations. Some benchmarking will relate to piloting procedures within the state for dealing with pastoral leases, national parks and mining activities, and other activities. This type of benchmarking would be geared to assist claimants evaluate possible new procedures that could be put in place in diverse situations throughout the state. Benchmarking will also relate to immediate and practical ‘process’ matters such as the development of more consistent understandings about the meanings of words, difficult concepts, unfamiliar concepts, ethical issues, dispute resolution mechanisms, reporting and evaluation mechanisms, to determine through workshopping the most appropriate processes and methods for dealing with issues that are integral to the negotiations. At the ‘organisational’ level, benchmarking will be important for broadly considering an appropriate cross-cultural negotiation process itself.
In terms of planning and budgeting to prepare for negotiations skills training the Report outlines some issues that the NTU will need to clarify with the Main Table participants, including:

- the difference to the NTU’s training strategy and budget requirements if participants chose to:
  - negotiate directly with each other
  - engage others to assist them with professional expertise to present positions and interests in the negotiations
  - consider engaging an independent negotiator or mediator to either monitor or play an integral role in the proceedings.

- The extent to which each party is considering benchmarking relating to cross-cultural and cross-sectoral negotiations, both in Australia and internationally, and whether groups could mutually develop and fund a resource and skills-building facility to evaluate different negotiations procedures.

- How all stakeholders are taking account of the uneven understanding about native title issues and negotiations process issues within their own and other stakeholder groups.

- Whether the native title negotiations will meaningfully integrate with other decision-making processes about diverse and overlapping issues within the state concerning:
  - equality, recognition and reconciliation
  - equity and relationships between market values and other cultural values
  - broader issues, involving multiple parties, about sustainability and resource use futures.

- The extent to which stakeholder groups will jointly deliberate, reflect and plan what dispute resolution mechanisms might be necessary to deal with unexpected problems or contentious issues in the negotiations.

- Whether it will fall to the NTMCs to be responsible for ‘negotiating understanding’ about cultural difference to other groups, or whether this will be seen as a shared two-way responsibility, and if so who will take responsibility for establishing this ‘interface’.

- The scope of the role of the Secretariat to assist claimants prepare to negotiate, that is, whether their function is to support claimants to take their issues to the negotiations as issues are most meaningful for claimants, with negotiations procedures actually providing the ‘interface’ to mediate about cultural difference, or whether the Secretariat assists claimants to present their issues in a form which is understandable to other stakeholders. This issue has a bearing on how the Secretariat is shaped, and the way it is to be resourced, staffed and politicised.
# TABLE OF CONTENTS

**ACKNOWLEDGMENTS** ...................................................................................................................... iv  
**EXECUTIVE SUMMARY** .................................................................................................................... v  
- Key features of the consultation process .............................................................. vi  
- Lessons learned ........................................................................................................................ vi  
- Planning for future stages ................................................................................................. ix  
**TABLE OF CONTENTS** ....................................................................................................................... xiii  
- LIST OF EXPLANATORY NOTES ............................................................................................... xvi  
- LIST OF FIGURES ....................................................................................................................... xvi  
- LIST OF TABLES ......................................................................................................................... xvi  
**ACRONYMS** ..................................................................................................................................... xvii  
**KEY PARTICIPATING GROUPS** .......................................................................................................... xx  
- NATIVE TITLE MANAGEMENT COMMITTEES ........................................................................ xx  
- ABORIGINAL LEGAL RIGHTS MOVEMENT ............................................................................ xxiii  
- NATIVE TITLE UNIT OF ALRM ............................................................................................... xxiii  
- SA GOVERNMENT CABINET & ATTORNEY-GENERAL'S DEPT ............................................. xxiii  
- SOUTH AUSTRALIAN FARMERS FEDERATION ................................................................. xxiii  
- SOUTH AUSTRALIAN CHAMBER OF MINES AND ENERGY .................................................. xxiii  
- SA GOVERNMENT ILUA NEGOTIATING TEAM ................................................................. xxiii  
- TECHNICAL ADVISORY GROUP APPOINTED BY THE NTU ................................................ xxiv  
- NTU STATEWIDE NATIVE TITLE NEGOTIATIONS SECRETARIAT ....................................... xxv  
**TIME LINE** .................................................................................................................................... xxvii  

## 1. INTRODUCTION

- **1.1 General Introduction** ............................................................................................................ 1  
- **1.2 Addressing A Complex Set of Relationships and Issues** .................................................. 2  
- **1.3 Addressing Complex Choices** ............................................................................................ 2  
- **1.4 Reviewing the Process** ....................................................................................................... 2  

## 2. TELLING THE STORY

- **2.1 Enabling the process** ............................................................................................................ 5  
  - **2.1.1 The Aboriginal Representative Body in South Australia** .............................................. 5  
  - **2.1.2 NTU's Relationship with SA Attorney-General's Department** ..................................... 8  
  - **2.1.3 Establishment of the Attorney-General's Negotiating Team** ....................................... 13  
  - **2.1.4 Development of NTU's Technical Advisory Group** .................................................... 13  
  - **2.1.5 Establishment of the Main Table Discussions** ............................................................ 14  
  - **2.1.6 First Steps In the Process - Port Augusta Meetings Late 1999/Early 2000** .................... 15  
  - **2.1.7 Action from the February Port Augusta Meeting Undertaken by the NTU** ................. 20  
- **2.2 INITIAL PLANNING** .......................................................................................................... 23  
  - **2.2.1 The Initial Planning** ....................................................................................................... 23  
  - **2.2.2 Planning to Implement the Pilot Sessions** .................................................................... 28  
  - **2.2.3 Reviewing the Outcomes of the Pilots** ........................................................................ 29  
- **2.3 REVISIONING THE INITIAL STRATEGIES** .................................................................. 32  
  - **2.3.1 Considering Alternative Strategies** ................................................................................ 32  
  - **2.3.2 Relationship of Revised Strategies to the Overall Goals of the Process** ....................... 36  
  - **2.3.3 Implementing and Reviewing the Revised Strategy at Coober Pedy** ............................ 37  
  - **2.3.4 Follow Up from the Coober Pedy Meeting** ............................................................... 40
3.7.3 The Uncertainties of How to be Accountable in Practice .............................................................. 96
3.7.4 Leadership Role of Mr. Agius in the Realisation of Congress Meetings ........................................... 96
3.7.5 NTMCs Developing Their Own Accountability in the Process .......................................................... 96
3.7.6 Congress as a Transitional Stage ................................................................................................. 97
3.7.7 Giving Names to As Yet Uncreated Structures .......................................................................... 97
3.7.8 Lack of Clarity about Accountability in the Structure of the Secretariat ........................................ 97
3.7.9 Team Building and Good Will within the Secretariat .................................................................... 98
3.7.10 Reporting Protocols ............................................................................................................... 98
3.7.11 Importance of Team Building to Provide Consistent Service to Claimants ................................. 99
3.7.12 This Process as a Precedent? ............................................................................................... 99

4. AUTHORITY AND ACCOUNTABILITY .................................................................................. 100

4.1 Accountability to Claimants in the Process .................................................................................. 100
4.2 Accountability to Mr. Agius ........................................................................................................ 100
4.3 The Authority held by NTMCs on Behalf of Claim Groups .......................................................... 101
4.4 Articulating a Sense of Accountability within the Secretariat ....................................................... 102
4.5 Equal Use of Aboriginal Sense of Identity for Expressing Ideas ................................................... 103
4.6 A Program to Develop Consistent Meanings and Definitions ...................................................... 103

5. BENCHMARKING ................................................................................................................. 106

5.1 NTMCs Developing Their Own Capacity to Participate in Negotiations ........................................ 106
5.1.1 Benchmarking for Competency in Negotiations Procedures ..................................................... 106
5.2 Considering and Addressing the Scope of the Negotiations ........................................................ 107
5.3 Processes for Decision-Making Concerning Profoundly Different Problems .............................. 108
5.4 Considering Joint Stakeholder Training/Skillbase Program ......................................................... 110
5.5 Role of the ILUA Negotiation Team and the Role of the Secretariat ........................................... 110
5.6 Benchmarking and Standards of Competency in Australia and Overseas ..................................... 111
5.7 Reconciliation ............................................................................................................................. 113
5.8 Benchmarking about Definitions of Words and Concepts ............................................................ 113
5.8.1 An Example of Benchmarking about Definitions - The Concept of Power ............................... 114

6. CONCLUSION ...................................................................................................................... 120

6.1 Clarifying Original Goals ......................................................................................................... 120
6.2 The Team - NTU, Secretariat, and TAG .................................................................................... 120
6.3 Initial Planning ......................................................................................................................... 120
6.4 Change of Strategies and Methods .............................................................................................. 122
6.5 Emergence of the ‘United Voice’ Concept .................................................................................... 123
6.6 Producing the Intended Outcomes ............................................................................................. 124
6.7 What has been accomplished ...................................................................................................... 124
6.8 The Influence of Inter-Related Issues .......................................................................................... 125
6.9 Preparing to Engage with the Main Table ................................................................................... 126
6.10 The Secretariat’s ‘Process’ Role to Support NTMCs ................................................................... 127
6.11 The Secretariat’s Administrative Role Supporting the Process ................................................. 128
6.12 Maintaining Feedback from NTMCs about the Process ............................................................... 131
6.13 Accountability in a Changing Process ........................................................................................ 131
6.14 Changes Affecting the Technical Advisory Group .................................................................... 132
6.15 Terms of Reference for an Independent Review of the Process in Future. 133
6.16 Training ............................................................................................................. 134
6.17 Benchmarking ................................................................................................... 135
6.18 Conclusion ........................................................................................................ 136

7. BIBLIOGRAPHY - CROSS-CULTURAL AND CROSS-SECTORAL NEGOTIATIONS .............................................................................................................138

7.1 Books and Journals ........................................................................................... 139
7.1.1 Literature Addressing Environmental and Development Issues ..................... 139
7.1.2 Literature Addressing Conflict and Cooperation Relating to Cultural Difference 142
7.1.3 General Texts on Alternative Decision-Making Processes .............................. 147

7.2 Web Sites ............................................................................................................ 149
7.2.1 Australian Initiatives Toward Negotiating About Native Title ........................ 149
7.2.2 Organisations Addressing Conflict in Environmental and Development Issues 151
7.2.3 Government Agency Initiatives for Resolving Environmental Problems .......... 152
7.2.4 Organisations Addressing Conflict and Cooperation about Cultural Difference   153
7.2.5 International Organisations–Enhancing Decision-Making Processes ............... 156

LIST OF EXPLANATORY NOTES
Explanatory Note 1: Map of South Australia showing registered native title claims (Figure 1) ... xviii
Explanatory Note 2: Considering the Advantages of an ILUA ............................................11
Explanatory Note 3: Interpreting Native Title Rights ...................................................... 12
Explanatory Note 4: Confusion over Terminology - Statewide ILUA Negotiations .......... 13
Explanatory Note 5: Negative Perceptions about ALRM’s Involvement in Top Level Discussions ................................................................. 22

LIST OF FIGURES
Figure 1: South Australia showing registered native title claims, as at May 2000 .......... xix
Figure 2: South Australia showing approximate area of operation of Native Title Management Committees .............................................................. xxi
Figure 3: Relationship Between Key Organisations in the Statewide Process ................ xxi
Figure 4: Relationship Between ALRM, the Native Title Unit and the Statewide Negotiations Secretariat ................................................................................... xxvi
Figure 5: Diagram of the model in Issues Paper No. 2 .................................................... 17
Figure 6: Proposed Organisation Model Through Which Claimants Could Negotiate ...... 29
Figure 7: Diagram prepared prior to the Coober Pedy August meeting to convey an idea about issues that could be addressed by a statewide ILUA ................................................ 34
Figure 8: Planned Sequence of the Congress Meetings .................................................. 35
Figure 9: Diagram showing how ‘hard’ issues, difficult to resolve locally, could be addressed through ILUA negotiations – taken from a whiteboard drawing developed in consultation with claimants at Coober Pedy meeting ................................................................. 40
Figure 10: Diagram illustrating how the Congress meetings offered claimants a helpful stage toward organising to participate in statewide negotiations .................................. 47
Figure 11: Diagram setting out some issues NTMCs were considering .......................... 60

LIST OF TABLES
Table 1: Three faces of power .................................................................................... 115
Table 2: Power in the present set of circumstances ..................................................... 116
Table 3: Land as a central factor in Aboriginal worldviews ........................................ 117
Table 4: Land in Western worldviews ......................................................................... 117
## ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALRM</td>
<td>Aboriginal Legal Rights Movement</td>
</tr>
<tr>
<td>ATSIC</td>
<td>Aboriginal and Torres Strait Islander Commission</td>
</tr>
<tr>
<td>ILUA</td>
<td>Indigenous Land Use Agreement</td>
</tr>
<tr>
<td>NNTT</td>
<td>National Native Title Tribunal</td>
</tr>
<tr>
<td>NTMC</td>
<td>Native Title Management Committee</td>
</tr>
<tr>
<td>NTRB</td>
<td>Native Title Representative Body</td>
</tr>
<tr>
<td>NTU</td>
<td>Native Title Unit of Aboriginal Legal Rights Movement</td>
</tr>
<tr>
<td>SACOME</td>
<td>South Australian Chamber of Mines and Energy</td>
</tr>
<tr>
<td>SAFF</td>
<td>South Australian Farmers Federation</td>
</tr>
<tr>
<td>TAG</td>
<td>Technical Advisory Group to Native Title Unit</td>
</tr>
</tbody>
</table>
Explanatory Note 1:
Map of South Australia showing registered native title claims (Figure 1)

Figure 1 attempts to reflect the external boundaries of native title claim applications falling either wholly or partly within South Australia as per the Register of Native Title Claims (s185, Native Title Act (C’wth) in May 2000. Various areas of land within the external boundaries depicted are excluded from the application, for example because they are freehold land.

The transitional provisions which formed part of 1998 amendments to the Native Title Act required that all applications held on the Register at the time of the amended Act’s commencement would undergo the Registration Test (s190A), with the exception of those applications already determined or those lodged prior to 27 June 1996. In the latter case, if these applications were subject to a s29 notice or any part of the area claimed was covered by a freehold estate or a lease, then s190A would be applied. Applications that do not comply with the Registration Test are removed from the Register, as are applications that are withdrawn, discontinued, rejected or struck out. These applications are not depicted on Figure 1.

Inclusion of the applications depicted on Figure 1 on the Register of Native Title Claims means that ‘procedural rights’, such as the ‘Right to Negotiate’, are confirmed in relation to the areas claimed. These ‘procedural rights’ apply to some kinds of future acts, as set out in the Native Title Act.
Figure 1: South Australia showing registered native title claims, and national park areas, as at May 2000

Native Title Claims Accepted as at May 2000
- SC98/067 Antakina Native Title Claim
- SC98/063 Bungga
- SC98/064 Bangarga
- SC98/065 Nuru
- SC97/063 Wawangarungu/Yarluwand People
- SC97/064 The Edward Landers Den People's Native Title Claim
- SC97/065 Witori #2
- SC97/067 Saddle Ranges NT Claim
- SC97/068 Nko - Bangarga
- SC97/069 Yankunytjatjara/Antakina
- SC98/061 Tjundjarrangha/Yawarranbara
- SC98/062 The Arabuma People's Native Title Claim
- SC98/063 First Peoples of the River Murray and Mallee Region Native Title Claim
- SC98/064 Ngamndjen and Others Native Title Claim
- SC99/061 Ayumathanka People
- SC98/062 Kokatha Native Title Claim

Base map: Dept for Environment and Heritage, National Parks & Wildlife SA. Produced from PAMS

Native title claim boundaries: National Native Title Tribunal: The Registrar, the National Native Title Tribunal and its staff and officers and the Commonwealth, accept no liability and give no undertakings, guarantees or warranties concerning the accuracy, completeness or fitness for purpose of the native title information portrayed.
## KEY PARTICIPATING GROUPS

### NATIVE TITLE MANAGEMENT COMMITTEES

<table>
<thead>
<tr>
<th>NTMC</th>
<th>Claim</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adnyamathanha</td>
<td>Adnyamathanha claim (SC99/1)</td>
</tr>
<tr>
<td>Antakirinja (ALMAC)</td>
<td>Antakirinja claim (SC95/7)</td>
</tr>
<tr>
<td>Arabunna</td>
<td>Arabunna claim (SC98/2)</td>
</tr>
<tr>
<td>Barngarla</td>
<td>Barngarla claim (SC96/4)</td>
</tr>
<tr>
<td>De Rose Hill</td>
<td>De Rose Hill claim (SC94/2)</td>
</tr>
<tr>
<td>Eddie Landers Dieri Peoples</td>
<td>Eddie Landers Dieri Peoples claim (SC97/4)</td>
</tr>
<tr>
<td>Eringga</td>
<td>Eringga claim (SC96/3)</td>
</tr>
<tr>
<td>First Peoples Murray Mallee</td>
<td>Murray Mallee or Ngarrindjeri #2 claim (SC98/3)</td>
</tr>
<tr>
<td>Gawler Ranges</td>
<td>Gawler Ranges claim (SC97/7)</td>
</tr>
<tr>
<td>Kaurna*</td>
<td>Kaurna Peoples Claim (SC00/2) - undergoing registration (as at May 2001)</td>
</tr>
<tr>
<td>Kokotha</td>
<td>Kokotha claim (SC99/2)</td>
</tr>
<tr>
<td>Narungga Nations</td>
<td>claim application not yet lodged</td>
</tr>
<tr>
<td>Nauo</td>
<td>Nauo-Barn-gala claim (SC97/8)</td>
</tr>
<tr>
<td>Ngadjuri*</td>
<td>claim application not yet lodged</td>
</tr>
<tr>
<td>Ngarrindjeri</td>
<td>Ngarrindjeri &amp; others or Ngarrindjeri #1 claim (SC98/4)</td>
</tr>
<tr>
<td>Nukunu</td>
<td>Nukunu claim (SC96/5)</td>
</tr>
<tr>
<td>Urlpariarra Wilurarra</td>
<td>Amalgamation of Wirangu #1 (SC97/6), Mirning (WC95/13), Maralinga (SC96/1), Yalata (SC96/2), southern part of Ted Roberts (SC95/5) claims: not yet re-registered.</td>
</tr>
<tr>
<td>Wangkangurru-Yarluyandi</td>
<td>Wankangurru-Yarluyandi claim (SC97/3)</td>
</tr>
<tr>
<td>Wirangu</td>
<td>Wirangu #2 claim (SC97/6)</td>
</tr>
<tr>
<td>Yandruwandha-Yawarrawarka</td>
<td>Yandruwandha-Yawarrawarka claim (SC98/1)</td>
</tr>
<tr>
<td>Yankunytjatjara</td>
<td>Yankunytjatjara-Antakirinja claim (SC97/9)</td>
</tr>
</tbody>
</table>

* Interim Native Title Management Committee established after the period covered by this Report.
Figure 2: South Australia showing approximate area of operation of Native Title Management Committees
Figure 3: Relationship Between Key Organisations in the Statewide Process.

- **Electorate of South Australia**
- **Aboriginal Community of South Australia**
  - Native Title Claimant Groups

- **SA Government**
  - Attorney General
  - Cabinet
  - ILUA Negotiations Team

- **Peak Industry Bodies**
  - (including SAFF & SACOME)

- **Aboriginal Legal Rights Movt**
  - (funded Federally through ATSIC)

- **Native Title Unit**

- **Legal Services Program**

- **Secretariat**
  - (funded by SA Govt)
  - Secretariat Coordinator and Staff

- **Technical Advisory Group**

- **Sub Committee on legislation to lobby State Govt re NT legislation**
  - (Outcome of Congress # 2)

- **Working Group re formulation of “United Voice” and Budget**
  - (Outcome of Congress # 3)

- **Propective Negotiations**

- **“United Voice”**

- **Outcome - decision to create “United Voice” through which to negotiate on behalf of all Claimants**

Three “Congress” Meetings of Native Title Management Committees representing their Claimant Groups

- **Main Table Meetings**
KEY PARTICIPATING GROUPS

ABORIGINAL LEGAL RIGHTS MOVEMENT
South Australian Native Title Representative Body
Mr. Malcolm Davies, Chair, ALRM Council
Mr. Neil Gillespie, CEO, ALRM

NATIVE TITLE UNIT OF ALRM
Fulfils functions of the SA Native Title Representative Body
EO, Mr. Parry Agius.
Native Title Unit staff.

SA GOVERNMENT CABINET & ATTORNEY-GENERAL’S DEPT
Mr. Trevor Griffin, SA Attorney-General
Mr. Brad Selway, SA Solicitor-General
Putting forward proposal to negotiate native title through an ILUA

SOUTH AUSTRALIAN FARMERS FEDERATION
Stakeholder at Main Table Discussions
Mr. Mike Gaden, Head, Indigenous Issues Committee

SOUTH AUSTRALIAN CHAMBER OF MINES AND ENERGY
Stakeholder at Main Table Discussions
Mr. Bob Goreing, CEO.
Mr. George MacKenzie, Legal Adviser.

SA GOVERNMENT ILUA NEGOTIATING TEAM
Andrew Secker comes from a SA West Coast farming background, and has for more than twenty years worked in the South Australian and Western Australian public sectors, originally in policy and regulatory areas, and more recently in senior, executive and project management positions, including Liquor Licensing Commissioner (SA), Director, Liquor Licensing (WA), Director, State Print (SA) and General Manager, Totalisator Agency Board (WA). From 1996 to 1999, he was the Director, Government Businesses Group in the South Australian Department for Administrative and Information Services. Mr. Secker was appointed by the SA Government in late 1999 to lead its team holding negotiations with the SA Farmers Federation, SA Chamber of Mines and Energy and the Aboriginal Legal Rights Movement. The aim of the negotiations is to see whether native title issues in the State can be resolved through Indigenous Land Use Agreements rather than court litigation.

Peter Campaign has thirty years’ experience in the SA public service sector across a range of government agencies. Since 1992, he has been with the Division of State Aboriginal Affairs primarily supporting the administration of the South Australian Aboriginal Heritage Act 1988. During this period, he has been closely associated with the major issues relating to Aboriginal Heritage and the development of proposals to amend the South Australian Aboriginal Heritage Act 1988. His duties require him to undertake extensive consultation and communication with Aboriginal people throughout South Australia.

Rick Barratt has experience in the SA public service primarily in the field of natural resource management with a strong focus on Australia’s rangelands. He has provided professional advice to the Pastoral Board and worked with pastoralists in developing strategies for land management. He has worked with local communities, to develop and implement regional wildlife management programs including threatened species management, eg. Mallee Fowl, Kowari and was the SA
representative on the Kowari recovery team. He has also worked on vegetation management issues, catchment management, reserve management and wetland management.

**Peter Hall** was admitted to the bar in 1970 and has practised in both country South Australia and in Adelaide as a sole practitioner. The focus of his practice was quite general, and included such diverse fields as criminal law, family law, commercial litigation, probate and corporations law. He joined the Crown Solicitor’s Office as a Senior Solicitor outposted to the Education Department in November 1995 and he transferred to the Native Title Section in August 1998.

**John Keeling** has 25 years experience in the minerals industry mostly with the South Australian Government working in a variety of areas including information systems, mineral exploration, assessment of mineral deposits, project management, policy development and research. For the past 10 years, John has been a principal collaborator in research with CSIRO in the development and use of techniques for assessment of fine-grained industrial minerals. In this field, John has acted as consultant to the industrial minerals industry. Recent projects include assessment of magnesite resources for the SA magnesium project and studies on graphite at the Uley Mine near Port Lincoln.

**Sue Smalldon** is an archaeologist with a special interest in the interpretation and management of archaeological sites as tourist attractions. She has worked with Nation Parks and Wildlife SA and ATSIC and previously worked for Central Land Council, NSW National Parks and Wildlife and overseas. She joined the Government ILUA Negotiation Team as a part-time member in mid-1999.

**TECHNICAL ADVISORY GROUP APPOINTED BY THE NTU**

**Mr. Parry Agius**, the EO of ALRM’s Native Title Unit was responsible for contacting Dr. Richard Howitt and discussing his engagement as Principal Consultant to assist NTU in the planning of consultative process. After this appointment was approved by ALRM, Mr. Agius and Dr. Howitt considered what other professional expertise and knowledge they could draw on as the concept of statewide native title negotiation became a clear possibility.

**Dr. Richie Howitt** (also known as Kunmanara Howitt) is the NTU’s Principal Consultant in connection with implementing NTMCs’ consideration of the Government’s proposal to negotiate. Dr. Howitt has extensive knowledge of national and international negotiations on indigenous rights, a deep understanding of indigenous communities and practical involvement in regional development arenas. He is also an outstanding teacher and trainer. Dr. Howitt drew on the services of **Ms Jo Fox** up to July 2000 and then **Ms. Venessa Kealy**, both Sydney-based part-time assistants. Ms Kealy has previous experience working with the NSW Aboriginal Land Council on native title issues. She had coordinated the negotiations for Eastern Gas Pipeline and other matters in southeast NSW.

**Dr. Jocelyn Davies** was appointed to the TAG in October 1999 following the Grosvenor Hotel meeting and joined the Native Title Unit early in 2000 on secondment from Roseworthy Campus of the University of Adelaide. Dr. Davies is known to many claimants over the past twelve years through her research and teaching about environmental issues that are important to Aboriginal people. She has an extensive understanding about how land management and policy issues are relevant to the recognition of native title in South Australia.

**Dr. Mike Metcalfe** teaches in the Business School of the University of South Australia in Adelaide. Dr. Metcalfe was previously a senior government adviser, working with the previous Liberal Treasurer, The Hon. Stephen Baker. Dr. Metcalfe has been engaged in the Technical Advisory Group as commercial and political adviser, providing support and advice in relation to government’s and the mining industry’s thinking, commercial issues and information technology.
Mr. Malcolm Gray is a barrister in Adelaide and former Solicitor-General of South Australia. His contribution is his outstanding legal experience and his deep understanding of government, and a particular expertise in legal drafting. He was engaged as a consultant on legal matters and to provide specific advice on drafting of terms of agreements and proposals.

Mr. Andrew Collett is a barrister in Adelaide who is well known to many claimants from his work with ALRM. He has an extensive understanding and experience relating to native title law and other matters that concern Aboriginal rights. He was engaged as a consultant on legal and strategic matters.

Ms. Rhian Williams, a Canberra-based training, facilitation and mediation consultant. Her work had given her experience with a wide range of industry, community, public sector and indigenous groups, including ALRM. She was engaged initially as a trainer, but has since been engaged as a coordinator to develop training and meeting facilitation.

Ms. Judith Morrison, a Perth-based PhD student with an extensive understanding of negotiations involving governments, resource developers and indigenous communities, and negotiations to resolve cross-cultural and environmental conflicts, was engaged to maintain a record of developments and prepare an independent report on the consultative process.

Ms. Lesley Johns, Communications and Media Consultant, was engaged to provide policy advice on the coordination of communications between NTU senior management, the Secretariat, the NTMCs and claimants. Her role was to give feedback on community and political feeling on Aboriginal issues, native title, reconciliation and related matters. Through a secondment for part of the week, she was also able to oversee the coordination of media and communication relating to the overall negotiations proposal through the Communications Side Table of the Main Table. Ms. Johns draws from her broad understanding of SA public relations and media.

NTU STATEWIDE NATIVE TITLE NEGOTIATIONS SECRETARIAT
Unit established within NTU to support the statewide negotiations process
Mr. Parry Agius, EO, NTU and Secretariat
Mr. Stephen (Fish) Walker, Secretariat Coordinator
Dr. Jocelyn Davies, Senior Policy and Research Manager
Ms. Lesley Johns, Communications Consultant
Ms. Grace Nelligan, Communications Officer
Ms. Michelle Saunders, Finance/Administration Officer
Ms. Kylie Sparre, ASO-Meetings Officer
Mr. James Warrior, ASO-Meetings Officer
Mr. Tony Goodacre, ASO-Meetings Officer
Ms. Sharna Hall, Receptionist
Figure 4: Relationship Between ALRM, the Native Title Unit and the Statewide Negotiations Secretariat

Aboriginal Legal Rights Movement Inc
Elected Council

Appoints CEO, ALRM

Native Title Unit
EO Mr Parry Agius

Aboriginal Legal Rights Movement Inc
Law and Justice (funded by ATSIC)
CEO Mr Neil Gillespie

Native Title Unit

Statewide Section
(funded by SAGovernment)

General claims
(funded by ATSIC)

Secretariat Coordinator
Mr Stephen “Fish” Walker

Research & NTMC Support Officer
Dr Jocelyn Davies

Media Consultant
Ms Lesley Johns

Technical Advisory Group
Dr Ritchie Howitt
(Pia Vennessa Kooley)
Dr Jocelyn Davies
Dr Mike Micallef
Mr Andrew Collett
Mr Malcolm Gray
Ms Lesley Johns
Mr Rhian Williams
Ms Judith Morrison
Mr Don Blessing

Claims Manager

Future Acts Manager
Mr Chris Charles

Education Manager
Mr Lewy Lovegrove

Corporate Services Manager
Mr Keith Thomas

Case Managers
Karen Brimford
Graeme Dobson
Fred Tanner
Terry Sparrow

De Rose Hill
Instructing Solicitor
Tim Wooten

Communication & Information Officer
Ms Grace Neilligan

Administrative Support Officer
Ms Kyile Sparre

Administrative Support Officer
Mr Tony Goodacre

Administrative Support Officer
Mr James Warrior

Administrative Support Officer
Ms Eliza Lovegrove

Administrative Support Officer
Mr Lester Highfield

Administrative Support Officer
Mr Michael Ellul

Receptionist
Ms Shama Hall

Administrative Officer
Ms Michelle Saunders
TIME LINE

**May 1999 – NTU**
Mr. Parry Agius appoints Dr. Richie Howitt, geographer, Macquarie University, as Consultant.

**May 1-2 1999 – Wirrina Cove meeting**
ALRM, NTU and Dr. Richie Howitt
Solicitor-General
SA Government representatives
South Australian Farmers Federation representatives
SA Chamber of Mines and Energy representatives
To explore how native title might be resolved through a statewide Indigenous Land Use Agreement

**7-8 May 1999 Clare Meeting**
ALRM, NTU and Dr. Richie Howitt
Discussion about Policy Direction

**10-11 September 1999 - Expert Advisory Panel Meeting, Grosvenor Hotel, Adelaide**
ALRM convened a 2-day workshop to bring together expert advisers on key topic areas relevant to possible negotiations about native title in SA. The following people were involved on one or both days:
Mr. Malcolm Davies, Chair, ALRM Council
Mr. Rex Angie, ALRM Council Member
Mr. Parry Agius, EO, NTU
Dr. Richie Howitt, Consultant
Ms. Jo Fox, Research Assistant to Dr Howitt
Mr. Malcolm Gray, Barrister
Mr. Andrew Collett, Barrister

Mr. Griff Weste, independent geologist, oil and gas industry
Mr. David Turvey, mining consultant
Dr. Greg McCarthy, Politics Department, University of Adelaide
Dr. Jocelyn Davies, geographer, Faculty Ag. & Nat. Resource Sciences, University of Adelaide
Dr. Mike Metcalfe from the Business School of the University of South Australia
Ms. Lesley Johns, ALRM media consultant
Dr. Dianne Smith, anthropologist, CAEPR, ANU
Dr. Annie Holden, development economist, ImpaxSIA Consultants
Mr. David Yarrow, researcher in law, Melbourne University

Mr. Brad Selway, SA Solicitor-General attended for the first session on both days to make a presentation which confirmed the government’s commitment to negotiations: he announced that Cabinet had authorised a start to the negotiating process and was establishing a 5 person team.
**October 1999**

**Formation of the NTU Technical Advisory Group (TAG)**

Mr. Parry Agius, EO, NTU  
Dr. Richie Howitt, Principal Consultant  
Mr. Malcolm Gray, Barrister  
Mr. Andrew Collett, Barrister  
Dr. Jocelyn Davies, geographer, University of Adelaide  
Dr. Mike Metcalfe from the Business School of the University of South Australia, commercial and strategic government systems and process adviser.

**12 December 1999 – Port Augusta Meeting**

ALRM (NTU/TAG)  
NTMC representatives  
Claimants conclude they are unable to make a decision on the Government’s proposal and request to meet with the Attorney-General.

**21 December 1999 - Initial Meeting to Establish Main Table Group**

ILUA Negotiations Team  
SAFF  
SACOME  
ALRM (NTU/TAG)  
Ongoing discussion amongst stakeholders, producing some protocols for their meetings and a statement of some key priority areas for negotiations.

**26-27 February 2000 – Port Augusta Meeting**

Attorney-General  
ALRM (NTU/TAG)  
NTMCs Representatives  
NTMCs authorise the NTU to proceed with consultations amongst NTMCs to discuss the proposal. Attorney-General indicates the Government will fund the process.

**February-May - Main Table and Side table discussions continue.**

**15-17 June 2000 – McLaren Vale Meeting**

ALRM (NTU)  
TAG  
Prospective Trainers  
- Ms. Rhian Williams  
- Dr. Annie Holden  
- Ms. Venessa Kealy  
- Ms. Liah Gibb  
- Ms. Judith Morrison  
Planning meeting for consultations and training, putting in place a schedule for conducting consultations with NTMCs on a regional basis, with prior pilot sessions.

**July 2000 – Pilot NTMC Consultative Meeting, Brisbane**

Yandruwandha-Yawarrawarrka NTMC Representatives indicate that they are not satisfied with consultations/training process.
### July 2000 – Pilot NTMC Consultative Meeting, Murray Bridge, SA.
Ngarrindjeri NTMC Representatives indicate that they are not satisfied with consultations/training process.

### July 2000 – Chifley Hotel Meeting
**NTU**
**TAG**
Dr. Annie Holden
Ms. Rhian Williams
Decision to review the entire plan for implementing the process.

### 11 August 2000 - Coober Pedy Aboriginal Community Meeting
NTMCs members from north-central SA and other members of Coober Pedy Aboriginal community
Mr. Parry Agius
**TAG**
Interpreters
SAFF, SACOME and SAG representatives
Presentation by and discussion with Main Table parties about their support for statewide negotiations and issues for negotiation.

### 12-13 August 2000 – Coober Pedy NTMCs Meeting
**NTU** Mr. Agius facilitating the meeting
**TAG**
Interpreters
Ms. Rhian Williams
Members of NTMCs from north-central SA given verbal presentation of written material that was being posted to other NTMCs, and addressing issues that would be raised with all NTMCs at Congress # 1.

### 18 August 2000 - Ceduna Aboriginal Community Meeting
Members of Ceduna Aboriginal community
Mr. Parry Agius
**TAG**
SAFF, SACOME and SAG representatives
Presentation by and discussion with Main Table parties about their support for statewide negotiations and issues for negotiation.

### 21-22 August 2000 – Workshop to prepare Facilitators for Congress # 1, Novotel, Adelaide
**NTU**
**TAG**
Ms. Rhian Williams, appointed Lead Facilitator.
Prospective Facilitators to assist at Congress # 1
25 August 2000 - Port Augusta - Aboriginal Community Meeting
Members of Port Augusta Aboriginal community and NTMCs assembled for Congress # 1 (which commenced the following day)
Mr. Parry Agius
TAG
Interpreters
SAFF, SACOME and SAG representatives
Presentation by and discussion with Main Table parties about their support for statewide negotiations and issues for negotiation.

26-27 August 2000 – Congress # 1, Port Augusta
NTU Mr. Agius facilitating the meeting.
TAG
Interpreters
NTMC Representatives
Facilitators
Facilitated meeting to discuss issues, questions and concerns about the Government’s Proposal. After Congress # 1, all issues, questions/answers and reports from the Meeting sent out to NTMCs.

11-13 September 2000 - Congress # 2, Hahndorf
NTU Mr. Agius facilitating the meeting.
TAG
Interpreters
NTMC Representatives
ALRM Council representatives, Observers
ILUA Negotiating Team, Visitors
SAFF Representative, Visitor
SACOME Representatives, Visitors
Facilitated meeting to discuss issues, particularly how claimants could have a united voice at a statewide level in negotiations. Visiting Main Table speakers answered questions from NTMCs.

6-8 October 2000 – Congress # 3, Coober Pedy
NTU Mr. Agius facilitating the meeting.
TAG
Interpreters
NTMC Representatives
ALRM Council representatives, Observers
ATSIC Zone Commissioner, Observer
ATSIC Project Officer, SA NT Steering Committee, Observer
Attorney-General & Staff, Visitors
Facilitated meeting for NTMCs to discuss issues, particularly whether NTMCs on behalf of claimants, would accept the Government’s proposal to enter into statewide negotiations about native title issues and develop a statewide Indigenous Land Use Agreement.
1. INTRODUCTION

1.1 GENERAL INTRODUCTION

The Native Title Unit of ALRM South Australia, with the approval of a meeting of Native Title Management Committees in February 2000, and with financial support provided by the South Australian Government, undertook to consult with claimants and to facilitate meetings to determine whether native title claimants would be prepared to negotiate to create a statewide Indigenous Land Use Agreement.

This Report traces the processes and the interactions that developed from the Native Title Unit's planning and implementation of activities leading up to and during the consultation period from July-October in response to the initiative from the SA Government. It sets out how the developments unfolded, what was involved in the process, and the perceptions, experiences, concerns and responses of those who have been involved. It traces steps through which the consultations proceeded, and how it drew together a wide range of ideas, opinions, feelings and issues which guided the process, highlighting how different factors have contributed. It assesses what the process offered claimants by way of assistance, and the degree to which both the NTU and the claimants were satisfied with the process, and considered that the intended goals had been fulfilled effectively. This is significant, given that one of the primary goals of the NTU was to maintain a high level of accountability to the Aboriginal people who were considering the proposal. It is therefore particularly concerned to assess whether the process provided the participants, the Native Title Management Committees, with adequate opportunities to come together and consider the proposal as Aboriginal people, in terms of their present, and their future relationships with others in the state of South Australia.

The key focus of the Report is to consider how the Native Title Unit, the Technical Advisory Group, and the Secretariat, established to support the statewide native title negotiations, sought to:

1. Facilitate a program to enable native title claimants to make an informed decision as to whether they would accept the Government’s proposal to negotiate about native title at a statewide level.
2. Provide information and support to native title claimants primarily through the Native Title Management Committees in order that they were in a position to understand and respond to the SA Government’s proposal.

The ultimate decision for the Native Title Management Committees, on behalf of their claimant groups, to accept the proposal to negotiate with the South Australian Government, the South Australian Farmers Federation and the South Australian Chamber of Mines and Energy, is significant. However, irrespective of the final decision, the Report was commissioned to provide a description of the way claimants themselves were facilitated in the decision-making process. Even in the event that the NTMCs were to choose not to enter into statewide negotiations, there would, irrespective of the outcome, be a record to give an account in the future of what had transpired.

The review reports how the process developed and highlights the key contributing factors and significant events from July to October 2000. As well as being a record for considering how claimants reached their decision to agree to negotiate, it also provides the means for appreciating what further stages and processes could still be necessary in order that claimants feel confident that they are in a position to negotiate effectively. Reviewing and recording the significant interactions is a useful indicator for considering where the process can move on to from this point. As well as providing a broad understanding of events that shaped this present process, in
a more general way, it also offers a contribution toward shaping the development of more effective ways to report about 'process' matters that concern decision-making about native title and a sustainable future. The chronology of events is a personal interpretation, drawn from observations and understandings of the interactions between the people planning, initiating or otherwise involved in the consultations and from the resources and records available in the archive. It does not presume that I am necessarily presenting the issues as they might be perceived by all the Aboriginal people who contributed through their involvement as representatives of the NTMCs. Nevertheless, it is hoped that the interpretations are adequately accurate and relevant as a broad and general account of the interactive process.

1.2 ADDRESSING A COMPLEX SET OF RELATIONSHIPS AND ISSUES

The scope of issues in the prospective negotiations mean that both the process itself, and the potential outcomes, have wide significance in terms of how native title matters could be resolved within Australia. The consultations have taken place within a wider context of complex interlocking political, economic, environmental and social dynamics, many of which are Australia-wide and span diverse cross-cultural issues. This Report addresses only key national issues, and focuses primarily on reviewing how the SA Government’s proposal has been significant for advancing new ways South Australian native title claimants might meaningfully engage with others primarily in the wider community of their own state. Its specific focus is on how those involved in the consultations responded to the SA Government’s proposal, and how their responses had relevance for their own specific circumstances. The analysis attempts to reflect on the extent to which the consultative team adequately understood what were the significant issues in this particular set of circumstances, what was required in order that South Australian claimants could make an informed decision about the proposal, and therefore whether the process appropriately enhanced claimants’ opportunities and capacities to make decisions relevant for their own circumstances.

1.3 ADDRESSING COMPLEX CHOICES

Tracing the issues, perceptions and ideas connected with the process also provides a measure for reflecting on how it might otherwise have developed. It offers a way to consider what other choices of action could have been taken in response to the Government’s proposal, and whether, if any of the key contributing factors had been different, they would have made a significant difference to the overall outcome. In other circumstances, perhaps the Executive Officer of the NTU could have brokered with the Government a quite different process whereby the NTU played a stronger direct role. This would have created a significantly different decision-making process for claimants to negotiate a statewide ILUA. It is likely that it would have produced a quite different negotiation process and different short-term and long-term outcomes. It is likely that it would also have made a significant difference to the extent to which the process and the outcomes were recognised as appropriate and legitimate from the perspective of the native title claimants themselves.

1.4 REVIEWING THE PROCESS

The Native Title Unit of ALRM recognised that the consultations which were being planned would be significant for all native title claimants in South Australia, and as such, it was considered significant that a proper account of the process be recorded which was as transparent as possible.
The review gives an account of an entirely new initiative relating to native title. The circumstances were inextricably bound up with and required to be meaningfully contextualised in terms of immediately preceding events that shaped the process. It is unlikely that reviews of subsequent stages would need to be scoped to include an entire chapter dedicated to ‘Enabling the Process’. However, the details in this chapter which set out what had formerly transpired have been considered necessary in order to make this stage of the process meaningful.

It was intended that the independent review would run alongside the process, rather than be undertaken once the process finished. It was anticipated that having the review available as soon as possible would be advantageous insofar as it could contribute to planning and preparation for the next stage of the process if necessary. Due to a number of factors, including the need to re-schedule the program, and the unavailability of office equipment in the Secretariat, the actual review process did not commence until mid-August. This meant that the reporter had to catch up with past events as well as report about ongoing developments. Many of the stresses which impacted on the NTU team, including tight time frames and limited office equipment, similarly impacted on the reviewer. It particularly limited opportunities to closely monitor and appreciate the day to day work activities of Secretariat personnel. This accounts for some discontinuity in the structuring of the Report. In order to address possible oversights and appreciate more fully the range of dynamics and issues that were being dealt with by the Secretariat and the TAG team during the process, the Report includes a chapter summarising personnel and consultants’ own perceptions of the process, obtained through focus group discussions which were conducted following the third Congress meeting in October.

A decision had been made in February 2000 to maintain an archive, which would keep together copies of past records of correspondence from the discussion and planning stages of the process, and that Dr. Howitt would maintain an email account to which copies would be sent of all emails generated about the process between ALRM, NTU, the TAG team and the Secretariat when it was set up. A formal protocol was prepared and circulated to all those brought into the process, so that copies of all letters, faxes, reports, minutes, file notes, and information presented to the Native Title Management Committees, could be kept. The responsibility for maintaining the archive was handed over to the Secretariat once it was a functioning unit.

In order to prepare this Report, I have reviewed material from the archive, attended and observed at meetings, engaged in discussion with Secretariat personnel in their office, engaged in discussion with TAG members and native title claimants, conducted focus group discussions with personnel and consultants involved in the process, and reviewed participants’ evaluations of meetings.
2. TELLING THE STORY

2.1 ENABLING THE PROCESS

2.1.1 The Aboriginal Representative Body in South Australia

2.1.1.1 The Aboriginal Legal Rights Movement

The Aboriginal Legal Rights Movement of South Australia (ALRM) came into being as a community organisation in 1973 to serve the needs and protect the rights of Aboriginal people, particularly those who had to deal with the criminal justice system. Its structure and mode of operation reflects the egalitarian non-hierarchical ethos of Aboriginal people. The Council is made up of people elected by Aboriginal communities throughout South Australia. From its inception, it has taken an interest in Aboriginal land rights issues as well as other legal issues that impact on Aboriginal people. ALRM has been able to function with relative autonomy, originally funded through the Commonwealth Department of Aboriginal Affairs, and later by ATSIC when it assumed the functions of the former Department.

Due to limited funding and other resources, ALRM continues to find it challenging to meet the diverse needs of Aboriginal people throughout South Australia. These limitations have created frustrations and tensions for Council and staff in terms of how they can fulfil all their goals. They have to make decisions about which services will receive priority over others. The choice is often between longer term, more broad-based issues, such as land rights and social reforms, and legal services to meet immediate and pressing needs of individual Aboriginal clients. This tension is exacerbated by geographical considerations as to how ALRM can best assist Aboriginal people wherever they live within the state. This is particularly problematic, given the limitations on their budget and the high cost of travel to and from places where some clients live. For many Aboriginal people, the issues that need attention are bound up with their personal identity, their social relations and their connections to country. The social and physical setting in which issues are discussed and resolved can have a significant bearing on clients’ confidence to speak about issues, and their role in resolving them.

ALRM, as well as serving the interests of Aboriginal people through the mainstream legal system, is also obliged to recognise and uphold traditional Aboriginal culture and customary law and decision-making processes. In this respect, those working within ALRM have to continually respond to the cleavages between how their clients understand justice, how it can be invoked, and whether it has the capacity to meet their needs. They do not, therefore, only attempt to serve clients through the formal legal system; their role is also to negotiate between the formal system and other systems that are recognised by Aboriginal people. Given that these other ways of perceiving and getting by in the world, are often not well understood within mainstream culture, there can be a presumption that it is a less formal or less relevant system. ALRM receives its general funding from ATSIC through the Legal Services Program in order to assist Aboriginal people throughout the State of South Australia, irrespective of any specific group affiliation.

2.1.1.2 Establishment of ALRM Native Title Unit

Since the Native Title Act (1993), ALRM has also served as the Native Title Representative Body in South Australia, with the initial exception of the Anangu Pitjantjatjara and Maralinga Tjarutja lands. The Native Title Unit (NTU) was created as the body within ALRM to perform these
Representative Body functions. To fulfil this specific function, ALRM receives funding from ATSIC through the Native Title Representative Bodies Program.

There have been 37 native title claimant applications in South Australia and 16 of these have been accepted onto the register of native title claims. The remainder are undergoing testing for registration, or have been amalgamated with other claims, or have failed the registration test. There have been no determinations of native title to date. It is anticipated that by 2003 there will be 23 registered claims whose external boundaries will encompass most of the state other than the Anangu Pitjantjatjara and Maralinga Tjarutja lands which are in freehold Aboriginal ownership and as such are unlikely to be subject to claims.

The work of the NTU is primarily to support native title claimants though whichever avenues seem appropriate in order to have their native title claims determined or protected. The NTU has to address the dynamics which these new procedures have themselves created, that is, consider how its staff can assist claimants to come together and consolidate claims, and assist different claimant groups to work through issues that create tension and conflict between claimants. The Native Title Unit has worked toward some significant consolidations of claims, reviewing and attempting to deal with overlapping and inconsistent claims, so that some groups can submit joint claims. It has also promoted claimants’ appreciation of the benefits of developing a workable management structure within each claimant group in order to deal effectively with claim issues, namely, their Native Title Management Committees (NTMCs).

There are other dynamics, which involve relationships between claimants and other external parties, that the NTU must also address. These can arise when claims might be contested through the courts. In South Australia, the most significant test case relates to the pastoral station of De Rose Hill.

As well, the Native Title Unit assists claimants in the protection of their native title rights and in realising the procedural rights established under the Native Title Act. The Act stipulates that native title groups whose claims have been registered have a ‘right to negotiate’ or a right to be consulted for specified acts, such as changes to land use and tenure. In some circumstances, native title claimants have the right to be consulted and agreements negotiated with other interested parties where native title may be affected by proposed changes. The negotiations that have the highest profile are land access issues between claimants and resource developers, when access is sought, for instance, for mining purposes, or when state and federal government agencies require agreement about the location of government facilities. In some cases, agreements have to be reached about what native title rights and procedures are to be upheld by those wanting to institute new developments or changes to the way land is to be used. The negotiations also have to determine what form and degree of entitlement may be appropriate for claimants, such as compensation, royalties, or some other form of benefit. There have been many instances of negotiations between one or more claimant groups (often in conjunction with their legal representatives) and companies or government agencies requiring agreements about issues such as heritage protection, land access or resource developments on a claim area.

It has been less than a decade since the Mabo rule of the High Court in June 1992 whereby the accepted doctrine that Australia was ‘terra nullius', or land of no one, at the time of colonisation was conceded to be a legal fiction. The High Court found that the common law was as capable of recognising communal interests in land as it was of recognising individual interests, and that the native title of the inhabitants of Australia at the time of settlement was not automatically wiped out by the assertion of sovereignty by the British Crown. The Judges broadly ruled that native land title rights survived settlement, but that they are still now subject to the sovereignty of the Crown. The Mabo ruling inevitably left many ambiguities and points of law to be resolved. Implementation of the Native Title Act (1993) under the jurisdiction of the Federal Court and the NNTT has highlighted a number of unprecedented procedural issues still requiring resolution within the claims process, between claimant groups themselves, between claimants and other
Aboriginal people, including those who cannot make claims, and between claimant groups and other parties with an interest in the land.

The common law relating to native title has continued to evolve since the Mabo ruling due to subsequent judgements in a number of native title cases seeking clarification of the Act. Many procedures, policies, regulations and state and federal laws which could be affected by revisions have yet to be settled. The most significant High Court ruling was the Wik decision in 1996, which prompted the Federal government to pass an amended Native Title Act in 1998. While it could not revoke native title rights, it did, through the 10-point plan, significantly amend the procedures through which native title could gain recognition and how it could be administered by state governments. Hence state governments have yet to comprehensively revise all the administrative procedures to take full account of the procedures established under the Commonwealth Native Title Act so that native title claimant groups can become more meaningfully involved in decisions about landholding and the use of land and resources at state level.

2.1.1.3 The Creation of Native Title Management Committees

The 1998 amendments to the Native Title Act introduced a requirement that existing claims be re-registered and that all claims pass a ‘registration test’ (s 190) before they attract procedural rights. This registration test includes a requirement that the Registrar, who is responsible for keeping the Register of Native Title applications, be satisfied that the applicant(s) for a native title claim are authorised by all the other persons in the native title claim group. Certification that applications are so authorised is one of the functions that the Native Title Act has established for Native Title Representative Bodies (NTRBs). In certifying an application, the NTRB must be of the opinion that the applicant(s) have authority to make the application on behalf of all the other people in the claim group, and that all reasonable efforts have been made to ensure that the application describes or otherwise identifies all the other people in the native title claim group (Native Title Act, s202[5]). It is also the responsibility of each NTRB to make every effort to facilitate agreement between native title claimant groups, particularly to alleviate anomalies, such as overlaps between different claims.

The certification process thus effectively defines the claim group and its membership. It provides certainty to other parties that the claim process is fully authorised and widely representative. It provides a strong basis for overcoming concerns that other parties may have about claims being lodged capriciously or opportunistically.

In South Australia, key parts of the certification process have been taking place through broad-based community meetings convened by the NTU. The aim of the meetings has been to involve all Aboriginal people who can claim connections to areas of land within a particular claim area. Such meetings are termed ‘community meetings’ by NTU to reflect their intention to involve all individuals who comprise the ‘native title community’ for that particular area. A further part of the certification process is to arrange for the preparation of background anthropological and genealogical research to establish the full extent of the native title community. It is at ‘community meetings’ that each native title community gives authority to particular people to be applicants for the claim, and authorises a description which defines the native title group.

Native Title Management Committees (NTMCs) have been established by each claim group in South Australia during the certification process, with the encouragement and support of the NTU. A Committee typically comprises the applicants named for the claim as well as other members of the community who have been selected because of their knowledge, their roles or their skills, or because of family interests that they can represent. The entire claim community plays a role in appointing members to the NTMC, and each NTMC is a recognised body with delegated authority from the whole claim group to oversee the management of the native title claim on behalf of the whole group. These procedures promote both claimants and other parties to maintain a sense of
confidence that when discussions and negotiations take place with a NTMC, they are dealing with authorised representatives of the entire claim group.

However, NTMCs are neither a substitute for nor a body necessarily reflecting traditional Aboriginal customary arrangements. The NTMCs only have vested authority to speak on the entire group’s behalf for particular purposes. Their primary function is to manage interactions between the claim group and other people, groups or organisations whose interests could impact on the group’s native title rights and interests. They can participate in consultations and negotiations that affect the native title rights of their claim group. There is a presumption that they will exercise their authority on behalf of the entire claimant group’s interests. NTMCs are limited in the extent to which they can redelegate their authority given the legal principle that a person who has been delegated authority cannot redelegate it to someone else.

A NTMC can be established by a claimant group even where no claim application has been prepared, or where a claim is undergoing the registration test. There are some claim groups in SA which are in this position. In these cases a NTMC, or an interim NTMC, has been authorised by the claim group, through community meetings held to consider the preparation of a claim application.

2.1.2 NTU’s Relationship with SA Attorney-General’s Department

2.1.2.1 ALRM’s Initial Consultations About Native Title

The process with which this report is concerned developed from opportunities that emerged from the 1998 amendments to the Native Title Act. The process itself is one reflection of changing attitudes in recent years about how all parties might deal with native title.

Prior to the Native Title Act amendments, between 1994 and 1996, the NTU of ALRM was involved in extensive informal discussions and negotiations with the SA State Government about native title and land access issues. These discussions focused on the Solicitor-General’s proposal for a template agreement about Aboriginal access to pastoral leases, framed as a protocol for the operation of section 47 of the SA Pastoral Land Management and Conservation Act, 1989. That section provides that Aboriginal people “may enter, travel across or stay on pastoral land” (but not camp within specified distances of buildings or constructed stock watering points) for the purpose of following (their) “traditional pursuits”. The Solicitor-General’s approach reflected a SA Government view that native title rights in South Australia would be limited, and that there was an arguable case that native title rights had been wholly extinguished by virtue of the British Parliament’s Colonisation Act of 1834 which vested power in the Colonisation Commissioners in England. The Act allowed the Commissioners powers to secure and mortgage land. The SA Government is presenting this argument before the Federal Court in the De Rose Hill native title case, scheduled to commence hearings in June 2001.

NTU did not accept the Crown’s position in relation to Aboriginal rights on pastoral leases being limited to those set out in section 47 of the Pastoral Land Management and Conservation Act. Discussions between ALRM and the Crown broke down after 1996 since NTU perceived that the parties had fundamentally different ideas about how native title could be recognised, and where there was a case for extinguishment.

Meanwhile the National Indigenous Working Group on Native Title (comprising representatives from Native Title Representative Bodies, the Aboriginal and Torres Strait Islander Commission, the Indigenous Land Corporation, the Aboriginal and Torres Strait Islander Social Justice Commissioner and the National Aboriginal and Islander Legal Services Secretariat) had been developing proposals for amendment to the Commonwealth Native Title Act to provide greater
guidance and certainty for native title parties in making agreements about native title. These proposals, to provide for Indigenous Land Use Agreements (ILUAs), were taken on board by the Commonwealth government and introduced to Parliament as one point in the ‘10 point plan’ package of Native Title Act amendments that the Commonwealth Government prepared as a consequence of the High Court decision in the Wik case in December 1996. It was the only part of the 10 point plan that had clear support from national indigenous leaders. The ILUA amendments to the Native Title Act, which came into force in 1998, provide that ILUAs can be negotiated between parties that have mutually and responsibly agreed about each other’s rights and interests in land and resources. ILUAs have the potential to provide parties with a speedier and more practical resolution of native title matters than a Court determination on native title.

When Parry Agius, as Executive Officer of NTU, resumed discussions with the SA Government about native title in 1998, they were on a different basis to those held previously. NTU’s position was that it could deliver certainty to stakeholders by providing assurance of Aboriginal community authority on any agreements that might be negotiated. The key to interesting the SA Government in negotiated approaches to native title rights and interests was this promise of community authority. NTU’s capacity to make this promise stemmed from the introduction of the certification process in the 1998 Native Title Act amendments (see page 5), while the amendments to the Act relating to ILUAs provided the mechanism for any agreements to be legally binding.

NTU was able to put to the SA Government that if it wanted to negotiate agreements about native title, ALRM, as Native Title Representative Body, had the means to offer certainty and authority in regard to the Aboriginal parties to agreements, and could bring this authority together across the state in a united approach to negotiations. The prospect of securing this authority and certainty was a significant factor in swaying the SA Government to see the idea of negotiated agreements as being in its own interests. Informal discussions about the prospects for negotiated agreements were subsequently renewed between the South Australian Government, the South Australian Farmers Federation (SAFF), the South Australian Chamber of Mines and Energy (SACOME) and ALRM’s NTU.

### 2.1.2.2 Specific Discussions About a Statewide ILUA and Native Title

Following a Cabinet instruction, the Solicitor-General invited representatives from ALRM, SAFF, SACOME and Primary Industry and Resources South Australia to participate in informal meetings at Wirrina Cove on 1-2 May 1999 to discuss native title issues. ALRM was informed that the meetings would explore how native title in South Australia might be resolved through negotiation, as an alternative to taking each separate claim through a costly court process. The Attorney-General had indicated that outcomes of the discussions would allow him to advise Cabinet whether a negotiated agreement was possible, to what extent the government should resource and support a negotiated statewide agreement, and what principles dividing the parties could be responded to by the Government.

The governing Council of ALRM met in Adelaide prior to this meeting on 22 April, and again shortly after at Clare on 7-8 May, to consider how such a proposal to negotiate could be formalised. At these meetings, Dr. Howitt, at the invitation of ALRM, outlined a negotiation process to Council. The Council had to consider the proposal carefully given that the NTU had limited resources from ATSIC for maintaining progress on specific claims, and therefore had to decide on the most appropriate expenditure of those resources to serve the interests of claimants. There were already a range of tensions and anxieties within and between claimant groups inherent in the process of formally registering, or going through the re-registering of, native title claims. Many of the stresses were attributable to the degree to which Aboriginal social arrangements and connections to land had formerly been denied recognition, and Aboriginal people now had to deal with discontinuities and disconnections which had to be worked through to draw together and strengthen each claimant group’s case. Earlier policies of the SA
Government had contributed to many of the dispossessions and separations of Aboriginal people from their land and from each other, and their aftermath was making it profoundly difficult for many claimants to now assert their native title rights, which were being instituted under Federal rather than State legislation.

ALRM Council had to consider whether there was ‘good faith’ in the SA Government’s initiatives, beyond the bottom line of abiding by the Federal legislation, and how the proposed negotiations would advantage Aboriginal people as well as serve the immediate land access needs of powerful business and government interests. These considerations were all brought to an Expert Advisory Meeting held at the Grosvenor Hotel in September 1999, funded by ALRM. ALRM had indicated its willingness to consult with native title claimants about the proposed statewide negotiations, and was seeking resources to do so. The meeting aimed to develop a coherent strategic analysis of the political, economic and social context, and sought a clear ‘public’ statement of intent from the SA Government concerning the scope of the proposed negotiations. The meeting brought together people who could provide expert advice on prospects for negotiations, covering political, economic, industry and legal issues. It allowed ALRM to identify several key personnel who became part of the Technical Advisory Group (Dr. Jocelyn Davies, Dr. Mike Metcalfe and Mr. Andrew Collett). The workshop materials were designed to assist the ALRM Council, its own Native Title Unit, and the Native Title Management Committees, as well as observers from other Native Title Representative Bodies which existed at that time in the state (Anangu Pitjantjatjara and Maralinga Tjarutja) to consider which issues were motivating the Government to undertake serious negotiations about native title, and also what ALRM’s role would be to ensure that the consultations proceeded in a way which ensured negotiations produced worthwhile outcomes for their client groups.

The Grosvenor Hotel Meeting provided the opportunity for ALRM Councillors and staff to meet with Mr. Brad Selway, the Solicitor-General and independent experts in areas of law, government and industry, who dealt with mining, oil and gas, and land management issues in relation to South Australia’s political economy. Mr. Selway reiterated that the SA Government was willing, and had the authorisation of Cabinet, to continue exploring prospects for negotiation and provide some specific funding in order that ALRM could participate without drawing on the resources allocated to it by ATSIC specifically to progress native title claims. He also indicated that he had Cabinet authorisation to proceed with establishing a five person team to oversee preparations for prospective negotiations, and, over a three-month period, the team would review and establish whether an Indigenous Land Use Agreement seemed possible over large areas of South Australia. This group was to be called ‘The ILUA Negotiation Team’. This group maintained dialogue between the Government and representatives of SAFF, SACOME and ALRM. As the process developed their meetings became more formal, and came to be known as ‘Main Table’ meetings.

### 2.1.2.3 Position of the SA Government

At the Grosvenor Hotel meeting, the Solicitor-General, in recognising the breadth of issues that would be entailed in the statewide ILUA proposal, suggested that ‘everything is on the table’. He indicated that the government expected agreements to involve acknowledgment of native title, rather than its extinguishment. This was despite the fact that the SA Government was aware that the De Rose Hill test case could establish a precedent that native title had been legally extinguished in South Australia by virtue of the Colonisation Act of 1834. Equally pressing, however, was the Government’s need to address policy matters concerning Aboriginal rights which were unresolved as a result of the Mabo ruling in the High Court in 1992 and the subsequent Native Title Act. Through the negotiations the Government proposed to work with ALRM and together they could develop means to overcome the ambiguities between legal issues, practical issues and ethical issues which in the present circumstances threatened to create invalid administrative decisions and outcomes which created a loss of confidence in the courts and the government to produce certainty and fairness. However, he indicated that the Government would expect that one of the primary goals of a negotiated ILUA covering a
significant area of the entire state would be to clearly indicate how native title rights were to be understood for the purposes of practical co-existence. For the government to pursue a course toward a negotiated statewide native title agreement, it would be looking for outcomes that demonstrated how native title rights could be practically incorporated into decision-making processes to an extent that would maintain an ongoing interest from government, native title claimants and other groups who needed to use the land and resources to maintain their activities.

2.1.2.4 Key Principles

At the September meeting three key principles were established.

- The first was that the move toward negotiations should not be based on prior assumptions, but that any consultations should aim at strengthening the ability of native title claimants through their NTMCs to advance their own interests.

- Secondly, that the negotiations were not simply between the Government and ALRM. They should involve extensive consultation and participation by claimants in the process and a high level of transparency and accountability.

ALRM’s NTU had made it clear that its own function is to assist claimants progress their individual native title claims and not to make decisions on claimants’ behalf. Even though the Native Title Act provides that ALRM, as an appointed NTRB, may make certain decisions on behalf of claimants in relation to native title, it needs to comply with the principles of Aboriginal customary law if it is to be effective in representing the native title interests of claimants. These principles provide that only Aboriginal people themselves, whose native title rights are unique within each claim, can talk authoritatively and make decisions about their traditional country. As an Aboriginal organisation, ALRM’s NTU has established policies in keeping with this principle of customary law and required that claimants themselves make decisions about the prospective statewide negotiations process.

- The third principle was that just outcomes should not be dependent on completion of negotiations, and that just outcomes for Aboriginal people throughout the state did not depend on the advancement of the statewide negotiations process.

Explanatory Note 2:
Considering the Advantages of an ILUA

The significance of recognising native title through a statewide ILUA would be that if all the parties with an interest over claim areas mutually agreed that native title rights were recognised, and that through negotiation they could also agree how those rights were to be understood and practically co-exist with other rights, then the claims would not need to first go through a determination process mediated by the NNTT and then ratified through the Federal Court. The agreed outcomes of such negotiated settlements between all the involved parties would actually become the basis of an ILUA. In turn the ILUA could be ratified through the NNTT and consequently through the Federal Court as an uncontested expression of how native title was to be recognised over the area covered by the Agreement for the period of time set out in the Agreement. The concept of ILUAs was introduced through the revised Native Title Act of 1998 to alleviate the need for drawn-out court determinations of native title that could be costly in terms of time, resources and acrimony. The significant disadvantage of court-based determinations is their propensity to create adversarial and distrustful relationships between the parties. If a Court process determines native title, the involved parties still need to come together to agree how the specific native title rights which are significant to that set of circumstances can workably co-exist over the claim area. If the determination is that native title rights are not legally recognised, many issues to do with co-existence will still require resolution.
Explanatory Note 3: Interpreting Native Title Rights

A sense of what native title rights are, who has the authority to define native title rights, and how they can be meaningfully incorporated into fair and workable agreements is important for appreciating the process that follows in this report. What makes interpreting native title rights most challenging for mainstream administrators is that there is no legal definition that can stipulate in advance how it will work in practice over different claim areas. There is, however, much more certainty about what it is not. Native title claims are registered through the National Native Title Tribunal and the Federal Court, whereas other forms of title over specific areas of land are registered in a land register. Native title is not an ‘ownership’ of land in the way ownership is interpreted in the common law, but a determination of an array of rights and entitlements that the claimant group has by virtue of the traditional cultural connections to the land. The Mabo ruling of the High Court in 1992 overturned the legal fiction that Australia was ‘terra nullius’, (or ‘land of no-one) at the time it was initially colonised. The ruling implied that Aboriginal people forfeited their rights to land at the time of colonial settlement by an application of English Common Law that was unjust, and that now, through the law, these actions should be redressed.

The revision of the law could not redress all the subsequent actions taken by colonisers, but wherever possible, legal systems in Australia should give recognition to Aboriginal customary law and culture, which includes a deep connection to land. Native title claims are not a straightforward ‘ownership’ of land, but a way of expressing a right to ‘belong’ to the land, and for each claimant group in each part of Australia, this is expressed through native title rights which need to be specified in each case, in order that those particular rights can be recognised and co-exist with the way other people also have rights which apply within that claim area. The rights range from rights to land access in order to hunt, collect bush tucker and conduct ceremonies, to rights that exclude others from access or use of land so that the heritage value of a site is maintained and protected. In each case, determining a claim is a mediation between the legal traditions of the common law, and the traditional customary law of Aboriginal people, and will be specific to the circumstances of each claimant group’s area and lifestyle.
2.1.3 Establishment of the Attorney-General’s Negotiating Team

The Cabinet of the SA Government proceeded to establish their five person ILUA Negotiation Team to oversee preparations for prospective negotiations. Over a three-month period, the Team began to review how an ILUA could be established over large areas of South Australia. The Team was directly accountable to the Attorney-General.

2.1.3.1 The SA Government’s Negotiation Team

The ILUA Negotiation Team was headed by Mr. Andrew Secker. Also included in the team was Mr. Peter Campaign, of the SA Public Service, with a background in Aboriginal heritage issues, Mr. Rick Barratt, of the SA Public Service, Mr. John Keeling, whose work with the SA Government related to information systems, mining, policy and research, Mr. Peter Hall, who has a law practice, and has worked with Native Title Section of the Crown Solicitor’s Office since 1998, and Ms. Sue Smalldon who is an archaeologist with a background in the management of archaeological sites and national parks and wildlife areas.

Explanatory Note 4: Confusion over Terminology - Statewide ILUA Negotiations

The use of the term ‘ILUA Negotiation Team’ has been problematic for many people in the process that followed. The confusion lay in the ambiguity of the term ILUA, as the SA Government were interpreting it, and how the term was commonly understood both by Aboriginal people and the industry and business groups who were aware of its more usual application at local or regional level.

2.1.4 Development of NTU’s Technical Advisory Group

2.1.4.1 Appointment of Macquarie University Consultancy

As discussions about how a community-based process might progress, ALRM’s Native Title Unit appointed Dr. Richie Howitt from Macquarie University to develop and head a Technical Advisory Group (TAG). Through this appointment, training materials and consultative processes could be developed, considered and trialed. Dr. Howitt also participated in the continuing liaison with SAFF, SACOME and the SA Government.

Dr. Howitt has worked as the NTU’s Principal Consultant in connection with implementing NTMCs' consideration of the Government’s proposal to negotiate. He has extensive knowledge of national and international negotiations on indigenous rights, a deep understanding of indigenous communities and practical involvement in regional development arenas.

2.1.4.2 Development of the Technical Advisory Group

Mr. Parry Agius, the Executive Officer of ALRM’s Native Title Unit was responsible for contacting Dr. Richie Howitt and discussing his engagement as Principal Consultant to assist NTU with the consultative process. After this appointment was approved by ALRM, Mr. Agius and Dr. Howitt considered what other professional expertise and knowledge they could draw on as the concept of statewide native title negotiation became a clear possibility.
For the consultative process NTU sought to appoint a Technical Advisory Group that, through each person’s understanding and experience, incorporated wide and diverse range of perspectives and expertise, all of which had relevance to the proposal. In each case, they sought people whose professional roles and personal understanding of Aboriginal and native title issues and/or relevant political and business issues could contribute significant knowledge. Additionally they needed people who could, despite their diverse backgrounds, work together with the others on the team, and contribute to enhancing the process overall. They had to address that the planning and implementation tasks ahead of them involved understanding the ‘interface’ between the recognised needs of the Courts, the SA Government and business interests and how they carried out their activities and fulfilled their responsibilities, and, simultaneously, the often less well articulated needs of native title claimants whose rights and concerns would also need to be upheld and given equal recognition. Their input into the process was vital considering the breadth of the issues with which the process was concerned. The TAG have supported the process by highlighting the need for balance, bringing to light new and appropriate information, and providing commentary and critical responses to developments within the process. It was significant that the team should contribute to the process a high standard of professionalism that enhanced the integrity and trustworthiness of a process that could be recognised and supported by the diverse parties. The goal of the TAG was to maintain a concerted commitment to ensuring the consultations were accountable, meaningful and relevant to both native title claimants and the wider community of South Australia.

Over the later half of 1999 the initial appointments to the TAG included:
- Dr. Jocelyn Davies, whose background is in land management and policy issues, particularly issues that are relevant to the recognition of native title in South Australia,
- Mr. Malcolm Gray, an Adelaide barrister and former Solicitor-General of South Australia, with wide experience of government issues and legal drafting.
- Dr. Mike Metcalfe who is a former senior government adviser with a broad understanding of commercial and political issues, particularly in relation to the mining industry and information technology.
- Mr. Andrew Collett, an Adelaide barrister who has an extensive understanding and experience relating to native title law and Aboriginal rights.

2.1.5 Establishment of the Main Table Discussions
Throughout the later part of 1999, the SAG ILUA Negotiation Team, SAFF, SACOME and ALRM had been meeting informally to consider the significance of the Government’s proposal. In order to keep other stakeholders informed of developments in the consultations with Native Title Management Committees, ALRM initiated a meeting with representatives from the South Australian Government, SACOME, SAFF, the South Australian Fishing Industry Council and the National Native Title Tribunal, which was held on 21 December, 1999. At that meeting, the representatives agreed that there was a need to formalise their discussions to provide a mechanism for stakeholders to raise concerns and issues, and to develop a high level of mutual trust and understanding. Consequently, it was arranged for the first formal ‘Main Table’ ILUA Meeting to take place on 10 January 2000, with a representative from the National Native Title Tribunal (NNTT) attending as an observer in light of the implications these developments would have on South Australian native title claims. At the Government’s request, the participation of fishing industry representatives was postponed pending further one-to-one discussions of native title issues between industry groups and ALRM. Mr. Andrew Secker chaired the subsequent Main Table meetings, and was responsible for compiling and distributing the minutes. When the initial meeting minutes were sent out to each participating group, each was invited to offer an opening statement in their own words.

These meetings gave the prospective stakeholders and ALRM an opportunity to put forward their own ideas as to how they would support the proposal. They also presented opportunities for each participant to clarify their mutual understandings about the reasons for the negotiations and
the key objectives, how they were keeping their members informed, and how they would make information available to other groups. The projects they set themselves included working together to formulate protocols for the meetings, providing explanations of key terms and concepts, setting out key issues to be addressed, and developing proposals and a schedule for action.

2.1.6 First Steps In the Process - Port Augusta Meetings Late 1999/Early 2000

2.1.6.1 Port Augusta Meeting 11-13 December 1999

On the basis of the principles established at the Grosvenor Hotel meeting in September 1999 with representatives from the Government, the NTU was commissioned to organise a large consultative meeting with NTMCs representing their claimant groups, to advise them about the proposal from the government.

In December 1999, the NTU convened the meeting of NTMCs in Port Augusta with funding provided directly from the Attorney-General's Department. Approximately two hundred Aboriginal people attended. The main part of the meeting was specifically to consult with the NTMCs of native title claimant groups. On the preceding day, another more public meeting was held which was open to the wider community, including Aboriginal people who were claimants, and others who were not part of a claim group. The reason for convening this more public meeting in conjunction with the specific meeting with NTMCs was to provide the Government, SAFF and SACOME, who were involved in the Main Table meetings, with a forum for advising the wider community about the proposal being put to claimants, and to explain how the proposal had come about. Included in this wider community were Aboriginal people who, for historical reasons, were not in a position to be part of a group who could register a native title claim.

2.1.6.2 Briefing Papers Sent to NTMCs Prior to the Meeting

Before the meeting was convened, the NTU team sent papers to all NTMC members informing them of the meeting and outlining the issues which were to be discussed at the meeting. The three main papers that NTMCs received were:

1. Why is the government negotiating? What drives the other stakeholders?
2. How to negotiate: alternative approaches to consultation and negotiation
3. Producing a negotiating position: What do native title claimants want in an agreement?

The Issues Papers presented background material to enable claimants to develop a broad understanding of the developments which had led up to this meeting, and what both the Government and ALRM hoped to achieve as outcomes. In particular, Issues Paper No. 2, ‘How to Negotiate: Alternative Approaches to Consultation and Negotiation’, presented a possible model through which NTMCs might deal with some organisational problems if claimants ultimately agreed to accept the Government’s proposal. It presented reasons why the model was being put forward, how it aimed to relinquish ALRM’s direct control of the process to claimants themselves, and how it could address issues of Aboriginal rights, Aboriginal representation in decision-making generally, and Aboriginal decision-making as it concerned claimants’ own ‘country’.

The paper addressed some persistent problems that Aboriginal faced with regard to representation, particularly the issue of having other people, people who appeared to be most expert or qualified, undertaking decision-making on behalf of Aboriginal people. It outlined for the claimants some reasons why having other people, such as lawyers, playing a predominant role in negotiations on their behalf was not necessarily constructive, and that it was probably not in their
longer-term interests to have others, even ALRM, acting on their behalf in negotiations. This could be the case even if the outcome of particular negotiations seemed to offer satisfactory outcomes. One reason given as to why this style of negotiation did not serve Aboriginal people well was that the people most concerned with the outcomes of the negotiations may not have actually understood what had taken place, the range of people involved, whether every aspect of the issue had been settled, and whether other people were equally satisfied and had agreed to wholly abide by the decisions. The other consideration raised was that allowing experts to undertake negotiations on behalf of each individual claimant group did not increase the skillsbase of the Aboriginal people directly involved, allow claimant groups to share their skills and learn from experience, and did not provide claimant groups with the necessary encouragement or mechanisms to collectively deal with political, economic and social aspects of negotiations that were mutually problematic for every claimant group. The recently-created NTMCs were providing a better means for each claimant group to develop a concerted approach to negotiating about specific local issues. However, the NTMCs could only engage with others, as a representative group, about native title issues that were of direct concern to that specific claim area, and they had no authority to deal with native title issues or concerns that were beyond their area.

2.1.6.3 Outlining Some Challenges Relating to Statewide Aboriginal Representation

The paper then put forward a suggested model (Figure 5) as a way of practically addressing and overcoming some of these problems within the context of the proposal from the Government to negotiate about native title on a statewide basis. The model was a way of recognising how unlikely it would be that all NTMCs, a large and widespread group, could come together regularly and take part in negotiations about statewide issues, when other stakeholders would most likely have a team of about five people. The size of the group alone could contribute to weakening the entire group’s capacity to develop a clear position about each matter needing attention. The alternative suggested was an organisational structure which delegated to a smaller group of people from claimant groups the authority to participate in the face to face negotiations, to commission and receive expert advice, to consult with NTMCs, and to follow instructions given by them. As well as appointing a negotiating team, the suggestion was that each NTMC appoint at least two representatives to a Committee which would be the ‘interface’ between the negotiation team and claimants themselves. This group in the model was described as the ‘Reference Group’. The representatives of such a Reference Group could meet at regular intervals to consolidate their understanding of progress and undergo training to understand more about participation in negotiation. The model indicated how the NTMC representatives who actually made up the small negotiating team could be supported by:

- an advisory group that could provide it with guidance and support, and
- a full time support team, or secretariat, to maintain the office work, attend to details about meetings and deal with communications between claimants at all levels in the process, NTMCs, the actual negotiation team and the Reference Group. Such support would be necessary in order to keep the information flowing to, from and between claimant groups using newsletters, videos, telephones, faxes, radio programs, etc.
2.1.6.4 The Timing of the Decision

Issues Paper No. 2 also suggested that representatives from the NTMCs carefully consider the importance of moving toward formulating their own specific ideas about representation and other issues of concern as a matter of high priority. It was pointed out that the Government and other interested parties, like SAFF and SACOME, for their own purposes, were looking for a decision one way or another quite soon as to whether NTMCs were prepared to proceed with negotiations about native title at a statewide level.

2.1.6.5 Decisions of Port Augusta December 1999 Meeting

Discussion at the meetings, which was open, robust and constructive, centred around the Government’s proposal to negotiate a statewide agreement on native title, and the implications of the proposal for claimants. The representatives from the NTMCs concluded that they were unable to formally make a decision on the proposal to commence negotiations with the government at that time. Specifically, delegates concluded that they needed to consult with their full NTMCs and their wider communities before making a formal decision. They also identified a range of issues that required clarification or action before they could consider opening formal negotiations with the Government. They asked to meet with the Attorney-General to talk about issues that needed further consideration including:
• **South Australian Native Title Legislation**
Delegates were concerned about legislation that was to presently go before the SA Parliament. It would extinguish native title on perpetual and miscellaneous leasehold land in South Australia. This was the issue of major concern to claimants at the time of the December meeting. ALRM as part of the South Australian Native Title Steering Committee had voiced criticism to the Attorney-General both about the substantive issues in the legislation and about the timing of its presentation to Parliament. They had indicated that it appeared to undermine ‘good faith’ in the Government’s expressed interest in negotiating native title matters directly with claimant groups. NTMCs felt that the legislation that affected native title on perpetual leases had been drafted and presented to Parliament without any direct consultation with them, and without an adequate explanation being offered as to which specific areas of land were involved. ALRM had indicated to the Government that the way the legislation had been drawn up and put before Parliament had made it very difficult to foster positive and co-operative dialogue between the claimants and the Government.

• **Aboriginal Law as a Fundamental Principle**
Aboriginal law does not allow anyone to talk about another person’s land. This was a fundamental principle which would be recognised by all NTMCs. Delegates expressed concern that the Government might seek to negotiate with ALRM on their behalf, and they were unanimous that this would be unacceptable, and that they must participate directly in any negotiations about their own claim area.

• **Non-Extinguishment of Native Title as a Fundamental Principle**
Delegates indicated that they would not support any proposals that sought to extinguish or diminish native title.

• **Claimants’ Right to Negotiate**
Delegates indicated that any negotiations at a statewide level should not pre-empt or restrict NTMCs right to negotiate local or regional arrangements that were only of direct concern to one particular claimant group. Claimants wanted assurance that their NTMCs could continue to autonomously manage negotiated settlements that were specifically concerned with their own claim area.

• **Scope of Proposed Negotiations**
Claimants at the meeting wanted more information about the scope of the ‘statewide’ negotiations. The stakeholder groups had produced a statement of a number of key areas on which they seeking clarification as a matter of priority as they had implications for regional and state economies. They included heritage management, national parks, low impact exploration activities and pastoral management.

2.1.6.6 **Resources for consultations, communication and preparation**
Mr. Parry Agius of the NTU informed the meeting that there was still uncertainty about provision of financial support in order for claimants to participate in the proposed negotiations. He indicated that ALRM wished to avoid committing itself or native title claimants to one particular position or agenda. Negotiations should only proceed if the process established was acceptable to claimants themselves. One of the desired outcomes of the consultative process was to ensure that whatever was offered to claimant groups by way of assistance was deemed by the claimants themselves to be appropriate, necessary, worthwhile and useful. Support would have to fully cover what was needed in order for them to organise and consolidate their existing skills, resources, networks and confidence, and maximise their ability to negotiate with other parties within local, regional and state arenas.
2.1.6.7 Outcome of the December 1999 Meeting in Port Augusta

ALRM informed the Attorney-General that the outcome of the December meeting in Port Augusta was that the native title claimants were unwilling to commit either way to negotiations because of their present lack of understanding about the proposal. They also indicated that they had inadequate information in order to consider how the proposals would address their present concerns. The issues to do with the proposal to negotiate, however well presented in the papers, needed to be considered carefully in terms of its implications on the demands of claimants, particularly the recently-formed NTMCs to cope with more organisational change. The concept of ‘statewide’ negotiations was new, and people were unsure what impact it might have, and whether it was likely to overturn or undermine local autonomy for native title claimant groups, and how these changes might relate to Aboriginal customary law.

2.1.6.8 Subsequent Consultations

Discussions continued through the Main Table meetings between the ILUA Negotiation Team, SAFF, SACOME, and ALRM. The agreed outcome of their meetings was that ALRM would be commissioned to arrange a further meeting with NTMC representatives in an attempt to properly address some of the concerns raised at the prior meeting in Port Augusta.

2.1.6.9 Port Augusta Meeting 26-27 February 2000

The meeting in February 2000 was convened as a direct response to the claimants’ request to meet with and discuss issues directly with the Attorney-General. It was attended by representatives of ALRM, representatives from NTMCs, representatives from the Government’s ILUA Negotiation Team, Ms. Jenny Hart and Michelle Coram from the Native Title Section of the Crown Solicitor’s Office, and the Attorney-General of South Australia, Mr. Trevor Griffin. In his address to the delegates, Mr Griffin reiterated that the Government he represented was serious about negotiating, and that he wanted to hear what Aboriginal people had to say. In his speech, Mr. Griffin suggested that if Aboriginal claimants appointed one group, “you will be speaking with one voice...You can get across your points more strongly than if you each have to say it separately and, perhaps, differently.” This could be interpreted that at present claimants merely lacked a single representative group that could negotiate on behalf of every claimant group. However, what it did not recognise, or say more categorically, was that even though many claimants could see the benefits of a stronger political voice, the deeper problem lay in considering how such a ‘peak body’ could have meaning for Aboriginal people whose primary concerns were to speak for their own country, and to allow others, who also had authority to do so under Aboriginal customary law, to speak for their own country. If a single body were to be brought into being without carefully taking account of cultural considerations which affected local social arrangements and decision-making processes, it could undermine claimants’ own local autonomy, and diminish, rather than enhance their traditional rights. The problems to be overcome were as much to do with cultural difference as they were to do with organisational difference.

This issue was of profound significance in terms of the NTMCs’ initial response to the proposal. It was one of the most significant issues that had to be addressed in the consultation process that followed. From the outset, it was clear that there was a need for better shared understandings about the fundamental differences between mainstream ways of organising to make decisions and Aboriginal ways of organising to make decisions. For Aboriginal people to make an informed decision to negotiate about native title they would require assurance that the decision-making processes recognised in the negotiations would be just and fair according to Aboriginal culture, organisational abilities and preferences, and decision-making capacities.
2.1.6.10 Outcome of the Port Augusta Meeting in February 2000

At the February meeting, the Attorney-General indicated that he was willing to financially support further consultations. Claimants authorised the NTU to organise a further round of meetings that would be funded by the Government. The goal of these proposed meetings was to allow each of the NTMCs to discuss issues relating to the negotiations more fully. This authorisation was set out in a motion passed by NTMCs at that meeting, which became the basis for the consultative process between July and November with which this report is concerned.

The Recommendations from the Port August meeting authorised the NTU to:

- lobby the South Australian Government to obtain funding for the work involved in facilitating the NTMCs to work out their positions on the future of native title in their regions;
- meet with the NTMCs to building their understanding of the issues affecting the future of native title in their regions and increase their skills in advancing their concerns and interests;
- assist the NTMCs in selecting, training and supporting representatives in a statewide group to negotiate with government and discuss with industry groups about issues that are common across regions;
- prepare advice and relevant materials for the NTMCs about proposed negotiated outcomes;
- facilitate the NTMCs in developing negotiating positions; and
- continue discussions with South Australian Government, SAFF, SACOME and other industry groups to improve Aboriginal understanding of government and industry positions on the future of native title in the state.

2.1.7 Action from the February Port Augusta Meeting Undertaken by the NTU

2.1.7.1 Defining the Role ALRM Could Serve in the Negotiations

The outcome of the Port Augusta meetings highlighted that even though the SA Government was serious about negotiating about native title, there had been a fundamental lack of understanding about Aboriginal ways of life, and therefore the relationship between ALRM as a statewide Aboriginal organisation, and individual claimant groups whose claims ranged across different parts of South Australia. ALRM could play a part in instituting meetings so that groups could consider the Government’s proposal, but it would have to be the claimants themselves who ultimately made the decision as to whether or not to accept the proposal to negotiate about native title at a statewide level. The initial consultations between ALRM and the other groups from the Main Table meetings were leading to a clearer understanding that there were significant differences between the organisational structure of ALRM and the organisational arrangements of the claimant groups, and that these differences related to culture, and would need to be addressed as such, if negotiations were to proceed effectively.

At the Port Augusta meetings, there had been a unanimous expression by NTMCs, speaking on behalf of their claimant groups, that they were unable to relinquish to ALRM or any other larger statewide organisation their right to speak for their own people and their own country. To do so they would be relinquishing their local autonomy and capacity for self-determination, but as well, they would be acting in breach of traditional customary laws. Claimant groups only have authority to speak for their own claim area, and do not have the right to speak for land over which other claimants have rights, responsibilities and customary obligations. The Port Augusta meetings made clear that ALRM did not have the right, either through Aboriginal customary law, or through its administrative function, to be considered a ‘peak body’ which could make decisions in negotiations for or about the groups they served. The misunderstanding is symptomatic of a
widespread general lack of appreciation of the impact of the Mabo ruling of the High Court in 1992, which stipulated that Australian common law must now recognise and uphold certain Aboriginal rights which have meaning according to traditional customary law.

In addition, it was also clear that NTMC’s were not in a position to commit to participate directly in negotiations on the basis of what had been presented to them at the Port Augusta meetings. The NTMCs had only been functioning as formal bodies for a short period of time, and the concept and implications of a statewide ILUA, in relation to local ILUAs was far from clear.

2.1.7.2 Continuing Discussions through ‘Main Table’ ILUA Meetings

After the February meeting at Port Augusta, the ILUA Negotiation Team planned a series of four ILUA Consultative meetings of the Main Table group. ALRM participated in these general discussions with the Attorney-General and the ILUA Negotiation Team, SAFF and SACOME firstly in order to maintain communications between ALRM and the other stakeholders, and secondly in order that they were in a position to inform NTMCs about planning and developments that were being arranged at these top level discussions. At these meetings ALRM was able to promote a better understanding about the significance of Aboriginal customary law, as well as to more precisely understand the position and the requirements of other stakeholders as they related to the proposed negotiations. The discussions helped all the parties to understand that the ultimate authority to decide whether to proceed with negotiations rested with the claimant groups themselves, and that this would require considerable and well-planned consultations. Some key issues covered in the discussions concerned terminology, process, protocols, and further clarification of each other’s reasons for seeking negotiations. A NNTT representative also attended these meetings as an observer in light of the fact that any prospective negotiations could mean that the native title claims presently being mediated through the Tribunal might otherwise be determined through the ILUA process. An outcome of these discussions was the development of joint documents, including a memorandum of understanding, a protocol as to how their discussions were to be conducted, and ultimately a publicly released pamphlet setting out the reasons for their mutual pursuit of negotiations to deal with native title through statewide negotiations. The group developed this pamphlet after reviewing how they had each framed their respective reasons for being involved with the proposal to negotiate about native title. This pamphlet was put out as a joint statement from the four organisations involved and was distributed to NTMC’s. It was also distributed through other public outlets.

2.1.7.3 Funding to Initiate the Project

In March, ALRM submitted to the ILUA Negotiation Team a budget of $870,000 to cover the costs of a consultation process for a six month period. The budget was to enable ALRM to establish the Secretariat, set up and use a communications system to support the flow of information to and from NTMCs, establish technical support, commission research and advice, convene meetings and consultations, and reference proposed settlements to international benchmarks. ALRM was unable to secure any funding from Federal government sources to support this initiative.

In late May the SA Government approved the budget and provided some resources and a promise of further allocations in the next financial year in order that the first round of meetings could go ahead. The NTU and TAG formulated plans as to how the process would be administered, how teams would be recruited and trained for the consultative process, and considered how issues of accountability would be expressed. It was agreed that the Native Title Unit of ALRM would oversee the project, and position statements were developed for staff of the Secretariat as provided for in the budget.
2.1.7.4 The Secretariat

The ILUA Negotiation Team supported the idea of creating a Secretariat as a distinct body from the main body of the NTU when they began devising their budget for the process. The Secretariat would provide the necessary infrastructure and support so that the NTU could conduct the consultative process as a separate exercise from its main purpose. The funding of the Secretariat by the SA Attorney-General’s Department meant that the NTU could maintain the two functions separately, with its normal ATSIC budget still being used to progress individual native title claims toward determination.

Staff were recruited in July and August. Up until this time, the directions for the process were primarily set by Mr. Agius as Executive Officer of NTU and Dr. Howitt as Principal Consultant in consultation with the TAG. The directions took their authority from the resolution passed by the meeting of NTMCs in February at Port Augusta. The direction had a clear focus on training for NTMCs, with a view to expanding NTMC members’ understanding of how they might approach the negotiations. Training approaches were workshopped at a 3-day meeting at McLaren Vale in June 2000.

Explanatory Note 5:
Negative Perceptions about ALRM’s Involvement in Top Level Discussions

On the one hand, the ILUA Consultative Meetings were seen by many to be creating an improved and effective channel of communication between organisations whose members wanted effective resolution of native title issues, and in this respect they were a practical step toward alleviating much of the uncertainty, frustration and anxiety that native title issues had set up across different sectors of South Australian society. On the other hand, however, they were also creating or intensifying some problems for ALRM to do with perceptions of accountability.

The ILUA Consultative Meetings were significant to the processes that followed insofar as they created or maintained ambiguous perceptions of ALRM amongst native title claimants. ALRM’s participation in the ILUA Consultative Meetings fuelled some uncertainty and suspicion amongst claimants as to whether this was an appropriate way for ALRM to actually serve their interests. Some later questioned ALRM’s trustworthiness. For claimants the primary task of ALRM was to support and protect their native title claims. What was most significant was their rights and their interests over their own country, their claim area. They had been denied those rights since the time of colonisation up until the time when their claims were registered with the National Native Title Tribunal from 1994 onwards. Having only recently regained some rights over their land, there was concern that ALRM may have lost sight of its paramount responsibility to them, and be compromising or undermining their rights. Many prevailing attitudes to native title matters by pastoralists, resource developers, and government representatives gave claimants cause to worry what part ALRM might be playing in the ILUA Consultative Meetings.
2.2 INITIAL PLANNING

2.2.1 The Initial Planning

2.2.1.1 Guidelines

Apart from the usual requirements to be accountable for public funds, there had been no explicit instructions from the Government as to how the funds were to be used by the Native Title Unit and the Secretariat. However, there was a set time frame in which the consultations were to be conducted. By November 2000, the ILUA Negotiation Team expected to have a response from the NTMCs, an informed decision on behalf of their claimant groups, as to whether they would take up the government’s proposal to participate in statewide native title negotiations. The planned process was seen as a way of averting a situation whereby the Government would preemptively establish an agenda for any negotiations. If they were to put forward documentation outlining the specific issues which could be covered in the negotiations while claimants were still considering the proposal in principle, claimants would be considering their own issues in a reactive, rather than a proactive, way. This would have the potential to foster mistrust and misunderstanding.

While there were no specific instructions from the funding body that outcomes should primarily serve the interests and the goals of the Government or other stakeholders, it was understood from the ongoing Main Table meetings between ALRM, the Government, SAFF and SACOME, that the other parties at least expected the consultations to present to claimants why those parties favoured a negotiation process, and what significant substantive issues they hoped could be resolved through negotiations. There was an expectation that in the consultations the team would demonstrate how and why other parties were interested in statewide negotiations, and why they wished to be involved to more practically address issues such as ‘low impact’ activities in mining exploration, heritage management, national parks management, and commercial aspects of native title. The Government was hopeful that, by the end of the consultation period in November, they would have a decision from the NTMCs indicating that they were prepared to participate in negotiations that would address some of these issues. A decision to commence negotiations to resolve some of these contentious issues, and other issues concerned with native title, could serve as a demonstration to the general electorate that the Government was making advances toward effective resolution of native title issues generally.

However, at the same time, the Port Augusta meetings and the Main Table discussions had helped the other stakeholders to recognise that the consultative process was an important and unique step toward developing a negotiation process that was realistic and supportable by native title claimants. It was apparent from the two Port Augusta meetings that there were profound differences between how Aboriginal people perceived and talked about native title and how native title was perceived from an external perspective. The NTU and TAG team had been given both the responsibility, and also the freedom, to develop the consultations and present information primarily to address native title issues as they had relevance for claimant groups themselves, taking account of their particular circumstances, their aspirations and their needs. Care would be needed to maintain relationships with NTMCs that acknowledged claimant groups’ own appreciation of native title.

The issue of accountability to claimants and the transparency of the process has been in part addressed through the instituting of the archive, which has provided a great deal of the material for this report.
2.2.1.2 Recruiting People with Additional Skills

The NTU and the TAG endeavoured to bring together people whose professional capacities and understanding of cross-cultural issues would make a useful contribution to the forthcoming consultation and training. Mr. Agius, the TAG and prospective trainers were invited to a meeting in McLaren Vale to help formulate a working team. They included Ms. Rhian Williams, a facilitation and mediation consultant, Dr. Annie Holden, a consultant with extensive experience in impact assessments and indigenous economic development, training and planning, Ms. Venessa Kealy, who had experience working with Aboriginal people on native title issues, Ms. Liah Gibb, who also had extensive experience working with Aboriginal people on native title issues, and Ms. Judith Morrison, whose understanding related to negotiations involving governments, resource developers and indigenous communities.

2.2.1.3 McLaren Vale Meeting

On June 15-17 in McLaren Vale, ALRM hosted the initial train-the-trainers and planning session for the teams that would be involved in the consultation/training meetings with the NTMCs. The goal of this meeting was to produce a detailed work schedule, and consider how it would tie in with other commitments of trainers and consultants, other stakeholders, and other NTU activities. It was the first major meeting using funds from the ILUA Negotiation Team’s six-month budget allocation.

Mr. Parry Agius, EO of the NTU indicated at the meeting that he and the TAG were of the opinion that the proposal from the Government to negotiate for a statewide native title agreement offered good chances for delivering better services, opportunities and recognition for Aboriginal people. He saw its potential to allow NTMCs to become bosses for themselves over their country and still enable economic developments to go ahead in a way which simultaneously realised the rights and activities of both Aboriginal and non-Aboriginal people throughout South Australia. One goal of the team was to facilitate a process that could bring Aboriginal people to the table as equal and important partners in the state.

The TAG and the Consultants brought to the meeting their diverse experience from different professional and academic backgrounds. It was stressed at the meeting that even though the trainers appointed to participate had a wealth of past experience and understanding of Aboriginal issues, this did not preclude them from the most important priority of the entire process, which was to listen carefully to what the participants, the people on the ground, had to say. The reasons for maintaining this underlying ethos within the program were given by Mr. Agius, the EO of the Native Title Unit.

He outlined how the Native Title Unit had been working with each claim group to establish a NTMC as a governing body to oversee native title claim procedural issues, and that these groups were at different stages toward developing workable arrangements within this new structure. The establishment of NTMCs was in part to assist claimant groups take account of the administrative and procedural matters which concern their Aboriginal rights, their culture and their way of life, and having their native title rights recognised by others. Formerly many Aboriginal people had been denied a role in administering land, resources, goods and services. However, as a consequence of the overturning of the notion of ‘terra nullius’ with the Mabo ruling of the High Court in 1992 and the Native Title Act 1993, claimants have had opportunities to develop the necessary skills to deal with native title procedures. Establishing NTMCs and re-registering claims in accordance with the revised Native Title Act 1998 were two in a series of ongoing administrative adjustments since the Native Title Act was first introduced in 1993, and each adjustment has required claimants to reflect on the significance of procedures in terms of how they mesh with the culturally based pre-existing relationships within their community.

It was anticipated that those brought in as trainers or consultants would already have a realistic measure of the extent to which unjust laws and policies have influenced the lives of Aboriginal
people in Australia. While trainers’ appreciation of Aboriginal culture and the broader historical impacts of colonisation and disempowerment, including dispossession and forced separations, would be important, they would also need to be mindful of claimants’ own capacities to deal with procedural matters affecting their claims. It was recognised that claimants have had to engage with many professional people concerning their native title rights including lawyers, politicians, anthropologists, archaeologists, government agents, business people, and others. It was stressed that it would be inappropriate and paternalistic for this consultative process to thrust on to claimants another set of ‘experts’. Trainers were encouraged to keep an open mind, and not pre-judge the contemporary circumstances of native title claimants, or their decision-making capacity. It was reiterated how important it was for facilitators to develop their listening skills, and allow claimants a full and unbiased opportunity to put forward their own ideas.

Those engaged as trainers would be valued for their past experience, but the balance in the program was to avoid past experience leading to assumptions about what might be in claimants’ best interests, or unduly influencing their ultimate decision about the Government’s proposal to negotiate at a statewide level about native title

2.2.1.4 Consultation and Training Strategy

The basis for the training and consultation planning was the model originally presented to claimants at the Port Augusta meeting in December 1999. This model had been originally conceived as a way of contending with how claimants who lived across the vast geographical area of the state could work together effectively and cohesively. Time constraints were recognised as an issue to be addressed in programming the consultations. It was suggested that the consultations be conducted within four regional areas, but it was recognised in the meeting that this was one aspect of the planning that required more thought. The regions were:

1. **Far West Coast**
   Amalgamated West Coast claim (ie Maralinga, Wirangu # 1, Mirning, Yalata and southern part of Ted Roberts claims, Western Kokatha group) and Wirangu # 2.

2. **North East**
   Eringa, Wangkanguru, Yandruwandha/Yawarrawaraka, Eddie Landers Dieri, Arabunna, Dieri-Mitha, plus Far North claims - Antakirinja, Yankunytjarjara/Antakirinja.

3. **Central North**
   Adnyamathanha, Kuyani, Nukunu, Barngarla, Kokatha, Gawler Ranges, Nauo.

4. **Southern**
   Ngarrindjeri, SE Aboriginal Communities, Ngadjuri, Narrunga, River Murray & Murray Mallee region.

Dr. Richie Howitt introduced the participants to a strategy for combining training and community consultation in a series of meetings with NTMCs in these four regions of the state. The exercises were designed to offer NTMCs information illustrating what sort of native title matters could be dealt with on a statewide basis, and why there might be benefits in dealing with some native title matters collectively through negotiation.

The team and the trainers trialed a role-playing exercise devised by Dr. Howitt which used a simulation to promote discussion about how native title issues were presently dealt with. The exercise incorporated a map and a scenario through which people could appreciate how native title issues became problematic, how they might be regarded by people with different interests within a region, and the ways in which different people might attempt to address them. It was designed to convey a general idea of the problems many people presently faced in trying to deal with similar issues, and how they might otherwise be dealt with if groups could negotiate together through a statewide native title agreement process. It highlighted how it might alleviate some of the communications problems and organisational difficulties and constraints between various government agencies, businesses and native title claimants. It was ultimately agreed that this training exercise, because of its complexity, would be more appropriate to offer as an exercise for
people when they had been appointed to a specialist negotiating group from the wider community of claimants. Instead, it was agreed that at this stage claimants might prefer to relate their own claim experiences, and to work from these specific instances to illustrate and highlight how negotiation at a statewide level might be useful for them.

Ms. Williams also suggested that as well as clarifying specific substantive issues that claimants might be contending with, the program could also incorporate an introduction to some basic concepts about negotiation. She indicated that it might be equally important to illustrate to claimants how negotiations worked, and how as a process it could be significantly different from other ways that claimants were used to dealing with native title issues. As well as presenting ideas about ‘what’ could be negotiated, it could be equally relevant to present ideas about ‘how’ it could happen, in order for claimants to broadly consider the Government’s proposal. She offered ideas as to how some key concepts about negotiation might be conveyed in a visual format and how they could be supported with further explanation during training exercises. One of the planned exercises was a ‘throwing’ exercise whereby tennis balls could serve as an analogy for receiving and giving information in a negotiation situation. The plan was to convey some basic ideas about the characteristics of negotiation, how it could bring about a more dynamic and meaningful system of communication with other players. It could be supported by commentary to indicate that in the throwing exercise, as in negotiations about native title, each player may have opportunities to better grasp the problems that present themselves between players, and could promote more effective two-way exchanges. The broad goal was to introduce the concept that negotiations may be a viable and practical alternative to dealing with native title through the courts where decisions were made by an impartial third party rather than by those directly involved.

2.2.1.5 Planning to Implement the Meetings with Claimants

The initial planning for the training and consultative program had to take account of the geographical areas to be covered, the specific size and requirements of different claimant groups, such as lifestyle and language considerations, claim amalgamations, contention between claimant groups, and dispersal of claimants throughout the state and further afield. Another key consideration was how to ensure that the team dealt carefully and skilfully with the complex nature of the presentations in a way which was sensitive and appropriate for the claimants own needs, circumstances and capacities. They had to plan a program that would emphasise to participants that the primary concern of the consultations was to achieve workable goals for the NTMCs and their claimant groups even though they had a limited time and budget in which to work.

The plan laid down prior to the McLaren Vale meeting by the NTU and the TAG, and reviewed at the meeting, was that the consultation sessions would be conducted at a regional level, drawing together NTMC members within four regional zones so that the trainers and the NTMCs could work together in groups that were an optimum size in order to effectively cover the breadth of material being exchanged in the group work. It was anticipated that at the regional meetings the NTMCs could consider whether the model for appointing representatives from each claimant group to a Reference Group met their approval, and if so to discuss how they might bring the appointed representatives together from across the state for further training. Each regional consultative team would consist of a specialised trainer, technical assistants, professional advisers and ALRM field staff. These teams would work within the region under the control of a statewide NTMC support officer, working within the Statewide Negotiations Secretariat.
2.2.1.6 Planning Subsequent Specialist Training for Reference Group

The overall plan was to conduct the training and consultative sessions between mid-July and August. If delegates were selected to be part of the Reference Group, the team would then move into the next phase, which was to provide further information, advocacy and training for that Reference Group, and work with the Statewide Native Title Secretariat to build up the necessary two-way communications links between the Reference Group and their respective NTMCs, and the wider community of native title claimants.

2.2.1.7 Consultation/Training Sessions Combining with Community Meetings

The McLaren Vale meeting also discussed an expressed interest by the people at the Main Table to present to claimants during the consultations their reasons for supporting the proposal to negotiate. The meeting determined that, to avoid the consultative sessions becoming unwieldy, instead of personal presentations, the other stakeholders’ presentations could be outlined in a video that could be played during the sessions with the NTMCs. In addition, a series of public one-day community meetings was scheduled to take place on the day prior to the regional meetings planned for Coober Pedy, Ceduna, Port Lincoln, Port Augusta and Murray Bridge. At these meetings representatives from the Government and the Main Table could engage with the general Aboriginal community within these areas and inform them about the proposal being considered by claimants.

Ultimately, however, the regional strategy planned at McLaren Vale was altered when it became apparent from the pilot sessions that a regional approach was unworkable. The preceding one-day public meetings had already been set up, and so they went ahead as originally scheduled. The fact that two different types of meetings were being held about the statewide native title negotiations created some confusion, ambiguity and cause for concern that was later voiced by claimants at subsequent meetings. Both the public meetings and the other consultative meetings, which were for NTMCs only, were dealing with the same basic issues. The confusion about their scheduling can be traced back to the original regional planning strategy laid down at McLaren Vale in June. The fact that ultimately the public meetings did not coincide with meetings of NTMCs meant that there was less of a clear relationship or synchrony between the two types of meetings. It was particularly difficult for claimants to discern ALRM’s role in both processes. On the one hand, ALRM as the Representative Body for native title claimants in South Australia, was taking part in the discussions at the Main Table meetings with the Government, SAFF and SACOME, and had been party to the jointly-produced and publicly distributed pamphlet entitled ‘Native Title Negotiations: A Better Way Forward’, and on the other hand, ALRM’s Native Title Unit, was playing a key role in the consultative process to determine whether native title claimants did in fact wish to deal with native title matters through negotiations.

2.2.1.8 Maintaining Communication with Non-Claimant Aboriginal People

At the same time as the NTU was putting in place its strategy to consult with NTMC representatives, they also had to address the needs of Aboriginal people who would not be in a position to participate in the consultative process, and keep them informed of developments. This was particularly pertinent for those people who had not been able to yet submit a claim to the National Native Title Tribunal, or people whose claims had not passed the registration test. There were many historical reasons why it was challenging for some Aboriginal people to make claims, and many related to former acts of dispossession, separation or re-settlement. These past acts made it difficult for them to now demonstrate direct relationships between their status as Aboriginal people and their cultural and kinship ties that linked them to their people’s country. A letter was prepared and sent out to as many people and groups as possible explaining why those
people who were not affiliated with a claimant group would not be involved in this present round of consultations. It was important to offer an explanation as to why the proposal was being considered only by native title claimant groups. The letter reiterated to those Aboriginal people who could not be directly involved that the proposal was worth careful consideration to ascertain whether and how it might ultimately address many of the needs of the wider Aboriginal community of South Australia. In this way, the letter could allay some fears that non-claimants were being overlooked. People who were not directly associated with a registered native title claim were to be invited to participate in briefing sessions so they could be informed of developments, and would be invited to offer comments and suggestions.

2.2.2 Planning to Implement the Pilot Sessions

Prior to delivering the proposed training program and training materials to the NTMCs, the program was trialed in two locations, one in Brisbane on 19-20 July and the other in Murray Bridge on 25-26 July 2000. It drew together the skillsbase, the information and the training material that the NTU and TAG anticipated would be useful in order for claimants to make an informed decision.

The presentation at the pilots followed the plan laid down at the McLaren Vale meeting in June. As the basis for the presentation to NTMC representatives, two types of ‘models’ were used. The consultative team envisaged that by working with these models they could convey broad ideas about how an Aboriginal negotiating group could be drawn together from across the state, and how NTMCs could undertake negotiations with the Government. From the responses to their initial presentations, they hoped to institute two-way dialogue that would allow a clearer understanding as to what further information claimants needed or wanted. Each model was in a sense the consultative team’s platform for presenting the proposal. The first model presented one viable way through which claimants could organise so that they had a structure through which groups could be represented in negotiations with the Government. The other model was to help present ideas about what was entailed in negotiations so that claimants developed a basic understanding of negotiation as an optional process for decision-making about native title.

2.2.2.1 The first model

The first model was an organisational option (see Figure 6). It had initially been presented to claimants in Issues Paper No. 2 presented at the Port Augusta meeting in December 1999. The NTU and the TAG team had devised this model as a way of conceiving how diverse claimant groups throughout South Australia could overcome their geographical and organisational constraints to develop one cohesive and culturally appropriate position, develop skills in negotiation procedures, and be powerful enough to promote and advance the interests of all claimant groups in the proposed negotiations with the Government and other stakeholders. The model suggested the establishment of a small team of negotiators, supported by a Reference Group made up of people who could represent and speak for the interests of their claimant group. Together these two groups could drive the statewide negotiations. However, it was also recognised that a support and communications network would be crucial to ensure that there was adequate opportunity for input and deliberation between all levels within this organisational structure before final decisions were taken with other parties about native title issues.

2.2.2.2 The second model

The second model was a decision-making option. It was, in the first place, presenting to claimants an outline of the ways in which negotiations in general differed from other means of coming to decisions, such as arbitration or court rulings, etc. and how this was relevant when considering decision-making about native title. In another way, the presentation about negotiation was to serve as the basis for training exercises designed to introduce the NTMCs to
fundamental concepts about negotiation, its characteristics and its potential benefits as a process.

It was anticipated that these two models together would be the necessary catalyst that allowed claimants to raise issues and discuss how these options were relevant for considering the Government’s proposal. Through interacting with claimants about these basic ideas, the team hoped to develop a clearer indication as to whether these optional strategies were appropriate, and if so how they might be put into place and implemented. The responses would indicate what further information and training needed to be undertaken before all the NTMCs together could come to a concerted position in relation to the Government’s proposal.

2.2.3 Reviewing the Outcomes of the Pilots

The reason for carrying out the two pilot sessions before undertaking the broad plan was to determine the appropriateness and the effectiveness of both the content and the methods used in the sessions. It was the step before finalising the broader program. The NTU and TAG intended to take into account the responses and feedback from the pilots and modify their program accordingly.

However, the response from the pilots indicated that the team would need to review their entire strategy to conduct sessions that brought together NTMCs within each different regional area of South Australia.
2.2.3.1 Differences in Perspective

The first model that was presented to claimants (Figure 6) had been devised to convey how some organisational issues could be overcome if the NTMCs chose to negotiate about native title. However, the claimants themselves could not envisage the ‘big picture’ without first looking at the implications of this organisational structure as it had meaning in terms of their own immediate claims, and what acceptance of this proposal meant for them personally and their own claimant group. Their interpretation of the bigger picture was coming from what was most unique and important to them. Their sense of belonging was linked to their traditional connections to their own land.

The pilots indicated that the sessions were steering people too quickly toward making big decisions, and actually only offering them one optional way of taking up the Government’s proposal. The model was useful for demonstrating how some organisational and structural problems might be overcome, but it did not get down to realistically working through what this option meant for claimants, or how it would fit within the lived experiences of the people at the sessions and others in their native title claim group who were not in a position to hear about the proposal first hand. It seemed there were too many uncertainties and implications that needed to be widely discussed within and between claimant groups before NTMCs could even properly consider accepting this organisational structure through which to negotiate with the Government.

While the NTMCs appreciated that there was useful and relevant information and ideas in the sessions, they were concerned that the training and consultation was asking people to consider an entirely new way of dealing with native title without addressing as a first priority how it would ultimately impact on their own claim and their immediate personal concerns. For instance:

1. They had no way of knowing what would be happening or what was being discussed in each of the other regional meetings. They needed to know how other NTMCs were dealing with the information, because that might influence how their own claimant group might ultimately respond.
2. NTMC representatives felt their whole claim group, and their lawyers and others with whom they consulted, would want to know more before advising them to take up the option to negotiate with the Government.
3. They were not happy with the amount of information that they were expected to take on board in such a short amount of time.
4. In the light of the above, the sessions did not clearly address how NTMC representatives were to responsibly convey ideas which were both complex and new back to their people and present it in a way which was culturally appropriate, particularly given that the NTMCs would need to consult Elders and others about any final decisions.
5. There was an overwhelming sense that claimants may lose their opportunities to raise issues and be heard once negotiations commenced.

The pilots indicated that NTMCs were not unwilling to further consider the Government’s proposal to deal with native title through statewide negotiations; but they were not satisfied that the two-day regional consultative and training sessions would address some fundamental issues about how the proposal could be explained, or how negotiations could be organised to represent the interests of claimants adequately.

2.2.3.2 Differences between Local Native Title Issues and Statewide Native Title Issues

The organisational model, as presented, suggested that through the regional meetings a Reference Group could be appointed to develop negotiation skills and a broader understanding
about the prospective native title negotiations. However, the model did not overcome the essential problem that each native title claim group is autonomous, unique and independent, and its native title rights are specific to its own particular set of circumstances. This highlighted some deep underlying problems to do with people speaking for their own country and the broader issue of how Aboriginal people would be prepared to delegate authority in a negotiation situation.

1. People at the pilots were overwhelmingly in agreement that someone from their own country would need to speak for their country, and others would have to do the same for their own country.
2. There was concern that the statewide ILUA could assume responsibility, and somehow diminish the native title rights in each particular claim, or override local people’s capacity to administer and take responsibility for their local and unique concerns.
3. Some NTMCs had already been involved in negotiations and had negotiated satisfactory agreements with other stakeholders, such as mining companies and pastoralists.
4. Given that NTMCs could demonstrate a capacity to come to workable agreements through negotiation that related to local claims, it was difficult to see what additional benefits would be derived from negotiating with the Government at the statewide level.

2.2.3.3 Re-Organising the Meetings

This meant that the NTU and TAG had to address some serious modifications to their schedule and alterations to the program. The NTMCs at the pilots did not feel they had enough support, or the right kind of support, in order to go forward on the basis of the information being put forward. In addition, the pilot sessions had identified that NTMCs were concerned as to whether they had the capacity to meaningfully share the type of information being presented with others from their claimant groups who could not attend. This was of crucial significance for the NTMCs, given that accepting the Government’s proposal may have a direct bearing on the autonomy and integrity of individual native title claims. The program had misjudged the amount of complex and diverse information claimants could take on board at a single session, and in turn discuss, debate and prioritise all the issues raised. There was a need to think further about the balance between listening to claimants’ own concerns, and offering the right information at the right time.

2.2.3.4 Outcome

At a meeting at the Chifley Hotel in Adelaide on Saturday 29 July 2000 after the second pilot at Murray Bridge, comprising a member of the TAG team and Consultants who had been involved in the pilots, a decision was reached that the sessions with NTMCs could only be worthwhile if they were drastically altered, and went forward through a stage by stage process of decision-making, whereby at each stage claimants, together, felt confident and satisfied about what they had come to understand, and what else they needed to know. They would have to work toward outcomes whereby every decision would be arrived at by the NTMCs working collectively at meetings where all claimant groups could be represented.

It was also clear that to present the model as outlined originally at the Port Augusta meeting in December 1999 as the only optional means for dealing with organisational issues to do with statewide negotiations would not be acceptable. Therefore, at this stage, it would be unrealistic to present predetermined ideas about how negotiations might be conducted, or how specific training programs would be implemented. Training, when it was required, would be offered as the need for it became apparent from claimants themselves. Instead the consultations would take the form of stage by stage facilitated decision-making so that together the NTMCs and the NTU, TAG and Secretariat worked to appreciate the Government’s proposal starting fundamentally from how it had significance for claimants and by degrees build up an idea of its wider ramifications and benefits.

While this review made clear the need for a complete re-organisation and re-scheduling of the proposed regional sessions, it also indicated that a program which was more in keeping with
ideas promoted by claimants themselves would lay a more mutually satisfactory foundation for all ongoing activities, including information-sharing and training. The NTU team concluded that training, as such, had to be offered in response to developments in the process among and between the NTMCs themselves, rather than directing people in ways that had not been authorised, or ways that risked marginalising them or making them dependent on external experts when this was not necessary.

2.3 REVISING THE INITIAL STRATEGIES

2.3.1 Considering Alternative Strategies

The team recognised that the training/consultations program would need to be radically changed. Instead of holding a series of training/consultative sessions within four distinct regional zones, the consultative process would shift to meetings that brought together all NTMCs in a series of statewide meetings. These 'Congresses' would be facilitated decision-making sessions that would start by addressing the expressed fundamental concerns of NTMCs themselves in light of the proposal. Training about negotiations as a prescribed activity would have to be introduced at a stage in the process when it was meaningful in terms of NTMCs own identified needs and priorities.

The new Congress-style meetings would bring all NTMCs together in a series of three statewide meetings. These meetings were planned so that the NTU and TAG’s role would be to provide each person who was to attend the Congress with significant and well-presented information prior to, and following each meeting. The intention was to give everyone who would be attending the Congresses opportunity to adequately reflect on and discuss the information with other claimants. Additionally, other supporting information would be available for NTMC representatives during the meetings, which could be kept together in a folder and taken away and discussed with communities and legal advisers. To reinforce that NTMCs were to have ‘ownership’ of the sessions, participants would be encouraged to come back to the next meeting with questions and comments, so that, together with other NTMCs, they could discuss and debate all relevant issues prior to making any decisions.

In line with this style of meeting, the NTU and TAG would try to co-ordinate the presentation of information, so that as far as possible, it was offered when it related to an issue NTMC representatives had raised and were discussing. This sequencing for presenting material would be dictated by the course of the meetings. It was seen as a way to avoid overwhelming people with too much information at the wrong time, so that all paperwork became equally incomprehensible.

2.3.1.1 A New Organisational Concept

The pilots had helped the NTU and TAG to become much clearer about how they could improve their former strategy. It was evident from the pilots that claimants were interested in the possibilities of what a negotiated agreement about native title could offer, but the model that had been put forward had assumed a shared perspective. The proposal could only be realistically considered by claimants if they could see it in terms of their own lived experiences and from that starting point begin to frame the issues that the NTU was presenting to them. The priority of the program then became to ascertain from the NTMCs themselves what they, as native title claimants, considered to be significant, develop an understanding of their issues, and more broadly understand what they wanted or what improvements they sought in a broader context which covered all of South Australia. This would have to be the framework from which to discuss,
evaluate and consider all the issues to do with the proposal. Considering how native title might be determined through a negotiated agreement with the Government was just one factor in this larger framework of Aboriginal aspirations and an Aboriginal sense of identity.

In retrospect, it also became clear to the NTU and TAG, in a way that had not seemed obvious before, what some of the constraints were for claimants to develop a broader vision. Their claim interests were local, and there were actually no means through which claimants could interact with each other. The NTMCs had only been dealing with local claim issues and there were no means available for them presently to appreciate the issues at anything other than that level. The concept of having representatives on a Reference Group from which a small negotiating team could talk about their issues at a statewide level presented a fundamental problem because the local level was the primary one at which native title had meaning and relevance for claimants. There was concern that people on a negotiating team could speak about each other’s country and their native title rights. With no means available, it was difficult for claimants to appreciate what native title issues could be addressed at anything other than local level, and it was difficult to grasp that there could be ‘statewide’ issues, structural problems to do with how native title could be more effectively resolved and bring about improvements relevant for each individual claim. There was worry that negotiations at a statewide level could undermine a claim’s integrity as it had meaning within traditional customary law. This was one of the strongest reasons for rejecting the model.

However, the NTU and TAG were not locked into simply offering a predetermined model. In fact, there seemed to be a way to overcome the cleavage between the local level at which native title had meaning, and the statewide level where certain issues could be resolved, which was satisfactory to both the Government and to claimants. Instead of proposing that a small decision-making body represent claimants, the NTMCs themselves could actually become a decision-making ‘united voice’ for and on behalf of all claimants. If all claimants were represented through such a body, it would become far easier for the NTMCs to resolve the issue of how to negotiate about statewide issues, and not have them mistaken for local claim issues. Equally, as a consequence of the Government’s proposing to financially support the development of a multi-tiered communications and support infrastructure within the negotiations process, such a body could simultaneously enhance the capacity of each of the NTMCs to deal with local claim matters more effectively.
It seemed viable to put this concept to NTMCs and ask whether coming together to negotiate through a ‘united voice’ with all other NTMCs was an approach through which they could more realistically consider the Government’s proposal. Figure 7 was drawn up by NTU and TAG after the pilots for use in presenting this model to NTMCs.

**Figure 7: Diagram prepared prior to the Coober Pedy August meeting to convey an idea about issues that could be addressed by a statewide ILUA.**

2.3.1.2 Sequences of the Congress Meetings

The congresses were planned to follow some basic sequential steps as shown in Figure 8:
The first would be to present information to give a broad outline of the SA Government’s proposal, and in turn to ask the NTMCs to put forward what issues they felt were important to their claimants with respect to it. Once claimants’ issues were identified, the next step would be to ask whether NTMCs could see advantages in coming together to deal with some of their native title issues through negotiating as one united body, or whether they would prefer to stay with the present process for having native title recognised on a claim by claim basis through the procedures of the National Native Title Tribunal, and ultimately through the Federal Court, either to have their claim determined, or to take further proceedings if a claim was not registered, or was contested.

The next step, if the NTMCs indicated that their claimants wanted to consider joining together, would be for them to collectively consider how they might develop a unified voice for their concerns. This would bring NTMCs to a point for re-drafting another, more culturally acceptable ‘model’ as to how, through this unified voice, they could participate in negotiations.

The role of the NTU and the TAG changed to be one of facilitation in order that the NTMCs could, in the light of their own concerns, ideas and aspirations, come to decisions. The team would support this facilitation by offering information, explanation, and advice when sought, and assist claimants to gather together a more complete and integrated picture of all their issues as they related to the Government’s proposal.

2.3.1.3 Implementation Strategy

The team then sought to gather together a skills base which would better suit this new direction. They began to consider how through the Congress meetings they could develop their own understanding and appreciation of what claimants were actually saying, and thus be able to more effectively offer claimants the information and resources they wanted and needed at any
particular stage. They also considered carefully the type of support and communications network they could offer NTMCs that would encourage and facilitate the development of more meaningful shared understandings about the proposal. The goal was to facilitate in the creation of opportunities for claimants to deliberate together about native title issues, and other related issues that more broadly concern Aboriginal self-determination, so that they could come to an informed decision about the Government’s offer to negotiate about native title.

The NTU and TAG planned to bring all the NTMCs together first in a series of three Congress meetings. After some amendment to the initial plan, the meetings were ultimately scheduled so that the first was a two-day meeting on August 26-27 at Port Augusta, the second a three-day meeting at Hahndorf on September 11-13, and the third a two-day meeting at Coober Pedy on October 7-8, 2000.

2.3.2 Relationship of Revised Strategies to the Overall Goals of the Process

The revised approach would not necessarily alter the content and issues with which the consultations were concerned, but the sequencing and style of how matters would be raised and addressed would change.

2.3.2.1 The Requirements of Other Stakeholders

The other prospective negotiators at the Main Table discussions were hopeful that a negotiation strategy could be developed by claimants as soon as possible in order to address certain of their most pressing practical issues. The NTU team was mindful of the fact that the funding and support for the process had been made available from the SA Government in order that NTMCs could consider how the negotiations might address, in particular, four major areas where the Government and the Main Table group wanted to move as quickly as possible toward resolution. Those areas were: low impact mining exploration, heritage protection, national parks and pastoral land. However, it became apparent to the team that in order for native title claimants to make an informed decision about negotiating, the entire process would need to start by sequencing and prioritising the issues as they had meaning for and were instituted by the claimants themselves.

However, the NTU team also recognised that despite some profound differences between the priorities of the Government and other stakeholders, and the priorities of the claimants, there was little to suggest that both groups’ goals would inhibit opportunities for better co-existence and mutually workable arrangements through negotiation. Nevertheless, unless the preliminary process actually allowed claimants to feel they could negotiate confidently, further steps in the negotiations would be frustrating and flawed. Other participants in the Main Table discussions were coming to realise that the NTMCs, unlike the other stakeholders, first had to address fundamental organisational and cultural issues which would deeply influence their capacity to participate in negotiations. Claimants had to address whether and how to develop a sense of their mutual interests and how they could come together with an assured sense of unity, and negotiate with other parties while at the same time maintain their integrity as Aboriginal people, and as native title claimants speaking for their own country.

2.3.2.2 The Postponement of Negotiation Skills Development

The shift in strategy away from training did not necessarily mean that training about negotiation was not relevant, only that it could not serve a useful purpose if it was offered in a context where some even more fundamental issues were still unresolved that had to be initially addressed by claimants. How claimants considered and resolved ideas about coming together and organising in a unified way would profoundly influence and determine how effectively they could participate in negotiations. Exercises such as the simulation involving two fictitious native title claims and
how each related with each other and the wider community, which had been introduced at McLaren Vale, were put on hold. It was felt that they could only serve a useful purpose if the NTMCs actually felt the training was appropriate and timely. Negotiation skills would have to be seen to be appropriate from the starting point that claimants themselves determined.

### 2.3.3 Implementing and Reviewing the Revised Strategy at Coober Pedy

A meeting at Coober Pedy had originally been scheduled at the McLaren Vale meeting in June 2000 as one of the 'Regional' meetings. Even though it was clear from the pilots that a regional strategy was to be superseded by Congress meetings which would bring together all the NTMCs from across the state, it was decided that, rather than cancel the organised arrangements that had been laid down for 12-13 August at Coober Pedy, the consultative team would take the opportunity to present material verbally to NTMCs who would be relying on interpreters. It would be the same material that was being sent out in a written form prior to Congress # 1 to all NTMCs. This would be a significant means of evaluating whether the NTMCs attending could readily understand how the revised process might work. Equally, it was an opportunity for the NTU team to reflect on their own capacity to listen, and respond to issues raised by claimants.

It was in effect a way for the team to offer members of the De Rose Hill, Antakarinja, Yankuntjatjara and Eringa Management Committees, who rely on interpreters, a two-day session which presented to their NTMCs in a hand-delivered form, the information that would otherwise be sent in the post to other NTMC representatives. This personalised presentation used interpreters to explain what would otherwise be distributed as printed information, including the Agenda, the Progress Report and other papers. Those attending included:

Mr. Parry Agius, EO, Native Title Unit  
**TAG:**  
Dr. Richie Howitt, Principal Consultant  
Dr. Jocelyn Davies  
Ms. Rhian Williams  
Mr. Andrew Collett  
Ms. Lesley Johns  
Dr. Mike Metcalfe  
**Secretariat/NTU:**  
Mr. Stephen (Fish) Walker  
Ms. Kylie Sparre  
Ms. Eliza Lovegrove  
Ms. Camille Dobson  
Ms. Kate Bickford  
**Interpreters:**  
Mr. Ramoth Thomas  
Ms. Mona Tur  
Mr. David Brown

### 2.3.3.1 Introduction

The Progress Report was presented by Mr. Parry Agius, the EO of the Native Title Unit. This provided the necessary background information as to why the NTMCs were meeting and what issues they would be addressing. A further presentation outlined some matters that were set out in a paper entitled *ILUAs in South Australia: Questions and Answers* that had been formulated by the TAG from their previous meetings with NTMCs. The goal of this preparatory paper was to
provide those attending with some indication of the matters all NTMCs would be dealing with at the forthcoming Congress meeting.

Through the interpreters the NTU team explained that the session was convened in order to hear what NTMCs together had to say about their native title claim issues, and why NTMCs would be considering developing a united approach through which to negotiate with the Government about native title. Over the two-day meeting, they worked through the contents of the material relevant for Congress # 1, and gave attention to appropriate ‘process’ issues. These included protocols for using interpreters in meetings, small group discussion sessions, facilitation of discussion in the larger meetings, acknowledgment of dietary needs and the needs of elders at the meetings, and the development of a sense of ‘ownership’ of the meetings by NTMCs themselves. This Coober Pedy meeting was significant insofar as it laid down the model for the process the team would implement in the Congress Meetings.

2.3.3.2 Distinguishing Land Rights and Native Title Rights

A NTMC member asked a question concerning the difference between land rights and native title rights, and Mr. Andrew Collett, an Adelaide barrister, responded. He gave an outline of how the colonisers had introduced a system of land tenure in South Australia which had not taken adequate account of Aboriginal rights to land, and that now there were two issues about land which Aboriginal people were concerned with. On the one hand people wanted land rights, the right to have ownership of land, an exclusive ownership so that Aboriginal people could use the land entirely as they wished. On the other hand, since the Native Title Act 1993 Aboriginal people could also claim native title rights which give some rights back to traditional custodians to enter land, hunt, protect important places, hold ceremonies, collect food and medicine, and other things which are significant for traditional customary life. Aboriginal people could claim native title rights only on certain land. It depended on what sort of title the Government recognised over that land. He explained the difference between freehold and leasehold title, Crown land for national parks and Aboriginal reserves, etc. and outlined where native title rights could co-exist with other people’s rights to the same land.

This explanation helped to focus the discussion by NTMCs toward finding ways to share native title rights over land with the Government, with mining companies, farmers, and other people. The presentation helped to explain that the Congresses were being convened because there was a proposal from the Government which meant that native title claimants in South Australia could now consider two different ways through which claimants could gain recognition of their native title rights. The one that the Native Title Unit of ALRM had been assisting claimants with so far was to submit their claim through the Courts. The other way for having native title recognised had not been possible until now, and that was to reach agreement with all the other parties involved, and have that agreement become the basis for having native title formally recognised. Mr. Collett explained that the second way had not been tried in South Australia before, but the Government had asked the NTU to explain to NTMCs what was now being proposed, and for NTMCs to consider this offer to negotiate agreements.

Claimants expressed concerns about whether having native title recognised through Indigenous Land Use Agreements rather than through a Federal Court determination would change their native title rights, whether the negotiations would be controlled only by whitefella rules, and whether they would still be able to put their claims through the Courts if they could not reach agreement with the SA Government. At the meeting the NTU team explained that all these concerns would be raised at the Congress meetings, and the TAG would try to provide information so that all NTMCs together could make an informed decision about the Government’s proposal.
2.3.3.3 Individual Claim Group Discussions

The NTMCs broke into groups to think about the issues they were presently facing in connection with their native title claims and having their traditional rights upheld and respected by others. The following were some of the issues raised by different groups and shared with the larger group:

- inconsistent and poorly managed heritage protection
- unauthorised mining activity on land
- insufficient land rehabilitation
- resourcing so groups can come together and hold meetings
- involvement in land management issues
- Aboriginal people not being properly consulted
- support for Aboriginal corporations to acquire land and manage land
- problems understanding the reasons why the government and other stakeholders now want to negotiate when they have ignored Aboriginal people before
- problems understanding how the negotiations would benefit Aboriginal people
- concern whether the Government could be trusted to negotiate with Aboriginal people as equals
- concern about how the negotiations would work.
- insufficient fees for NTMC representatives to attend the current meeting even though it can take people a long time to get to meetings. The transport and accommodation fees do not necessarily cover all costs
- other people get paid to attend the meetings as well as having transport and accommodation paid for.

2.3.3.4 Specifying How the Government’s Proposal was Relevant to Native Title Issues

Mr. Agius demonstrated to NTMCs how some of the substantive and process issues groups were facing might be overcome through achieving a broader vision of all the issues that concerned claimants throughout the state, and part of the way toward seeing how solutions could be found would be for everyone to have opportunities to talk about and try to resolve their issues together through a united voice. It was explained that the Congress meetings would be asking all NTMCs to think about which issues they found easy to deal with and which ones were harder, and what the way might be for all NTMCs to come together to resolve issues which affected each claimant group. Mr. Agius sketched a diagram (Figure 9) that was later developed and used in Congress meetings (superceding the predrawn diagram shown in Figure 7) to show that at present NTMCs could do little to resolve their ‘hard’ issues. He asked NTMCs to consider whether the issues they were experiencing were just local issues, or whether they were issues which were statewide because they affected other claim groups as well.
2.3.4 Follow Up from the Coober Pedy Meeting

The TAG team felt that the Coober Pedy meeting had been very constructive, and had encouraged significant input and discussion from all NTMCs. It indicated that the format developed for the Congress #1 meeting could, on a larger scale, provide similar opportunities for NTMCs to ask questions about the proposal. The TAG would then undertake to come back to the next Congress with as much supporting information as possible to address issues raised.

The Coober Pedy meeting also confirmed the benefit of NTMCs breaking into individual groups to raise issues which affected their individual claims, and then to bring the issues back to the bigger meeting to share and discuss. All the specific issues raised would provide the basis for further consideration as to whether statewide native title negotiations could address some of their issues.
2.4 INPUT AND OUTCOMES OF THE THREE CONGRESS MEETINGS

2.4.1 Preparation for Congress # 1 Meeting

2.4.1.1 Facilitators Training Workshop

A Facilitators Training Workshop was convened at the Novotel, Adelaide, on 21-22 August 2000. The material for this preparatory meeting was compiled by Mr. Parry Agius, the EO of the Native Title Unit, Dr. Richie Howitt, Principal Consultant with the TAG, and Ms. Rhian Williams. Ms. Williams’ role, following the pilot sessions, changed from that of Trainer to Lead Facilitator. The meeting brought together members of the TAG, personnel from the Native Title Unit and the Secretariat, and prospective presenters/facilitators who would participate in Congress # 1.

Dr. Howitt stressed that the forthcoming Congress was planned to allow claimant groups from each area to come together and work within a framework that was as transparent as possible, insofar as it allowed the participants to maintain control of the decision-making process. Rather than setting a fixed agenda for Congress # 1, the Facilitators’ Manual presented an outline of some information, issues and discussion headings which the team anticipated would be covered at this first statewide meeting. The items, as they were to be presented to NTMCs in a folder included:

A Progress Report - a paper to be presented to NTMCs broadly outlining developments since 1999 between the Government and ALRM which had led up to the Congress meetings which brought all NTMCs across the state together to consider the proposal to negotiate about native title at a statewide level. This was to be followed up with an opportunity for representatives to ask questions or seek clarification of issues arising from that report.

Why Bother with Statewide Negotiations? - a paper to be presented to NTMCs in the folder, and presented verbally, outlining the position of the Native Title Unit towards the Government's proposal, commending it as an option worth pursuing. Through this paper the NTU sought to give claimants a glimpse of the possibilities for what outcomes might be achieved through choosing to negotiate about native title rather than having each native title claim determined on a case by case basis through the Courts.

Thinking About Negotiations - diagrammatic explanations of the present relationships between native title claimant groups, the Government, and other groups such as farmers and miners whose interests touch on native title. It described the types of agreements that were possible under the present regime whereby native title went through the Courts for determinations. Another diagram gave an interpretation of how the present regime allowed local agreements to be developed for specific purposes under the future acts protocol of the National Native Title Tribunal. These could be successful if all problems and issues were dealt with by the local native title group immediately concerned, and other involved parties, such as a mining company. However, it also indicated some shortcomings in the present system, particularly if problems or issues arose which local parties could not deal with because the solutions lay outside their jurisdiction. It indicated that at present there was no avenue available to claimants if they needed assistance to resolve these broader problems when making local agreements with other parties. The problems included means for establishing clear and workable agreements about access issues, heritage protection, consistent and equal recognition in dealings between parties, and similar matters.
Mapping Challenges Facing NTMCs - the mapping exercise was to focus discussion on each NTMC’s needs and priorities, highlighting both the important substantive issues about native title, but also other factors that limited claimant groups’ capacities to deal with issues at the present time, such as resourcing, communications, experience with negotiation, and other practical problems. In this exercise the meeting would break up into individual NTMCs, so they could write down all the challenges they presently faced. It was planned then to bring the outcomes of these sessions of NTMCs back to share with the full Congress meeting. This exercise was seen as an opportunity for claimants themselves to incrementally build up a broader picture of the issues they faced, the goals they had in common and shared ideas about satisfactory outcomes. Equally, the exercise would be a way to build up a picture of the things that presently stood in the way of each claimant group achieving its goals. The exercise would explore where claimant groups had common problems for which no resolutions seemed apparent at present. All of the ideas and comments would be noted on butcher’s paper, and shared in the large group session by all NTMCs. It was explained that this exercise could highlight where there were certain common issues that might be addressed by claimant groups together through a statewide negotiation process.

Papers were presented to facilitators outlining their role in the individual claim group discussion sessions with NTMCs. The purpose of the facilitation sessions was to promote a focused but easy environment in which participants themselves, rather than the facilitators, voiced the concerns. The facilitators’ role was to initially ensure that the groups had a clear understanding of the exercise, and the issues to be discussed, and then their role was to listen and ensure that a record of all the ideas and information that was brought up in the NTMC group discussions was set out on butcher’s paper. The intention of these exercises was to set a pattern of accountability that ensured that the starting point for any subsequent decision-making was guided by the input from NTMCs themselves. It was stressed to facilitators that the Native Title Unit could not function as if it were a ‘top-level’ organisation, and could not make decisions on behalf of native title claimants. Its role was significantly different from that of a peak body that represented the interests of a particular type of business or industry. The NTU was not authorised to make decisions on behalf of claimants. The Congresses were to be an opportunity for claimants to receive appropriate information and support in order to make an informed decision about the Government’s proposal.

Ways of Organising in Negotiations- some exercises had been prepared which dealt with broad concepts about negotiation. Some were trialed at the meeting so that the facilitators could work through them with claimants when required at the forthcoming Congress meeting, or at subsequent meetings. The tennis balls exercise that had been used in the pilot sessions was worked through with the team and the facilitators. In addition, a simulation exercise was set out in the Facilitator’s Manual for use either at Congress # 1 or at later Congress meetings if required.

Ms. Williams introduced facilitators to some fundamental concepts about the decision-making issues facing the NTMCs. She indicated how in the Congresses facilitators would need to be mindful that procedural, substantive and emotional needs would interrelate around any issues to do with native title. While the substantive issues were the most straightforward to identify, discuss and write down, they meshed with procedural issues about fairness and equal capacity to participate, and in turn both substantive issues and procedural issues had a profound impact on emotional needs. The facilitation was not simply to identify practical matters, because underlying the entire concept of native title were unresolved psychological issues that equally concerned recognition and respect. All three types of issues would arise from the NTMC group work, and all needed to be recorded, and shared between the claimants when they came together for group discussion.

The outcomes of the NTMC group work and subsequent joint discussion would be, with the permission of claimants, typed up in a form which faithfully represented claimants’ own words,
and then sent out to NTMCs in an easy to read format so that NTMCs could share the outcomes of Congress # 1 with their wider claim group.

Mr. Agius also suggested that at some point in the Congress it might be useful to present back to claimants a matrix showing, at a glance, where some of the issues and problems were commonly experienced by different claim groups. The matrix was considered as one way of highlighting how claimants might benefit from a collective approach when negotiating about native title at a statewide level. It was suggested that this might be a quick and simple way of highlighting how having a collective approach through participation in a statewide process might enhance claimants' abilities:

- on the one hand the matrix could show whether, indirectly through a strengthening of organisational networks and communications links, NTMCs might generally be better able to assist one another to deal with local native title matters;
- on the other hand, the matrix could show whether some of the problems which groups had in common could not, in fact, be fixed at local level because they were not simply 'local' issues, but were bigger structural problems that, unless addressed through collective negotiation at a statewide level, could continue to inhibit optimum local outcomes.

It was felt that if such a matrix was prepared at the meeting, it could tie in with the other graphics being used at the meeting. For instance, it could link in with the discussions about the fact that at present there were just frustrations when local groups experienced problems that they could not resolve at local level. It was felt that if some issues showed up as being common to many groups, improvement may be possible for them all if there was some direct representation from claimants on boards and agencies that dealt with matters like heritage, conservation, land management, tourism, etc.

### 2.4.1.2 Material Sent to NTMCs Prior to Congress # 1

A draft Agenda and some supporting material was sent to all NTMC members on 11 August 2000. Further material was included in plastic covered folders that were prepared and handed out to NTMC representatives when they arrived at Congress # 1. The total package included:

**Meeting Papers**
- Introduction by Parry Agius
- Outline of Congress meetings process
- Suggested Meeting Agenda for Congress # 1.
- NTU progress report since Feb 2000 Port Augusta meeting
- Recognising Indigenous rights in SA - Why bother with statewide negotiations?
- The Satisfaction Triangle (Rhian Williams)
- Mapping the issues - telling your stories

**Background Materials**
- ILUAs in South Australia: Questions and Answers
- Relationship between land rights and native title (prepared by Andrew Collett)
- Native Title Negotiations: A Better Way Forward (pamphlet put out jointly by ILUA Negotiation Team, SAFF, SACOME and ALRM)

### 2.4.1.3 Media

The TAG Communications/Media Consultant, Ms. Lesley Johns, worked formally for two days each week with the Secretariat, providing policy advice on the coordination of communications, particularly relating to media between the NTU Executive Officer, Mr. Parry Agius,
NTU/Secretariat personnel, other parties to the Main Table meetings, and the NTMCs and claimants. She was seconded for three days per week to coordinate the Communications Side Table of the Main Table meetings, providing overall support and guidance amongst the major stakeholders relating to communications and media connected with the negotiations proposal. She was based within the Secretariat since July. Ms. Johns made arrangements for the forthcoming Congress meeting and subsequent meetings to be recorded on video, and for an address from Main Table representatives connected with the Government’s proposal to be presented by video to NTMC representatives. Congress #1 was recorded on video, and it was later decided that copies would be made available to NTMCs at the following Congress. Recording meetings was considered a significant component of the overall media and communications strategy. The Communications Consultant would be able to draw on this material if and when the need for its use arose for publicity or media release purposes.

2.4.2 Congress #1 Meeting 26-27 August 2000

Congress #1 was held over a two-day session at Port Augusta on 26-27 August 2000. However, many NTMC representatives had arrived on the preceding day to attend an Aboriginal community meeting at which Government representatives and other stakeholder representatives made addresses to those who attended.

2.4.2.1 Introducing Claimants to the Negotiations Secretariat and Facilitators

By the time of Congress #1, the Secretariat, which had been due to come into operation in July to maintain the central services and communications networks between the consultation team and the NTMCs, had a full complement of staff. They were introduced to the NTMCs when they attended Congress #1.

NTU personnel at Congress No 1
Mr. Parry Agius, EO, Native Title Unit
Dr. Jocelyn Davies, Senior Policy and Research Manager
Mr. Fish (Stephen) Walker, Secretariat Coordinator
Ms. Kylie Sparre, ASO-Meetings Officer
Ms. Katie Bickford, Case Manager ALRM NTU
Ms. Camille Dobson, Case Manager ALRM NTU
Ms. Eliza Lovegrove, ASO team leader
Mr. Lester Highfold, ASO-Meetings Officer
Mr. Michael Ellul, ASO- Meetings Officer
Mr. Lewy Lovegrove
Technical Advisory Group
Dr. Kunmanara (Richie) Howitt,
Mr. Andrew Collett
Dr. Mike Metcalfe
Judith Morrison

Secretariat
Ms. Grace Nelligan, Communications Officer

Facilitators
Ms. Rhian Williams - adviser to ALRM on negotiations training and process needs
Dr. Annie Holden - adviser on negotiations training

Facilitators engaged for casually for Congress #1: Sally Skyring, Donna Robb, Ribnga Green, Suzie Hutchings, David Baker, Sophie Creighton

Interpreters
Mr. Ramoth Thomas
Mr. David Brown
Mr. David Crombie

2.4.2.2 Establishing Protocols and the Translation Services for the Meeting

The Congress meetings brought together approximately 130 NTMC members and proxies representing some 19 native title claim communities whose country is in South Australia. They represented Aboriginal people from traditional, semi-traditional and urban groups. The Congress meetings were the first time that the NTMCs had talked together on such a scale about native title and related issues.

During the introductory session, protocols began to develop for the conduct of the meeting. NTMCs were encouraged to develop their own protocols for running the meetings, so that their various Aboriginal traditions in decision-making could be respected and upheld, which would ultimately contribute to the meeting operating smoothly. For instance, it was emphasised that care needed to be given at the meeting to elderly people, and that care should also be given so there was an equal voice from men and women. It was also felt to be important that the NTU team look after people with special dietary or medical needs, particularly when they had come a long way to attend the meeting. The protocols gave recognition and set a precedent that the needs of all Aboriginal people were important.

The use of interpreters was equally important. It set a pace and a style for the meeting. It promoted every speaker to make clear and straightforward presentations to the meeting through microphones. In this way there was an assurance that people would hear everything that was said, and that everyone was heard in turn. The translation period also allowed intervals for reflection on what had been said. All of these protocols were significant and were important indicators that the meetings would respect, and as much as possible, reflect traditional values and protocols of Aboriginal people.

2.4.2.3 Presenting the Goals of the Congress Meetings

Mr. Agius indicated that the meeting was to provide an opportunity for NTMCs to come together and work in a large group in a way that was relatively unprecedented. Such opportunities had rarely been possible in the past due to organisational and financial constraints. The strategy to bring together all NTMCs was the option which those involved in the pilots had felt to be fundamentally significant. It was pointed out that the ASOs working within the Secretariat under the leadership of Mr. ‘Fish’ Walker, had been responsible for dealing with the complex travel and accommodation requirements necessary to bring everyone together, and that it was his team who would continue to provide ongoing practical support for NTMC representatives throughout the meetings, to generally ensure that people’s practical needs, such as meal arrangements, were attended to. Attending to all the practical arrangements used a substantial proportion of the consultative team’s resources. However, they were considered to be necessary expenditures to underpin any developing confidence by claimants in the process.

Mr. Agius facilitated the opening session, outlining the objectives of the Congress meetings, which were:

- To identify, discuss and respond to the opportunities, risks and implications of the SA Government’s proposal to negotiate about native title at a statewide level.
- To establish a consensus vision of how negotiations may lead to recognition of native title in ways that produce acceptable results for claimants.
- To identify, debate and decide upon acceptable procedures and structures that will deliver acceptable accountability, transparency and support to NTMCs to permit them to approve participation in the statewide process.
- To establish what resources, training and support is needed to implement decisions made by the NTMC Congress meetings.
• To identify next steps to implement decisions made by these Congress meetings.

2.4.2.4 Reports from Pilot Sessions

At the meetings some of the representatives from the pilot sessions outlined why they had been adamant that meetings allow all claimants to develop in concert a unified position about native title. The facilitating team were mindful that some sensitive issues were still unresolved between some individual claimant groups, and that these sensitive feelings had to be accorded care and recognition in order to avoid discord between groups undermining the broader purpose of the larger meeting of claimants. These issues did not appear to stand in the way of all groups coming together and maintaining a positive and consolidated focus on the issues put to the meeting about the Government’s proposal.

2.4.2.5 Issue of Payment for Attending Meetings

In the discussion about meeting arrangements, there was a general sense that NTMCs were dissatisfied with the high number of people present who would be paid for attending the meeting when it was the case that NTMC representatives were not paid a specific allowance for attending. Only NTMC representatives who were employed in State Government jobs could negotiate paid leave. The claimants otherwise were only entitled to receive basic travel and accommodation costs and meals. It had been planned that in Congress # 1 facilitators would play more of an active role than actually transpired. There was a small group discussion session on both days of Congress # 1, but NTMCs own input into the general group discussion took up the largest proportion of the time. As the opportunities to use the facilitators lessened with the passing of the meeting, NTMCs voiced their concern that the number of paid professionals was disproportionate and inappropriate for the general purposes of the meeting, which was for NTMC representatives to talk through their issues.

2.4.2.6 Use of Diagrams

The use of diagrams and other visual presentations proved to be helpful to convey complex ideas and concepts. Some, such as the one illustrated below relating to an organisational issue, had been prepared in advance, while others developed during the meeting to convey ideas about the Government’s proposal. All issues raised by NTMCs were written in large print on butcher’s paper to help everyone follow related discussion. All visual presentations provided a useful focus to support verbal presentations and subsequent discussions.
2.4.2.7 Perceived Misrepresentation of NTMCs Issues in Summary Format

The manner in which NTMCs themselves controlled and directed the discussions in the meeting was very inclusive and productive, and the small group sessions ultimately provided a wealth of issues for NTMCs to collectively review and share together. This development of a sense of unity and accord amongst NTMCs was one of the most powerful and constructive aspects of the meeting. However, an issue which caused NTMCs to feel concern with the conduct of the meeting arose toward the end of the second day, when information which had been given by claimants on butcher’s paper in the small group sessions, was presented back to Congress in a summary format. This strategy had been discussed at the Facilitators Workshop. However, it had not been clarified precisely how it would be put into practice given the limited time and resources available during Congress # 1. It was drawn on a large sheet as a matrix, or summary table, with a line entry for each of the claimant groups present at the meeting, and columns for some broad categories which roughly correlated to issues raised through the NTMC small group work. In the columns ticks indicated which claimant groups had raised the same or similar specific issues.

NTMCs voiced strong concern at the way their issues were represented in this summary. They felt there had been no explanation given as to why or how the summary table had been compiled. Instead of assisting representatives from the NTMCs to develop an overall assessment as to
where there were common concerns amongst claimant groups that could be addressed through statewide negotiations, its hasty compilation and presentation back to NTMCs meant that it became a contentious ‘process’ issue, and did not well serve its original purpose.

NTMC representatives were concerned that it did not give adequate recognition to the way each group had brought issues forward, and because it summarised issues into broad categories, it was prone to inaccuracies and ambiguities. NTMCs asked for an opportunity to talk with each other without NTU consultants and staff present. The outcome of that session was the presentation back to the meeting of a log of claims formulated by some NTMC representatives. This had been prompted by a perception that NTU was not listening to claimants. There was concern as to who had authorised their information to be presented in the summary format, and how such unauthorised presentations could undermine the transparency of the process. The time taken to resolve this issue lessened the time in which facilitators could have contributed further within Congress #1. The way claimants responded to the issue of the summary made it very clear that they personally wanted to maintain a sense of control of the meeting’s proceedings. This made it doubly important that when the outcomes of the Congress were sent out to claimants following Congress #1 they would need to be in a format which took great care to respect claimants’ own words for framing their issues.

2.4.2.8 The Contribution of Congress #1 in the Developing Process

Congress #1 was dynamic and productive. The NTMCs themselves responded to maintain a strong sense of ownership, accountability and decision-making capacity throughout the meeting, even when there was a perceived need to clarify whether it was the Government, the NTU, or claimants, who could control the means through which decisions about the proposal would be made. It was important for developing trust in the process that appropriate recognition be given to all inputs from NTMCs, and that all their matters and contributions were considered as fundamental to the practical development of the process. The agenda for the meeting had offered a broad outline to suggest what matters required attention, rather than imposing a rigid format and timetable. The small group discussion sessions during the meeting, where NTMCs discussed information presented and issues raised, produced, on a broader scale, a range of issues, similar to those that had been raised at the Coober Pedy meeting. The issues raised and reported on to the full meeting of all NTMCs was very extensive, and are covered in appropriate form and detail in the Meeting Report of Congress #1.

2.4.3 Follow-up to Congress #1 Meeting

2.4.3.1 Debriefing

There was a general sense that the meeting, given the complexity of its goals, had ultimately been successful both in terms of what issues had been covered, and how each NTMC had been able to make a positive contribution. However, given that there were virtually no precedents for a meeting of this kind, evaluation of accomplishments was tentative. The break in the schedule of the meeting when the NTMCs asked for time to consider matters themselves without facilitation had somewhat undermined the confidence of staff, facilitators and the TAG in each other’s capacity to work effectively and in concert with one another.

The process was initiating and developing an interactive style that was relatively unique and learning as it went along. The role facilitators could have contributed to the process was less than had been anticipated, and some facilitators expressed doubts as to whether their level of expertise had been relevant. There had been little opportunity for those involved to adequately develop an understanding of each other’s role in the team. There was no final debriefing session when the Congress ended, when some of these tensions and confusions may have been aired.
and given a sense of resolution. Facilitators were asked to send in written reports and feedback about the meeting. However, given that many in the team had come together from far afield to take part in the meeting, there was no opportunity for personnel, TAG members and consultants to formally meet and review together their own or the facilitators’ written reports concertedly.

2.4.3.2 Outcomes for the Consultative Team

The follow up to Congress #1 was the most intensive of any throughout the process, in terms of reviewing the strategy of using facilitators, maintaining responsibilities to NTMCs, and appraising the evolving and complex dynamics, structures and roles within the TAG team and the Secretariat.

2.4.3.3 Appraisals of Strengths and Weaknesses in Team Strategies

Interpreters
Following the Coober Pedy meeting, it had been decided to use an interpretation and translation service at future meetings. The team concluded that these services were crucial for running a big meeting that was to acknowledge, affirm and maintain Aboriginal ways of doing things, both in terms of language and culture, and a sense of inclusiveness. The service was important in terms of the tenor and style it set for conducting meetings. The advantage it brought to the meeting overall was that it promoted all participants to speak in turn, and to present their information in ways which allowed time for everything to be clearly heard and received. It was decided that it was important to maintain NTU’s capacity to work in people’s own languages wherever possible. It reinforced that further Congresses should be conducted in ways that were culturally appropriate and allowed people to feel confident and comfortable as Aboriginal people and as NTMC representatives. Should claimants agree to negotiate with the Government, some significant procedural arrangements were already been laid down as precedents. Such precedents could alleviate Aboriginal procedures being overshadowed by styles more commonly used and understood in government settings.

Roles When Attending Meetings
The feedback from staff and consultants indicated that there were uncertainties as to why different people were in attendance at the meeting. There was a certain ambiguity as to how each person was fulfilling their role, and how their roles were perceived by others. Some were aware that if they or others were not seen to be playing a formal active role, it could be construed that their attendance was irrelevant or that they were being under-used. This was to some extent a reflection on the uniqueness of the process, whereby people were not necessarily fulfilling traditional consultative roles. Dr. Howitt commented that it was the crux of this process to listen. There was a perceived imbalance because those who attended as consultants were apparently less active for most of the meeting than the ASOs, whose workload was heavy, overseeing the requirements of the team and the NTMC representatives, and seeing to the practicalities of running the meeting. This issue was exacerbated by the fact that NTMCs themselves received no payment for attending the meeting. The issue of the large number of people who were being paid to attend the meeting and yet whose role was unclear to NTMCs had been raised in the meeting.

An outcome of Congress #1 was to employ more people to help the ASOs run the meetings, and give further support to the Secretariat Coordinator, Mr. Stephen (Fish) Walker, and the ASOs already employed, in order to assist them to carry out their work effectively. This was crucial for the success of the meetings in practical ways, but also in terms of how the delivery of the practical support upheld a sense of care for people coming to a new place, both physically to the meeting and psychologically to appreciate their sense of ownership of the meetings. The coordination of the Congress meeting was complex, and entailed staff booking venues,
accommodation, transport, maintaining budget control for meetings, ensuring that those whose attendance was required were informed and available, and that all materials and equipment required was available and operational. By employing two additional ASOs it was hoped that future meetings would realistically acknowledge the expectations of each person involved, and would alleviate stress.

**Team Leadership and Communication**

Leadership and organisational capacity was a problem in terms of providing the staff with clear and uniformly understood decisions. This was in part due to the fact that the position of Manager, which had been budgeted for in the submission to the Attorney-General, was assumed by Mr. Agius, as the most appropriate person to oversee the work of the Secretariat. However, he was also maintaining his managerial role within the NTU and thus he had a double workload. Another factor also contributed to how leadership amongst the team was problematic. The consultations were complex and some key people involved with the process were not permanently based in South Australia. This meant there were many logistical problems to overcome in order to work together as a coordinated unit. The number of staff working in the Secretariat increased just prior to Congress # 1. Dr. Jocelyn Davies and Ms. Lesley Johns contributed significantly in the establishment of job descriptions, office protocols and coordination of activities within the newly established Secretariat office, which was to take a more prominent role in maintaining the process. However, the shortfalls in office infrastructure, with personnel being required to use office and communications facilities within the main NTU office or in their homes, hindered opportunities for developing a centrally coordinated network to support the process. This contributed to leadership problems amongst the team, particularly given the relatively unprecedented nature of the process that was developing. The team was itself learning as it went along what leadership actually meant in a process of this kind.

The lack of an office communications and computer system, which the Attorney-General’s department had undertaken to supply in July, significantly hampered the development of a coordinated team effort. The lack of a basic office infrastructure created both practical and conceptual problems. Secretariat personnel had to access computers and fulfil their duties from other locations, and this meant there were less opportunities for them to come together for team-building within the Secretariat itself. These frustrating circumstances meant that roles could not be clearly defined, and understood by others on the team, and competing demands were placed on staff to deal with continual crises which were attributable in part to the lack of office infrastructure. The lack of resources and leadership meant that staff found it difficult to fulfil the jobs for which they were trained and employed. Nevertheless, with a concerted effort to fulfil what they saw as a personal responsibility to claimants, they were able to send out the reports and follow-ups from Congress # 1 on time.

**Under-utilisation of Facilitators**

Many facilitators indicated that they felt somewhat unnecessary for the purposes for which they were contracted during Congress # 1. However, when recruiting facilitators, the consultative team had to weigh up whether to bring in to the process people whose primary skills were facilitation, or people whose primary attribute was an affinity with the issues facing Aboriginal people. The team regarded the second alternative as being a paramount consideration. Facilitators were sought whose background gave them a sensitivity to the issues that were likely to be raised in the meeting, and who were likely to make the most accurate interpretations of information that NTMCs could share with the meeting.

The role of the Ms. Williams, as Lead Facilitator was not well understood by facilitators, and in part this was attributable to the fact that the process was, in principle, to be directed by the NTMCs, with the TAG preparing for making itself available to offer support and advice when it was required. The follow up responses from the facilitators after Congress # 1 indicated that most appreciated the process to be positive and beneficial because it was encouraging better listening skills. However, there was a sense of a lack of leadership, and insufficient time to allow them to adequately prepare to work within the process in a way which took advantage of their
understanding of Aboriginal protocols. Concerns were also raised by facilitators both about the lack of time and opportunity that had been allowed in order for them to be prepared for their prospective roles, and the way in which exercises planned for Congress #1 would be integrated with each other and carried out within the time frame of the Congress meeting. There was also reservation as to whether the planned exercises were in fact culturally appropriate facilitation techniques, and that there was a lack of opportunity to review and discuss these issues. In the circumstances, it had been difficult to build up useful working relationships between people in the team, and facilitators were concerned that this also reflected on their own capacity to build good relationships with NTMC representatives. To some extent the responses from facilitators were another reflection of the relatively unique nature of these consultations, and the fact that the team was learning what leadership actually meant in a process of this kind.

As an outcome of the minimal advantages and the very high cost of using facilitators in Congress #1, the team decided that it would not be appropriate to use them in subsequent Congress meetings.

A further outcome of Congress #1 was that NTU would approach the Mr. Andrew Secker, Head of the ILUA Negotiation Team, to ask if funds might be made available so that NTMC representatives received payment of an incidentals allowance at future meetings.

**Under-Utilisation of Prepared Program**

Part of the difficulty for facilitators was that the planning strategy was attempting to fulfil two basic requirements to assist the NTMCs - problem identification and problem solving. When the NTMCs came together for Congress #1, the consultations devoted a lot of time to exercises to map out the challenges facing NTMCs. The goal of the facilitation was to identify problems that NTMCs might resolve collectively if they accepted the Government's proposed negotiation process. Given the complexity of the issues covered in this aspect of the facilitation, 'problem identification' matters predominated at Congress #1. NTMCs needed time to make distinctions between problems that were specific to their own individual claimant group, and common problems experienced by many claimant groups. NTMCs needed to make this distinction in order to appreciate why certain issues might be better addressed if all NTMCs worked together and created a unified structure. A way presented itself to develop such a structure through the Government’s proposal to negotiate about native title at a statewide level. At Congress #1 it was evident that a high priority for NTMCs was to initially identify which problems could specifically be addressed through a statewide negotiation process. The discussions and the exercises provided an opportunity for NTMCs to develop a realistic picture of the implications of the proposal, clarifying which of their problems it could address.

However, the team also had to incorporate into their planning strategy some preparatory exercises to show, when the time was right, how some claim problems could get resolved through negotiation. Therefore, some of the planned exercises were designed to illustrate fundamental concepts about negotiation. It was necessary for the team to have a range of exercises that might assist NTMCs when they needed to consider how they might organise and deal with resolving problems through a negotiation process. Some of these facilitation exercises, planned for Congress #1, to introduce people to ideas about how to negotiate, were not implemented. This was particularly confusing for facilitators, who, from the Training Workshop, had anticipated that they could be engaging in exercises to introduce participants to ideas about negotiation.

### 2.4.3.4 Outcomes for NTMCs

Dr. Howitt had stressed that the Congresses could not be construed simply as a process whereby the team gives information, or otherwise ‘processes’ information given by NTMCs. A primary outcome of the Congress meetings was to act on what was heard at meetings, and be able to indicate to claimants how the team was endeavouring to be responsible to them by paying attention to what was heard, and taking action to address what people had to say.
2.4.3.5 Feedback to NTMCs following Congress # 1

After Congress # 1, the Secretariat team were directed in formulating their responses primarily by the Research and NTMC Support Officer, Dr. Jocelyn Davies, whose role was in part to coordinate support for NTMCs in the process, and also to make available to NTMCs the benefit of her extensive understanding of high level planning and community development skills. From the notes taken at Congress # 1, she produced the Meeting Report, and identified what information, answers and action was needed by way of follow up. The Meeting Reports were prepared and sent out with the supporting documentation as soon as possible in order to maintain a sense of continuity, and to establish confidence that the TAG and NTMCs were committed to maintaining an effective two-way communications process. This was particularly critical between Congress # 1 and Congress # 2. The schedule for the Congress meetings was drawn up bearing in mind the time constraints within the process overall, and those planning the date of the second meeting did not realise the implications of having two meetings following on so closely to one another. They had not envisaged the extent to which this much larger group of NTMCs would generate such a heavy workload for staff, bereft of even basic office equipment, due to a hold-up in the supply from the Attorney-General's Department. Perhaps also, those planning the meeting schedule had no real conception that the meeting would produce so much positive and meaningful output that would require follow-up.

Care was taken at Congress # 1 and subsequently that all the information noted on butcher’s paper was kept and attended to promptly and accurately. All information presented to the main meeting by the NTU or by the NTMCs, was typed up and sent out to NTMCs so that claimants could feel affirmed that the team was listening to them. The formats for distributing the information/responses from Congress # 1 were:

- Meeting Report - Minutes and NTMC reports
- ‘Questions from Congress # 1’ with Answers provided by Parry Agius, Jocelyn Davies, Richie Howitt and Andrew Collett.
- ‘Issues Raised by NTMCs’, which presented in a typed format all the issues that had been raised by the NTMC’s when they worked together as Management Committee groups with a facilitator. The issues had been grouped together under different themes.

It was important that those formulating the responses for the NTMCs could draw on a deep understanding of Aboriginal issues, and could see where comments were significant, even though that significance may not necessarily be apparent at first glance. Reporting back as faithfully as possible was a way in which the NTMCs could feel affirmed and could maintain their faith that the process was directly and primarily accountable to them and all claimants.

2.4.3.6 Feedback from NTMCs following Congress # 1

The evaluation report backs from Congress # 1 provided the team with some indicators of what actions needed to be undertaken to prepare for and make improvements in the running of Congress # 2. The feedback forms provided an opportunity for people to make general comments, but to particularly comment on the usefulness of the meetings, the way they were being run, and how they might otherwise be run. Of the 17 responses from Congress # 1, five indicated that Congress # 1 had not offered useful information. However, there were no specific indicators as to whether this related to the quality or quantity of information, or whether it was more to do with information being available, but the style in which it was offered rendered it meaningless.

**Reporting on the Usefulness of Information and Participation**

A high proportion of the people who responded indicated that Congress # 1 had given useful information. Some of the comments were:

- Useful hearing from other NTMC members
− Good to have feedback from all groups
− Interesting learning experience
− Able to participate actively
− Sharing stories
− Recognising different claimant groups

**Reporting on the Organisation of the Congress**

Sixteen of the seventeen feedback forms indicated that the small group discussion was a useful and significant aspect of the Congress meeting for them. Some of the comments were:
− Good balance
− Discussions with other groups
− Presentations from all over
− Small group discussion
− Not enough time to read all the information
− Make sure everyone has all the information correctly

**Suggestions for Improvements**

− More care over travel arrangements
− Funding for attending meetings
− Better care for Elders
− Special consideration for people with special needs
− Needed more time
− Make commitment to note all concerns taken down
− More information made available in language that Elders can understand
− Government representative at meetings

**Other Comments**

− Listen to Aboriginals
− Respect linked to more personal discussion in running meetings
− Still confusion about overlapping issues
− Cannot separate ideas about native title and ILUAs.

### 2.4.4 Preparation for Congress # 2

#### 2.4.4.1 Mailing list

The Communications Officer, Ms. Grace Nelligan, who had joined the Secretariat just prior to Congress # 1, began a process of checking with all NTMCs representatives at the meeting that the Secretariat’s office mailing list was accurate and up to date. The meeting provided a good opportunity for her to revise her master list for general mailing purposes, so that when necessary it could be modified and separate listings generated at short notice for NTMC representatives who were to attend meetings. These checks would ensure that all representatives would receive meeting reports and other information on time. When considering staffing requirements, the position of Communications and Information Officer was considered to be of vital significance to ensure a reliable flow of information, and a means for channelling comment and input into the process from claimants. The complexity of the communications demands and the range of communications and media formats to be used demanded adaptive and imaginative responses as the process was developing. This was significant in terms of planning further communications strategies, should claimants ultimately proceed to negotiate about native title at a statewide level.
2.4.4.2 Mail Outs

It was important that mail-outs, as part of the communications network, worked effectively for every mail-out, to contribute to a sense of continuity between the Congress meetings, and to ensure that every NTMC representative, irrespective of whether they attended meetings, received a full set of follow-up papers, particularly the Meeting Report. There was a particularly crucial turnaround time between Congress # 1 and Congress # 2, with only two weeks between them. Secretariat staff found that the task of producing and posting out the feedback from Congress # 1 and the Agenda and supporting papers for Congress # 2 extremely challenging with little equipment, such as computers and printers, available in the Secretariat office. The equipment was to have been provided by the Attorney-General’s Department in July.

2.4.4.3 Media

The TAG Communications and Media Consultant, Ms. Lesley Johns, was responsible for providing general news about the developments in the process to claimants and to other interested parties, primarily through a newsletter Native Title News. It was distributed to all native title claimants, people in the wider Aboriginal community, and to other stakeholder representatives. A video of the proceedings at Congress # 1 was also prepared, in order that copies could be offered to each NTMC at Congress # 2.

2.4.4.4 Radio Broadcasts

As part of the community education strategy, the Communications Officer, Ms. Grace Nelligan, began to formulate ideas for putting together a radio program that would be broadcast once a fortnight. The radio program would reach a wide Aboriginal audience around South Australia, with the program even extending beyond South Australia to be heard in Victoria, Alice Springs, and Townsville. The program would enable her to disseminate news and information about the statewide negotiations process in a catchy and immediate format. She was also able to broadcast presentations by the Attorney-General, Mr. Trevor Griffin, and the Head of the ILUA Negotiations Team, Mr. Andrew Secker, as well as presentations from other stakeholder groups at the Main Table, such as SACOME and SAFF. Each presentation has been relayed in traditional Aboriginal language as well as in English.

2.4.4.5 Lack of Office Telecommunications Infrastructure

Until just prior to Congress # 2, the Statewide Native Title Secretariat had been operating with a very inadequate telephone and fax system and a lack of computers through which to use email. This created problems in terms of sending out literature to NTMCs with an appropriate freephone number if people needed to phone or fax in to the Secretariat office with enquiries. It seriously curtailed the use of telephones and faxes in order to ensure that all those who needed Agendas for Congress # 2 could receive them on time, or at the proper place. It was also a considerable disadvantage in terms of organising the arrangements for the NTMCs to attend meetings, which brought people together from different parts of the state and further afield. The Secretariat was located in the same building as the already existing Native Title Unit office, so the longer the delay in these facilities being available to the Secretariat, the greater the impact and disruption it created for the NTU’s own operations, and the more considerable the impact on the NTU’s own resources.

2.4.4.6 Role of the Support Staff

The Secretariat Coordinator, Mr. ‘Fish’ Walker, oversaw the practicalities of assisting NTMCs to come together for the statewide Congress meetings and ensuring that their needs were met in the process. His role was to:

- Manage the logistical program, and interactions with consultants and claimants.
• Manage the administration support for the program through office support in word processing, budget control, information circulation and documentation filing.
• Provide leadership and support for the ASOs at meetings.

There were many logistical matters to oversee in terms of coordinating attendance at the meetings, travel, funding, venues, media set up, communications, information-sharing with NTMCs’ own claimant groups, and information-sharing between different native title claimant groups. The way that all the practical and logistical considerations were being addressed in preparing for and responding to the Congresses have provided important indicators and benchmarks. As NTMCs were considering ideas about what a united voice would look like through which they could negotiate with the Government, the large Congress gatherings themselves were for NTMCs the first actual demonstrations of how well new organisational arrangements could work. The Congresses allowed NTMCs to envisage structures and groupings for large meetings, and how these large meetings might inter-relate and co-ordinate with sub-groups claimants might want to establish. The effective running of the Congresses was not only meeting practical needs, but psychological needs for considering how well a united body from across the state would work, and how it might ‘interface’ with smaller working groups who might be dealing more specifically with negotiations.

2.4.5 Congress # 2 11-13 September, 2000

Congress # 2 took place at Hahndorf Resort, Hahndorf on 11-13 September, 2000.
Mr. Parry Agius, EO of the Native Title Unit, welcomed NTMC representatives to the meeting, and introduced them to those who were attending:

**NTU personnel at Congress No 2**
Mr. Parry Agius, EO, Native Title Unit
Dr. Jocelyn Davies, Senior Policy and Research Manager
Mr. Stephen (Fish) Walker, Secretariat Coordinator
Ms. Kylie Sparre, Secretariat ASO-Meetings Officer
Ms. Grace Nelligan, Communications Officer
Ms. Rhian Williams - Process Adviser
Ms. Katie Bickford, Case Manager ALRM NTU
Ms. Camille Dobson, Case Manager ALRM NTU
Ms. Eliza Lovegrove, NTU ASO team leader
Mr. Lester Highfold, NTU ASO-Meetings Officer
Mr. Michael Ellul, NTU ASO- Meetings Officer
Mr. Lewy Lovegrove, NTU ASO-Meetings Officer

**Technical Advisory Group**
Dr. Kunmanara (Richie) Howitt, Principal consultant
Mr. Andrew Collett
Ms. Lesley Johns
Dr. Mike Metcalfe
Ms. Judith Morrison

**Other ALRM staff**
Mr. Neil Gillespie, CEO

**Interpreters**
Ms. Mona Tur
Mr. Ramoth Thomas
Mr. David Brown
Mr. David Crombie

**ALRM Council Representatives**
Mr. Malcolm Davies, Chair
Ms. Val Power, Deputy Chair
Mr. Neil Gillespie, CEO ALRM, made an opening address to the NTMCs, and indicated that five Members of the ALRM Council would be in attendance at the meeting as observers.

Mr. Agius presented a Progress Report outlining where the NTMCs had got to at Congress # 1, and went through the Agenda, to indicate that the sessions on the first day would be to ask NTMCs to present back to the meeting any issues arising from Congress # 1, and subsequently, the meeting would consider what questions and issues the NTMCs would like to raise with the Main Table representatives who were to come to the meeting later that day.

### 2.4.5.1 The Legislation Issue - The Miscellaneous Bill and Validation and Confirmation Bill

An issue that predominated throughout Congress # 2 was the draft legislation due to go before the Parliament the following week. This created a tension in terms of whether the meeting would be able to fully address all the other matters on the Agenda, which were more directly concerned with the proposal from the Government to negotiate about native title at a statewide level. NTMCs wanted to discuss the significance of the legislation issue for themselves as claimants, and the relationship of the legislation issue to other native title issues, including negotiating about native title. At the Port Augusta meeting in February, the Attorney-General had made a statement which had led some NTMC representatives to believe that the legislation, which would lead to the extinguishment of native title over land subject to perpetual leases and miscellaneous leases, would be deferred while NTMCs considered the proposal to negotiate. The meeting deliberated as to whether it was even appropriate that NTMCs should be talking about negotiating with representatives from the Government, and with representatives from farmers’ and miners’ groups, while the legislation was being put before Parliament.

Discussion centred on the reasons why native title claimants were not taking a stronger position with regard to the legislation. Mr. Agius explained how and when the South Australian Native Title Steering Committee, which was addressing the legislation issue, had been formed and what their role had been to date. When the legislation had been first drafted in 1998, a Steering Committee had been formed, made up of ATSIC Zone Chairs and the Commissioner, ALRM representatives, and representatives from the two other bodies which at that time were also Native Title Representative Bodies in South Australia, to lobby about the legislation as a matter of urgency. He detailed how the Steering Committee had been involved in negotiating about the bills. This had delayed them being passed in their present form. The Steering Committee had indicated to the Attorney-General in the strongest possible terms that more time was needed to allow for review of the specific details of the land tenures involved. At Congress # 2, there was a feeling amongst NTMCs that to do nothing further to prevent the legislation going before Parliament was sending a message to the other stakeholders and to the SA Government that the NTMCs agreed to the legislation. The Government was maintaining a position that the legislation was a quite separate matter from the negotiations. However, from the perspective of NTMCs the two issues were inextricably linked and inseparable because they were both concerned with their rights as native title claimants. On the final day of Congress # 2, the following motion concerning the legislation was carried:

“The Congress of NTMCs meeting at Hahndorf on Tuesday 12 September totally rejects the SA Government’s Native Title Validation and Confirmation Bill currently in SA Parliament.

1. The Congress of NTMCs resolves to form a Sub Committee comprising two representatives from each NTMC (one male, one female), nominated by the NTMC groups, to make the
appropriate representations to have the proposed legislation stopped from being passed in the SA Parliament - to lobby for our rights, to protect what we have and to gain more.

2. That the door stays open to talks with SAFF and SACOME on the process of ILUAs while this legislation is dealt with.

3. The SA Native Title Steering Committee assist the Congress Sub Committee with administration, resources, and all other necessary arrangements to have these motions carried out.'

2.4.5.2 Formation of a Lobby Group

It was agreed that a Lobby Group was necessary to attempt to have the legislation reviewed. It was agreed that each NTMC would appoint two representatives to this group. Thirty eight people were nominated at the meeting to consider action in order that the SA Government make arrangements to show NTMCs which lands were specifically affected by the proposed SA Native Title legislation, and to assist NTMC members to travel round to the land with Elders from each region so they could properly consider the effect of the proposed legislation on their native title and heritage rights and interests. In addition the Lobby Group on legislation was empowered by the meeting to develop roles and responsibilities in order to address issues associated with the legislation, such as:

- heritage
- legislation proposals
- relationship between ILUA process and the 38 member group
- relationship with other bodies, such as farmers and miners,

and report back to a full meeting of Congress before making any final decisions.

2.4.5.3 Talks with ILUA Negotiation Team, SAFF & SACOME

Later in the first day, the Congress welcomed guests from Government, South Australian Farmers Federation and SA Chamber of Mines and Energy negotiating teams for questions and discussions, comprising:

Andrew Secker, Chief negotiator for SA government on native title, Attorney-Generals' Department introduced other people from the Government team:

Peter Campaign, Manager Aboriginal Heritage Section, Department of State Aboriginal Affairs

Peter Hall, Lawyer, Crown Solicitor's Office

John Keeling, Geologist, Primary Industries and Resources, Mining section

Sue Smalldon, Archaeologist, National Parks and Wildlife SA

Heather Barr, ILUA Office

Bob Goreing, CEO SACOME

George MacKenzie, Legal Adviser, SACOME

Mike Gaden, Head, Indigenous Issues Committee, SAFF

Mr. Secker, Mr. Goreing, and Mr. Gaden spoke with NTMC representatives about the benefits of negotiating with claimants at a statewide level as well as at local level. Through discussions and questions they gave examples of how a negotiations process might bring better ways to sort out problems that were affecting more than one claim group, plan better ways that groups might work together, and compel more people to abide by mutually understood protocols.

When asked whether the Government’s offer to negotiate about native title included sea and water rights, Mr. Secker indicated that at present the Government would not be negotiating about the sea, and that they didn’t know enough about it at this stage, and to do so they would have to include other bodies to participate in the negotiations. However, he did reiterate that native title can exist over the sea.
A question was put to Mr. Secker as to how the negotiation team would address the fact that some Aboriginal people in South Australia had not yet lodged native title claims. Mr. Agius was able to indicate that the step was to bring people together into organised groups to represent their native title interests, and that subsequent meetings were being arranged to do that. Then the people who might be involved in new claims could get together to talk about authorising them. He indicated that while the current decision-making process could only formally deal with existing NTMCs, it was supposed to be inclusive, and would deal with potential new claims. In the meantime, there was nothing to stop prospective claimants getting information.

Mr. Secker was asked why Aboriginal people could not have rights recognised over land that had been set aside in 1856 as Crown land for Aboriginal people, according to documents from an 1860 Royal Commission. Mr. Secker indicated that he was unaware that such grants had been made, and that it was an issue that could be further investigated during the course of the negotiations.

Mr. Secker responded to a question as to what might happen if claimants were to be participating in negotiations and found that Aboriginal people could not agree that a particular current law was valid in their view. Mr. Secker indicated that one of the advantages of having the Government involved in the negotiations was that if those negotiating could not agree about particular laws, they could be taken to Parliament to change the laws. In response a claimant asked how Mr. Secker’s comment related to the bill presently before the Parliament to extinguish native title on all current and historical perpetual and miscellaneous leases. Mr. Secker indicated that if NTMCs wished to make a submission he would inform the Attorney-General that NTMCs wanted a meeting.

NTMCs expressed their concern about the legislation presently before the SA Parliament that would extinguish native title on perpetual leases and miscellaneous leases on land in different regions of South Australia that had not been clearly specified. Mr. Secker drew a graph to indicate that the amount of land involved was a considerably small proportion, approximately 6% of land in South Australia. However, he could not offer more than general information as to where the leases were.

### 2.4.5.4 Payment of Fees to NTMC Representatives at Congress # 2

Another issue was also put to Mr. Secker. It concerned payments to NTMCs representatives for attending Congress meetings. It was agreed that Mr. Secker would meet with representatives of the ALRM Council during the Congress to discuss this issue further. The reason for this matter having to go to the ALRM Council was that ALRM is the constituted body appointed to be the Representative Body for native title matters for the whole of South Australia. The native title functions are carried out by the Native Title Unit of ALRM, but for the purposes of holding and allocating money, ALRM is the formal body through which funds are directed. Therefore they hold the money allocated by the SA Government in order that the Native Title Unit administer the Statewide Negotiations Secretariat and the consultative process overall.

Mr. Malcolm Davies announced to the meeting on Day 2 of the Congress that after talks between the ALRM Council and Mr. Secker, a one-off payment could be made from the budget allocation held by ALRM of $50/day per person to NTMC representatives to cover incidental costs for attending Congress # 2. It was also announced that payments would be made for executives of the ALRM Council to attend. However, it was stressed that at this stage, the authority to make the payments at Congress # 2 did not set a precedent for future allocations.
2.4.5.5 NTMCs United Voice in the Process

On the final day of the Congress, each of the NTMCs broke into their own individual groups, and considered issues relating to the formulation of a ‘united voice’. NTMCs considered what type of structure could be devised in order to meet and deliberate together, and what protocols would govern the conduct of the body. A significant issue that NTMCs needed to address was who could speak for traditional owners’ own country and how claimants could make decisions about issues that affected more than one claim area, issues that affected all of South Australia.

The following is a final summary of some of the ideas which NTMCs developed during their group discussions, and then shared with the entire Congress meeting. In terms of what a united voice would look like, there was general strong feeling amongst NTMCs that it:

- should be recognised by government at the highest level and be given equal status
- should have a clear mandate in its role of protecting Aboriginal rights and interests but should not remove the autonomy of individual NTMCs
- be elected NT voice and authorised body for all NT issues in SA, addressing the issues the NTMCs want them to address, such as legislation and cultural rights
- should only be the voice of NTMC groups - rather than being the voice for everyone in SA.

In terms of how it should operate, there was also general strong feeling amongst NTMCs that:

- Accountability should be built into process- that is, information/decisions filtered to and from community; feedback to community - meetings, media and newsletters
- Ensure that elders are present
- Young people also need to be present - bring young people to Congress at least once a year so they can learn
- Agendas need to be set in a way that we can change and then delete so that our outcomes are achievable
- Ensure there is an avenue for people to voice opinions so that these are heard and can be voted on
- Reps from each NTMC should be invited to each others country for meetings/getting together
- Standard procedure to notify/inform each member
- Resources administration - establish a secretariat base: telephone, filing, photocopying, postage, stationary and on-cost technology
- Each elected NTMC to report back to their NTMC on a regular basis as needs arise. On some issues the representatives on the Reference Group cannot make a decision at that level and can only give a position/view once the issue is considered within own NTMC. Each NTMC to work though this arrangement themselves to ensure best practice.
- Two-tiered reporting - members of Council to their NTMCs, plus full Council to full Congress at least 3 times a year)
- Contact with community (through letters etc), verbal communication with elders
- All administration, resources and support should be provided through NTU.

In terms of what were the next steps, NTMCs were asked to consider what matters required decisions at Congress # 3, what information and support they needed from NTU and the TAG in order to make those decisions at Congress # 3. Some suggestions were put forward from the TAG team, but it was stressed they these were just some possible ideas. NTMCs were encouraged to think further about these ideas between now and the next Congress.
2.4.6 **Follow up from Congress # 2**

2.4.6.1 **Feedback from NTMCs about Congress # 2**

*Useful Information from the Meeting*

From the thirty feedback forms filled out at Congress # 2, 28 indicated that they had received useful information from the meeting. There was only one specific request was for further information - a plain English summary of State Native Title Legislation and how it affects native title claimants.

*Organisation of the Meeting*

Twenty-three people indicated that they had had a chance to be prepared and be heard, although one had not received an Agenda, and another had received it too late.

Some comments included:

− Some people very vocal and showing aggression, people need to be assertive rather than aggressive

*Most Useful Parts of the Meeting*

− Meeting with representatives of Government SAFF & SACOME (5)
− Sharing information with other groups (14)
− Talking about legislation and forming the lobby group (4)
− Having prepared papers to assist NTMCs
− Sharing common ground
− Having everybody sharing common ideas, shared experiences which make us more aware of people’s specific native title needs.

---

**Figure 11: Diagram setting out some issues NTMCs were considering.**

![Diagram](image)
How Could the Meeting Have Been Improved

- Better leadership to finalise each subject before going on to other points
- NTU not to push an agenda on to people, listen to what people are saying
- Respect for each others' opinions
- Documentation sent out very early so that changes can happen
- Be focussed and don't get sidelined
- Stick to the Agenda
- Inform newcomers on issues rather than through the meeting to avoid repetition
- Have concise ways of summarising each statement
- Speakers should stand at the front so they can be heard and seen
- Social night and singalong
- Time Management for speakers
- Speakers being repetitive, need to keep discussions moving
- Time factors for diabetics
- Punctuality
- Better and more appropriate food
- More care about seating older people so they don’t have too far to walk
- Talk about how Aboriginal land can be returned to Aboriginal people

Other Comments

- Like how you’ve got secretarial work organised so that a written document is given to participants about each day
- The meeting was great for building relationships and trust, and building for the future
- Concerned to know more about Land Council. Uninformed about who is involved in it.
- Seat people in a circle
- More workshops
- Needs to be an opportunity for women’s issues to be heard
- A very good experience - a first for me
- Documentation has been vastly improved

2.4.6.2 Feedback of TAG following Congress # 2

One of the most challenging issues for the TAG and the EO of the Native Title Unit, who facilitated at Congress # 2, was the different levels of understanding about present organisational arrangements. It was important for the team to consider how to address these knowledge gaps without appearing to be pushing people toward decisions, given that the purpose of the congresses was to support the development of organisational structures that the NTMCs themselves could construct.

Concepts About ‘Congress’ as an Organisation

There was a sense that some people, by the very description of the meetings as a ‘Congress’, actually concluded that authority had already been given for the creation of a United Voice called a Congress. For some it was hard to draw the distinction between the current round of meetings which were only deliberating about whether to develop a united voice, and their role and right as claimants to ultimately authorise the instituting of a body which could be their united voice. Equally, there were understandable confusions when people at the meeting discussed the idea that the Congress might create a Land Council, given that in fact a constituted body already existed called the South Australian Aboriginal Land Council. Both historically and for practical purposes, the already existing Land Council was not generally perceived to have strong and meaningful associations with native title issues or with native title claimant groups. In fact for many this body was perceived to be serving Aboriginal people in a very prescribed way, and its functions and its structure had not been changed or been amended to appropriately recognise the federal Native Title legislation.
Facilitating Meetings While Still Allowing Them to be Led by the Congress

Protocols had been developed at Congress # 1, and further throughout Congress # 2, as people raised issues that were to do with the appropriate conduct and style of the meetings. The TAG had laid down a lot of issues to be covered in Congress # 2 in the Agenda, not least of which was feedback from the issues raised at Congress # 1. Congress # 2 was facilitated by Mr. Agius, as Executive Officer of the Native Title Unit, and some balance had to be struck between allowing each person the opportunity to bring forward their own issues, and having concern that everyone wanting to speak had the appropriate opportunity to do so. There was a lot of ground to cover from the agenda, yet care needed to be taken so that the meeting didn’t move forward at a pace which left some people behind. An important lesson from the Congress meetings was that protocols would need to be acknowledged and respected so that all people present have adequate opportunities to be heard. A significant responsibility of the TAG and Secretariat has been to maintain an accurate record of what each person has said and contributed. A way that the team could contribute to effective facilitation was to reassure people that they have been heard and their contributions noted.

The Relevance of the Legislation to the Congress Meetings

At Congress # 2, the issue of the SA Government’s legislation meant that matters were being raised in a sequence that did not follow the Agenda as it had been distributed. For those who were not familiar with the significance of the legislation in respect to their native title rights, this created a certain degree of confusion. It was challenging for some to follow the sense of the relationship between the two issues, legislation and negotiation, when the issue of the legislation was not formally on the Agenda. There were different levels of understanding as to how it was possible for the Government to be asking NTMCs to consider a proposal to negotiate about native title, yet, at the same time, also be taking another course of action to extinguish native title, and insist that the two courses of action were dealing with separate issues.

Small Groups Discussing Organisational/Representation Issues

At Congress # 2 on the final day of the meeting, NTMCs broke into their small groups, and were asked to consider what sort of organisational body they could envisage might be appropriate in order to negotiate about native title at a statewide level. The small group discussion allowed NTMCs to consider and then share with the bigger meeting ideas toward devising a structure which would be acceptable and appropriate for native title claimants to collectively negotiate about some native title issues. One of the underpinnings of the process was that, because the ideas were coming from NTMCs themselves, claimants could have confidence that what was developing out of the meetings was being carefully thought through by people from their own claim group. However, as an indication of the care that groups would need to give to issues about representation, following the presentations by individual NTMC representatives about What a United Voice Might Look Like, a motion was passed to form the Lobby Group to deal with the legislation issue. Each NTMC was then asked to nominate two representatives from their Management Committee, to make a total of 38 representatives on this Committee, two from each group. One NTMC raised the issue that they would have liked to have more representatives on the Lobby Group, to represent both groups who make up their native title claim. This brought forward more discussion about the issue of representation from other groups that, in a similar way, had an amalgamated claim. Mr. Agius pointed out that the Lobby Group would need to be of a limited size if it was to work effectively and quickly, so each NTMC should appoint representatives who could represent the interests of their entire claim group, even where groups are amalgamated. The only way that Mr. Agius could suggest for resolving the issue in the present circumstances was for the men and women representatives to represent different groups within their amalgamated claim. The issue of representation to participate in the Lobby Group was in a sense a parallel issue to the issues about representation that the NTMCs had been discussing in the small groups about what a future United Voice might look like, and it was in one sense, a trial run as to how NTMCs could cope with and address issues and dilemmas about representation in the future.
**Mistrust and Confidence-Building about Organisational Issues**

The transference of discussion from how groups might be represented in a United Voice straight to the issue of representation on the Lobby Group highlighted how much potential anxiety there could be concerning the matter of local autonomy and having the right to speak for one’s own country. The tension over the decision to limit the Lobby Group numbers indicated that a lot of care and planning and perhaps even trialing of ideas would be needed before the NTMCs together could create the most appropriate structure for representing all claimants through a United Voice. The level of confidence and capacity to work together that was generated in the first two Congress meetings was an indication to the NTU team and the NTMCs where there were promising opportunities for claimants to create for themselves grass roots participation and representation to an extent that had not formerly been possible within other Aboriginal or non-Aboriginal organisations. To this extent NTMCs were being encouraged to shift the focus from distrust that outside organisations, such as NTU, were controlling or manipulating the agenda toward a trust in their own developing relationships and organisational capacities. This would shift both the right, and the responsibility, for decision-making directly on to claimants.

### 2.4.6.3 Follow Up to NTMCs After Congress # 2

A Meeting Report was mailed to all NTMC members, together with a draft agenda for Congress # 3. It set out NTU’s suggestions about decisions that might be taken at Congress # 3.

### 2.4.7 Preparation for Congress # 3

Congress # 3 was planned to be the meeting where claimants would make decisions about whether to take part in the proposed statewide negotiations. At Congress # 2, NTMCs had indicated that they were seriously considering the formulation of a united body, and had reported on how this organisational concept could be achieved. NTU considered that there was still much to discuss about this, especially about the structure of the united body. However, given the time constraints, there was also a need to make some clear decisions about the immediate practical steps that were necessary in order to move the process forward. In the Agenda for Congress # 3, NTU included suggestions about what decisions needed to be made by claimants. The considerations which guided NTU’s suggestions were set out in the following draft of a covering letter prepared for distribution as part of Congress # 3 agenda papers. Although this letter was not finalised and distributed to claimants with the Agenda papers, it does represent considerations that were important to the NTU in approaching Congress # 3:

“The (NTU’s) suggestions for discussion and decision at Congress # 3 aim to pick up on important discussions by NTMCs at Congress # 1 and Congress # 2 and to guide future action. The suggestions try to balance three main considerations.

- some NTMC members are impatient for quick action on the issues discussed at Congress # 1 and # 2, and some issues are urgent.
  As an example, Congress # 2 endorsed the formation of a lobby group with one male and one female member from each NTMC to work against SA Parliament passing legislation that would water down native title rights on about 6% of land in SA.

- some NTMC members have said they need more time to work through things, including consulting with their communities.
  For example, people have said they need time to understand how the Statewide situation related to native title fits in with the issues and concerns they have within their own claim area; they need to make sure the United Voice, whether it is called a Congress or a Land Council, is set up properly - that its structures are appropriate culturally and do not impose on local NTMC autonomy. People have said they need resources to meet with their local native title communities about the matters discussed at Congress # 1 and # 2.
• a deadline exists because of budget factors.
In July the SA government funded NTU to consult with NTMCs about Statewide issues related to native title and to provide a report on whether NTMCs wish to negotiate with the government about Native Title and what the budget requirements are for these negotiations. This report is due to be considered by SA Cabinet in late November.”

2.4.8 Congress # 3, 6-8 October 2000
Congress # 3 took place at the Greek Club, Coober Pedy on 6-8 October, 2000. Mr. Parry Agius, Executive Officer of the NTU, welcomed NTMC representatives to the meeting, and introduced them to those who were attending:

**NTU personnel at Congress No 2**
Mr. Parry Agius, EO, Native Title Unit
Dr. Jocelyn Davies, Senior Policy and Research Manager
Mr. Stephen (Fish) Walker, Secretariat Coordinator
Ms. Kate Bickford, NTU Case Manager
Ms. Camille Dobson, NTU Case Manager
Ms. Eliza Lovegrove, NTU ASO team leader
Mr. Lester Highfold, NTU ASO-Meetings Officer
Mr. Michael Ellul, NTU ASO- Meetings Officer
Ms. Kylie Sparre, Secretariat ASO-Meetings Officer
Mr. James Warrior, Secretariat ASO-Meetings Officer
Mr. Tony Goodacre, Secretariat ASO-Meetings Officer
Ms. Grace Nelligan, Secretariat Communications Officer

**Technical Advisory Group members**
Dr. Kunmanara (Richie) Howitt, Principal consultant
Mr. Andrew Collett
Ms. Judith Morrison

**Interpreters**
Ms. Mona Tur
Mr. Ramoth Thomas
Mr. David Brown
Mr. David Crombie
Mr. Yami Lester

**ALRM Council Representatives**
Mr. Malcolm Davies, Chair
Ms. Celia Hirchausen, Port Lincoln
Ms. Elaine Newchurch, Adelaide
Mr. Kevin Kropinyeri, Raukkan, Murray Bridge
Ms. Jennifer Hayes, Adelaide
Ms. Joan Lamont/Williams, Adelaide
Ms. Mabel Lochowiak, Coober Pedy
Ms. Lynette Crocker, Kaurna
Mr. Rex Angie, Point Pearce/Goreta
Ms. Gwen Owens, South East, Ngarrindjeri
Ms. Max Rankine, Raukkan
Mr. Richard Abdulla, Gerard
Mr. Henry Croft, Whyalla
Mr. Derek Newchurch, Adelaide
Ms. Lois Agius, Executive Assistant

**ATSIC Representatives**
Mr. Brian Butler, ATSIC Zone Commissioner
Mr. Ribgna Green, ATSIC Project Officer, SA NT Steering Committee
Mr. Brian Butler, the ATSIC Zone Commissioner, made an address to the NTMCs, and indicated that he was attending to observe the proceedings. Mr. Malcolm Davies also indicated that he and members of the ALRM Council were in attendance as observers.

The traditional owners who welcomed the gathering to their country indicated that they had the funeral of a local claimant to consider which was sorry business for them. The EO of the NTU acknowledged the significance of this for local claimants and asked them for direction as to whether the meeting should continue. Local claimants deliberated about this matter, and then indicated that they thought that the Congress meeting should proceed. Later in the meeting again it was significant to ask whether the meeting should proceed due to the sudden serious illness of an NTMC representative. The meeting sought direction from the appropriate NTMC representatives as to whether it was possible in the circumstances for the meeting to continue. After giving this careful thought, they indicated that it was appropriate for the meeting to continue.

Mr. Agius, the EO of the NTU, opened the proceedings with a report on actions from Congress #2. He indicated that as per the motion accepted at Congress #2, a Lobby Group, which would be a Sub Committee of the South Australian Native Title Steering Committee, had been established with two representatives from each NTMC, and would shortly be making representations to try and have the proposed native title legislation presently before the SA Parliament stopped. Three papers from the South Australian Native Title Steering Committee were distributed at Congress #3 which gave information about native title in South Australia which could be affected by the legislation, a letter from the Steering Committee to the Attorney-General, and a copy of a Submission to the Attorney-General both dated 21 September 2000.

2.4.8.1 Protocol About Attendance at Meetings

Concern was raised by NTMC representatives about the number of people present at the meeting who were not NTMC members. NTMC’s asked for clarification about the reason or the need for ALRM Council members to attend, and who had given them permission. At Congress #1, there had been some discussion as to whether a representative from the Council should attend Congress meetings, given that ALRM was the constituted Representative Body of native title claimants, but there had been insufficient support to warrant this being formalised, and the NTU, the body within ALRM which fulfilled the native title functions, had continued their role as sole facilitators of the Congress meetings and maintained the process. The EO of the NTU did not offer explanations on behalf of ALRM Council members as to why they were present, which might have reflected ongoing tensions about protocol between ALRM and NTU. In keeping with the process of promoting NTMCs to take responsibility for the Congresses as their own forum for deliberation and decision-making, the onus was on NTMCs to ask Council directly for explanation.

2.4.8.2 Control of the Budget for Congress Meetings

The issue of why Council members were in attendance in part related to the fact that ALRM held the funds that the NTU used for the meetings with NTMCs. The Council had been formally informed, following Congress #1 that the NTU was seeking to resolve a funding issue that had arisen at that meeting. It concerned the issue of seeking financial support to cover NTMCs’ expenses when attending meetings. When NTU had originally submitted their expenditure budget for the consultative process to the ILUA Negotiation Team of the Attorney-General’s Department, no provision had been made for out of pocket expenses or sitting fees or any other form of expenses. After Congress #1, the NTU had wanted to respond to NTMC’s dissatisfaction with that arrangement, and indicated they were seeking an amendment to the provisions of the budget so that an incidentals allowance fee could be paid. As ALRM, rather than its Native Title Unit, was actually the constituted Representative Body, it was ALRM that could formally hold the allocated funds on behalf of the NTU for carrying out this process. Therefore, any amendment to the way ALRM distributed budgeted funds would have to be authorised by the ILUA Negotiation
Team. Thus, ALRM Council members made the decision to attend Congress # 2 and consult with the ILUA Negotiation Team who were to be present at that meeting. Five ALRM Council members had been present at Congress # 2 and gained authorisation from Mr. Andrew Secker for one-off payments of $50 per day to be paid to each NTMC representative attending that meeting, and additionally, they sought and were given authorisation for a payment of $100 for each ALRM Council member in attendance.

2.4.8.3 Issue of ALRM Council Making Direct Representations to ILUA Negotiation Team

Protocol issues which related to these complex funding arrangements were further complicated when, prior to Congress # 3, ALRM made two direct representations to the ILUA Negotiation Team seeking further amendment to the budget so that payments could be made for attendances at Congress # 3. Fifteen Council members had decided to attend Congress # 3, and when NTMCs questioned the need for so many ALRM people to be present at a meeting, which was specifically for NTMCs, the Chair of ALRM indicated that the Council had been working to secure funds from the budget which could be paid to NTMCs at the current meeting. The NTMCs felt frustrated because the complexity of these funding arrangements, and the way they were being addressed, had implications for diminishing their sense of ‘ownership’ of the process. There was a strong sense amongst NTMCs that their role and their responsibilities were community-driven, and their accountability was to a process that allowed communities to be involved in decision-making. The consequent discussions with ALRM Council about these matters took place on both Day 1 and Day 2 of Congress # 3. NTMCs discussed the issues primarily through in camera sessions. On Day 2, it was reiterated that the questions NTMCs were raising were more for the sake of transparency rather than to draw conclusions about the motives of ALRM Council members. Two motions arose from these discussions as follows:

“This Congress meeting at Coober Pedy on 6 October 2000 requests a full financial report on expenditure related to all ILUA activities to date, including activities of ALRM Council Members prior to the next full NTMC Congress meeting.”

“The ALRM Council does not in any way represent the Native Title Management Committees or any other group in their discussions with the Government about native title or ILUA matters. All negotiations are to be done through Congress.”

2.4.8.4 Decision-Making About Funding and Issues of Fairness and Equity

The outcome of ALRM Council’s discussions with Mr. Secker prior to Congress # 3 was that together they agreed that a payment of $150 a day would be paid to Council members, and a lump sum payment of $500 was to be paid to the Chair of each NTMC for distribution amongst all of its members. The NTMCs sought clarification from ALRM as to how these decisions had been reached. They were not satisfied with the initial brief answers they received, and in fact indicated that they felt the short, defensive responses were disrespectful to claimants, and asked for further clarification. The main focus of concern by NTMCs did not appear to relate to the amounts of money involved, but a concern that ALRM Council did not understand the process, and had only a limited vision of the opportunities the process afforded claimants. Entailed in their original raising of the issue of attendance payments were issues and principles of recognition and equity in the process as well as practical considerations. Discussion focused more specifically on the need to clarify the procedural issue of who had the right to make decisions about how the budget allocation was to be spent. They were concerned that ALRM’s statutory duty as the Representative Body was to manage funds for the process, and that this should not be confused with the fact that the budgeted funds were specifically to be used to provide support and services so that NTMCs themselves could as far as possible control and manage the decision-making process in an open and transparent forum. The matter of how the attendance payments were to
be distributed had been decided in advance of the meeting, without consultation with the NTMCs, by either ALRM or the ILUA Negotiation Team, to ascertain whether this was the claimants’ preferred choice. The procedure had not allowed claimants opportunity to carefully and jointly consider issues of equity, fairness and practicality. This was a serious consideration, given that NTMC representation at meetings was uneven, and the method of distribution of the money placed an unprecedented responsibility on just one person in each NTMC. The process was not necessarily transparent, nor did it accord with the protocols laid down by the NTMCs.

2.4.8.5 Preparing for Attorney-General’s Attendance

Prior to the visit of Mr. Trevor Griffin, the Attorney-General, Mr. Agius asked the NTMCs to consider how they would organise in order that as wide a range of questions from different people could be put forward within the time of the visit. As each person in turn offered suggested questions, they were typed up in a way that allowed them to be simultaneously displayed on an overhead projector. What developed was an extensive set of questions for the Attorney-General. It was agreed that, having got a good cross-section of questions from many NTMCs, Mr. Agius would ask each question in turn of the Attorney-General from this list. However, the prepared questions became secondary to a NTMC wanting to put questions directly, prompted as much by strong feelings rather than by the protocol formerly agreed to. Mr. Agius did not get a clear indication from the meeting as to which approach NTMCs wanted to follow, and the original set of questions was overtaken by questions put to the Attorney-General from the meeting directly. This meant that questions from many representatives went unanswered. There was not the confidence in the circumstances to steer the process back to the practice that had originally been devised to be fairest for everyone.

2.4.8.6 Questions to the Attorney-General about Negotiations

On the second day of Congress #3, Mr. Agius welcomed Mr. Trevor Griffin, the Attorney-General of South Australia when he attended and addressed the meeting. Following his speech, he made himself available to answer questions from NTMC representatives.

The Attorney-General, in answer to questions as to what the Government was prepared to offer in the negotiations with claimant groups, indicated that it was as much to do with the Government developing a good understanding of what claimants themselves really wanted from their native title claims. The negotiation process was being established in order that the Government could make offers in terms of mining, farming, joint management of national parks and so on. Native title claimants raised issues about their connection to land and their custodianship of land. They were looking for good faith from the Government through regaining ownership of some land. Mr. Griffin said that he had to uphold the law and could not turn back the clock and alter prior practices, however, a response from a claimant was that while it was understood that that was not possible, Aboriginal people were concerned to at least ensure that the road ahead would not look the same as the road Aboriginal people had had to travel since colonisation.

Mr. Griffin indicated that the negotiation process would allow a better flexibility to deal with matters that concern different native title claims, and that dealing with some native title matters at a statewide level promised a more consistent approach so that the way each group’s concerns were dealt with avoided the creation of division amongst communities.

Another claimant indicated that the discussion about native title could not be restricted to legal argument. It incorporated reconciliation and principles of justice and equity. People were looking for moral solutions as well as legal solutions because the law does not deal with feelings. Unity is about mutual respect for who we are and where we are coming from and where we are going.
2.4.8.7 Questions to the Attorney-General about Legislation

In response to a question as to whether the Attorney-General was prepared to stop the bill going through Parliament, Mr. Griffin reiterated that the bill had been in Parliament for about two years, and that, as he had previously said, if there was some alternative proposition he would be prepared to listen to it. He referred to the correspondence with the Native Title Steering Committee, and that he was currently considering this. He indicated that the bill would not be finished until he had had an opportunity to respond. He also indicated that he was prepared to consider a compromise. In response to a further question asking why the bill was still going through Parliament, the Attorney-General was adamant that the land covered by the bill in the Parliament did not include the land that would be the subject of the ILUA consultations. However, he indicated that the legislation before Parliament would only deal with current leases, and would not now also deal with historical leases.

2.4.8.8 How Other Indigenous Groups were Organising Self-Determination

Dr. Howitt made a brief presentation explaining how indigenous people have organised in other parts of the world for self-government. He said none of these ways were perfect, and that Aboriginal people in South Australia would have to work out their own preferred way. He cited examples from the United States where First Nations have tribal governments, some with the right to make their own laws, such as on a Navaho reservation. The Saami people, the indigenous people who live in the northern regions of Norway, Finland and Sweden each have a Saami Parliament. In Canada, there were both historical and modern treaties that give First Nations self-government within the Canadian constitution. There were different arrangements in different areas, which included comprehensive claim settlements, joint management arrangements and self-government. Some land had been returned, while in other cases there were compensation settlements and rights to resources. In New Zealand the 1840 Treaty of Waitangi was reformed in 1975 and in 1985 by the New Zealand Parliament. There are Maori seats in the New Zealand Parliament and some Maori tribes had secured substantial agreements about compensation, return of property and independence.

2.4.8.9 Considerations Before Deciding Whether to Negotiate

Mr. Parry Agius opened the discussion on the final day of Congress #3 by outlining the choice that was before the NTMCs. If NTMCs decided to say NO then the matter would be at an end. If they decide to say YES, he indicated that it would only be a decision in principle toward negotiation. There would be other steps between now and the negotiations.

Given the significance and the weight of these decisions, NTU’s senior TAG lawyer Mr. Andrew Collett, offered the NTMCs some assurances that might alleviate fears. He put forward some ideas based on his personal and professional assessment of the choices before them. The points he made were:

- There would be plenty of opportunities for people to decide further about the process, and that saying yes in principle did not mean going straight to the Attorney-General with a decision.
- Claimants had nothing to lose by saying yes to the negotiations. If claimants were successful in negotiating and reaching an agreement with the Government, it could produce statewide settlements that combined law reform plus indigenous land use agreements.
- A settlement could be achieved more quickly than going through the Courts. It might take one and a half years but through the Courts it would take between five and seven years.
- Negotiated settlements would be cheaper, and claimants needed to consider the issue that claims through the Courts have to be funded. ALRM does not have money to fund all cases, and claim groups may have to find the money to go to Court. The Government and the
miners also have more money to put into Court cases against native title claims, whereas with negotiations, the Government would actually fund the process and it would cost claimants little or nothing.

- Through this process claimants would actually have the matter settled, and that was worth quite a lot in its own right. People can get anxious when matters aren’t settled, considering whether they would get the same result through a court case as they might through a settlement. The advantage of having a settlement is that you have got it and you can get on with your life. If claimants get a settlement in eighteen months’ time, it means everyone can get on with enjoying native title rights whereas it could be five or ten years before cases would be settled in Court.

- Everybody would have the rights that had been agreed to. He asked claimants to compare this way of having rights with rights they might have if their case went to Court. Some would win and some would lose and those who lost would get no rights.

- Full participation of all the native title claimants would be a very exciting way to try to resolve native title. If claimants can negotiate successfully everybody gets the benefit and claimants may create a very strong Aboriginal group in the process. Everyone will have got something very important for everyone else.

- Claimants would have a settlement forever. Even if circumstances changed, claimants would still have control over how any changes might happen.

- If claimants were negotiating with the Government and could not reach agreement for some reason, such as the Government wanting to extinguish native title, claimants would still have the option to stop negotiating. In these circumstances, claimants would not have lost anything because they could still have their case in Court. There is no penalty for going into the negotiations.

- Even if claimants have to go back to Court, they would still have gained some very important knowledge about native title through having been involved in negotiations. Many terms are very difficult to understand. Just by being involved claimants would get opportunities to talk with each other about native title and gain more understanding. Even if the negotiations did not succeed, there could be opportunities for claimants to develop strong relationships between each other.

- If claimants negotiate the agreement themselves, judges would not be making the decisions for them. It would be an agreement that claimants themselves would have contributed to, and it would also be agreed to and signed by every member of the Cabinet.

Mr. Agius then addressed a concern from a NTMC representative. The concern was that the Cabinet might then be able to override the decisions. Mr. Agius gave a reassurance that the negotiations would be devised so that the Government could not override the agreement. It could be put into state legislation. It was an advantage of the negotiation process that claimants would be able to control those arrangements as the negotiations proceeded.

### 2.4.8.10 Deciding Whether to Develop a United Voice and Negotiate About Native Title

Mr. Agius then put to the NTMCs that if they said YES for a united voice the process would move into an interim stage in which the NTMCs would select representatives to create a working group, to work for the next twelve months on issues such as representation, organisation, structure and budget, relationships and protocols between different Aboriginal organisations. They would also begin work to create a log of claims.

The NTMCs broke into their own groups to consider their answers to four questions:

- whether or not to have a united voice, and the group’s reasons for their decision
- whether each group agreed to the interim plan, and if so, the names of two representatives to be appointed to the working group, plus two proxies. It was stressed that each group would
have to agree that the working group was not authorised to make significant decisions; it would report its recommendations for decision by Congress

- whether to call the process the South Australian Settlement Agreement or something else
- what the role of the Native Title Unit would be in this process.

It was clarified that these decisions were not about the formulation of a council or some other body representing the united voice; they were decisions to do with continuing with the current process.

Of the eighteen NTMCs represented at the meeting, all but two groups agreed at the meeting to negotiate toward agreement on native title on a statewide level. The other two groups indicated that they needed to discuss matters further and would advise the NTU of their decision. All the groups who had agreed to negotiate nominated Working Group representatives and proxies, which would meet with staff of NTU and Secretariat as well as with the TAG to give consideration to immediate and pressing budget and planning issues prior to taking them to the next Congress meeting. There was no general agreement about the name that would be finally adopted for the process. Six preferred SA Settlement Agreement, two preferred ILUA, another suggested SA Indigenous Native Title Settlement ‘SAINTS’ while others did not nominate a choice. This was in part a reflection that the NTMCs were less concerned with the outward appearance and name of the organisation, and more focused on the purposes it could serve and the processes it would use as a way of effectively dealing with their issues, and producing meaningful outcomes.

2.4.9 Outcomes of Congress # 3

2.4.9.1 Feedback from NTMCs from Congress # 3

The following are evaluation responses given by NTMC representatives at the end of Congress # 3. From the 24 feedback forms filled out at Congress # 3, 22 indicated that the meeting had given them useful information, 20 indicated that the organisation of the meeting had given them a chance to be prepared and heard, 11 that there was room for meetings to be improved in terms of timing and keeping to an agenda, and 4 that the accommodation and travel arrangements had shortcomings. In addition, there were 2 suggestions that, within the time frame of the statewide meetings, a social activity be arranged so that claimants could take a break from the formality of the sessions, and relax and enjoy some time together.

Useful Information from the Meeting

- Good progress
- Without the great help from ALRM and NTU this would not have happened
- Information dissemination excellent.
- The information gathered from the NTU and other claimant groups is invaluable
- Each meeting has provided information that has increased knowledge of the native title issues and the ILUA process.
- The information was useful but there is a lot of backtracking to Congress 1 & 2
- Some issues re ALRM could have been dealt with by a small delegation instead of using knives.
- Let’s go with the ‘Saints’ - Statewide ILUA Native Title Settlement!
- The only thing is that we’re talking over things for too long instead of talking about the reason why we met in the first place.
- True, but could have been more.
- Slow start but strong finish.
- Meeting very helpful, particularly information spoken by all committee spokespeople.
- Should stick to agenda items as much as possible.
- Meeting was good but got off track a couple of times, but very good.
− You’re never too old to learn.
− Impressed with ALRM’s response to financial display but not attitudes.
− Meeting other group members always teaches me.
− Most informative.

**Organisation of the Meeting**

− I spoke briefly to put message across for my people correctly, was heard, which I enjoyed.
− Due to high number of people at meetings, it’s very hard for everyone to be heard.
− It was good to hear all the other comments from the other groups and to come together again.
− What happened to working in our groups? This is a really useful way to operate.
− Information not received early enough to read, and reflect on to make input into the debate.
− The organisation of this meeting gave every Management Committee a good full chance to explain their questions and matters.
− People need to address what’s on the agenda, not talk around.
− Congress gave me an opportunity to be heard but not enough time to prepare for the meeting with time to read papers, etc.
− Papers for meeting are presented during the meeting, therefore limiting your abilities to respond appropriately. In addition as with all meetings, those with the strongest loudest personalities control. Time frames need to be enforced.
− Great opportunity for people to be heard, and to write.
− The process used gave me a chance to be heard.
− The organisation has done a very good job.
− There was some straying away from talking about the main issues but lost time was made up and on the whole, this was a successful, progressive, well managed meeting.
− Could have been longer process and more exact information.
− All issues raised which are not an agenda item should be set aside until 4-4.30 pm whereby those interested can stay behind to work on the issues.
− Through this process, the opportunity to listen, learn and participate has enriched the understanding of hard issues of significance to many groups. Thank you.
− Less politics, more business. Must continue these meetings if we are to be heard in this state.

**Most Useful Parts of the Meeting**

− In a formal sense, whitefellow way, could have been more structured, but black fellow way you done a bloody good job.
− Someone in charge of arrivals and departures.
− Provide opportunity for groups to add to the agenda and encourage ownership of the process. Answer questions, concerns, when raised. Timeframe for speakers to be improved to ensure whole of Congress is provided with opportunity.
− Sticking to time lines. If start time is 9.00 am start at 9.00 am. If people want information, they will be there on time. The breaks at the appropriate time, eg. morning tea, lunch and afternoon tea stops the day being too long for elderly and diabetics.
− An entertainment night - singalong
− Mid-day meals and afternoon tea on time because of diabetic and elderly people.
− Time limit on different questions, and decisions made promptly
− Better preparation of management committee and community about ILUA understanding.
− Still need to have accommodation and meals organised properly and incidental allowance for claimants.
− With integrity and honesty.
− With the organisation, management committee members and all that are involved coming to true, honest, helpful agreements for the future, for improvements.
− Please organise accommodation to allow allocation of rooms more efficiently.
Meeting within groups - time framework, start on time - other issues after main agenda - time frame for speakers.
− By separating agendas, personal from important land issues.
− Should be held over four days with a break in between.
− Food needed some better quality. Greek people (caterers) were very nice people.
− Separate personal agendas from really important issues like land.

Other Comments
− Continue sitting fees
− Thank you for inviting me along to this meeting. Please keep communication going well for I had a hard time that two day meeting. This is why I was not able to attend Harndorf. Need sitting fees.
− Next meeting held in Ceduna with a trip to the whales or a day out fishing, charter boat, etc., a wombat/fish barbecue tea.
− Thanks to all the workers who helped to get this meeting up and running.
− NTMCs are main participants, observers are only here as that, and not to make statements.
− Advise participants about transport in time. Post cab charges early. It is difficult not knowing what is happening one day before departure. We also have to plan for our departure
− We still need to respect the Elders and obey their requests when in their area/land.
− Community education about ILUA, opportunity for reporting back to community.
− All Aboriginal people should work together or stay home and don't go anywhere.
− People who have reservations about supporting ILUA are only frightened to be accountable to their own people because of individual greed and selfishness.
− Empathy, commitment, cultural protocol and a willingness to work hard. Be careful of being seen as a government instrument, maintain the cultural protocols.
− Well done at Coober Pedy.

2.4.9.2 Media Release following Congress # 3
On Wednesday, 11 October, 2000, at the end of Congress # 3, a joint media release was made by the Attorney-General, Mr. Trevor Griffin, and Mr. Parry Agius, EO of the Native Title Unit of ALRM. It outlined the historic significance of the decision by the NTMCs to go forward as a united voice with a process to negotiate native title on a statewide basis. This was described as a major step forward.

2.4.9.3 Follow Up to NTMCs After Congress # 3
A Meeting Report and video newsletter was mailed to all NTMC members.

2.4.9.4 Further stages in the process
Further stages in the preparations for statewide native title negotiations are not covered by this independent review. However, planning had begun toward organising a subsequent meeting of the Working Group that was established by Congress # 3 to work on the structure for the United Voice, and a further Congress meeting in early December 2000 to consider the Working Group's recommendations.
3. PROCESS PERCEPTIONS BY THE NTU, THE SECRETARIAT AND THE TAG

This independent review was undertaken as the process developed. Due to a number of practical constraints, including the need to re-schedule the program, and the unavailability of office equipment in the Secretariat office, the actual review process did not commence until mid-August. The reviewer therefore had to catch up with preceding events as well as report about ongoing developments. Many of the stresses which impacted on the NTU team, including tight time frames and limited office equipment, similarly impacted on the reviewing process.

These constraints particularly limited opportunities to closely monitor and appreciate the day to day work activities that were being undertaken through the Secretariat, and the evolving understanding of requirements within the Secretariat to support the process. Evaluation of these perspectives are significant in order to appreciate that the process was dynamic and did not ‘just happen’. To acknowledge more fully the range of issues that were being dealt with by the Secretariat and the TAG team, this chapter of the Report presents a general review of a range of process issues that the Secretariat and the TAG have been attending to. It incorporates their perceptions and evaluations of the process, obtained from personnel and consultants through focus group discussions. They were conducted following the third Congress meeting in October.

The chapter offers a means for incorporating into the Report a range of short-term and longer-term development and planning ideas and concepts that have been significant in driving and supporting the immediate process, and putting in place preparations for the process to proceed to further stages.

3.1 PERCEPTIONS OF THE PURPOSE OF THE PROCESS

The following summarises how some of those involved in the process have interpreted its purpose:

To institute a process to deal with changing relationships that arise from:
- a historical legacy whereby Aboriginal rights went unrecognised
- a legal recognition of native title
- a recognition that native title is a right which has to be put into practice
- state government’s consideration of an alternative to court-based determinations ie., to recognise and incorporate native title through an Indigenous Land Use Agreement to achieve better outcomes for everyone in the state
- government proposal to negotiate native title at a statewide level
- recognition that the scale of the state is not the scale at which native title rights are defined and put into practice by native title claimants
- developing a process to ask claimants through the NTMC of each claim group, the scale at which native title has meaning, whether they could create a decision-making group to negotiate about native title at the scale of the state.

Claimants were not comfortable with the offered models, which would have only a small number of people directly involved in the negotiations. During the process a secondary purpose developed:
- to bring all the NTMCs together so they could deliberate together about the negotiations proposal and develop a concept of how the statewide negotiations could address some native title concerns in all their claims.
- to clarify what knowledge, resources, skills, and other requirements would be necessary in order for native title claimants to realise an improved relationship with other people in South Australia, and have the capacity to practically, meaningfully and fairly participate in
Uniting the Voices: Process Perceptions

negotiations to resolve native title issues both at the local level of each individual claim and at the statewide level

- to mature the organisational capacity and a spirit of unity amongst native title claimants in a way which recognises and upholds traditional Aboriginal identity and sense of belonging and simultaneously supports Aboriginal people to develop an unprecedented united body for the mutual benefit of claimants throughout the state.
- to facilitate planning toward the creation of a united body of claimants, with one primary function being to organise how native title claimants could participate in the negotiated decision-making processes with the state government and other stakeholders to formulate an ILUA, and for the appointed negotiating team to be directly accountable through that body to all claimants
- to ask all NTMCs to ultimately decide whether they would be prepared to take part in the negotiations.

3.2 What Has Been Accomplished

3.2.1 Decision to Accept the Government’s Proposal and Formalise a United Body

By the end of November, the NTU aim to develop through the Working Group a reasonably coherent set of propositions about some issues identified at Congress #3. These concern a representative structural organisation, a working party, clearer statements about NTMCs’ priorities and concerns, a preliminary log of claims, and a budget. A Progress Report will be presented to NTMCs at Congress #4 in order to have some form of the recommendations formally adopted. Therefore, by early December at Congress #4, NTMCs would be in a position to decide whether to formally constitute a united body. It is anticipated that while there could be clearer ideas about an organisational structure, there is unlikely to be a schedule until at least March 2001. A priority will be to undertake a round of local meetings to work through ideas about preferred mechanisms and procedures relating to the organisation, as well as allowing people opportunity to talk about substantive issues that they need to have addressed.

3.2.2 Budget Submission

The budget will be submitted to the Attorney-General and the ILUA Negotiation Team in November on the basis of it having been approved by the NTMC Working Group, after which time there will be more specific information as to how the Government will make the resources available. It is anticipated that at this time all parties concerned with the proposal will have a better idea about the level of commitment that can be expected from the State Government for the establishment of a united body of NTMCs.

3.2.3 Current Budget as a Guide For Budget Formulation

The TAG team considered that the Government was responsive to the budget that NTU submitted for the current process, and has been able to see a substantial return for their financial support for the process. The process as it developed increased the Government’s own understanding about how funds were used in the current process, and therefore what the requirement is likely to be for the next stage. The head of the ILUA Negotiation Team at least is an advocate for a realistic but not necessarily a generous budget that can be justified when it requires approval from Cabinet. There is a better understanding about what could be required to
prepare for and run Congress meetings, and what will be needed by way of supporting infrastructure and staffing in order that each person is able to fulfil their role effectively. It is meaningful not just to NTU but also to the Government that the Secretariat has a full complement of staff able to fulfil their roles effectively. It is now seen that having an initial budget which covered only a six month period was a significant advantage, insofar as it provided much clearer indications of what would be required for the longer-term budgeting and planning requirements.

3.2.4 Clarifying the Secretariat as a Separate Entity

At the completion of this stage of the process, NTU can now recognise far more precisely what is required to maintain and develop the Secretariat, both in practical terms, and in terms of a sense of purpose. The process has achieved an articulation and a strengthening of a sense of unity and common understanding about mutually shared issues between NTMCs themselves, and an appreciation of this by the staff of the Secretariat. At the time of the initial budget, it was not possible to do more than speculate what was required. Throughout the process, the NTU has reassessed and responded to the actual workload requirements, and new positions have been created when necessary. It became increasingly evident throughout the process that the services of the NTU and the Secretariat could not always be effectively or efficiently shared. While it was possible to co-opt NTU Support Officers to coordinate and assist with the running of meetings, the sharing arrangement did not take account of the level of support required in the Secretariat to cope with the workload between meetings, and this was resolved by taking on additional ASOs.

3.2.5 Relationship Between NTU and Secretariat

When the first budget was formulated for this first stage of the process, there was a distinct separation between the function of the NTU and the Secretariat. Now the administrative function of NTU is seen to be part of the statewide negotiations process. At the completion of this stage, there is a clearer understanding about these different functions within the NTU, one function concerned with general native title claims work and the other concerned with the Secretariat and support for the statewide negotiations process. While there will be a continuing interaction between them, they will still at this time need to be appreciated as separate processes by claimants, personnel and other involved parties. As the Secretariat has evolved, there have been changing and clearer perceptions of relationships between each other’s functions, and how they are relevant to each other. The NTU staff concerned with individual native title claims are aware that some of their claimants’ native title issues may increasingly be addressed in future through the Secretariat. As there are likely to be more interactions and crossovers in administrative matters, there are also likely to be similar parallel interactions on the ground at claims level. The other significant difference between the NTU and the Secretariat is that they operate on quite separate budgets, the NTU claims work through ATSIC and the Secretariat at present entirely through the SA Government. This has contributed to a positive perception of a joint Commonwealth/State funding arrangement, which promises to continue if the SA Government is willing to continue supporting and funding the statewide negotiations process. The next budget will have to cover a management system that can appropriately attend to the allocation of Secretariat/NTU tasks and crossovers accordingly.

3.2.6 Effective Communications System for NTMCs

A communications program has been created to keep NTMCs and claimant groups informed of developments to do with the statewide negotiations process through newsletters, radio programs, and other types of media and communications systems. In turn, there is an increasing appreciation of the facilities that NTMCs want and need. The Secretariat is better able to identify what processes, supports and networks are needed in order to get information about the developments out to communities. This will be crucial for further promoting a sense of
‘ownership’ of the process by claimants. These communications systems have been important in order to increase claimants’ understandings about the implications of the decision taken at Congress # 3, to create a united voice through which to negotiate about native title with the SA Government. Maintaining these communication links will help to clearly spell out why the decision was taken by the NTMCs to accept the proposal.

3.2.7 Planning the Development of Telecommunications Networks Amongst NTMCs

One of the most important and pressing aspects of the budgeting and planning exercise will be to draw on the understandings developed during the present process in order to evaluate more precisely how and when the NTMCs could develop a communications network between each other and with the Secretariat. While it will be difficult to estimate the costs accurately in advance, the present process has demonstrated how crucial the communications network will be in order that the formulation of the united body can be practically worked through. However, there is likely to be a transitional period between developing the budget and actually having the funds to implement this network. In the meantime, the Secretariat has started looking to find the skills for setting up an effective communications network, to take account of the diverse considerations, such as geography and lifestyle that will need to be covered. A great deal of consideration will need to go into designing a system which can best serve the specific requirements of different NTMCs. This will require particular knowledge about setting up a communications systems specifically for Aboriginal community communications, and monitoring to ensure that the systems are evenly allocated and appropriate across a range of communities. Planning will therefore have to take account of present levels of skills, access to computers and e-mail links, etc. It is likely that for the foreseeable future the main focus will be on telephone and fax systems specifically programmed to ensure that the systems are not open to abuse. For instance, there will be consideration about units that can receive but cannot call out, or can send only to predetermined numbers such as the Secretariat or other freephone numbers. They might also consider broadcasting facilities so that faxes can be sent to a group of people on a network. A further consideration in the budget will be the costs of both hardware and ongoing costs associated with communications systems.

3.2.8 Promoting the Social Dimension of the United Voice

What has also been achieved is an increasingly shared sense that the process could be beneficial to many people in a range of ways, and a tentative schedule has been initiated to try and bring prospective participants in the negotiations together socially as well as to deliberate about more formal aspects. Every facet of these interactions is likely to break the social conditioning that has constrained Aboriginal people from becoming progressive, proactive and innovative. While taking an immense responsibility for their own affairs at the state level, they will also be better placed to protect and promote their recognised and established decision-making processes within their own claims with confidence, drawing on a sense of achievement as they move from no voice to a united voice at a significant level within the state which offers positive future interactions, both within and beyond their claimant groups.

3.2.9 Cohesiveness of the Process

The process has allowed an increasing appreciation of how, together, the Secretariat and the NTMCs are integrating the relationships between structure, process and communications issues. In both the Secretariat and in the Congresses there has been a strengthening of the links between these areas, which have all helped to achieve a tentative credibility for the process and sense of ownership by the claimants. These are seen as the fundamental support areas that will
assist claimants to consider and deal with their substantive issues. What was formerly just an abstract organisational concept with the name ‘Secretariat’ attached has become a reality, and this parallels with similar organisational developments taking place as the NTMCs begin to conceive of and shape a formal united body. At this stage, claimants are still considering whether it is appropriate for their united body to be a land council, or how their body will be structured. They are many factors to take into consideration, weighing up possibilities for funding against issues of autonomy and independence.

3.3 PROCESS MATTERS STILL NEEDING TO BE FULFILLED

3.3.1 Significant Key Understandings for NTMCs About the Government Proposal

3.3.1.1 Training

Prior to the pilot sessions, there was, to some extent, an assumption that NTMCs would find it relatively straightforward to take the decision to negotiate with the Government, and this was reflected in the planning strategy to introduce basic negotiations training within this stage of the process. After the pilots, however, there was a realisation that people were in fact a long way from making their decision, or at least, that they had serious reservations about making a decision in case it was not the ‘right’ decision. It was in part an issue of facing the unknown, both as NTMCs and as Aboriginal people. Training would not necessarily provide a sense of power, of unity, of protection, a sense of strength in numbers, or a sense of confidence, all of which would underpin plans for moving forward. It was not, therefore, training that NTMCs needed, but information about the issues, opportunities to jointly consolidate their ideas about the fundamental concepts, and a facilitation process in order to make their own decisions. It was conceded that people were not ready to proceed to a training phase to develop skills as to how negotiations would work, and this was postponed.

The process was a learning exercise then in two ways. Not only would NTMCs need appropriate information and opportunity in order to make an informed decision, but also the NTU and the TAG were realising the relevant adjustments they would have to make to their scheduling and strategies, and to do this they had to review the fundamental concepts that they themselves were applying to the process. NTMCs needed to be involved with each other to progress the process, and for the NTU and TAG to take their lead from what claimants had to say. Instead of going forward with the original strategy for rolling regional meetings with NTMCs one after the other, the plan developed to bring people together so that they could hear what one another had to say and make their decision together. Because of the size of these meetings, and the complexity of the issues, the NTMCs would need to meet at least three times. This was a fundamental shift in both concept and strategy necessitated through feedback from the pilot sessions.

Claimants will be looking to the TAG and the Secretariat in the next stages of the process in order to be prepared for negotiations, particularly given that there is little by way of precedent to draw from to fully conceptualise what these new circumstances might be like. Even the most basic training about negotiations was postponed in order to allow claimants to deal with more fundamental organisational and representational issues. There will need to be a training component to develop managerial roles and more specific training in negotiations, team-building and representational skills. Provisioning of training was originally envisaged as a three-step process between the wider group of NTMCs, a Reference Group and a negotiating team. It is likely that claimants might now consider a two-step process between the wider group of NTMCs
and an executive group, but whatever structure Congress decides to adopt for the negotiations process, it is anticipated that training could be for the executive group and for NTMCs on an individual basis.

3.3.1.2 Expectations About Support from the Secretariat

There is a developing understanding by NTMCs that the services offered through the Secretariat and the TAG will be maintained and will be striving to be a fundamental improvement in services previously available to claimants concerning their native title issues. At every opportunity, NTMCs have been directly encouraged to make more use of the services that are available through the Secretariat.

3.3.1.3 Fundamental Issues Concerning Native Title Rights

Claimants, and many other people as well, are still uncertain about definitions of native title, and how native title can be put into practice. Claimants want to know more about how their rights to native title will be upheld through a NNTT and Federal Court process, or through a negotiations process, and what has generated the idea of negotiating with the SA Government. They also want clarity about how the De Rose Hill court case or the SA legislation relating to native title could impact on their rights, how they can achieve both land rights and native title rights, what they can do when there are breaches of the Native Title Act, what they can do about misinformation concerning native title, how the processes for determining native title work, and for practical purposes, how they can improve processes for making local agreements. In each case claimants want information and clarity.

3.3.1.4 Clarification of Confusions

Claimants want clarity where there is presently confusion, on matters such as the difference between land rights and native title rights, how it is possible for native title to be extinguished, how lobbying against native title legislation relates to negotiating a statewide ILUA, what the implications are concerning the De Rose Hill Court case in connection with the statewide negotiations, how political processes, government systems and administrative systems can have advantages as well as disadvantages. Claimants need opportunities to have explanations offered, because confusions can create needless and unproductive worry and anxiety.

3.3.1.5 Benchmarking About Indigenous Peoples’ Settlements and Treaties

Claimants want understanding about what has been achieved elsewhere to improve cross-cultural relations, so they have reference points to help them evaluate what they might possibly achieve, and to help them develop their own benchmark standards against which to evaluate their own prospective agreements. Claimants require understandings so they can appreciate how they might achieve certain goals, and be better able to decide whether certain steps will lead toward the goals they want. As well, they will be looking for assurances about all the possible consequences that might follow from taking certain steps and making certain decisions.

3.3.1.6 Strategic Planning

Claimants want understanding where presently they do not feel they are fully informed about the motivations of other parties, and from these understandings to develop their assurance as to whether the negotiations process will be trustworthy, fair and just. They need to develop their understanding about the broader context so they can discern whether in the process individuals or groups have some hidden agenda which could threaten their capacity to participate in the negotiations or ultimately threaten their native title rights. They need to have guidance in order to discern whether what other people say is truthful, and whether what they say has relevance for
them as Aboriginal people. The process will be new to the NTMCs and they will need to simultaneously understand how Aboriginal way of doing things and non-Aboriginal way of doing things can both have relevance, and develop an awareness as to when each is appropriate. The Congress meetings have been invaluable for claimants to begin to have their way of seeing things, their perspective, given voice. The benefit of having opportunities to more clearly and meaningfully articulate their own position is that it also provides a confident and constructive foundation from which to more positively consider and articulate how other people are perceiving things. This will be particularly relevant for negotiating their values and interests in relation to other people’s values and interests, when they need to be considering each other’s ways of doing things.

3.3.1.7 Conceptualisation of the United Voice

Claimants want understanding about the broad implications of the creation of a united body of claimant groups, and how it could be significant for them. Claimants will be considering how it will be possible to tell if it is being formulated in a way which will produce the most meaningful and effective Aboriginal organisation, what purposes it will serve and whether it will retain the promised transparency, and significance in terms of Aboriginal culture and an Aboriginal sense of identity. Claimants will therefore need to have access to accurate, comprehensible and transparent information as to who has been involved in its formulation, what roles they have played in creating the united body, what their roles are likely to be in the future, and who else could have access to participate.

3.3.1.8 Research and Technical Support

The process has demonstrated that Aboriginal people already have a well-developed capacity for dealing together with their own issues, and that has been evidenced through the Congress meetings. However, when the NTMCs get to the point where they have to work through complex substantive and process issues in the negotiations, there will be a need for skills development in order to appreciate broader and more complex planning and strategic issues that will arise as an outcome of these new interactions. These are likely to be in areas such as land management, national parks management and mining exploration. NTMCs will need to be able to see the relevance and the breadth of activities of the technical support base, be able to contribute to planning about how the information it produces can be taken advantage of and disseminated, and contribute to the shaping of the technical support base. NTMCs will also need a comprehensive program relating to skills development in procedural issues to do with the negotiations.

3.3.1.9 Discerning the Relevance of Technical Advice

Claimants will need to develop understanding about when advice, both technical advice and strategic advice, is relevant and appropriate, when and how it will serve to support their own way of doing things and their own outcomes. It may be that the advice is relevant, even when it appears to relate to other people’s ways of appreciating things or doing things. A developing confidence will help claimants keep an open mind as to how all advice is relevant in the bigger picture, how to give priority to the relevance of different advice, and discern whether it is worth following, or whether it is likely to create confusion and dilemmas. Equally, claimants’ increasing confidence will also allow them to discern and articulate to others why advice they are being offered is either inappropriately framed in order to be relevant, or is otherwise inappropriate for a particular set of circumstances. Being able to engage meaningfully with prospective advisers about these issues will be a critical foundation for ensuring that claimants have confidence to relate to both Aboriginal and non-Aboriginal ways of doing things.
3.4 **CONSIDERING FUTURE NEEDS**

3.4.1 **NTU/Secretariat Supporting Claimants’ Preparations for Negotiations**

3.4.1.1 **Administration and Capacity Building**

- **Clarification of Accountability** It is a pressing need for issues of accountability to be formally discussed and clarified amongst the NTU, the Secretariat, the TAG and other people engaged on consultancies to clarify whether people clearly understand where their primary obligations lie.

- **Reporting Protocols** There is a need to have consistent, clear and current reporting procedures and protocols, and to ensure that these are made available to everyone involved in the process.

- **Continuity Role** There is a need to have a member of staff to deal with continuity, who can maintain an overall perspective on what is happening, rather than having a focus only on a range of substantive issues. That person could monitor, advise, assist and challenge on process and communication issues, and put forward ideas so that process issues maintain their relevance and maintain links and a sense of meaning between all substantive issues.

- **Regular Planning and Debriefing Meetings** Regular meetings will be essential for evaluation, planning and implementation of ideas and strategies.

- **Leadership** The NTU/Secretariat will need effective and consistent managerial and leadership skills to oversee the process. These will include project leadership, substantive leadership, logistical and administrative leadership, and broad-based planning leadership to determine short-term and long-term goals simultaneously.

- **Claimants’ Perception of the Usefulness of the Secretariat** There is a need to maintain the organisational capacity of the Secretariat so that claimants develop a continuing sense of the functions it can provide for them, and the range of services it would be prepared to make available in response to claimants’ needs. This would include research and information-sharing to increase claimants’ own sense of empowerment, and a consistent and effective communications and support network based within the Secretariat.

- **Claimants’ Perception of the Reliability of the Secretariat** There is a need to develop strategies so that undertakings are carried through appropriately, and to ensure that false expectations are not being set up that cannot be met. NTMCs will need to develop an assurance that they can rely on the process, and that all could be done is being done.

3.4.1.2 **Process Issues**

- **Liaison with Other Key Institutions Concerned with Native Title** There is a need to keep other key groups, such as the National Native Title Tribunal, informed as to whether the developing process will have a bearing on native title claims processes in the Federal Court. Court and other institutions may want to maintain a watching brief as the process develops. This could be a two-way process, with the courts and other institutions also evaluating and learning, an educative role to demonstrate how engagements between institutions may be possible despite what might otherwise have been assumed, and how this could in fact be more effective that relying on third parties to intervene and control processes.
• **Information to Claimant Communities** There is a need to keep communities informed and involved so that what is happening at community level retains its relevance to the process.

• **Ensuring Demands on Claimants Seem Relevant** There is a need to ensure that any demands placed on claimants in relation to the formulation of a united body or the statewide negotiations process are not perceived by claimants to be irrelevant to them, and merely another hollow ad hoc meaningless demand.

• **Other Stakeholders Appreciation of Claimants’ Needs** There is a need to convey to other participants in the negotiations what other demands may impact on claimants’ capacity to participate, such as other meetings, community tasks and obligations.

• **Building Relationships with Other Stakeholder Groups** There is a need to build relationships between stakeholder groups. Each group is investing in the process and therefore each will want to maintain good will as well as moving toward settlement of material outcomes. When, for instance, the process takes more time than anticipated, the process will need mechanisms to keep other stakeholders informed as to why developments may not appear to be happening appropriately. Providing good reasons can help to maintain good will even when things are happening at a slow pace.

• **Justifying Different Groups' Timing Requirements** There is a need to continue to increase other stakeholders’ understandings as to why this process may not be straightforward and swift, and be able to explain the complexities involved. Justifications of why the issues cannot be resolved through the usual ways that government find familiar have to be valid reasons, not excuses.

• **Developing Understanding As to What Makes Agreements Legitimate** There is a need to continue a process of increasing the understanding of other stakeholders as to what will actually make local agreements binding and authoritative.

• **Clarifying that Claimants Themselves are the Decision-Makers** There is a need to ensure that other stakeholders do not assume NTMCs themselves are the decision-making body rather than the claim group, and that clear protocols are established to ensure that the integrity of NTMCs as representatives of their claim group is not compromised in decision-making. Those involved will need to be able to clearly and openly give expression to a sense of being involved, a sense of whether or not they are being brought along in the process, a sense of whether they are being pushed too fast or inappropriately in a particular direction, and a sense of assurance that decision-making is happening in a mutually meaningful way for everyone in the learning and decision-making process.

• **Monitoring Programs and Strategies for Effectiveness** There is a need to monitor programs and strategies that have been initiated for skills development and capacity building to ensure that they are actually appropriate and are delivering the anticipated benefit.

• **Specifying Reasons for Supporting NTMCs with Resources** Claimants will need resources to participate, and, as importantly, there is also a need to demonstrate and be able to convey to others involved the specific reasons why practical support is necessary, particularly when it is necessary to ensure that claimants are not disadvantaged in their capacity to participate in negotiations as equals.

• **Addressing Impatience If Initial Developments are Slow** There is a need to be able to articulate to both claimants and other stakeholders that the creation of a united body may in fact mean that initially the negotiations do not happen as quickly as anticipated. There is a need to be able to clearly articulate that there are likely to be valid reasons to do with the
development of an unprecedented body which can ultimately bring about more effective resolutions.

3.4.1.3 Expertise, Skills and Research

- **‘Pilots’ for Statewide Benchmarking** There will be a need to consider how to alleviate conflicting or heavy demands on NTMCs through integrating a ‘pilot’ process into the statewide process with regard to pastoral leases, national parks and mining areas. The pilots could be benchmarking exercises for the statewide process. Careful thought would need to go into considering whether and how pilots could be useful benchmarks for different claim groups. They might be useful for demonstrating how particular sorts of NTMC tasks could be carried out in practice.

- **Pro-Active Benchmarking** There is a need for claimants and NTU to strategically review where appropriate benchmarking might be accessed, possibly with advice from NTU claim case managers, rather than waiting to merely respond to government or industry proposals in order to establish benchmarking. Benchmarking would have to be meaningful to claimants to avoid it becoming a superficial or confining exercise.

- **Program for Mutual Skills-Building Amongst Stakeholders** There will be a need for mutual skills building to address how NTMCs and other involved stakeholders will actually organise and participate in the negotiations. Generally accepted categories or conventions relating to negotiations may not encompass the requirements and needs of all parties.

3.4.2 NTMCs and Claimants’ Own Preparations for Negotiations

3.4.2.1 Administration and Capacity Building

- **Resourcing to Participate** There will be a need for each local NTMC to think about what resources might assist them and their entire group to participate. Planning will have to carefully consider resources which enable the greatest number of people to be involved in consultations amongst local groups, at different local levels, at regional levels and at the statewide level. In turn, there will be a need to monitor and ensure that the resources are actually enhancing people’s capacity at the local level, given that the entire process is founded on the basis of its workability and meaningfulness at local claim level.

- **Financial Resources for Travel and Related Costs** There is a need to have appropriate resources in order that NTMCs can attend meetings. As well as reimbursement of costs, NTMCs need to have payments in recognition of the significance of their attendance at meetings, and the responsibilities they undertake by attending.

- **Financial Resources for Local Capacity-Building** There is a need for resources to recognise that at the local claim level NTMCs are likely to also incur costs as part of their work at community level. They need access to resources that would give recognition to the additional work put in by NTMCs between meetings at community level.

- **Considering Implications of Optional Funding** There is a need to assess what implications it would have on the process if different funders become involved, weighing up the differences between different potential funding organisations, the merits or otherwise of their funding policies, etc. Claimants need to have at least some broad idea of how the process might alter if different funders became involved.
3.4.2.2 Processes Issues

- **Communications Network**  There is a need for communication facilities between each of the claim groups so that claimants can monitor the relevance of developments at their own local levels, and ensure they are not lost at other levels. It would also help to ensure that developments at one level do not override considerations about their significance at other levels.

- **Practical skills training**  There is a need for claimants to workshop about process issues and develop skills for articulating and relaying their position to other people, discerning and being able to choose from different cooperative styles and methods for resolving problems and issues, and promoting how people can take an active role in promoting them.

- **Evenness of Opportunity Amongst Claimants**  There is a need for monitoring to ensure that there is evenness of opportunity, in order that each claimant group can contribute meaningfully.

- **Information-Sharing Between Communities**  There is a need for NTMCs and communities to learn from each other about ways to share information, and keep in touch about what's happening, through local and regional networks and gatherings, radio programs, etc. This is important for communities to maintain their sense of being part of the decision making. This may also help other parties to realise that this process at community level can be time intensive.

- **NTMCs' and Claimants' Exercising Caution About Future Funding Sources**  There is a need for NTMCs to prepare claimants psychologically relating to the fact that there can be no guarantees about funding at this stage, and that if there were significant changes in the funding arrangements this could also mean a significant change in the process overall. Claimants will need to be advised to consider these contingencies to maintain a balanced perspective on the future direction of the process.

- **NTMCs and Claimants Considering More Secure Future Funding**  There is a need for NTMCs to look at revenue flows and consider how a sustainable funding base can be ensured for ongoing work at local and statewide level beyond special grants. They will have to consider at what stage there would be a change so that funding for the process does not rely on grants or largesse from Government in order that the process is supported.

- **Strategies So NTMCs are not Overwhelmed with Unnecessary Tasks or Demands**  There is a need to consider how claimants will deal with diverse substantive issues that may only affect certain parts of the state, while at the same time maintaining a united voice and unity about broader issues, such as statewide native title matters and recognition.

- **NTMCs Addressing Different Lifestyles Amongst Claimant Groups**  There is a need for claimants’ meetings to be an opportunity to appreciate different local cultures while maintaining and enhancing a common sense of their unity and identity as Aboriginal people.

3.4.2.3 Expertise, Skills and Research

- **Developing New Links**  There is a need to try out and encourage an interest in new ways of working together and developing links and protocols where these were formerly not possible or likely.

- **Acquiring Information from Indigenous People Elsewhere**  There is a need for facilities to develop, generate and share ideas through other means besides phones and fax machines. Claimants will need to know what other indigenous people are doing to advance
their issues, and therefore they need to have guidance about where to look to further information about arrangements that might work for them, through websites, books, visiting speakers, etc.

3.4.2.4 Broader Process Needs

It is a pressing need for NTMCs to build their capacity as to how they, on behalf of the wider claimant community, can speak collectively and authoritatively on land issues and native title issues. While a united body would not in itself replicate a traditional Aboriginal way of organising, it is significant in the following ways:

- as a vehicle through which claimants can take advantage of the Government's and other organisations’ willingness to interact and have Aboriginal aspirations and needs taken into account alongside those of other organisations.
- as a vehicle through which Aboriginal people can have their rights to uphold their culture and their way of life recognised, understood and protected.
- as an interface between the different scales at which resolutions can be meaningful for both the state and traditional owners. While the scale of the united body would be different from the scale which has most meaning for claimants, ie. a local scale, building a capacity to engage at the scale of the state would offer claimants opportunities for resolving issues that can only be resolved at the level of the state.

In addition, it would be hoped that the development of a negotiations process through which the wider community of claimants could speak on land issues and native title issues would also address the following:

- the need for a wider recognition of the complexity and scale of these organisational issues. It would help to articulate a political recognition of the autonomy and self-determination of claimants at the local level and also provide a framework for articulating the relationship between local level and the level of the state through the new decision-making process, and thus the relationship between that statewide body and other stakeholders who then also need to engage at the local level.
- the need to ensure that legal outcomes achieved through the negotiations process articulate how they specifically relate to and will be implemented in terms of political, social and economic outcomes, giving substance to the ideals of co-existence and sustainable outcomes.
- the need to ensure that a principle for the negotiations is that the state recognises that formerly claimants have had an absence of an institutional capacity to participate at the state level and that they thereby have a structural disadvantage that needs to be recognised and accommodated.
- the need to ensure that the united body of native title claimants can be recognisable as having accountability directly and primarily to claimants, and that a key principle for negotiating about native title is that this body can maintain its integrity as a decision-making body on their behalf, and that no other organisation can assert an authoritative position on claimants’ behalf at a state level.
- the need for the power and the persuasiveness of Aboriginal integrity to be given expression through the united voice and be able to meaningfully say how agreements will be acceptable and just.
- the need to make the process educative for all stakeholders, so that mutually they can recognise how the negotiations are developing. In this way they can mutually reflect about
the process and build recognition as to where there are shared problems and shared solutions, and equally where problems are unique.

- the need to clarify what type of negotiations process is being promoted, and what role the National Native Title Tribunal or other intermediaries might play to ensure that the negotiations are more than a bargaining exercise, and ensure that the process involves give and take to advance mutual resolutions.

- the need to structure meetings and developments in a way which allows NTMCs to consult and inform their communities about developments. The process will have to ensure that groundwork at local level is taken into account in the process and that the agenda is not just meeting the needs of other parties, such as the Government or industry groups who may not need so much time.

### 3.4.3 Supporting Claimants with Related Tasks and Obligations

While issues presently facing NTMCs will vary considerably throughout the state, each group will, for their own specific purposes, need to feel in control of setting their local agenda. There will need to be monitoring and support services available to the NTMCs to ensure that the complex dynamics of the statewide process do not, particularly in the first developmental stages of the process, place undue and unacceptable additional burdens on individuals. For claimants, it is likely to be at the local level, to do with their own claims, that the complexities of dealing with native title have most significance and can be most challenging. The dynamics and interactions involved at local level are likely to be the ones that are least understood by other parties. Support will be essential to ensure that in the initial transitional stage as NTMCs move toward negotiations, as many frustrations and stresses to do with local claim matters are alleviated.

The NTU will need to plan and prepare for how it might need to modify and expand the extent of its professional expertise, as NTMCs need assistance to deal with discerning which matters could or should be dealt with at local level, and which ones through the statewide negotiations. There will be uncertainties, ambiguities and disagreements in these interpretations, and the solutions may not simply be a matter of relying on or using legal interpretations. The skills that will be needed to tease apart the issues and resolve the complications that could arise trying to decide about local/state issues may require a whole new procedural approach to be devised which can deal with legal aspects of native title, but can also put in place practical, constructive and culturally appropriate mechanisms which could themselves become benchmarking exercises relating to decision-making.

A significant issue that will have to be addressed within the statewide process is the extent to which resources will be committed to allow NTMCs to deal locally with issues such as heritage, mining and parks management. NTMCs will have to weigh up how they will want to deal with each different area, and establish means to monitor whether the processes chosen are flexible and do not lock people in to procedures that create difficulties. They will need to feel supported to cope with these choices.
3.5 **PERCEPTIONS OF THE SIGNIFICANCE OF DIVERSE ROLES IN THE PROCESS**

3.5.1 **Principals**

Mr. Parry Agius has played a pivotal role in the process, both in terms of his senior position as EO of the NTU and in terms of his standing as an Aboriginal leader and the person in South Australia who speaks with significant authority on Aboriginal issues and native title issues at both state and national level.

The role of Dr. Richie Howitt, the Principal Consultant, developed beyond an advisory capacity, and he became increasingly involved in coordinating the process on the ground up until the Secretariat became operational in mid to late August. At the end of the present phase, Dr. Howitt will have fulfilled his undertakings within the present process. At Congress # 4 in early December, he delivered a draft budget and a strategic plan, including suggestions for a mechanism whereby the process can be internalised and driven entirely from a base in Adelaide.

3.5.2 **Technical Advisory Group**

The Technical Advisory Group was made up of Mr. Parry Agius, Dr. Richie Howitt, Dr. Jocelyn Davies, Mr. Malcolm Gray, Mr. Andrew Collett, Mr. Mike Metcalfe, Ms. Leslie Johns, Ms. Rhian Williams, Ms. Judith Morrison and Ms. Mona Tur.

The TAG was appointed by the NTU to play three roles in the process:
1. to provide strategic advice to the NTU
2. to provide an interface with Main Table discussions with other stakeholders
3. to provide an interface with the NTMCs.

The TAG was to provide advice to NTU, particularly to the Executive Officer, Mr. Parry Agius, rather than be a strategic decision-making body in its own right. Given the unprecedented nature of this process, and the fact that Mr. Agius had a long-standing relationship with the NTMCs and an intimate understanding of their issues, he needed a group of people whose expertise he could draw from for invaluable yet diverse advice, a group who would not necessarily give the same advice, and who could accept that he would ultimately make the final assessment, and may not necessarily follow their advice. While this had the potential to be discomforting for people used to decision-making roles, the arrangement worked as a two-way educative process. Equally, the TAG had not been assembled simply in order to receive advice from one perspective. Its loose and flexible structure allowed individuals to balance their obligations to the NTU with other obligations, such as those to Government or to other stakeholder groups. This flexibility meant that a sense of obligation to the process did not have to be shared equally across all of the people on the TAG.

Mr. Agius and Dr. Howitt tried to avoid constructing the TAG as a decision reference point. Advice was generally directed to either Mr. Agius or Dr. Howitt, and rather than the TAG playing a high profile role in NTMC meetings, when they attended meetings with claimants they were generally there to listen and observe in order to understand developments. However, while people’s involvement generally went beyond what had been specifically expected of them, the changing dynamics and the flexibility of the structure meant that there were inevitable uncertainties about the roles people could or should be playing as circumstances changed, particularly as to whether their advice was relevant for the circumstances. This was in part a problem of imperfect mechanisms to maintain continuity, share information, and ensure that everyone shared clear ideas about what stage the evolving process had reached. This was
important in terms of whether people felt they were in an optimum position to undertake or maintain a role.

3.5.3 NTU/Main Table

The Main Table discussions took place between the SA Government ILUA Negotiation Team, the South Australian Farmers Federation and the SA Chamber of Mines and Energy and the NTU of ALRM, the Native Title Representative Body. Mr. Agius, EO of the NTU, Dr. Metcalfe and Dr. Howitt contributed to these discussions. There have been quite considerable differences in interpreting the importance of the Main Table, particularly as circumstances have changed. Before the process actually commenced, Mr. Agius and the TAG were focused on the agenda of the discussions with other stakeholders at the Main Table. Prior to the consultative process, the Main Table discussions set the strategic orientation. However, once there was clear authorisation from the NTMCs to participate in consultations, and there was a commitment for funding, the emphasis shifted so that the Congress meetings became the point of strategic engagement. This meant that the Main Table was relying on a decision to proceed from the Congress meetings before a more inclusive strategic orientation could really be constructed. From July, 2000, there was a significant shift in emphasis away from the Main Table discussions toward facilitating NTMCs with their own decision-making process. The TAG's own agenda, particularly in relation to the Main Table, was drastically altered because the process did not proceed according to the strategy initially envisaged. This also, consequently, altered the agenda of the other stakeholders at the Main Table.

In June, prior to the process commencing, those at the Main Table were thinking in terms of having a decision from the NTMCs by September, and they had been looking to have clear dates for commencing negotiations soon thereafter. Equally, the Main Table participants had much clearer and more specific ideas about which issues should be prioritised in terms of decision-making. The requirements of other stakeholders undoubtedly were a significant influence on how the process was initially planned and initiated. However, despite initial pressures to achieve outcomes in the quickest possible time, those at the Main Table have increasingly come to realise the significance of the re-direction of the process facilitating toward the development of a broad-based decision-making body as a sound framework through which NTMCs could participate effectively in negotiations.

3.5.4 Advice about Drafting Legal Agreements

Initially Mr. Gray's role was conceptualised as being to provide advice on drafting and legal agreements. In actuality, he played quite a different role, a watching brief. His broad experience as a former Solicitor-General, his level-headedness and general wisdom, balanced with a commitment to the principles involved, could not be underestimated. Even while appreciating that the process being suggested was unprecedented, he was persuaded by the transparency of the process. His response at the June planning meeting was so positive that it reinforced Mr. Agius' confidence to be innovative and aim for a process which would provide a high level of ownership and participation by the claimants themselves. His feedback was invaluable, even though within the present stage there was no requirement for legal drafting. Instead, it was his optimism about the process that allayed concerns that it might run into legal difficulties and there would be an insistence that it be controlled by lawyers or confined to a legal framework.

3.5.5 Legal Advice About Native Title

Mr. Collett intended to provide a broad legal oversight role. As well as doing this, he has also provided input that did not limit the process to legal interpretations of native title. In fact, it was significant that the process was not predominantly reliant on lawyers or professionals who might otherwise confine definitions of native title generally. Mr. Collett, as a barrister, was able to
advise about legal issues, but equally his deep and long-standing involvement and personal relationships with Aboriginal people was reflected in his view that native title rights are rights that people use in their lives. His interest to maintain a personal involvement within the process reinforced Mr. Agius’ confidence about the direction of the process, and that it was a process that could be supported by the legal profession.

3.5.6 Research and NTMC Support

Dr. Jocelyn Davies, as the Research and NTMC Support Officer, came to take on more of a coordinating role within the Secretariat than had been originally envisaged. This was more from necessity as the process became increasingly directed from the Secretariat office just prior to Congress #1. While maintaining her work to plan and consolidate a research program and a research budget relating to present and future land management and policy issues, she also played a crucial role in securing the in-house support team to undertake the considerable logistical, strategic and administrative work involved, set up office procedures, mailing lists, and other aspects of the communications systems. Her contribution in preparing and presenting to NTMCs the meeting reports, and informed answers to their questions and concerns was exceptional. She considered that maintaining a high level of accountability to claimants through well-presented and reliable information was the foremost priority, and this is reflected in the extent to which NTMCs have perceived the support and facilitation within the process to be honest and transparent.

3.5.7 Advice and Liaison - SACOME and the Government

Dr. Mike Metcalfe’s role was to provide the interface with SACOME and Government. This was particularly crucial in discussions with the Main Table representatives in the preliminary stages of the process prior to the Congress meetings. When the emphasis shifted to the Congress meetings, and the Main Table meetings became less central to the process, his role was to monitor for balance in the process.

3.5.8 Media and Communications

Ms. Lesley Johns, Communications and Media Consultant, provided policy advice on the coordination of communications between NTU senior management, the Secretariat, the NTMCs and claimants and the wider community, as well as reporting on developments about communications issues being addressed through the Main Table. She was able to provide feedback on community and political feeling about native title and related matters, drawing from her background in public relations and media. In addition, her support to guide the general role and work of the Secretariat was significant, particularly in terms of liaison with Main Table representatives, and initiating communications networks, newsletters, videos and general publications, all of which have contributed to the effectiveness of the process.

3.5.9 Process Adviser

Ms. Rhian Williams was brought in to the process initially as a trainer, but as the focus changed to facilitated decision-making, her role developed to take advantage of her significant experience as a facilitator. Her contribution to the process was to provide checks as to whether the facilitating team was actually hearing what claimants were saying, to ensure that decisions relating to the process were not made on other peoples’ behalf. She did not bring a substantive expertise on topics specifically related to the issues being deliberated, but expertise on the dynamics of the relationships being created and developed. She provided insight and advice.
from a ‘process’ perspective, which helped people on the team to reflect and assess whether the process was maintaining a high level of responsiveness and accountability to claimants.

### 3.5.10 Interpreting Aboriginal Languages and Cultural Advice

Ms. Mona Tur has extensive experience as an interpreter of Aboriginal language in a wide range of contexts. Through her personal commitment to the promotion of improved cross-cultural understanding, she provided the group with significant advice about communication and protocol matters that were invaluable in order that all the engagements with the Aboriginal people concerned were as meaningful and appropriate as possible. Her contributions were of great significance in the planning for the conduct of meetings.

### 3.5.11 Agricultural land tenures and uses

When the SA native title legislation became an issue of high priority for claimants, the immediate research focus was directed to agricultural land tenures and uses. Since Congress # 2, Mr. Don Blesing has provided expertise to support the Lobby Group and the SA NT Steering Committee. The development of a need to provide extensive advice on land tenure issues shifted the immediate emphasis away from mining issues to agricultural issues.

### 3.5.12 Independent Review of NTU Statewide Negotiations Process

Ms. Judith Morrison was commissioned to maintain an involvement throughout the consultation process, and from observations, discussions and archived material, compile an independent review of the first stage of a process possibly leading to negotiations about native title in South Australia. Her role was to evaluate the stage of the process between July and October. Her research topic relates to cross-cultural negotiations involving governments, resource developers and indigenous communities. In one sense it could be argued that as an independent reviewer, her role and her accountability is different from that of others on the TAG. However, the independent review will be significant in terms of providing NTU, and the NTMCs, with an evaluation of this stage of the process. The assessments and recommendations in the report will be relevant for reviewing budgeting and strategic planning for further resources, skills and training if the process is ongoing.

### 3.5.13 Changing Requirements within the TAG

The roles that people on the TAG could actually play at different times and in different circumstances throughout the process changed as it became clear that the process needed to be rolled back to an even more fundamental starting point. This meant there was a need to review what sort of advice was most relevant at each stage of the process. However, essentially all the advisory roles within the TAG remained relevant, and each change in the circumstances has actually increased each contributor’s broad general awareness of the relevance of advice in this relatively unprecedented process.

### 3.5.14 Future Role of the Technical Advisory Group

The TAG consultants are presently perceived by claimants to be a part of the NTU. It is likely that the TAG will in future become a more reachable advice body for the Working Party and the NTMC united body. The distinction will become more meaningful when the Working Party looks at the budget. The TAG will need to remain flexible, and this is quite realistic given that there is
likely to be no requirement to stay within strict operating guidelines. This distinguishes the terms of this budget from those of many other Aboriginal bodies, such as ATSIC, where stipulations as to how budgeted funds can be used are very specific. The budget for this process does not have such strict funding guidelines that lock funds tightly to a particular preordained program. In part this can be directly attributable to the credibility accorded to Mr. Agius, who, in discussions with the Attorney-General and other stakeholder group representatives over the consultative period, was able to convince the Attorney-General that a high degree of flexibility was necessary to trial this relatively unprecedented process. The transparency of the process to date is likely to significantly influence the Government’s decision to continue funding the process in future.

3.5.15 The Role of the Secretariat
The initial configuration of the Secretariat was considered in March, and at that stage it was only possible to guess whether the structure was being anticipated correctly. The structure was fine-tuned in July when position descriptions were developed. Subsequently roles have been clarified and changed in response to practicalities, or even crises. The Secretariat, while having people designated to fulfil specific roles, lacked a person overseeing ongoing and immediate requirements. It is still the case that personnel become occupied with immediate concerns to attend meetings and prepare briefing papers and have to slot their own specific tasks in when they can. This makes it difficult for staff to clearly see what their present and future role will be in this working environment, particularly given that they will have to continue to deal with changing circumstances. However, the Secretariat is likely to be restructured in the next budget.

3.5.16 United Voice Working Group and the Main Table
The Working Group set up at Congress # 3 has not been authorised to participate in consultation or negotiation with other parties at this stage, so it is unlikely that there will be any formal meetings with the Main Table at least prior to Congress # 4. It could be that there will be one or two information sessions over the next two months to prepare progress reports for other stakeholders. NTU’s role at the Main Table will ultimately be superseded by a representative group appointed by the Congress. These information sessions will be critical to ensure that other stakeholders are clear about the organisational structure, the united voice, which is developing from the Congress meetings, and that at this stage is has not been clarified who will be appointed to do the negotiating from that group, otherwise there could be an anticipation from SACOME or from SAFF that a negotiating body has been already established. It will also be important to clarify to the NTMCs the role those at the Main Table meetings will play in the negotiations.

It will be a significant step for NTMCs to come in on what many of the other stakeholders perceive to be the ‘main game’. It will be the beginning of the establishment of mutually agreed definitions and protocols and each of the groups will be tentatively developing a working relationship before putting forward specific formal positions and beginning to address specific issues and concerns. The establishment of positive relations between representatives of the NTMC Working Group and those at the Main Table will be crucial. The effective exchange of information and opportunities to interact directly with one another will lay a foundation for future working relationships and a sense of mutual accord. These new relationships will be important as each stakeholder group relates news of the developments in the process back to their members, and considers how they will relay their present position about a complex set of relationships to other outside parties. Each can use these first meetings to help them frame their interpretation of the consultative participatory process so that it is meaningful for their members and the community at large.
3.6 **PERCEPTIONS OF SIGNIFICANT FACTORS IN THE PROCESS**

3.6.1 **Key Contributing Factors**

3.6.1.1 **Personal Commitment**

Within the State Government, three individuals in particular have transcended their political ideology to grapple with the issues of native title at a personal level. The significant contributions have come from Mr. Trevor Griffin, the SA Attorney-General, Mr. Brad Selway, the SA Solicitor-General, and Mr. Andrew Secker, Head of the ILUA Negotiation Team. Their contribution to envisioning the concept of a statewide Indigenous Land Use Agreement created an opportunity that would not otherwise have been possible at the present time in most states of Australia.

Equally, the personal qualities, commitment and experience of Mr. Parry Agius and Dr. Richie Howitt were significant. Their relationship forged a coalition of values so that they actually pushed each other to consider how the process could be made most accountable to claimants beyond what each other might have otherwise thought possible. Mr. Parry Agius’ leadership has been a powerful and broad influence on the process. This was not only in terms of the personal respect he commands in his role as EO of the NTU and as an Aboriginal leader, but also in his capacity to draw together and develop a coalition of people to work with him in the process to provide invaluable advice and support.

The other significant quality shared by the two principals was a capacity to listen and attend to what other people were saying, and lay aside strategies and consider alternatives when it was evident the ones being used were not appropriate for the circumstances. The process was effective and unifying largely due to the example set by Mr. Agius in how to listen rather than to try and lay down the law for claimants. He allowed the space for those at the Congress Meetings to work through each issue, rather than arguing or coming in too quickly to tell people ‘the answer’. This facilitated a process whereby information was provided and people genuinely felt they had the opportunity to work through their own decision-making process. By facilitating opportunities for claimants to manage and work through problematic issues themselves, and listening and responding to what was said, a sense of good faith and transparency was promoted. While Mr. Agius and Dr. Howitt both had an extensive understanding of the issues involved, they increasingly came to recognise that they were seeing the situation from their own perspective, and the meetings with NTMCs did not call for asserting what they believed was best for claimants, and they did not push their own opinions on to the claimants. They were interested in extending the understanding of claimants, but also in turn how they could hear from claimants and extend their own understanding. This often meant putting aside prior plans and ideas. Their astuteness and their flexibility contributed significantly toward evolving the process.

3.6.1.2 **The Contribution from Claimant Representatives on the NTMCs**

The contribution from the NTMCs as to how the Congress meetings were to be conducted could not be underestimated. It gave the sense of unity of purpose to the process. Claimants themselves recognised the need to come together to make their decisions, and establish the protocols which would give the meetings and the process significance. This was achieved in ways that promoted personal confidence but as well gave credence to claimants’ deeper relationship between the immediate and the infinite Dreaming world which goes beyond individualism and holds people to their relationship with traditional enduring laws. The Congresses gave claimants the opportunity to talk about their native title issues confidently and in
real terms beyond rigid legal interpretations, and this offered glimmerings of new opportunities. New opportunities could also be envisaged through claimants’ insistence that native title whether in the context of litigation, legislation or negotiations was integral to their consideration of the Government’s proposal. There was a sense of achievement and a developing good faith in the process when the Attorney-General agreed to compromise and consider the historical leases separately from current leases in the current legislation, in response to NTMCs consolidating their expression of opposition to it. The incorporation of the Lobby Group to work with the SA NT Steering Committee also allowed the NTMCs to appreciate what role other Aboriginal organisations, such as ATSIC, had been playing to uphold and protect native title rights.

3.6.1.3 A Developing Sense of Unity Amongst Claimants

Even when there were tensions between claimants that were unrelated to the process, there was generally a reservoir of goodwill amongst all the NTMC representatives at meetings. This was in part due to the fact that claimants themselves had control of a process that was enabling them to see where they had issues in common as well as issues that could set them apart. In fact the meetings provided claimants with opportunities to actually step back from and discuss contentious issues, such as overlapping claims, and appreciate that if these were viewed in the broader context, they could be seen as structural problems linked to the claims process which claimants themselves had formerly had no alternative way of resolving. The claims process itself had limited alternative recourse for resolving these issues. The protocols which the claimants themselves mutually established set up a dynamic which promoted everyone to work together. Even when people were frustrated, annoyed or tired because of the complexity of the issues or the pace at which the meetings were moving, there was generally a reasonable degree of cohesiveness, and a high degree of respect which prevented difficult issues being attributable to particular people or groups of claimants. The general sense of the meetings was that people were committed to working together and focusing on the issues.

3.6.1.4 Flexibility of the Schedule

Neither Mr. Agius nor Dr. Howitt had assumed that the proposed representative model that had been presented to claimants at the pilots was the only solution to the issue of representation on a negotiating team. They were prepared for the eventuality that it would change, but they had not anticipated the extent to which they would ultimately have to change and reschedule the entire program. They were flexible enough to consider revising the strategy and bring all the NTMCs together for the three Congress meetings. They had had to consider the issue that meetings of large numbers of people can loose their focus. There was, therefore, an inherent risk that if the Congress meetings had not worked, the program would have had little time or resources to fall back on. They ultimately based their decision to make the change in the program on what claimants at the pilot sessions had suggested, which was supported by the team members who had taken part in the pilots. The Congresses were, in fact, able to build on the NTMCs own developing capacities to work through challenging organisational issues at the level of their individual claims. Because of the work they had put into working through their own decision-making issues as NTMCs well before this process commenced, the Congress meetings were not starting from a disorganised base.

3.6.2 Missed Opportunities

3.6.2.1 Time Taken to Conceptualise Broader Context in which Changes Could Happen

In hindsight, there was speculation as to why it took as long as it did to envisage and articulate the ‘bigger picture’, the overall context in which the changes would take place, and the relevance of that bigger picture to the purpose of the process. The purpose became clearer after the initial
pilot meetings with claimants, and in fact, it was claimants themselves who pushed the team leaders to see the relevance of that bigger picture. It was from that direct engagement with claimants that it became apparent that steps in the process toward negotiating about native title would have to be relevant to, and put into practice in terms of a broader framework - how all Aboriginal issues had statewide significance. It took that engagement to see that negotiations for resolving native title issues could only be considered by those who would participate, the claimants, if they had a conception of what negotiated changes meant in terms of that bigger picture for the whole state. For negotiations to resolve native title issues, the issues themselves would have to be first envisioned by the entire body of native title claimants so they could appreciate how structural, political and constitutional reform could be relevant and appropriate for them all. Part of the process for resolving native title would have to be an articulation of that vision. There was a certain regret that that idea did not become clear at an earlier stage.

3.6.2.2 Scope of Issues to be Formally Addressed in Prospective Negotiations

The more immediate requirements of the process have meant that there has not, as yet, been opportunities for claimants to develop a concept of how sea rights, inland water rights and the significance of the fishing industry, which are part of the broader context of statewide issues, might be addressed in the negotiations.

3.6.2.3 Practical Constraints

The delay in finalising the budget between March and May and having the financial and other resources available from the Attorney-General's Department to commence work, delayed the process considerably. Equally, the delays in providing office equipment, such as computers, internet facilities, telephones, faxes, and printers within the Secretariat was a huge hindrance to productivity and communication and lessened the overall efficiency and effectiveness of personnel, or at least placed undue demands on them to be as efficient or effective as possible.

3.6.2.4 Ad Hoc Decision Making

Given that the process was evolving and dynamic, in hindsight it is clearer to see that before embarking on meetings it would have been useful for everyone involved to have had time together to consider the issue of protocols and cohesiveness. The process fulfilled its primary goals, but protocols and reporting about changes in strategy were at their weakest at times when fundamental shifts in the direction of the process were being considered and implemented.

3.6.2.5 Continuity

The discontinuities between players meant that some things were not attended to, or not attended to in sufficient depth. This was not necessarily attributable to a failing of any one person but to a failing in the 'corporate memory'. This was understandable given that there was so much detail different people had to take on board and share. It was difficult to know, and therefore to ensure, that all the appropriate information was being broadcast, and action undertaken, as the process evolved and changed. There was a need for a person whose specific role would have been to keep records and ensure that everything was being attended to. A person fulfilling this role, working in close consultation with Mr. Agius, could have ensured more clarity about each person's role and responsibilities.
3.7 **PERCEPTIONS OF ORGANISATIONAL ISSUES AND ACCOUNTABILITY ISSUES**

### 3.7.1 Determining the Focal Point of a Dynamic Process

A recurring theme in this process has been the sense that there was no central point in the structure that was the source of all authority. The Principal Consultant described this process as one which functioned without a pivotal mechanism, and as such it was a de-centred process. The fact that the process had no central mechanism, however, did not necessarily mean that it lacked a single purpose. The purpose was to allow the native title claimants to create their own centre. The process generated a climate whereby both the ‘facilitators’ and the ‘facilitated’ were mutually stepping outside of familiar structures. Everyone involved was operating in anticipation of an outcome and to do this required a simultaneous letting go and building up. The basis on which a new structure for negotiating could be created needed a process that rested, therefore, on something other than already-existing formal structures. It was powered and upheld by trust in the integrity and capabilities of the two principals, Mr. Parry Agius and Dr. Richie Howitt, and in turn their commitment to principles and beliefs. This gave legitimacy to the purpose.

There was a mutual understanding between those consulting and the people being consulted that the process centred around the native title rights of claimants, and that a significant purpose of the process was to facilitate claimants gaining access to power to have those rights realised. The process was upheld by a shared understanding that claimants needed an opportunity to consider and attempt to bring into being an appropriate mechanism for making decisions about matters which were of concern to them in connection with their rights.

### 3.7.2 Basic Principles as a Focus

This reflects on the fact that since the Mabo decision of the High Court in 1992, Australian common law and Australian people have an obligation to recognise the right for Aboriginal people’s customary laws to co-exist with other laws and practises, and that it is neither possible nor just to interpret native title rights simply as though they are an abstract legal notion. Native title confers on actual people certain rights and responsibilities constructed in Aboriginal law, and it is therefore not appropriate to reduce those rights to a legal definition which is removed from the lived experience of those who are entitled to them. The commissioning of this process by the Attorney-General was in one sense a recognition that at whatever level, addressing how different people’s rights can be simultaneously recognised, will usually entail some letting go and building up to create a more reconciled structure, and in the present case, a structure better able to recognise and uphold how native title rights can be practised.

The way this purpose was maintained in the process reflected that it was, in microcosm, part of the deeper issue of finding new ways toward achieving a more reconciled society in both ideological and practical terms. The process was a way of carefully letting go of circumstances which many would have otherwise believed needed to be ‘managed’, but managing the process would not have allowed the actual purpose to be developed. What could be held on to even when letting go, was that the people involved trusted in both in the moral correctness of the endeavour, the competency and integrity of the principals, and a belief that it was a necessary component of the process to let go of the usual way of doing things.

At the beginning of the process, while there was a general understanding that the ultimate accountability was to claimants, this could only be appreciated in a relatively abstract sense. With the advent of the Congress meetings, however, a more tangible appreciation of how
accountability could be expressed developed. The Congress meetings themselves became the focus of that accountability. This has not in itself been the problem that some might have anticipated it to be, but it was a significant shift in focus, and gave the process a much more concrete and direct sense of accountability to claimants.

3.7.3 The Uncertainties of How to be Accountable in Practice

The process engendered an ethos that the purpose was to serve claimants and be accountable to them, and personnel appointed to the NTU, the Secretariat or as consultants were recognised as having a capacity to fulfil that accountability to claimants. They have had to create unique roles that took on board how their expertise would best serve claimants, making it appropriate for circumstances that were quite dynamic. There were instances when people felt quite uncertain and unsettled as to what their present role in the process was, or what it should be. Those involved had recurring worries as to whether they were getting things right for claimants. There were surprisingly few precedents of this type of accountability.

Many involved realised there were more precedents about how to give instruction rather than to listen for instruction, and in fact that style of engagement has been the one with which many Aboriginal people have had to contend. This process was dynamic and educative because a fundamental principle was that it was appropriate to offer advice, but if the advice was not followed, it was not appropriate to leap in and immediately attempt to ‘correct’ people who did not consider the advice appropriate for their circumstances. Avoiding an instructive style was enlightening and in itself instructive about what the benefits could be of other ways of dealing with issues or coming to decisions. Nevertheless, individuals had to cope with letting go of their familiarity with formally prescribed roles in order to build up an understanding of their present role. The process asked of people a form of engagement and accountability which was not simply having a particular expertise plus particular beliefs and principles, but a professionalism that could be recognised by the claimants as legitimate and meaningful for them. The process relied fundamentally on this capacity of people to develop their own sense of accountability to claimants. The strain to contend with this ideal where many prejudices and misunderstandings still abound, even within institutions that legitimate ‘expertise’ meant that people doing this type of work straddled diverse realities and worldviews and will continue to have to engage in both simultaneously.

3.7.4 Leadership Role of Mr. Agius in the Realisation of Congress Meetings

Mr. Agius has been the vehicle for most of that sense of accountability. The extent to which personnel, consultants, TAG and other stakeholders perceived that Mr. Agius, the Executive Officer of the NTU, held himself accountable to native title claimants was significant. It was evident from the way that the Congress meetings were conducted that the decisions of the meeting belonged to claimants, and as far as possible the way in which those decisions were made gave respect and upheld Aboriginal protocols which claimants themselves recognised. He was trusted to take some significant steps within the process, but only insofar as they were leading to the evolution of a decision-making process being driven primarily by the NTMCs themselves.

3.7.5 NTMCs Developing Their Own Accountability in the Process

The confidence of the NTMCs crystallised at Congress # 3 when claimants reiterated the importance they attached to Congress, as a decision-making body, being conducted with
appropriate protocols. As well, NTMCs expressed their insistence for clear benchmarks of transparency and accountability. A real strength of voice developed to insist that procedures and reporting mechanisms be clear and be followed appropriately. As the Congress meetings proceed to subsequent stages, NTMCs will be looking to maintain that high level of openness and transparency in order to uphold their faith in the process. This will require NTMCs and their wider claimant communities to be kept aware of all developments in the process, so they can formulate responses, even about issues that could threaten to undermine its continuation. This will be necessary in order to allay concerns that the NTU or some other organisation could make decisions on their behalf based on information that should have been available to them as claimants.

3.7.6 Congress as a Transitional Stage

As an outcome of the general decision by NTMCs at Congress # 3 to accept the Government's proposal to move toward negotiating a statewide agreement on native title, Congress should continue to meet as a NTMC decision-making body in the transitional period until there are clearer ideas about how they will constitute a united body, and deliberate together about what structure it will take. Congress has, however, appointed a Working Group to work with the NTU, TAG and Secretariat to develop planning proposals and a budget to submit to the Government. At this stage, beyond a formal decision to proceed toward negotiation, Congress is not yet in a position to make more concrete decisions about the united voice through which they will ultimately participate in the negotiations. The entity and the name are issues that claimants are yet to deliberate on through further Congress meetings.

3.7.7 Giving Names to As Yet Uncreated Structures

The choice of the word 'Congress' was deliberate insofar as it had connotations with the idea of a decision-making body. The fact that claimants were so easily able to use the Congress as a vehicle for decision-making in part reflects that they were already tuned into a mechanism that was ripe for creation. It was under Mr. Agius' direction that the groundwork had been laid through the establishment of the NTMCs themselves. Another reflection of Mr. Agius' astuteness was that he left open the idea of what some broader organisational structure of native title claimants would look like, or even what it would be called, and simply alluded to a concept of a 'united voice'. He did not push the idea that the name 'Congress' was a given for whatever united body claimants might create for themselves.

3.7.8 Lack of Clarity about Accountability in the Structure of the Secretariat

The TAG has been a relatively flexible structural device appropriate for the dynamics of this process, but a major weakness lay in not recognising that the personnel appointed and working through the Secretariat required an organisational structure that more realistically addressed the 'un-centredness' of the process. Planning meetings were needed to get clearer shared perspectives and a sense of cohesion, and provide opportunities for devising strategies to alleviate problems. Misunderstanding about responsibility put pressure on people already working within tight time frames, and in fact most would concede that between the first two Congress meetings people were operating at unbearable pressure. There had been no appointment of a person to be responsible for organisational issues who could set up meetings or other means for effectively sharing information and discussing and clarifying protocols and allocating responsibilities. Accountability was particularly unclear because the Attorney-General's Department had undertaken to provide the office space, the telephone system, the computer system and other office equipment. There was no telephone system until early September, and at the time of finalising the interim report, there were still no computers or printers and hence no internet access in the Secretariat office. This created burdens, limitations
and confusions for staff that seemed unresolvable. The people working in the Secretariat were put to the test to carry out their work without proper office equipment.

In retrospect, most people involved agreed that the workload on personnel in the NTU and Secretariat, and on consultants, was too heavy, on top of all the worries about whether they were getting things right, and having to make changes when things went wrong, either in the way meetings were being conducted, or in the way reports and other information was made available. There was uncertainty as to what was an appropriate amount of information to offer, and when and how to offer it. It was reassuring to have feedback from claimants that the process was perceived to be transparent, open, and accountable in terms of reporting. It was underestimated how much work would be involved by way of follow up from meetings and preparations for subsequent meetings.

3.7.9 **Team Building and Good Will within the Secretariat**

The sense of cohesiveness and cooperation that was achieved in very challenging circumstances was founded on each person's commitment and understanding of the overall purpose of the process, and the process therefore relied a great deal on people's good will. However, there were insufficient opportunities to have that good will directed through good internal processing. Lack of time and diversity of responsibilities meant that people had little time to catch up except about essentials. People did not have time to share and reflect on information generally, so conceptually there were different ideas about where the team, and the process, had got to. The Secretariat will need far greater administrative support in the future. The present short-term stage required people to work under pressures attributable to lack of resources and a tight time schedule, but personnel, however committed, can only maintain their effectiveness under such circumstances for a limited amount of time.

3.7.10 **Reporting Protocols**

Clearer reporting protocols would have been helpful in a process that was both fluid and under-resourced in terms of office equipment and facilities for communication, such as telephone, fax and e-mail, and where some members of the team were based outside of South Australia. There was often an uncertainty as to who each person should be talking to directly. Communications were taking place across different states and time zones. It was understood that Mr. Agius, the Executive Officer of the NTU was now not only administering the General Claims work within the NTU, but was also the person to whom everyone was accountable in terms of reporting about the statewide negotiations process. Because he was so busy, it was hard to find time to talk with him directly. This meant then having to decide who else each person should be liaising with, and then to consider when and how the matters discussed might be further relayed on. Apart from the possibility of misinterpretation, it also involved a more general uncertainty about who each person should be talking to directly.

There was also a potential for misunderstanding simply because of people's different work backgrounds, procedural styles and capacity to interpret the overall relevance of information to the process. The Principal Consultant was maintaining a heavy academic workload, as well as his involvement with this process which also cut down opportunities to speak about issues directly or immediately. These reporting issues had both positive and negative impacts on the process, insofar as seeing things from a distance was good in terms of maintaining a broad perspective on the big picture. However, it also meant that the principals were less aware of the strains and uncertainties about accountability and protocols being experienced by other people involved in the process whose roles were less well defined. The reporting protocols were particularly significant given that the process was working to a very tight schedule and between people who were not operating from the same place. Through experience those involved came
to understand that accountability was directly to Mr. Agius, and as much as possible they should
develop protocols to work with other people rather than for other people, and take ownership
within their own role.

3.7.11 Importance of Team Building to Provide
Consistent Service to Claimants

The consistency of service from the Secretariat to claimants has been and will continue to be
crucial because claimants too have been engaged in team-building within each of their NTMCs.
It was not always the same people from within each NTMC who attended meetings, and therefore
maintaining a consistent process was important to engender a sense of continuity. Those new to
Congress meetings were also building up new relationships with people from other NTMCs, as
well as becoming familiar with the issues they were required to address directly. The sense of
unity that was created at the meetings could in part be attributed to the calibre of the service and
care provided by support staff within the Secretariat under the direction of Mr. ‘Fish’ Walker, who
paved the way for claimants to meet in a manner that was as satisfactory as possible. Claimants
were simultaneously building unity with each other, as well as developing ideas and strategies
that were important for their own claim community.

3.7.12 This Process as a Precedent?

It is unlikely that this process could be replicated in quite the same way again unless, to the same
degree it was guided by similar principles of service and personal commitment by key players,
both in Government and in other organisations, whose personal credibility transcended distrust.
It was as much to do with a changing political climate that afforded the opportunities in the
present process. Equally, such a process would be difficult to institute through a constituted body
with its own management structure well established, which relied on a very specific and
prescribed funding program. In such cases, the fundamental principles to guide the changes
might be resisted by those holding sway, and the process could be prone to be worked around,
bypassed or overwhelmed. Under less favourable circumstances, or with different people
involved, the entire option to negotiate in the present circumstances could have gone in a
different direction.
4. AUTHORITY AND ACCOUNTABILITY

4.1 ACCOUNTABILITY TO CLAIMANTS IN THE PROCESS

The process engendered an ethos that the purpose was to serve claimants and be accountable to them. NTU and Secretariat personnel, and consultants, through a blend of formal roles and personal commitments, shared that sense of accountability, which was increasingly demonstrable and able to be articulated as the Congress meetings developed. They offered opportunities for meaningful direct engagement. This allowed the concept of accountability to shift from a relatively abstract notion to something more practical, tangible and immediate. Mr. Agius maintained a pivotal role in these changes, and it is worth considering how those engaged in the process perceived that by following his leadership they would also be working toward merging an ideal about accountability with an actuality.

4.2 ACCOUNTABILITY TO MR. AGIUS

There has been a general perception that an accountability to Mr. Agius was virtually equivalent to an accountability to claimants. This reflects Mr. Agius’ continuing work relating to native title issues well before this process commenced. Earlier stages in the development of native title claims in South Australia are important for appreciating the broader dynamics of this process, and why Mr. Agius is the charismatic driving force behind the process, who commands respect and support from personnel within the NTU and the Secretariat, the TAG, and other consultants; and commands an increasing level of trust from the NTMCs, from Government representatives and from other stakeholders. His role is significant in understanding how this transitional stage will lead claimants, through their NTMCs, toward creating their own united decision-making body.

His role in this transitional process is attributable in part to his former strategic management of native title claims issues, and his managerial skills as Executive Officer of the Native Title Unit. He has an intimate understanding of the former developments as Aboriginal people have come together over recent years to lodge native title claims. It was also under Mr. Agius’ direction that claimant groups appointed the Native Title Management Committees as an ‘interface’ between traditional customary laws, obligations and other requirements, and mediating claimants’ concerns about native title with other parties. Mr. Agius has an almost singular breadth of understanding of the effort that claimants in South Australia have had to put in to create their NTMCs. Through his management skills and personal commitment as an Aboriginal leader he has worked to ensure that claimants shape cohesive groups to deal specifically with their native title matters, and thus attain and enjoy as much benefit as possible from their native title rights. The developments in this process could not have taken place as they did without that earlier and continuing work consolidating NTMCs. It was actually those newly-created committees that provided the structural foundation through which to consider the feasibility of statewide consultations. That former capacity-building has provided the meaningful framework through which Mr. Agius was able to shape the present process.

Appreciating these longer-term dynamics will become increasingly significant as the process changes, and those who work within it will be reflecting on what accountability to claimants actually means in practice, when, up until this time, they have been able to express their accountability to claimants in terms of their responsibilities to Mr. Agius. Those who maintain their involvement with the process will have to share his dynamic vision that ultimately his pivotal role in the process will change, and claimants themselves, through the NTMCs and the united body, should become the driving force.
4.3 **The Authority Held by NTMCs on Behalf of Claim Groups**

The realisation of a statewide settlement of native title claims hinges on there being an authoritative structure through which settlements integral to an Indigenous Land Use Agreement can be formalised. The other prospective stakeholder groups, the SA Government, the SA Chamber of Mines and Energy, and the SA Farmers Federation will need to be assured that appointed negotiators and those formalising agreements will have the appropriate vested authority. They need assurance that NTMCs are not arbitrary bodies, but are bodies with a specific and legally recognised vested authority on behalf of claimants. There is such an assurance because the authority of each NTMC in South Australia, and therefore the authority of the collectively of NTMCs who will make up the united body, stems from the certification process that is undertaken by the NTU as part of the process of preparing native title groups’ claim applications (see page 7).

Given that NTMCs have authority from their entire claim group, the NTMCs become an essential party to any interactions with other persons or groups about matters that concern their claim. This applies to matters that arise within their own claim area, and it can equally apply at broader scales, such as at regional level, or at the statewide level. This issue of authority has relevance in terms of NTMCs’ capacity and authority to undertake negotiations about native title settlements through an ILUA at a statewide level.

However NTMCs are relatively fragile units, for two significant reasons:

- they have only relatively recently come into being.
- they have the significant burden and the responsibility to interact between two cultural and social systems.

The certification of claim groups and the registering of claims in accordance with the revised Native Title Act (1998), and the appointment and development of NTMCs, are processes that have had only a few years in which to develop and be put in place for a wide range of claimant communities throughout South Australia. Compared to the well established representative structures and policy frameworks that exist in the farming and mining sectors, and within government, the NTMCs’ organisational arrangements that are being developed to create the united body will likewise be new and inexperienced. These are important considerations relevant to the capacity of NTMCs and the united body to enter into negotiations on an equitable basis.

In relation to both local native title claim functions, and functions associated with the united body of claimants negotiating at the statewide level, it will be critical that claim communities and their NTMCs fully understand the significance of the claim management process and can contribute to its development and function. It represents the endorsement by claimant communities of the validity and authority of the NTMCs, and it is this endorsement which underpins the NTMCs’ capacity to effectively speak on claimants’ behalf in the statewide negotiation process. Not all members of a NTMC may necessarily take a direct role in the prospective negotiations, but, nevertheless, any claimant interests and possible settlements about their interests that are integral to the negotiations will ultimately have to come back to the full NTMC for authorisation. All agreements have to be authorised by the claimants’ entire NTMC, and this principle applies equally at local and regional scales, and at any other broader scales, such as the statewide scale. Interests and agreements being negotiated through the united body will need to be supported by each NTMC affected by a prospective agreement. If one or more NTMCs cannot authorise the prospective agreement, and then it cannot effectively be recognised and operate in that claim area.

The NTU, as part of its authority as NTRB, does have rights to formally endorse some settlements in certain circumstances, even where a NTMC may not support the NTU’s decision.
However, to do so would subvert the entire authority structure that the NTU has been establishing with native title claimant communities and their NTMCs. Such a course with respect to the statewide negotiations process would in all likelihood create division, confusion, and antagonism, and in turn undermine the validity of settlements and agreements. Local opposition and resentment could threaten the certainty that all the parties to the statewide negotiations process are seeking to achieve.

Some critical elements in order to maintain an authoritative structure and realistically contemplate statewide settlements include:

- NTMCs’ capacity for effective communications with the native title community members so there is continuing and ongoing support and certainty that they are exercising authority on claimants’ behalf responsibly.
- Ongoing communication between the individual NTMC members, particularly given that not all members of a NTMC may necessarily participate directly in the meetings of the united body of claimants, or the actual statewide negotiations process itself.

NTMCs will need to be able to maintain communication with each other, their own claimant community, and with other NTMCs, to keep each other informed. This will be the basis for developing and maintaining an assurance that NTMCs are not exceeding their delegated authority. Such assurances will help to maintain trust and build confidence in the integrity of the NTMC structure, the Committee’s relationship with its claimant community, and with the process overall.

4.4 ARTICULATING A SENSE OF ACCOUNTABILITY WITHIN THE SECRETARIAT

Realising an accountability directly to claimants through the united voice will be relatively unprecedented. Therefore, the structuring of the Secretariat will need to be flexible so that it can work with the NTMCs and adapt to cope with complex new structures and relationships, as NTMCs take over from Mr. Agius as the vehicle through which accountability to claimants is put into practice. It will be part of the role of the Secretariat to work with NTMCs and together develop a communications program that gives a good account of the decision-making process that the united body adopts. It will require both personnel and claimants to share clear and mutually understood ways in which to give their ideas substance, explain them to others, and be able to correct false assumptions and perceptions. It will be particularly important that those working in the Secretariat and the NTMCs themselves together develop a concept of the breadth of this decision-making process, which will be more than simply a legal or a political process, but a recognition of Aboriginality through culture, spirituality, ways of doing business, law and custom.

This shift in accountability will also have implications for how the Technical Advisory Group will function in the future. At present it is a relatively un-centred advisory team, with individuals providing advice about their own specialist area directly to Mr. Agius or the Secretariat without necessarily needing to have a breadth of understanding about other specialist areas connected with the process. This has been a useful aspect of the present short-term intermediary process. However, a loose structure is vulnerable to creating uncertainty as to how advice is to be prioritised. Guidelines will be useful for collating and prioritising advice, particularly when accountability is directly to claimants. Advisers will need to have a very good understanding about reporting protocols in the new structure, so that it is clearly understood that their advice will be for the benefit of the united body of claimants, and not simply for an intermediary.

The Secretariat will be supporting the NTMCs as they come together at the statewide level. Equally, they will be supporting them in the other aspect of their decision-making role, which is to
consult with their claimant communities. The Secretariat staff will need to have developed their own clear understanding that the NTMC representatives are not an authoritative decision-making body, but serve as conduits in a two-way process. The Secretariat will need to be structured so that it can assist them to fulfil both aspects of their role in the decision-making function, and ensure that one part does not take precedence over the other. One way in which the Secretariat can serve the claimant community is to be well prepared and clearly understand their own role in making this unique decision-making process well understood, and be ready to reinforce and educate others about the concept that both the Congress, and the united body which they will constitute, are bodies which ‘interface’ between the state level and the local claims level, and also that the NTMC’s ‘interface’ about the significance of issues and decisions as they have meaning within two distinct cultural systems, and that their primary accountability is to their claimants through a dynamic two-way decision-making process.

Therefore, as Aboriginal people assume a direct role in the negotiations, those in the Secretariat will need resources and time to engage with NTMC representatives and together develop strategies to demonstrate how the decision-making works, and allay wrong assumptions and misperceptions about the process. Given that the process is unprecedented, those who have not been directly involved will not automatically understand its significance. Part of the accountability of the Secretariat will be an educative role in order to uphold the full significance of issues and how they can be made meaningful in terms of Aboriginal customary laws and traditions. In this way, the united voice can be truly centred within an Aboriginal sense of identity, even when relating with others outside of that framework. Without a program to keep these ideas at the forefront of the work of the Secretariat, the significance of issues as they have meaning within an Aboriginal worldview, could become lost in mainstream administrative procedures.

4.5 **Equal Use of Aboriginal Sense of Identity for Expressing Ideas**

Maintaining the use of Aboriginal language and Aboriginal protocols has played a significant role in this process, and should continue to do so. The protocols have enhanced a sense that the decision-making process is founded on a spiritual connection with land and with the Dreaming. It will be important that those working with the Secretariat are open to perceiving that substantive, material issues can equally have spiritual, economic, social and political dimensions within an Aboriginal worldview. As the Secretariat supports the united voice to deliberate about issues, the breadth of each person’s perceptions of those issues could be significant to help the wider claimant community to maintain a full sense of involvement with the process, and to foster a good understanding of this within the wider community of South Australia.

4.6 **A Program to Develop Consistent Meanings and Definitions**

Maintaining an archive as this process developed did not necessarily overcome all the challenges of information-sharing and feedback. It could not serve as a substitute for time for discussion and mutual reflection, but given the loose structure of the team, the dynamics of the process and the diversity of roles, it was an invaluable resource. The content of the archive, understandably, relates most specifically to how each person fulfilled their own particular work in the process. There is not a great deal of recorded dialogue that indicates how people perceived their own professional capacities to be different when simultaneously engaging with two cultural systems. However, reflecting about what sort of ‘professionalism’ is appropriate for negotiating between different cultural conventions is likely to become increasingly important as the process continues to be dynamic, ground-breaking and unprecedented.
If an archive is maintained as the process develops, a more consistent, but not necessarily constraining, reporting format could be devised. As well as maintaining the openness and transparency of the process, as a resource it could also serve as a source of information to highlight where there is a need for more consistency of understanding. The person maintaining the archive could keep a journal of information, ideas, potentially ambiguous perceptions of issues or the meanings of words, difficult concepts, unfamiliar concepts, potentially difficult ethical issues and similar things that could benefit from attention in workshops or team-building meetings. As the Secretariat takes on a new direct relationship with NTMCs, this type of clarity is likely to become an even more critical component of the Secretariat’s function. This type of information-sharing needs to be reflective, educative, inclusive and stimulating.
5. BENCHMARKING

5.1 NTMCs Developing Their Own Capacity to Participate in Negotiations

The TAG reflected a view that there was no single competence that could be specified with regard to facilitating this process. Openness, flexibility and good communication, including good cross-cultural communication, have been central for the current process, and that is likely to be maintained as the NTMCs meet to formulate a united body to negotiate with the Government and other stakeholders. The process has been effective in order to reach the present stage, and, most significantly, it has been seen to be appropriate by NTMCs themselves. This is attributable in part to the depth of understanding about the broader context of cross-cultural relations in South Australia of the principals, Mr. Agius and Dr. Howitt, who have steered the process toward allowing claimants to create their own agenda. NTMCs were aspiring to achieve a model very much in keeping with what has emerged. Claimants have reached a stage where they are formulating protocols and principles to underpin the organisational structure of their united body.

As the model moves closer to reality, NTMCs will also most likely be carefully considering what protocols will be appropriate when internal problems or dilemmas arise, such as an unexpected withdrawal of financial or other support, or when there may be conflicting ideas about the purpose of the united voice and how outcomes can be achieved. There is every cause to believe that the NTMCs, and the actual negotiators from amongst them who will act on behalf of all claimants, will bring to the proceedings unique skills for working through issues in ways which ensure considered, just, equitable and workable outcomes.

The process undertaken between July and October could not put in place programs to provide training about negotiation beyond the very basic concept that negotiation was now a viable choice as a means for dealing with native title. The first priority for claimants has been to address the procedural issue of how they could participate in negotiations at the level of the state, and still retain a sense that their native title rights are cultural rights that have significance and meaning at a local, rather than a statewide level. The formulation of the united body will be founded on the relationship each native claimant group has to their own land. This matter of how claimants develop a united body through which their negotiators can participate and be accountable to the wider claimant community is likely to be the first of a number of procedural matters relating to cross-cultural negotiations for which solutions will have to found.

5.1.1 Benchmarking for Competency in Negotiations Procedures

Beyond the creation of their own united body, the NTMCs will also need to formulate plans as to how their united body will then engage with other stakeholders. For this purpose, as well, NTMCs will need support and information in order to formulate models. Their negotiating team, particularly, will need to plan how it will engage in negotiations, and how it will report back about proceedings to the united body and to claimants. Clear ideas about the interactive process, and means for reporting the outcomes of those interactions, will be significant in order to keep a structured record of what has happened, and be able to demonstrate accountability and transparency in the process. Reporting about developments will be important because it will shape how the process begins to be conceptualised and evaluated by all concerned. Mechanisms have to be clearly understood so that, if and when appropriate, they could be replicated or modified as necessary. The way the interactions are reported will be a way of developing and articulating standards for the negotiations, when it may no longer be possible to
rely on other standards, such as legal standards, to judge whether procedures are appropriate or whether in some way they are being abused or undermined.

There are a number of issues to do with training for these cross-cultural negotiations that warrant consideration. In the light of NTMCs' significant preoccupation merely to develop their own organisational capacity to participate, it is worth considering at what stage training in negotiation skills should begin, and to some extent, the type of training program offered will depend on whether NTMCs decide that in the first stages of negotiations they would prefer to:

- undertake the negotiations themselves
- engage others to support them with the professional expertise to present their positions and interests in the negotiations
- ask that all the parties consider engaging an independent professional negotiator, skilled in cross-cultural negotiations, to either monitor or play an integral role in the proceedings.

## 5.2 Considering and Addressing the Scope of the Negotiations

Through transparent reporting and mutual information sharing, a better understanding has emerged amongst the participants at the Main Table about the organisational issues facing claimants, and how they are presently working through their decision-making so that they can participate in negotiations at the level of the state. Prior to this process, the other stakeholders anticipated that claimants would be in a position to commence negotiations relatively quickly, and be in a position to address some of the other stakeholders' more pressing substantive issues. A primary outcome of the present process has been that claimants have agreed in principle to participate in negotiations, but to do so they must first devise an organisational structure, a united body, from which representation can be drawn to participate directly in the negotiations. The reasons why this is a necessary preliminary step is increasingly being understood by the other participants at the Main Table. It is better understood that claimants will be focusing a great deal of their time, resources and energy on how to formulate the united body, considering what native title issues are appropriate to negotiate about together, and how they might then present a collective position in relation to those issues.

There are at present many uneven understandings within the NTMCs and their claimant groups, and also considerable divergence of opinion about possible strategies for negotiation in the light of that uneven understanding. Nevertheless, the training, facilitation and resources are likely to see NTMCs take advantage of the negotiating option developing from the Congresses, building on a sense that the process offers constructive and tangible opportunities to participate. This contrasts with the alternative option, which would have been for the NTU to assume a primary role in the negotiations on behalf of the NTMCs. This would have alleviated the complexities of the present uneven understanding having to be addressed directly in the negotiation process. It would have allowed negotiations to begin sooner, and seem more manageable, but given that the NTMCs would not have had a sense of 'ownership' in the process, profound difficulties connected with uneven understanding and a sense of exclusion could then have arisen well into the negotiations, which would fall to the NTU to address. Such a negotiation process would have become, more, not less, complex as it proceeded. Equally, it would also have been less likely to produce mutually understood and agreed outcomes, and would have been prone to maintaining stereotypical images of native title claimants as being incapable of effective participation in decision-making.

What also needs to be given recognition is that there is likely to be equivalent uneven understanding about how negotiations are to take place between the diverse stakeholder groups. These considerations are all critical in the planning of the next stage of the process in terms of the timely provision of support and training. Resources and training relating specifically to
negotiations skills will be have to be reviewed, evaluated and be in place for when they are needed. However, the scope of this negotiations training program warrants considerable discussion with other participants at the Main Table to clarify present understandings about negotiations processes in general, and cross-cultural negotiations in particular, to ascertain the degree to which the other stakeholders are also considering and preparing for the forthcoming negotiations. If this is not clarified, it could fall to the Aboriginal representatives to ensure that the procedures of the negotiations deal appropriately with cultural difference, and this would place them at a considerable disadvantage. It is therefore important to understand the perceived relevance, and therefore the support for, training skills that are mutually relevant for all prospective participants in the negotiation, and who will resource the training that links the issues being negotiated with the possible paths toward their resolution.

5.3 PROCESSES FOR DECISION-MAKING CONCERNING PROFOUNDLY DIFFERENT PROBLEMS

The NTU, the TAG and the NTMCs will be considering what level of support they need from the Government in order to develop negotiations training for claimants and, in turn, whether other key players are likewise preparing so that there are mutually acceptable ideas about negotiations procedures. Just as it has been necessary in this process to appreciate the wider context in which the proposal has relevance, the same applies to seeing the ‘bigger picture’ in terms of the paths to solutions in the wider decision-making context. The initiative from the Government has been to find solutions relating to native title, and native title has implications in many aspects of the wider context of the entire state. While seeking solutions that make native title more workable in practice, the decision-making process could also extend to deal with other issues that overlap with it, such as sustainability, land degradation, salinity, resource management, etc. What follows illustrates three major types of conflicts that are confronting claimants and other stakeholders, all requiring specific decision-making mechanisms. They are often addressed within different academic disciplines, and professionally developed within different sectors and agencies. This in itself is a broad structural problem that affects decision-making relating to sustainable development and resource use futures. The scope of these negotiations about native title means that claimants will have to be appreciating the relevance of each type of problem, and what sort of organisations provide advice about each type of decision-making process for its resolution. The categories outlined below illustrate two things:

- The first is the phenomenal extent and complexity of the decision-making that lies ahead for claimants.
- The second is that the categories, apart from the first, are areas that are of equal concern to the Government and other stakeholders, because they are troubling areas where other groups apart from native title claimants will also be looking to devise better decision-making mechanisms.
The problem-solving can relate to conflicts concerning:

- **factors which make it difficult for a person’s or a group’s values relating to land and lifestyle to be compatible and mutually understood in relation to the values of others.** These issues deal with ‘values’ associated with recognition and legitimacy, and in the case of the claimants, they will be seeking to have native title and ‘care for country’ given formal recognition in new legal and political outcomes which are integral to their place in the overall social context of South Australia, particularly a recognition of their rights to equal and appropriate participation in decision-making. For Aboriginal people in Australia, as well as a need for recognition of their present and future aspirations and needs, there is also the need for recognition of the former failure to take account of their aspirations and needs.

- **factors to do with equity or distribution of benefit from a changing use of land and/or resources.** This set of issues is about how ‘social value’ ties in with ‘economic value’, dealing with issues that relate to economic considerations, issues of equity and fair settlements. In the prospective negotiations, these will be most challenging when ideas about equity have to address two different cultural approaches to the value that is accorded to resources. In part, these aspects of negotiation are about equating what value people give to things they both want access to. They will be concerned with monetary values associated with commodities or resources that may have another value that cannot be measured in monetary terms. This group of issues is relevant for indigenous people worldwide, as well as in Australia. They are issues that have relevance to many cross-cultural trading relationships. Negotiations that involve the resource development sector will be dealing with specifying workable and fair arrangements, and how the parties will articulate accountability for how wealth is distributed. They concern issues of whether a negotiated deal has been worthwhile for those who have felt the changes most in their daily life.

- **factors to do with one use of land bringing disadvantage to others who want to use the same land.** This set of issues that the negotiations will be dealing with concern shared values about the environment when the land is to be used by a range of people who all put a value on land according to their ‘social’ values. These negotiations concern the broader environmental issues and resource use futures. They will be to do with how people throughout the whole society have to work together and decide how they will share resources and co-exist throughout a region and maintain the ecosystem responsibly and sustainably. The type of decision-making processes for these issues, concerned with environmental integrity and sustainability, can bring together a wide range of groups who have to decide whether their arrangements adequately take into account ‘heritage’ issues, both those of the wider community, and those that have specific significance for Aboriginal people.

The reason for specifying these three major categories about decision-making is that while the first can ‘determine’ issues of equality and recognition through law and legislation, the other two are much more indeterminate and open ended. It is in those two categories where standards of accountability can be gauged by the quality and transparency of the procedures put into practice in order to attain a fair agreement, and this particularly applies when transactions and decisions involve the values of two different cultures.

For instance, following the introduction of the Native Title Act (1993), the National Native Title Tribunal instituted procedures in order that the cultural and traditional rights of Aboriginal people could be mediated and determined. However, the NNTT had little influence as to how claimants, state governments, resource developers and others dealt thereafter with issues that came within the future acts regime. In fact, the ILUA process was seen as a way of averting the frustration, discord and enmity that ensued when the right to negotiate procedure with native title claimants was perceived to be merely an obstruction to the purposes of a market driven economy. Choosing an appropriate procedure can be critical, and what is appropriate for one set of circumstances may not be right for another. Following the Mabo decision in the High Court, and
the passing of the Native Title Act in 1993, there was uncertainty where Australians should look for models. One avenue that the NNTT followed was to have key people, such as Justice French, attend the Program on Negotiation at Harvard University. At that time, the most well-known approach to negotiations advocated by the Harvard Program was an interest-based approach, as set out in the Fisher and Ury’s book *Getting to Yes*. It offered a popular model for people seeking to negotiate solutions to complex problems, proposing:

- negotiate about interests, not about positions;
- separate the people from the problem;
- search for objective criteria.

When this approach alone to negotiations is advanced by other parties, it is likely to put Aboriginal people at a disadvantage in negotiations. Interests are the things over which you can make deals, the things you can sell, modify, measure and reason about. However, the first of the three categories of conflicts mentioned earlier require people to put forward a position about the things that cannot be traded, such as values and rights, because they are non-negotiable, and all that can be negotiated in relation to them is co-existence. In a market driven economy, it is clear that the interest-based model is ideal, and why the model gained such popularity. One of the goals is to remove impediments, the things that interfere with efficiency. Values, principles and rights that are outside of that market economy can be, and in Australia have definitely been, seen as an impediment. It is understandable that there will be pressure to focus on ‘interests’ so that deals can be reached.

5.4 **ConSidering Joint Stakeholder Training/SkIllsbase Program**

These negotiations promise adjustments to practices, regulations, legislations and policies in South Australia which will specify how native title rights will co-exist with other rights and interests. Therefore, a significant issue will be who should take responsibility and financially support the development of a negotiations training skillsbase relevant for the planning of these negotiations. There is a strong argument to suggest that the responsibility and the burden for developing it should not simply fall to claimants, particularly given that they have many pressing deliberations about building their capacity to participate. It is important to ascertain an understanding of the present approach to negotiations by the Government and other stakeholders, and the extent to which they see advantages to using similar negotiations to deal with other challenging and inevitably inter-related problems, particularly seemingly intractable environmental problems with which the state is contending. It is important to know whether they are also proposing to use negotiations to deal with these types of issues because many of them will be inextricably linked to native title issues and care for country. There is a need to know the extent to which the other stakeholders are prepared to fund, support and promote a wider use of negotiations beyond their direct interactions with the united body. It will be significant for claimants to know whether the other stakeholders perceive the development of negotiations skills has mutual benefits and is a mutual responsibility.

Given that there have not so far been opportunities to offer claimants training to enhance their capacity to participate in negotiations, one consideration for the immediate planning exercise is to clarify what the scope of their forthcoming negotiations training should cover. To plan a training program, the following are some major issues to address:

- will the budget being submitted to the Government be advocating that funds are necessary for training to advance claimants’ basic negotiation skills so that they are prepared for negotiations
- will the assumption be that the claimants will be taking the full responsibility to develop every aspect of the training that is to do with ‘negotiating understanding’, that is, the full burden for
‘interpreting’ their aspirations and needs so that they are presented in a form which is straightforward and understandable by the other parties

- will the other stakeholders be instituting training programs in order that their negotiators are well placed to also negotiate understanding, and can in turn make the claimants’ positions meaningful to their own broader stakeholder groups.

As well as putting forward a budget that takes account of funding for the specific training claimants will need to be prepared to negotiate, it will be necessary to clarify with the funding body who will be providing the training that deals with the ‘interface’ between cultural difference. Clarifying whether there is to be a shared responsibility to attend to these critical procedural aspects of the forthcoming negotiations will indicate the extent to which the Government and other stakeholder teams are similarly devising benchmarks for cross-cultural procedural standards. Additionally it would clarify the extent to which negotiations are also seen as a means for bringing mutually beneficial solutions for a wide range of inter-relating environmental problems in order that parties can co-exist with one another.

**5.5 ROLE OF THE ILUA NEGOTIATION TEAM AND THE ROLE OF THE SECRETARIAT**

In terms of planning, more clarity is necessary about the role of the ILUA Negotiation Team, to determine whether their function is to establish the ‘interface’ between all the interested parties to the negotiations, including Aboriginal people, or whether they perceive their role to be just one of a number of relatively ‘separate’ stakeholder groups. The difference is significant in terms of who takes responsibility for ‘negotiating understanding’ at the level of the state when two different cultural systems are involved, in the way that the NNTT does through the Federal Court system. How they perceive their own role will mean the difference as to whether the united body of claimants has to assume the responsibility to convey an understanding of their cultural identity to other parties, or whether they will be assisted in order that others in the negotiations respond and attend to what is being said and how it is being understood in terms of cultural difference. This has implications for the role of the Secretariat as a body established to support claimants to participate in negotiations. The extent to which other parties are developing negotiation skills will make a significant difference to their own function. Those in the Secretariat will need to be clear whether they are supporting claimants to take their issues to the negotiations in ways which are most meaningful for claimants, with negotiations procedures actually providing the ‘interface’ to clarify different cultural meanings back and forth between different groups, or will it fall to the Secretariat to assist with making claimants’ issues readily accessible to other stakeholders. The different could make a significant difference to the way the Secretariat is resourced, staffed and politicised.

**5.6 BENCHMARKING AND STANDARDS OF COMPETENCY IN AUSTRALIA AND OVERSEAS**

In Australia, professional roles for negotiators or mediators have developed in two relatively separate ways. At the inter-personal level, skills, training and professional developments in mediation and negotiation have been developing through academic disciplines such as psychology and law, promoting inter-personal problem solving using alternative dispute resolution theory and practice. The use of alternative dispute resolution has been supported and encouraged by the courts and the legal profession where it can be seen to bring more effective resolutions, with less financial and emotional costs to the protagonists, and has the potential to bring about more enduring solutions where the outcomes can also be legally settled and made binding. This is most evident in family court proceedings. While inter-personal skills will probably need to feature in the training program, a further level of negotiation skills will also be necessary
to address how the united body as an organisation relates in the negotiations with other organisations.

However, while there have been significant professional developments to create roles for mediators and negotiators at the organisational level, these roles are generally perceived to bring benefit because they promote better interactions between organisations and businesses operating within a market economy. The focus is on working through issues in a less adversarial way, facilitating toward reaching agreements and solutions that are mutually satisfactory to the parties, with the least expenditure of time, money and acrimony. In more recent years, there have been some significant developments toward using mediators to lay constructive foundations for exchanges between mining companies and native title claimants, as evidenced in the case of Hamersley Iron’s Yandicoogina Agreement. However, even when corporations have created precedents to mediate in relation to specific exchanges, the negotiations planned for this prospective statewide process will be addressing an even greater level of complexity. The negotiators will not simply be devising precedents that take account of one single interaction, but a complexity of interactions between the diverse interests of Aboriginal people, farmers, miners, and many others. The negotiations will be considering procedures for how all their interests can be integrated into workable settlement frameworks in relation to each other. It seems to be the case that in countries, such as Canada and the US, a far broader range of professional roles are developing, providing intermediary skills to facilitate settlements entailing a complexity of overlapping cross-cultural and cross-sectoral issues.

This is an important consideration with respect to the present process, where the prospective negotiations about native title will be implementing a negotiation process that is relatively unprecedented in Australia, and will be addressing complex cross-sectoral and well as cross-cultural issues. Claimants will be relying on benchmarks, but it will be challenging to find meaningful precedents in Australia. Equally, given that adversarial attitudes toward native title have so far predominated, it is difficult to conceive where the sort of ‘professionalism’ that is appropriate to guide parties through cross-cultural mediations or negotiations is to come from, if it is conceded that what is sought will be agreements that are useful in practical terms as well as in contractual or legal terms. If professionals are recruited to assist claimants in negotiations they will themselves probably need to be ‘trained’ to appreciate how this developing process is relatively unique in Australia. The most meaningful benchmarking both about processes and their outcomes is likely to be drawn from international sources, in order to learn from and appreciate the similarities and differences between different treaties and agreements, and to take account of the procedures that have been put in place in order that the formal settlements follow through with appropriate and effective outcomes. The benchmarking that is most often drawn from to appreciate how other countries are developing new cross-cultural agreements comes from Canada, the United States and New Zealand. This material is relatively easy to access, and is important because it indicates how the dominant cultures in those countries have chosen to address anomalies and injustices concerning the rights of the indigenous people of those lands.

However, it is as important to benchmark how indigenous people in other countries are dealing with cross-sectoral and cross-cultural problems. This type of benchmarking highlights that even when there does not appear to be a fundamental issue of indigenous peoples having rights as landholders, poverty and environmental degradation indicate that they still have problems negotiating meaningful and fair exchanges. This is particularly the case when indigenous people participate in negotiations with large organisations, particularly resource development corporations, involved in market driven economies that want to use local resources. Equity is often the predominating issue in these situations, and examples can be seen in many countries, including Papua New Guinea, the Solomon Islands, Zimbabwe, Nigeria, Kenya and Ethiopia.

These implications about benchmarking will be as unsettling as other aspects relating to the present process because the claimants through their united voice will have to look beyond familiar structures and seriously consider what the measures of competency will be to guide the development of new procedures. Benchmarking standards will be critical considering that the
negotiations are to give practical recognition to the values and the rights of people with different cultures and different interests. For claimants an outcome of great significance will be recognition. In part, the negotiations will have a function somewhat parallel to that presently fulfilled by the National Native Title Tribunal, to mediate understanding and have cultural difference recognised. However, it will then also be incorporating new expressions of recognition, putting in place within existing legal and policy frameworks the practical means to deal with all the parties’ substantive issues. Benchmarking will be a way for the parties to conceptualise the criteria of success of their own negotiations in terms of:

- setting goals
- indicating present competencies and capacities to fulfil the goals
- providing a means for determining standards of accountability.

The negotiations will in fact be attempting to give meaningful and practical recognition to the formerly unrecognised rights of native title claimants, through new arrangements made with a range of other parties. Many others also have not formerly conceived how those rights can be practically integrated to be meaningful within the wider society of South Australia. The negotiations will profoundly challenge assumptions about how different rights can co-exist. If new procedures which are satisfactory to all the parties are not developed, then the question will remain as to whether those who have been invited to participate, the native title claimants, have simply been asked to comply with already existing rules and assumptions laid down by the groups who hold most sway. It will be as much through new procedures as well as new outcomes that a better articulation of equality, equity and social justice might be appreciated.

5.7 RECONCILIATION

Reconciliation is another dimension of the training program that will be significant. The negotiations will not simply be dealing with the practicalities of having specific Aboriginal rights and values given recognition, but will also need to address reconciliation issues, and the realities that former laws and prevailing attitudes have extensively disempowered and restricted Aboriginal people from sharing power and having the capacity to participate appropriately in decision-making about a wide range of issues that concern the wider community of South Australia. These former ‘structural disadvantages’ are a contributing factor in the degree to which claimants now need skills development and capacity-building within an as yet unformulated united body. They are issues that contribute to how claimants are coping with uneven development. Part of this process will be reconciliation, and as such, it is worth enquiring about the extent to which this could also be a part of a joint Government/stakeholder resourced training program.

5.8 BENCHMARKING ABOUT DEFINITIONS OF WORDS AND CONCEPTS

In the preceding chapter relating to Accountability, it was recommended that a program to develop consistent meanings and definitions be developed. As well as serving to ensure clearer ideas about accountability, it is also a useful tool and a ‘check-list’ which the NTMCs and other participants in the prospective negotiations can use to review whether all issues raised are adequately understood to be mutually relevant in order to make considered decisions. In this sense, it also relates to benchmarking.

The development of mutually agreeable sets of definitions about words and ideas which could otherwise be misunderstood because they have different meanings for speakers and listeners could make an important and practical contribution to the negotiation process. The participating groups are likely to need to formalise their understanding about each other in order to work together meaningfully, particularly when they might hold different deeply held values. Their
values will in turn shape how they express their different needs and their goals. In the forthcoming negotiations the development of clear and mutually understood meanings can contribute to problem identification, and assist toward rectifying as many misunderstandings as possible before moving on to problem-solving. This stage in the process helps to identify whether the ideas groups have about each other, and their issues, are accurate and consistent.

5.8.1 An Example of Benchmarking about Definitions - The Concept of Power

One of the concepts that is profoundly difficult to benchmark in cross-cultural negotiations is the power relations in which the negotiations are taking place. The existing political context of the dominant culture is inevitably a significant factor in the scheme of things. However, particularly in a process relating to change, it should not be presumed that everyone will define power relations primarily in those terms. To do so would place undue emphasis on existing structures, and fail to give equal emphasis to the fact that what is being negotiated is in part a better recognition of the legitimacy of native title claimants, whose lifestyle, culture and worldview could mean that they perceive power in a markedly different way. Benchmarks of relevant power in cross-cultural negotiations can be helpful because:

- negotiation is essentially a form of voluntary ‘power-sharing’ for the purpose of attempting to make new decisions
- negotiations are a way of keeping as many ideas as possible relevant for everyone involved, irrespective of their circumstances or cultural background
- negotiations should acknowledge that everyone involved has some part to play in the decision-making, and therefore some power to influence the outcomes
- how each person feels they can contribute to negotiations will profoundly influence how they believe power will work and have significance in their lives in the outcomes.

As native title claimants move toward developing their united voice, issues of power are likely to be important determinants in how they formulate their position and their interests. A primary basis of the legitimacy of the united voice will be Aboriginal traditional customary law and how it inextricably links with connections to land. Therefore, how power is defined is also likely to be linked to associations with land, and this could be a significant factor that other stakeholders may not readily appreciate.

It is especially necessary for native title claimants to feel they have every opportunity to contribute meaningfully in the forthcoming negotiations given that the decision-making capacity of Aboriginal people has in the past most often not been afforded even a basic recognition since colonisation in South Australia and elsewhere in Australia. One way of redressing that former exclusion will be a demonstration of respect and recognition accorded to the significant wisdom and decision-making practices that Aboriginal people know about and use to plan and organise things. The power to dominate has had great significance and bearing on the lives of Aboriginal people in Australia, and an important facet of this has been cultural domination, whereby Aboriginal ways of understanding and using power have been misunderstood, undervalued or ignored. Negotiating through the united voice promises opportunities for respecting the way Aboriginal people relate with each other, and their potential to relate wisely and meaningfully with others. Claimants will need to feel confident and comfortable with how their power is defined and accorded recognition. The negotiations can then foster creative problem-solving, and shape new relationships between people who appreciate the world they have to share, taking into account different cultures, social systems and worldviews. Central to the negotiations will be the issue of whether the basic assumptions that created the disempowerment of Aboriginal people are changing, and if so how this is happening. Claimants will need to believe that their own capacity to meaningfully contribute and be listened to will allow them to function effectively as decision-makers.
Thus, a broad framework is necessary for understanding power and according it recognition and legitimacy in a process which promises to bring about change within existing structures and relationships. One such framework to constructively integrate broad ideas about power has been developed by a sociologist, Kenneth Boulding, and it is presented here to illustrate why it will be significant to benchmark power, particularly as it has relevance to land.

Boulding’s framework starts with a very simple definition of power, which suggests that it is how all people have abilities to get what they want, and abilities to achieve common ends. This simple definition can then be expanded and relate to any sort of power people hold to make evaluations, choices and decisions. In the prospective negotiations, as in any scenario where new decisions will be being made, the power people have will come from knowledge, know-how, information and capacity for communication, always changing depending on the circumstances.

In complex Western traditions, it is evident that different forms of power can be perceived as relatively distinct entities. However, they could be perceived in less distinct ways in both traditional and contemporary Aboriginal experiences. Boulding’s framework brings together ‘three faces of power’ so that, appreciated as inter-relating dynamics in a wide range of given situations, they can be reflected on to develop a more complete idea about how power works and has meaning in different people’s lives, and how it can affect each person’s reasons for making evaluations and decisions. The three faces are described in Table 1.

Table 1: Three faces of power

<table>
<thead>
<tr>
<th>Coercion or Threat (Power ‘over’)</th>
<th>Exchange (Power ‘to’)</th>
<th>Integration (Power ‘with’)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Stick - you do something I want or I’ll do something you don’t want</td>
<td>The Carrot - ‘you do something I want and I’ll do something you want</td>
<td>The embrace - ‘you do something for me because you respect me’</td>
</tr>
<tr>
<td>Sacred or Secular Authority Capacity to carry out a threat(usually political power)</td>
<td>Sacred or Secular Exchanges Can create or diminish material worth (usually economic power)</td>
<td>Sacred or Secular Legitimacy Integration of ideas, feelings, capacity to persuade (usually power of respect)</td>
</tr>
<tr>
<td><strong>Positive:</strong> Control to uphold</td>
<td><strong>Positive:</strong> Make things/Use things Trade/Reciprocity/Services</td>
<td><strong>Positive:</strong> Capacity to create identity amongst people, particularly create loyalties/maintain family life/ bind people together</td>
</tr>
<tr>
<td><strong>Negative:</strong> Control to deny</td>
<td><strong>Negative:</strong> Inflate/Deflate value</td>
<td><strong>Negative:</strong> Capacity to create enemies, alienate/diminish personal worth.</td>
</tr>
</tbody>
</table>

Boulding’s simple model can help to reflect about how these faces of power can be present in all processes of interaction between people, in varying forms and degrees. The simplified model of power does not suggest that the issues themselves are simple, but it at least offers a useful benchmark to recognise that all three interact in contexts in which people are considering their issues and making evaluations and decisions. The stakeholders in the forthcoming negotiations will be considering the dynamics of power across a wide range of institutions involving government policies, legal systems, Aboriginal customary laws and practices, and agencies functioning to uphold and protect both people and the ecosystem. They will be looking most particularly for improvements in the mediated, negotiated or enforced settlements between Aboriginal people and people who primarily operate within the market sector. Benchmarking power within these dynamics could allow participants in the negotiations to identify and compare how the different groups understand and recognise power held by other people. The framework could only be useful as a benchmarking tool if it promotes reflection and understanding about
why it is important to consider different ideas about power simultaneously. The reason this is particularly important in the forthcoming negotiations is that:

- no one form generally operates in isolation from the others
- people with different cultures may not make the same distinctions about power as each other, particularly when the negotiations are dealing with land.

The following are some ways that the model could identify power in the present set of circumstances.

**Table 2: Power in the present set of circumstances**

<table>
<thead>
<tr>
<th>Coercion or Threat (Power ‘over’)</th>
<th>Exchange (Power ‘to’)</th>
<th>Integration (Power ‘with’)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Crown/Governor General Law Courts</td>
<td>Reserve Bank/Other Banks Other Financial Institutions</td>
<td>Family life, people’s moral and ethical values, beliefs and how people show support and respect for the political and economic institutions which affect their wants and needs</td>
</tr>
<tr>
<td>Commonwealth Parliament Acts</td>
<td>Other Financial Institutions Business activities</td>
<td>Services and support provided by agencies and charities</td>
</tr>
<tr>
<td>Commonwealth Government Rules</td>
<td>International monetary system</td>
<td>Selecting representatives</td>
</tr>
<tr>
<td>SA Parliament Acts</td>
<td>Maintaining infrastructure</td>
<td>Social action/demonstrations</td>
</tr>
<tr>
<td>SA Government Rules</td>
<td>Collecting/distributing wealth from taxes royalties, etc.</td>
<td>Respect for family, elders, law</td>
</tr>
<tr>
<td>Local Governments Rules</td>
<td>Charitable collections/distributions</td>
<td>Respect for what land gives</td>
</tr>
<tr>
<td>Non government agencies</td>
<td>Government Grants</td>
<td>Respect for non-visible entities</td>
</tr>
<tr>
<td>Religious organisations</td>
<td>Land directly giving sustenance</td>
<td></td>
</tr>
<tr>
<td>Defence Forces</td>
<td>Land and other things creating value in peoples’ lives</td>
<td></td>
</tr>
<tr>
<td>Aboriginal customary law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dreaming spirits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kinship ties</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Positive</strong></td>
<td><strong>Positive:</strong> Make things/Use things</td>
<td><strong>Positive:</strong> Create sense of belonging</td>
</tr>
<tr>
<td>Control to uphold</td>
<td>Trade/Reciprocity/Services</td>
<td>Create loyalties/care for people in families/groups</td>
</tr>
<tr>
<td><strong>Negative:</strong></td>
<td><strong>Negative:</strong> Inflate/Deflate value</td>
<td><strong>Negative:</strong> Create enemies, alienate people; make people feel worthless</td>
</tr>
<tr>
<td>Control to deny</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The most significant reason for suggesting such a framework for identifying power is that it could offer a way for claimants to express ideas about how land may hold significance and be of fundamental importance in their lives without having to draw rigid distinctions between traditional or more contemporary Aboriginal worldviews and lifestyles. It does not lock people into preordained categories, and can account for the wider context and people’s changing circumstances. Irrespective of whether claimants maintain a traditional, semi-traditional or urban lifestyle, the framework could help to express how land can simultaneously be a fundamental in political, economic and social terms, in ways which are significantly different, or to some degree different, from how land is perceived in Western terms. Land could, for instance be central in the way shown in Table 3.
Table 3: Land as a central factor in Aboriginal worldviews

<table>
<thead>
<tr>
<th>Coercion or Threat (Power 'over')</th>
<th>Exchange (Power 'to')</th>
<th>Integration (Power 'with')</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Land as the visible part of the Cosmos, the Dreaming Ceremonies to maintain laws. Sacred places reinforcing ties between people, land and the natural world and other entities.</td>
<td>The Land as 'a bank' giving value to places in people’s lives. The Land as 'a larder' holding nourishment until it is needed.</td>
<td>The land as a life-giver respected and cared for as people move through country and teach the next generation about food gathering, and other ways land maintains well-being.</td>
</tr>
<tr>
<td>Positive: Control to uphold</td>
<td>Positive: Make things/Use things Trade/Reciprocity/Services</td>
<td>Positive: Create sense of belonging Create loyalties; care for people in families/groups</td>
</tr>
<tr>
<td>Negative: Control to deny</td>
<td>Negative: Inflate/Deflate value</td>
<td>Negative: Create obligations and exclusions</td>
</tr>
</tbody>
</table>

In a western worldview, land may not hold such a central position. Land could be perceived as a 'commodity' that is used to maintain a market system whereby not everyone is supported directly by land and resources from just one region. This worldview is shown in Table 4.

Table 4: Land in Western worldviews

<table>
<thead>
<tr>
<th>Coercion or Threat (Power 'over')</th>
<th>Exchange (Power 'to')</th>
<th>Integration (Power 'with')</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Land as a means of defining the nation, Australia, with boundaries which account for states, cities, modern suburban life governed by laws, regulations, complex bureaucracy, transport system etc.</td>
<td>The Land as a commodity which produces resources and products which can be bought and sold in a global market economy</td>
<td>The land as it can be owned by the Government, or by individuals usually to support a modern lifestyle, supermarkets, cars, hospitals, schools, etc.</td>
</tr>
<tr>
<td>Positive: Control to uphold</td>
<td>Positive: Make things/Use things Trade/Reciprocity/Services</td>
<td>Positive: Create sense of belonging Create loyalties; care for people in families/groups</td>
</tr>
<tr>
<td>Negative: Control to deny</td>
<td>Negative: Inflate/Deflate value</td>
<td>Negative: Create obligations, alienate people</td>
</tr>
</tbody>
</table>

A broader framework about power can help toward integrating 'psychological' settlements with 'material' settlements, finding a balance between the legitimate claims of social, political, economic and legal institutions and the counter-balancing discretionary influences generated as people involved in the negotiations work through different but equally meaningful perceptions about the range of institutions involved, which have to be accommodated in new decisions and workable arrangements.

Sharing ideas about what is of central significance to different groups is a way of ensuring that the negotiations give equal standing to:
• Routine procedures that can be dealt with through formally established institutions which will require only the compliance of formal groups whose actions are prescribed by existing practices which are relatively determinate.

• Other procedures that are generally regarded as informal, not tied to formal institutions, but which nevertheless need to be acknowledged because, while they may appear to some to be more indeterminate, could be procedures which people presently use in order to define power and fulfil their needs.
6. CONCLUSION

6.1 CLARIFYING ORIGINAL GOALS

This Independent Review was commissioned by the Native Title Unit of the Aboriginal Legal Rights Movement of South Australia to provide an account and an evaluation of a process that took place between July and October 2000. This concluding chapter summarises and evaluates the outcomes of the process undertaken by the NTU in terms of the original goals, which were to:

- facilitate a program to enable native title claimants to make an informed decision as to whether they would accept the Government’s proposal to negotiate about native title at a statewide level.
- provide information and support to native title claimants primarily through the NTMCs in order that they were in a position to understand and respond to the Government’s proposal.

6.2 THE TEAM - NTU, SECRETARIAT, AND TAG

Mr. Parry Agius, the Executive Officer of Native Title Unit, played a pivotal role in this process, assisted by the staff of the NTU, the staff of the Statewide Negotiations Secretariat, set up within the NTU to provide support for the process, and the Technical Advisory Group. The TAG was not a decision-making body, but a group of people whose diverse experience and advice could be drawn on when relevant for the process. Their advice provided the confidence for the process to be innovative while ensuring it retained a high level of accountability, credibility and balance. The TAG’s advice covered legal issues, land management, policy, public relations, commercial and political issues, the effective coordination of the Secretariat’s activities, and appropriate research to support the process. There was also specific advice about ‘process’ issues, particularly principles and protocols relevant within Aboriginal culture, and the appropriate incorporation of Aboriginal language within claimants’ decision-making processes. Advisers were chosen for their high levels of expertise, combined with personal commitment to the underlying principles involved, and in many cases long standing personal relationships with Aboriginal people.

Mr. Agius’ leadership was a key contributing factor in the process, due in part to his ability to attend to what claimants, advisers and other stakeholders had to say, and be open to do more than ‘manage’ a set of changing circumstances. His contribution allowed the process to evolve positively despite individuals having to let go of familiar structures and create new decision-making structures that were more appropriate to satisfactorily resolve native title issues in South Australia. The team saw its purpose as allowing claimants to create their own decisions and responses to the proposal put forward by the SA Government, the South Australian Chamber of Mines and Energy and the South Australian Farmers’ Federation. The proponents of the proposal, people representing the other key stakeholders, equally shared qualities of leadership, appreciating that negotiations would entail the creation of new, flexible and voluntary power-sharing arrangements. Amongst the key players, there was a significant degree of trust in the principles which guided the endeavour and the competency and integrity of the principals involved. This created a set of circumstances whereby those involved could consider where there was scope to improve accepted conventions and create new ways to cooperate.

6.3 INITIAL PLANNING

In February, 2000, at a meeting in Port Augusta, native title claimants in South Australia passed a motion that directed the NTU to secure funds and implement a program to meet with Native Title Management Committees throughout South Australia. NTMCs, through a certification process undertaken prior to the registration of native title claims, are appointed and endorsed by their entire claim group to be their delegates. They therefore have vested authority to speak on the
entire claim group’s behalf about matters relating to the management of the native title claim. Thus, NTMCs are a critical component in an organisational structure dealing with native title.

Consultative meetings were planned to build claimants’ understanding of the issues affecting the future of native title in their regions, and increase their skills in advancing their concerns and interests. In May 2000, the funds to proceed were secured by the NTU from the Attorney-General’s Department.

The team initially planned to hold consultative meetings in four regional areas of the state between mid-July and the end of August. They were to combine community consultation and some initial training for representatives from local Native Title Management Committees. They intended to outline the Government’s proposal, illustrate what benefits claimants might derive from dealing with native title issues through statewide negotiations, and offer information and training to convey how some of their issues could be dealt with collectively through negotiations. The purpose was to introduce claimants to the concept of negotiations, and consider how, through this alternative decision-making process, they might develop with the Government, SACOME and SAFF a statewide Indigenous Land Use Agreement to bring about joint practical resolution of many native title issues. The information that was to be presented and expanded upon with NTMCs in the consultative sessions was developed primarily by Mr. Parry Agius and Dr. Richie Howitt, and initially presented in Issues Papers to NTMCs at the Port Augusta meeting in December 1999.

The team offered an organisational model for NTMCs to consider. If approved, two representatives from each claimant group could be appointed to a Reference Group to create a cohesive and culturally appropriate position on behalf of all claimants. This group would be provided with further specialised information, advice and training about negotiation. The resources would be developed within the Statewide Native Title Secretariat, funded for that purpose by the SA Government. A smaller team would be appointed to represent claimants at the Main Table, the name given to the forum initiated by the NTU through which the Government’s ILUA Negotiations Team, representatives from the other major stakeholders, and the National Native Title Tribunal, attending as observers, discussed negotiation issues. For claimants to organise in this way, they would rely on a supporting statewide communications network also developed through the Secretariat to allow two-way discussion and deliberation within each native title claimant community about the issues being negotiated at the state level. It was envisaged that NTMCs might begin negotiations at the Main Table as early as the end of this process.

The team trialed the strategy at two pilot sessions in July. This was the first opportunity for the team and claimants to meet and evaluate the program together. Despite NTMCs appreciating from the presentations the significance and the merits of the proposal, they indicated that they could not take up the option of negotiating through the suggested decision-making model. They also indicated that in order to weigh up the full significance of the proposal, they needed information about the issues to be tailored so that the starting point was their own perspective on the issues. This would make the proposal relevant as it had meaning within each local claim, in terms of Aboriginal customary law, which is the basis of native title. Many claimants had little experience of dealing with native title issues beyond their own claim level. Some of their reservations and uncertainties related to the implications of decisions being made at any level other than local level. There was no formal avenue for claimants to engage with groups from other claim areas, and therefore no means for assessing what common issues statewide negotiations might address. There was concern that statewide negotiations could undermine local claim autonomy and authority, which was grounded in Aboriginal customary law unique within each local claim.

The option to negotiate at the level of the state was a difficult concept to grasp because it related to complex changes in the level at which decision-making about some native title matters could be settled. The NTU team, through listening to claimants, came to understand the significance
of claimants’ lack of opportunities or resources through which to confer and compare their circumstances and their issues with other NTMCs. Their isolation from each other meant that they could not collectively evaluate the full significance of the information and concepts being presented as statewide issues, nor consider the implications and overall relevance of the proposal to themselves as claimants. As well, the idea of a small team negotiating at the level of the state on their behalf contravened traditional customary law whereby traditional owners spoke only for their own country.

The NTU team came to appreciate that an integral facet of making an ‘informed decision’ was the creation of opportunities through which information about the proposal could be evaluated by all NTMCs together. They could then develop clearer mutual ideas about the implications of the proposal as it had relevance in the wider context of South Australia in which the changes would take place.

The SA Government had allowed for flexibility within the program, and the team put in place an alternative strategy. The competency of the program was not merely whether the team could effectively convey the broad ideas about the proposal, but how well they could listen and respond to what claimants themselves actually had to say about it from their own perspective.

**Evaluation:** The capacity to re-evaluate the way to present the Government’s proposal was a fundamental strength in the process. The NTU had the capacity to provide a great deal of appropriate information, but it became clear that a fundamental requirement of the program was to structure that information so that claimants could use it more meaningfully to enhance their understanding of its relevance and create their own position and present their interests in negotiations.

### 6.4 Change of Strategies and Methods

The team responded to what they had heard from claimants at the pilots and revised their plan. Instead of NTMCs meeting at regional level, they were invited to come together in a series of three statewide ‘Congresses’ that would be conducted as facilitated decision-making meetings. At the Congresses, the NTU began by promoting each NTMC to identify their issues, concerns and aspirations, and once some of these were identified, to then jointly consider how coming together to deal with them through negotiations in a united way was viable. The Congress meetings allowed NTMCs to develop shared ideas about the issues that the negotiations might address, and share ideas about how they could organise to participate in negotiations. NTMCs developed their own protocols for maintaining the authority and transparency of this decision-making process. Through discussion and deliberation about the issues, they collectively discerned how some of their issues, even though they manifested at local level, were structural issues which could be resolved with the Government and other parties through engagement at the level of the state. The Congress meetings were the foundation for NTMCs to articulate their own interests and appreciate the relevance of the proposal as it had meaning in terms of their own identified needs and priorities.

The NTU, through the Statewide Negotiations Secretariat created for this purpose, supported this facilitated decision-making process by offering information, explanation and advice at the meetings and in mailed out responses as it was sought by claimants, in order that they could build up incrementally a more complete and integrated picture of a wide and complex range of native title issues that related to the Government’s proposal.

**Evaluation:** The NTU team responded to what claimants had said, and tailored their program in order to overcome the concerns raised at the pilots. The sequencing of the program altered, but the content, the issues, and the overall goals remained consistent.
6.5 Emergence of the ‘United Voice’ Concept

Through the Congress meetings, new organisational models for participating in the negotiations were considered, taking into account that within Aboriginal customary law only traditional owners had authority to speak about their own individual claim issues. The Congress meetings actually provided the NTMCs with the opportunity to envisage the creation of a statewide ‘united voice’ through which all claimants would have direct and formal input into the decision-making process. The ‘united voice’ would be a decision-making body able to discern which were local issues and which were issues that had a better chance of being resolved through negotiation at the level of the state. The same practical support and communications network, which had originally been envisaged as a necessary component of the negotiations process, could also be the means through which the ‘united voice’ would engage in the necessary two-way exchange with individual native title claimant communities about the issues to be negotiated at the state level before final decisions were taken with other parties.

NTMCs have reiterated the importance for their decision-making body to have culturally appropriate protocols, be transparent and accountable, and have clear reporting mechanisms. The Congress meetings addressed a former lack of an organisational structure through which information about the Government’s proposal could be collectively evaluated. The strategy devised by the team provided essential support for the process, insofar as the Congress meetings have been the underpinning vehicle through which claimants could develop a sense of confidence and trust in the process, which was a fundamental issue that needed to be addressed. While the Congress meetings, and the ‘united voice’ that will be formally constituted and practically developed by claimants, may not replicate traditional Aboriginal ways of organising, they can serve as means for claimants to:

- take advantage of the Government’s and other organisations’ willingness to interact and have Aboriginal aspirations and needs taken into account alongside those of other organisations.
- have their rights, culture and way of life recognised, understood and protected.
- have a workable ‘interface’ between the different scales at which resolutions can be meaningful for both the state and traditional owners. The scale of the united body would be different from the scale that has most meaning for claimants, ie. a local scale, but building the capacity to engage at the scale of the state would afford claimants opportunities for resolving issues that can only be resolved at the level of the state.

The program had to postpone earlier plans to offer formal ‘training’ to prepare claimants for negotiation. However, the process that has transpired has been an even more crucial ‘learning process’ to address the dynamics of a potentially changing set of circumstances. Central to the process was openness, flexibility, good communications skills and a depth of understanding of issues of concern to Aboriginal people in South Australia by those on the team appointed by the NTU. The Congresses have set a precedent for listening for instruction, and listening to know what information and advice was needed and the sequence in which it was needed in order that the NTMCs could come to an ‘informed decision’. If the process had merely instructed, it would not have provided NTMCs with opportunities to develop their own culturally appropriate mechanisms and decision-making capacities to suit their own understanding of the issues. An outcome of listening to claimants and sharing information has been an appreciation that formerly claimants lacked the means to see the relevance of the proposal within the broader framework of Aboriginal issues in South Australia. This had to be addressed for any changes and reforms to be realistically considered.

The concept of the ‘united voice’ had not been envisaged at the beginning of the process. The change in strategy that allowed claimants to develop this organisational concept reflected that flexibility was an advantage in the process, given that both those planning and responding to the program were stepping outside of familiar conventions and structures. The program was relatively un-centred, and this was necessary in order to facilitate a decision-making process that
was anticipating a new structure, whereby claimants and other stakeholders could negotiate and come to decisions about native title in South Australia. This had to reflect that negotiations are essentially a voluntary power-sharing arrangement. The idea of what constituted an informed decision was refined as the process developed. At the outset, the goal had been for claimants to reach a decision as to whether or not they would negotiate about native title. At the end of the process, what has been achieved is a capacity for the team, claimants and other stakeholders to more realistically evaluate and contextualise how that decision relates to fulfilling the broader purpose of being ready to negotiate.

**Evaluation:** At the end of the process the NTU team and the claimants have together developed a much more realistic concept of what constitutes an ‘informed decision’ than was formerly possible. The fact that NTMCs are not yet in a position to negotiate does not reflect a failure to convey appropriate information. It highlights that even more fundamental issues to do with organisational and participatory capacities needed to be addressed in order for information about the proposal to have relevance. The outcome has the potential to produce negotiations that are well-founded and constructive through a strategy that evolved as a response to perceived needs.

### 6.6 Producing the Intended Outcomes

The SA Government provided funds to support the process which continued through to December, 2000. However, this Independent Review reports only on developments until mid-October, 2000. The primary outcomes of the process up until that time have been:

- A decision for the Congress meetings of NTMCs to proceed, and from these meetings, to constitute a ‘united voice’, a decision-making body which can represent all native title claimants throughout the state. Through an appointed Working Group, they will begin to work on issues to do with the constituting of that organisation.

- A decision from the Congress meetings to continue with the current process, and that in principle they agree to negotiate with the Government and other stakeholders about native title.

**Evaluation:** These outcomes reflect that the program instituted an appropriate process through which to assist claimants to make a response to the Government’s proposal. Within the time frame, it has not been possible to provide all the appropriate information and support necessary in order that claimants are in a position to negotiate, and further time and resources are necessary in order to continue the process.

### 6.7 What Has Been Accomplished

In February, the NTMCs had directed the NTU to continue discussions with South Australian Government, SAFF, SACOME and other industry groups to improve Aboriginal understanding of government and industry positions on the future of native title in the state. In fact, what has transpired has been a two-way educative process for all stakeholders. There had been initial pressure from other stakeholders to achieve outcomes by the end of the consultation period, allowing negotiations to commence as quickly as possible. However, there has been a realisation amongst all stakeholders as to the significance of what has been achieved, and what still needs to be achieved before negotiations can commence. The process has consolidated a wider recognition and articulation of the complexity and the scale of these organisational issues, and a recognition that formerly there was an absence of an institutional capacity that would have satisfactorily enabled claimants to participate in negotiations at the state level. The claimants’ ‘united voice’ will be recognisable as having accountability directly and primarily to them and their claim interests. This has promoted confidence in the process because it alleviates the possibility of other organisations asserting an authoritative position on claimants’ behalf at a state level.
Some of the specific ‘process’ outcomes include:

- a sense of unity and purpose developing amongst the NTMCs leading up to their decision to develop a representative structure through the ‘united voice’.
- a sense of unity and purpose directly relating to the decision to negotiate about native title issues with the SA Government and other stakeholders.
- a sense that the process can bring benefits and unanticipated positive outcomes and opportunities simply by moving away from former social stereotypical images and negative social conditioning.
- acknowledgment amongst Government and other stakeholder representatives that the sense of unity and purpose is directly attributable to the process which enabled it to develop.
- the development of skills and experience working as a large group.

Some of the specific outcomes that are in the ‘planning’ stages include:

- The Congress Working Group, in conjunction with the NTU and the TAG, is formulating recommendations about organisational structure, and budgetary and planning requirements to maintain the process over the next twelve-month period.
- The instituting of the Congress meetings through this process has created a benchmark to indicate what supporting resources will be necessary to run statewide meetings and associated meetings of NTMCs in the coming year.
- The way in which the Secretariat has developed provides useful indicators of the further ongoing support that will be needed for it to be staffed, maintained and developed.
- The process has provided indicators about how a communications infrastructure could be developed and maintained to provide the critical two-way exchanges between the ‘united voice’ and local claim communities.
- The process has provided indicators about how an extensive and practical telecommunications network amongst NTMCs can be planned and implemented.

6.8  **The Influence of Inter-Related Issues**

Some of the original anticipated outcomes have not yet been realised:

- The ‘united voice’ has not yet been formalised through which the NTMCs can present a negotiating position.
- The ‘united voice’ is not yet in a position to respond to issues that are pressing concerns for other stakeholders.
- There has not been time or opportunity to put in place any pre-negotiation training and community consultation programs.

A crucial aspect of the process was that it gave priority to listening to claimants’ concerns. This meant that it was not possible simply to focus on a set of specific goals relating to the Government’s proposal as if claimants similarly saw the relevant issues as distinct and separable from each other. This was significant in terms of claimants developing an appreciation of the proposal within their own broader context. Some of the claimants’ concerns included:

- The legislation currently before the SA Parliament to confirm the extinguishment of native title on various classes of leasehold land.
- The legal argument being pursued by the Crown in the De Rose Hill court case suggesting that native title had been extinguished throughout South Australia at the time of colonisation.
- Issues of non-recognition and land rights.
• The issue, in connection with the present process, that NTMCs receive no payment recognising that they come together to deliberate about civil issues that warrant some recompense, as is paid, for example, to people serving on jury duty.

Through facilitation and support, NTMCs gave equal voice to a wide range of concerns. This meant that the specific proposal to negotiate about native title through a statewide Indigenous Land Use Agreement could be meaningfully considered within the wider context of their full range of issues and concerns, and this contributed to trust-building and capacity-building. This was considered to be an essential prerequisite in order that claimants could understand and respond to the Government's proposal. To promote the development of a negotiation position, or institute training to negotiate before this stage in the process had been developed would have been premature. The program had to respond to the lack of capacity by Aboriginal people to participate in formal decision-making processes of the state, many attributable to historical acts of dispossession, marginalisation and non-recognition. Equally, part of the trust-building and capacity-building was founded on an ideal that NTMCs could, through accountability and transparency, maintain a sense of ‘ownership’ of this process, so that communities were directly involved in decision-making. The NTMCs sought a confirmation of this ideal at Congress # 3 when a funding issue arose. They reiterated that ALRM as their legally constituted Representative Body had a statutory duty to manage funds for the process, but that the NTMCs, facilitated by ALRM’s Native Title Unit, had the decision-making capacity to control how funds should be used to provide support and services, and that as far as possible they should control and manage the decision-making process. All of these afore-mentioned issues, and a wide range of other issues, meant that the program had to be dynamic and be able to re-evaluate the importance of different goals for the negotiations in the light of many complex considerations.

**Evaluation:** The achievements of this initial stage of the process have been considerable, and have laid a foundation for a more effective negotiations process. The components of the process that were not achieved can be progressed over the next twelve month period, and the planning and budgeting in order to fulfil these objectives is being prepared by the Congress Working Group supported by the NTU team and the TAG.

**Recommendation No. 1:** That NTU meet with the ILUA Negotiations Team, and together develop clear guidelines about fees for NTMCs’ attendance at meetings.

### 6.9 Preparing to Engage with the Main Table

Amongst participants at the Main Table meetings, there has been an increasing recognition and understanding that their original discussions did not integrate all stakeholder interests. However, the agenda that will ultimately develop for the negotiations will be better able to incorporate and prioritise a wider range of issues, including Aboriginal issues. The way that the other stakeholders have presented their issues through video presentations and personal interactions at community meetings, and as guests for discussion sessions at Congress meetings, have made very positive contributions to the process.

NTMCs are preparing to come together with other stakeholders at the Main Table through the ‘united voice’. This will allow an unprecedented means for claimants to take responsibility for their own rights. The first stages will be to interpret and frame their mutual understanding of the potential benefits of the negotiations, establish protocols and develop positive working relationships prior to presenting formal positions and addressing issues. It will also be a significant opportunity for the stakeholders to consider together how they will relate news of the negotiations process back to their constituents and how they will interpret their new relationships to outside parties.

The process has highlighted and made more meaningful the complexity of the issue of ‘participation’ in negotiations when two distinct cultural and social systems are involved. The
precedents for facilitated decision-making established in the Congress meetings were a 'learning process' that can be replicated to deal with other procedural matters as to how the negotiations might be conducted. The process has provided useful models for working through issues that all stakeholders could ultimately come to appreciate are beneficial when a process is anticipating new outcomes. Some activities that have been developed and used in Congress meetings include:

- feedback sessions at the beginning of meetings
- small group discussions
- reporting back outcomes of small group discussions
- use of pre-existing diagrams and the development of new diagrams
- presenting progress outcomes
- allowing opportunity for people to raise items for the agenda
- recognition of principles and protocols which encourage everyone to have a say
- recognition of principles and protocols which encourage respect, even when working through difficult issues
- recognition of principles and protocols which encourage equal standing of men and women, and people of all ages
- use of interpreters to ensure that everyone can be meaningfully involved
- videos, newsletters and other means to communicate news and outcomes to the wider claimant community
- provision of well-structured reports and supporting information sent out to participants between meetings.

The development of the concept of the ‘united voice’ has been a means for resolving some issues to do with participation in negotiations in a way which is culturally and socially appropriate for Aboriginal people. It has been a means for overcoming a fundamental procedural problem that needed to be addressed, prior to identifying and working through substantive native title issues.

The alternative scenario that had originally been assumed appropriate was for the NTU to negotiate on behalf of native title claimants. This would have alleviated the complexity of having to address many uneven understandings both about native title and about negotiations procedures. It would have enabled the negotiations to begin sooner. However, a likely outcome would have been that as the NTMCs would not have shared a sense of ‘ownership’ of the process, the negotiations would have become more, not less, complex as they proceeded. Negotiating through that model would have also reinforced assumptions, based on stereotypical and unfair images rather than actualities, that Aboriginal people could not directly participate in relevant decision-making. The ‘united voice’ promises to provide mechanisms for lessening confusions and ‘secondary conflicts’ to do with how issues should be presented, or how the negotiations should be conducted, which can, through misunderstanding and poor communication, make negotiations unwieldy and polarised. In this respect, the process has provided practical means for meaningfully dealing with issues that more widely concern reconciliation.

6.10 THE SECRETARIAT’S ‘PROCESS’ ROLE TO SUPPORT NTMCs

It will be important that NTMCs continue to be provided with opportunities to meet, not simply to continue with their considerations about substantive issues associated with the negotiations, but also as a forum to develop clearer mutual understandings through discussion and deliberation. This reinforces the idea that not all learning will take place through formal ‘training’. The goal of the Secretariat’s program will be to build capacity at local claims level and, through the Congress and the ‘united voice’, at the state level. It will cover a range of ways in which claimants develop
a sense of their own preparedness for the significant changes, as decision-making about native title shifts toward negotiation.

**Recommendation No. 2:** The budget needs to provide NTMCs with opportunities to continue to meet as a Congress at least four times within the coming year, with appointed working groups meeting more regularly as the Congresses deem appropriate to consider negotiations issues and the constituting of the ‘united voice’.

**Recommendation No. 3:** It will be significant that there is support to maintain the use of Aboriginal language and Aboriginal protocols, and also to enhance a sense that the decision-making process is founded on a deep connection with land in many ways, including a deeply spiritual way.

**Recommendation No. 4:** That the Secretariat be encouraged to allow substantive, material issues to be framed so they can equally incorporate spiritual, economic, social and political dimensions as they have meaning within an Aboriginal worldview. This will be important to maintain and enhance involvement from the wider claimant community within the process and foster an understanding within the wider community of South Australia about Aboriginal perspectives.

Some key process issues that need to be monitored by the Secretariat and the NTMCs include:

- Liaising with other key institutions such as the National Native Title Tribunal.
- Providing opportunities to build relationships and good will with other stakeholder groups.
- An educative program outlining a clear understanding of the role of NTMCs as representatives of their entire claim group.
- Establishing the communications network to maintain the relevance of the process at claim level and at the state level.
- Monitoring to ensure evenness of opportunity to participate amongst claimants.
- Establishing programs to encourage information-sharing between communities.
- Establishing programs that promote claimants to appreciate and celebrate different local expressions of culture while enhancing a common sense of unity and identity as Aboriginal people.
- Monitoring to ensure NTMC representatives are not overwhelmed with unrealistic tasks and demands.

NTU personnel will also need to plan to accommodate the modifications as their present means for progressing individual native title claims intersects with arrangements being developed through the Statewide Negotiations Secretariat. As the negotiations process develops, there will be a need for NTU personnel to review appropriate professional roles and expertise, given that formal legal interpretations of native title are likely to merge with other ways of describing arrangements and settlements. The broadening of interpretation of native title issues beyond legal interpretation as these changes take place will require all personnel to develop culturally appropriate mechanisms that can serve as benchmarks in the new decision-making processes.

**6.11 **The Secretariat’s Administrative Role Supporting the Process

The development of the Secretariat throughout this process has provided a useful indication of future staffing requirements for budgetary and planning purposes. Future planning should reflect that the first six months of the Secretariat were accommodating a new and relatively un-centred process which was hampered by an acute lack of office equipment. The orders had been placed by the Attorney-General’s Department in June for appropriate equipment, and this was to have been supplied immediately. However, at the end of the reporting period, some facilities, such as
e-mail, were still not installed. This cut down productivity considerably, and, combined with the
general unprecedented nature of the work, contributed to a stressful and less effective working
environment for personnel and consultants. The next stage in the process is unlikely to place the
same pressure on personnel, as many of the factors which created the tight time frames and
logistical problems are likely to lessen. The experiences within this process have, however,
provided invaluable lessons that will help staff develop careful integrated planning. The team is
likely to be based primarily in South Australia and personnel are unlikely to need to respond to
drastic changes in the scheduling as happened in this process.

Recommendation No. 5: Budgeting and planning needs to provide for further administrative
support to adequately address all the staffing requirements of the Secretariat.

Recommendation No. 6: The budget needs to provide for a comprehensive media and
communications strategy in order to keep claimant communities informed and involved, so that
what is happening at both meetings level and community level retains mutual relevance and
gives people a sense that they are being brought along in the process.

The archive was an invaluable and transparent resource in order to formulate this report.
However, it cannot necessarily reflect how a great deal of the drive and energy for a process of
this nature develops informally, through long-standing friendship, collaboration and personal
commitment. Keeping a wider range of records of the forthcoming process will be easier with key
personnel based within South Australia, and an effective IT support system in place. There will
be more opportunities for the team to meet and record outcomes of meaningful discussion and
reflection as well as day-to-day administrative matters.

Recommendation No. 7: The archive be maintained within the Secretariat as a means of
continuing the openness and transparency of this ongoing process.

The essential requirements of the process did not allow time or opportunity for collaborative
reflection and evaluation about the longer-term effectiveness of the Secretariat and how it might
be structured. The cohesiveness and cooperation in the process was founded as much on
individuals' personal relationships with each other and a shared understanding and commitment
to the overall purpose. However, as the work in the Secretariat is consolidated there will need for
careful internal monitoring to ensure that administrative personnel carry forward mutually shared
ideas about the developing goals, and their own roles in the process.

The Secretariat could include in their team in the forthcoming stage a person to fulfil a role similar
to that of the TAG’s ‘process adviser’ who has provided advice to the NTU about this process to
date. The person’s role would be to monitor ongoing relationships between the Secretariat and
NTMCs and other inter-relating individuals and groups. The person could be either a permanent
member of staff, or a consultant, perhaps even the person engaged to provide further
independent reviews and evaluations of the process. In either case, the ‘process adviser’ could
hold regular meetings and present evaluations about process matters back to the Secretariat,
and to NTMCs if appropriate.

The person fulfilling this role could also draw from the archive and other sources useful
information and ideas that need to be shared. Workshops or team-building meetings will be
necessary to develop common understandings about the meanings of words, difficult concepts,
unfamiliar concepts, ethical issues and any other potential impediments to good process. As the
Secretariat takes on a new direct relationship with NTMCs and claimant communities, it is likely
that it will become more critical to develop effective ways of promoting clear and mutually agreed
ideas. Information sharing should be reflective, educative, inclusive, stimulating, and a
constructive part of the process. Responsibility for this task needs to be articulated, rather than
assuming it will otherwise happen on an ad hoc basis.
**Recommendation No 8:** The Secretariat engage the services of a ‘process adviser’, to monitor and provide feedback to the Secretariat about developments in the forthcoming stages of the negotiation process.

**Recommendation No. 9:** The archive and other material be monitored in order to positively identify and address instances where there is inconsistency of understanding that needs to be rectified.

Secretariat personnel will need to recognise that for their work to be meaningful, they will have to engage across a range of cultural and social styles. Their work needs to be able to relate to an Aboriginal sense of identity, even though a great deal of the necessary preparatory work for the negotiations needs to be developed with people who do not share an Aboriginal worldview. It will require a balance between fulfilling mainstream administrative procedures and accommodating and learning from Aboriginal ways of doing things.

**Recommendation No. 10:** In the changing circumstances, there will be a need for time to be made available in the activities of the Secretariat to allow for reflection about the ethical and practical demands this process places on each person’s capacity to maintain their formal professional roles and how this relates to issues of accountability. Monitoring and giving expression to the issue of what competencies are important within the Secretariat will become increasingly important as the process requires individuals to be accountable across diverse cultural conventions.

The Secretariat has been designed to support claimants develop more clarity about a wide range of issues relating to native title which are complex, contentious and confusing for many people. This is especially so for claimants who are coming to terms with a wide range of inter-relating and overlapping issues concerning recognition, land rights and native title rights. It will be essential that a component of the communications capacity of the Secretariat is the development of clear and easy to understand definitions to help alleviate confusion and ambiguity. Another facet of such a program to alleviate misunderstanding could be workshops that enhance cross-cultural communication. In addition, given former discriminatory and biased attitudes and unjust laws, such a program could constructively support groups who have concerns as to whether they are being dealt with honestly and respectfully.

Some key administration and capacity building issues that need to be monitored by the Secretariat and the NTMCs include:

- Leadership.
- Continuity or ‘process’ role to support the process.
- Regular planning and debriefing meetings within the Secretariat.
- Monitoring to determine which resources will be most useful in order to assist claimants to maintain their involvement in the process.
- Monitoring how claimants are managing financial resources for travel and related costs.
- Monitoring as to what financial and other resources will be necessary for capacity-building.
- Monitoring to ensure that statewide meetings are serving the purposes for which they were intended from NTMC representative feedback forms and other means.

As well as expertise, skills and research provided directly through the Technical Advisory Group, claimants will be drawing on a wide range of advice and expertise, particularly relating to land management, national parks management and issues connected to mining exploration. NTMCs will need to be informed how they can make use of this information, and how it will be collated and filed within the Secretariat’s technical support base.

The NTMCs, the TAG, and possibly NTU Case Managers can actively looking for ‘pilot’ projects, situations involving pastoral leases, national parks or mining leases, etc. that can provide
benchmarking for possible new procedures within the state which more effectively address native title issues.

The role of the Research Officer is to anticipate what research outcomes will be needed over the longer term, as well as being able to access information immediately. The research program requires secure funding, adequate time frames, and support from administrative staff within the Secretariat to deal with the routine aspects of research contract arrangements. Current research relates to revenue flows, local government experience with heritage issues, the development of planning approval processes, the economics of regional development, and analysis of land tenure and management seeking areas for productive negotiation.

**Recommendation No. 11:** Budgeting and planning needs to support long-term research projects that can continue to assist NTMCs’ preparations for negotiations.

### 6.12 MAINTAINING FEEDBACK FROM NTMCs ABOUT THE PROCESS

NTMCs at the Congress meetings were invited to fill in ‘feedback’ forms. Less than a quarter of claimants attending the meetings filled out forms. However, from the responses that were made, there was an indication of a developing sense amongst NTMC representatives about the purpose of the Congress meetings. As the meetings continued, a clearer sense developed of what NTMCs might expect, both from the Secretariat to support the meetings, and from each other in terms of how the meetings should be conducted and what the meetings could achieve. The feedback was a tangible indication to the Secretariat personnel as to how they needed to respond to claimants. The overall positive feedback indicated that the meetings were providing appropriate information and support. They were an important measure for Secretariat staff to realise that their commitment to accountability to claimants was being directed appropriately.

Evaluating such responses will become increasingly meaningful within the next 12-month period. The feedback forms from the present process, while overwhelmingly positive and constructive, were still relating to a transitional stage moving toward a relatively undefined longer-term goal. The means for eliciting responses about the usefulness of meetings has scope for improvement. It will be important to ascertain what formats and styles of presentation the Aboriginal people attending meetings or in any other way involved in the process perceive to be most useful and easy to respond to. There is scope for this to be developed through collaboration with claimants to devise appropriate means for eliciting feedback that claimants themselves help to create. It is possible for many innovative ideas to be given opportunities to develop, and generally incorporated into the way the process works.

**Recommendation No. 12:** Guidelines for reporting protocols be developed that reflect both the administrative functions of the Secretariat, and the cultural significance of their work.

### 6.13 ACCOUNTABILITY IN A CHANGING PROCESS

As the process changes and the ‘united voice’ comes into being, the organisational structure and the lines of accountability and responsibility within the NTU and the Secretariat will change. This will require ongoing review and re-evaluation so that both claimants and Secretariat personnel understand the full implications of accountability and responsibility, both in terms of internal structuring and effective functioning of the Secretariat, and in terms of clearly articulating the Secretariat’s function to others.

The Secretariat is supporting a two-way process, and this process needs to be clearly understood and shared throughout the organisation. Expression needs to be given to the idea that the Secretariat is supporting NTMC as representatives of their claimant community as
conduits in a two-way process, and not as a conventional authoritative decision-making body. This explanation should mirror the explanations offered to other stakeholders prior to initiating this process, whereby the NTU reiterated that it was inappropriate for an organisation to assume a representational role on behalf of native title claimants as if it were a ‘peak body’. While the ultimate representational structure for the negotiations is at this time still undefined, the same principles will apply. The Secretariat can make an important contribution to giving expression to how this innovative decision-making process will work, providing opportunities for the principles to be well understood both internally and externally. The staff will need to reinforce and educate about the concept that the NTMCs are an ‘interface’ between the state level and the local claim level, and that they also ‘interface’ about the significance of issues and decisions within two distinct cultural systems. Neither aspect of these roles should take precedence over the other in terms of importance.

**Recommendation No. 13:** Clear guidelines be formulated jointly by the Secretariat, the NTMCs and claimants at community level, using different cultural styles as appropriate, to clarify the web of relationships necessary in order for the process to function effectively and to ensure that there are clear understandings about the decision-making process in two ways:

- to articulate its breadth and complexity as a two-way process between the level of the state, and the level of different local claim communities.
- to articulate the breadth of its cultural significance, so that it is appreciated as a recognition of co-existence, accommodating the needs of Government and the wider society of South Australia, while simultaneously recognising Aboriginality through culture, spirituality, ways of doing business, law and custom.

This will alleviate the risk of misinterpretations, which can create general uncertainty and ambiguity, particularly given that the Secretariat will see marked changes as there is a shift from accountability directly to the NTU toward an accountability to the ‘united voice’. The work program of the Secretariat will bring together people who have different work backgrounds, different cultural and procedural styles and different capacities to interpret the overall relevance of information in the process. An articulation of accountability to claimants needs to be addressed as a central feature of the way the Secretariat functions. Those who have not been directly involved in the process from the outset will not automatically understand its significance as a two-way process. The educative role of the Secretariat will be to uphold the full significance of these process issues.

**Recommendation No. 14:** Clear guidelines be formulated jointly by the Secretariat, the NTMCs and claimants and community level which are helpful for allaying wrong assumptions and misperceptions about the process.

### 6.14 Changes Affecting the Technical Advisory Group

The role of the TAG will not necessarily change, but in future, it will be providing advice directly to Congress and the Working Party and ultimately to the ‘united voice’. It will remain a relatively un-centred advisory team, with individuals providing advice about their own specialist areas of expertise. At present, the TAG is directly accountable to the EO of the NTU through an arrangement that allows advice to be offered to him directly in an ongoing and flexible manner. Through this arrangement, advisers can be consulted or offer responses as and when appropriate. Other types of advice require contracts that are much more specifically oriented toward one outcome. When claimants, rather than the NTU, assume responsibility for accountability and decision-making, challenging issues could arise as to how to evaluate and compare different types of
advice, and to appreciate the value derived from the services of consultants and advisers. There is a need for clarity as to how advice will be judged appropriate, what use can be made of different types of advice, and how to resolve issues when different advice creates the need to make choices or set priorities.

**Recommendation No. 15:** Clear guidelines be developed in order that experts and advisers specifically understand how and for whom they need to be framing their advice. Both givers and receivers of advice will require protocols to avoid issues about advice developing into conflicts.

The NTU drew on the expertise of a ‘process adviser’ on the TAG who did not have expertise directly relating to any of the substantive issues connected with the process. Her role was to monitor and provide impartial feedback, primarily through discussion rather than through written reports, about the dynamics of relationships and the effectiveness of meeting procedures. This unquestionably enhanced the team’s capacity to constructively reflect about and articulate the dynamics of the process, and maintain continuity, responsiveness and accountability. The effectiveness of this role has provided a clear indication of a need to be well attuned to ‘process’ issues as they evolve.

**Evaluation:** The expertise of the ‘process adviser’ has been an integral and essential feature of the team’s facilitation role. There is a need for ongoing, competent and acknowledged review of ‘process’ issues in the forthcoming stages leading toward negotiation. It will be important that this role is budgeted for and structured as an integral component of the Secretariat’s function to allow process issues to be considered and reflected on both verbally and in report form.

### 6.15 **Terms of Reference for an Independent Review of the Process in Future**

The terms of reference relating to this Independent Review were drawn up by the Principal Consultant, and the selection process was completed, prior to the actual commencement of the process. It was intended that the Review would run alongside the process, rather than be undertaken once the process was finalised. It was anticipated that having feedback from the review available as soon as possible would be advantageous, insofar as it could contribute to the planning and preparation for the next stage of the process. Guidelines for reviewing further stages will need to be framed to identify and evaluate the ongoing dynamics in the process, including:

**Relationships:**
- NTMCs’ and the Secretariat’s involvement with the Congress meetings
- NTMCs’ and the Secretariat’s relationships with local communities
- relationships between local communities
- relationships between Congress and other stakeholder groups
- relationships between NTMCs and the Secretariat
- relationships between the work of the Secretariat and that of the NTU
- relationships between the work of the Secretariat and that of the TAG
- relationships between the work of the Secretariat and other consultants
- relationships within the Secretariat
- new developing relationships.

**Procedures:**
- identifying routine procedures that are formally dealt with through established institutions requiring only the compliance of formal groups whose actions are prescribed by existing relatively determinate practices.
- identifying other procedures that are less formally acknowledged which are not tied to formal
institutions, but which nevertheless need to be acknowledged: they may appear to be more indeterminate, but they could be procedures which people presently use in order to define their power and fulfil their needs.

**Goals and objectives:**
- identifying the extent to which broad long term goals are shared, and whether there are shared ideas about how goals can be fulfilled.
- identifying how goals are being prioritised, and whether some goals may be incompatible or contradictory to other goals or to the goals of other stakeholders.
- identifying short-term goals, particularly ‘process’ goals, to do with establishing and maintaining an effective negotiations process.
- correlation between the developing process and its ability to fulfil goals, and whether other processes might otherwise fulfil the goals.
- identifying both tangible, results-oriented goals as well as intangible goals, such as the development of more meaningful relationships and better understandings.
- identifying plans and objectives for involving people at mid-range and community level in the negotiations process.

The scoping of future independent reviews will in part be determined by the feedback about the usefulness of this Report, and whether it has conveyed an adequate understanding of the interactions between a diverse range of groups, and how this has implications for future interactions. In the future stages of this ongoing process, the training component that was anticipated would take place within this time frame will still need to be reviewed and evaluated.

### 6.16 TRAINING

It was not possible within this process to provide training about negotiation beyond the very basic concept that negotiation was now an optional means for dealing with native title issues. The initial strategy had been to offer basic training to NTMCs and then provide more specific training for an appointed Reference Group. Formal negotiations training was postponed in favour of providing more information and opportunities for claimants to consolidate their own ideas about the issues involved. The facilitated decision-making process was in fact a necessary preliminary ‘learning process’. The degree to which NTMCs learnt and shared with one another cannot be underestimated. They have built consensus and understanding about both substantive issues and appropriate protocols within their own meetings. In the next stage of the process, however, claimants will also have to deliberate and prepare their ideas about procedural issues relating directly to the forthcoming negotiations, and give careful thought to a number of relatively unfamiliar organisational and representational issues. One of the most significant components of a training program will relate to planning as to how claimants will engage with other participants in cross-cultural negotiations.

One of the first requirements of a training program will be for NTMCs to consider their preferred mode of engagement with other stakeholders. A primary choice will be whether NTMCs chose to address all the issues in the negotiations themselves, have representatives to assist them, or otherwise suggest a ‘third party’ who could be engaged to act as a mediator or negotiator between the stakeholder groups. Clarifying fundamental procedural issues of this nature will be significant in order that NTMCs develop and begin to frame their ‘process’ goals - to articulate their choices and preferences in terms of how negotiations should be conducted - as well as developing and framing their goals relating to substantive issues.

**Recommendation No. 16:** Budgeting and planning needs to support training to assist NTMCs, the ‘united voice’ and negotiation teams if appropriate to consolidate and develop their framing of organisational and representational issues as they have relevance for the forthcoming negotiations process, and to formulate plans as to how they intend to engage with other stakeholders in negotiations.
**Recommendation No. 17:** Budgeting and planning needs to support an extensive and diverse training program and information-sharing program to assist NTMCs and their claim communities to develop a good understanding of negotiation processes, negotiation skills and reporting mechanisms as appropriate.

NTMCs are presently formulating protocols to underpin the organisational structure of their united body. In addition they will be considering what protocols might be necessary or might be appropriate if or when internal problems and issues arise.

**Recommendation No. 18:** It should be ascertained from NTMCs well in advance of internal problems or conflicts developing whether they have preferred mechanisms through which to resolve contentious issues. NTMCs may prefer to deal with matters internally, or they might otherwise prefer to draw on the services of facilitators or mediators for advice or assistance. The Secretariat should assist NTMCs to consider, as a precautionary measure, what options for resolving conflicts and dilemmas might be available if and when they are needed.

The way reporting about the negotiations is addressed will be significant, insofar as it will set precedents for how all concerned begin to conceptualise and evaluate the negotiation process itself. It will be a way of articulating standards for the negotiations when it may not be possible to reply on standards, such as legal standards, to judge for appropriateness or fairness. As well, reporting mechanisms need to be well articulated, so that when similar issues arise in future, procedures can be replicated or modified.

**Recommendation No. 19:** The Secretariat institute a training program to support NTMCs in the development of their preferred reporting mechanisms in order to keep a structured record of what transpires in the negotiations. It will also be necessary that claimants ascertain what reporting mechanisms are likely to be used by other participants, so that even if different mechanisms are used, they are not fundamentally incompatible.

**Recommendation No. 20:** The NTU discuss negotiations process issues with other participants at the Main Table to ascertain how each group is evaluating their present understanding about negotiations, and their preparedness for participating in cross-cultural negotiations.

**Recommendation No. 21:** That NTU seek clarification from participants at the Main Table as to what procedures and mechanisms are likely to be put in place to mediate cultural difference, or otherwise provide an ‘interface’ which recognises that the negotiations will be an interaction between different cultural and social systems. If this is not addressed, it will remain ambiguous as to whether the united body of claimants has to assume responsibility for conveying an understanding of their issues to other participants in ways that are culturally significant for themselves or for others. Developing clarity about this matter should be given a high priority. It has consequent implications for the role and the capacity of the Secretariat to support claimants in the negotiations process.

### 6.17 Benchmarking

The negotiators will be considering procedures about how different group’s interests can be integrated into workable settlements. As well as looking at benchmarking from Australia, it will be important for NTMCs to determine what is understood by all participants about cross-cultural decision-making from international examples of settlements, treaties and agreements. The information about such agreements needs to also indicate the processes that have been used to produce the agreements, and whether the agreements have been considered effective when put into practice. Benchmarking will be important for claimants and for other participants adjusting to make decisions within a relatively unprecedented and unfamiliar structure. There is also a need for all participants to review what sort of professional competencies are developing to deal with
cross-cultural negotiations, both in Australia and in other countries where similar issues are being addressed, to ascertain what professional roles are most effective to progress negotiations, and what sort of advice is available through literature and professional development organisations. This type of benchmarking can contribute to clarifying whether the goals and the directions being set for the negotiations are realistic and capable of being fulfilled.

**Recommendation No. 22:** The NTU liaise with other participants at the Main Table to specify what benchmarking about negotiation processes is being considered, the extent to which negotiations are understood to be an alternative decision-making process to deal more effectively with cross-cultural issues, and the professional advice and expertise that they could draw on to assist in the process. These discussions would indicate the extent to which the proposed negotiations can be appreciated as a developing ‘learning process’ for addressing cross-cultural issues.

**Recommendation No. 23:** That clarification be sought at the Main Table as to whether processes of reconciliation might either be incorporated, or be developed simultaneously with the negotiations. This is pertinent, given that many of the ‘structural disadvantages’ confronting claimants in their capacity building and skills development to meaningfully participate relate to former laws and prevailing attitudes which have extensively disempowered and restricted Aboriginal people from sharing power.

### 6.18 **CONCLUSION**

The outcome of this process has been the development of a new statewide structure through which claimants’ have been able to consider and agree to negotiate about native title. Those involved in the process have been upheld by trust in the capabilities of the team leaders, and the team’s commitment to principles and beliefs. The purpose has been centred around the native title rights of claimants, and the development of opportunities to bring into being a mechanism for making decisions about matters that are of concern to them in connection with their rights. The process has actually achieved more than a mechanism through which to negotiate; it has achieved the promise of a decision-making body with the potential to effectively address a far wider range of purposes for Aboriginal people in South Australia.

The principles which guided the process are that in Australia the common law now incorporates an obligation to recognise the right for Aboriginal people’s customary laws to co-exist with other laws and practices, and that these rights cannot simply be interpreted as an abstract legal notion. They are rights constructed within Aboriginal law and need to be recognised through the lived experience of those who are entitled to them. This process has been a positive part of a wider process whereby people who live in Australia are articulating a need to find new ways to achieve a reconciled society in both ideological and practical terms. The process validates the idea that it is not realistic to simply attempt to ‘manage’ integration; it requires a process which lets go of the idea of incorporation, and builds up co-existence. The power operating to enable this to happen was trust in the moral correctness and the practical benefits of the endeavour, combined with the integrity and competency of the people undertaking the process.
7. BIBLIOGRAPHY - CROSS-CULTURAL AND CROSS-SECTORAL NEGOTIATIONS

The items are divided into the following sections:

7.1 BOOKS AND JOURNALS
Literature About Resolving Environmental/Development Issues
Literature Addressing Conflict and Cooperation Relating to Cultural Difference
General Texts Relating to Alternative Decision-Making Processes

7.2 WEB SITES
Australian Initiatives Toward Negotiating about Native Title
International Organisations Addressing Conflict and Cooperation about Environmental or Development Issues
Government Agency Initiatives for Resolving Environmental Problems
  • Australia
  • USA
Organisations Addressing Conflict and Cooperation about Cultural Difference
  • International
  • New Zealand
  • USA
  • Saami People
  • Africa
  • Latin America
International Organisations - Initiatives for Enhanced Decision-Making Processes
  • United States of America
  • Canada
  • Australia
  • New Zealand
  • Europe
  • UK
7.1 BOOKS AND JOURNALS

7.1.1 Literature Addressing Environmental and Development Issues

This book examines some benefits of mediation about environmental issues in comparison with solutions that could be provided through traditional political institutions.

This book covers environmental, developmental and public policy issues, including environmental policy and planning.

This study examines the effective use of dispute resolution processes, particularly those appropriate for the special problems that water disputes pose for negotiated resolution. It describes negotiation stages and strategies used to resolve complex disputes.

This book provides both a guide to managing environmental change and a training manual to pave the way to successful conflict resolution. It contains detailed case studies on the conflicting uses of urban, agricultural and natural environments, combined with exercises to develop the practical and team-building skills required for conflict resolution.

A comprehensive leadership framework to help participants develop leadership strategies for tackling public problems in a complex, shared-power world.

A compendium of case studies analysing specific natural resource conflicts in 10 countries and the interventions of people close to the conflict. Concept papers draw the case stories together around particular themes: culture, society, peace and policy.

This book presents a practical, step-by-step approach that integrates organisation development, alternative dispute resolution and dispute systems into a working model to help assess conflict and evaluate processes within organisations. Included are case studies, checklists, do's and don'ts and other practical aids to improve the delivery of services, morale and effectiveness, including early intervention strategies for resolving disputes, by preemption and prevention initiatives.
This is a practical manual on conflict management, containing exercises and case studies in a range of contexts. It includes sections on conflict, mediation, facilitation, negotiation and shared decision making. The manual is not explicitly for use in either developed or less developed countries, but could be used in either

This book draws on trends in the emergence of "sustainability" as a policy goal and the increasing use of consensus-based processes in resolving a variety of resource management disputes. It draws on experience gained from their own experiences, and provides a guide for those who become involved as participants, mediators or managers, about the use of consensus building in developing policies and programs necessary to achieve a sustainable environment and economy.

This book examines the goals of environmental conflict resolution relating to settlements, but also includes an examination of collaborative planning and facilitated problem solving strategies.

This book examines approaches to large-scale community change initiatives, efforts to strengthen civic capacity, building collaborative frameworks, resolving community conflicts, and reinventing local government to more effectively engage in collaborative efforts.

A study of natural resource and environmental conflict issues.

Institute for Environmental Negotiation and RESOLVE (1994) *Symposium Summary -The Cutting Edge: Environmental Dispute Resolution for the Nineties,* - Center for Environmental Dispute Resolution.

Good practice manual based on practical experience from current IFC activities and from other examples of international good practice for public involvement and consultation in private sector projects.

This book examines how rigorous science and politics can help to keep a balance, while developing the ability to manage the environment in a sustainable manner. He uses the Columbia River Basin in the Pacific Northwest as a case study.

This book presents twelve case studies of environmental partnerships among corporations, non-profit organizations, communities, and government agencies in the U.S.


This book focuses on the theory and practice of change management, intergovernmental relations, conflict resolution, institution building, and community building.


This book deals primarily with issues relating to organisational communication.


The book is concerned with public participation and forums for exchange for the purpose of facilitating communication between government, citizens, stakeholders, interest groups and businesses to make decisions or resolve problems. It compares and evaluates models and methods appropriate for participatory environmental decision-making, such as citizen advisory committees, planning cells, citizen juries, citizen initiatives, regulatory negotiations, mediation, compensation and benefit sharing.


Report of a forum composed of government, business, science, environmental groups, academia, labour unions and native peoples, who come together to build consensus about traditionally competing interests, and make decisions by consensus.


A manual exploring systemic, value and power issues in environmental and public policy decision-making.


This book offers a guide to consensual strategies for resolving public disputes. Susskind draws on his experience within the MIT-Harvard Public Disputes Program.


This study analyses the use of voluntary, informal negotiations to resolve environmental disputes. The authors, from the MIT-Harvard Public Disputes Program examine case studies of seven recent U.S. environmental disputes that demonstrate the advantages and difficulties of informal resolution of regulatory disputes. Topics include applications of negotiation to the rulemaking process, negotiation between different layers of government, and environmental mediation.

This book outlines consensus-based approaches to drafting regulations through negotiated rulemaking in the US, which brings together representatives of agencies and various affected interests in a cooperative effort to develop regulations that not only meet statutory requirements, but also are accepted by the people who ultimately will have to live with the regulations. It outlines how negotiated rulemaking is an innovative approach to reduce compliance costs, take less time, money, and effort for developing and enforcing rules, and promote more cooperative relationships between government agencies and other affected parties.

This manual provides guidance on all aspects of multi-sector partnerships, including planning and resourcing partnerships, building working relationships, creating partnership organisations, etc. It presents 14 key tools addressing various aspects of creating and managing partnerships (which can be used as teaching aids or presentation materials) with a further 6 in the appendix. There are numerous case studies of partnerships and techniques for their management, which are drawn from 8 years of experience.

This paper was prepared for the FAO Conference on Addressing Natural Resource Conflicts through Community Forestry, Rome. It offers three case studies of conflicts of interest which are used to prompt discussion and hypotheses which generate questions which are posed at the end of the paper

This manual is designed to be of practical use to community based organisations involved in rural livelihoods as well as private and government organisations involved in stakeholder negotiation. It deals with both the principles and the processes of consensus building, with illustrative examples and case studies.

This paper looks at the use of conflict management assessment in determining the types of action that might have to be taken. The process of CMA is looked at, as are options to be taken when it yields either “do something” or “do nothing” results.

7.1.2 Literature Addressing Conflict and Cooperation Relating to Cultural Difference

Through the use of folktales from cultural groups all around the world, the book introduces a wide range of attitudes toward the role of conflict in our lives, from whence it comes, and approaches to moving through it. He also discusses issues of reconciliation and forgiveness, stages of reconciliation, how they impact on different parties involved, and how forgiveness can be a powerful tool for personal and cultural growth.

Ten essays by anthropologists, sociologists, organisational theorists, communications and business specialists focusing on conflict resolution in various cultural settings, including the United States, Jordan, Indonesia, Melanesia, Central America, the Solomon Islands and
Hawaii. It examines the universal validity of theories of conflict resolution derived from white middle-class practice.

Approaches to the usefulness of generic theory about conflict, both for explaining and responding to conflict at all levels.

An account of the Alberta Metis settlements, including jurisdiction, structure and operation, and the negotiation of Metis land base and delegated powers of self-government, covering decisions rendered by an Aboriginal tribunal. It is relevant for lawyers, government, Aboriginal peoples, and those engaged in the study and implementation of Aboriginal government and dispute resolution processes.

Larissa Behrendt argues for radical change in the system of resolving land disputes involving Aboriginal Australians. The book gives an Aboriginal perspective on the law's history as oppressor of Aboriginal people, and points out entrenched barriers to Aboriginal acceptance that there can be justice through the court system. She is sceptical of modern alternative dispute resolution as the answer and examines the fundamentally unaltered power imbalance, which is central to the perception of injustice.

The article examines what effect culture has on the achievement of joint gains in negotiation. It reviews strategies for sharing information about preferences and priorities, eschewing power, etc. that lead to the development of joint gains, both when negotiators are from a US culture or from different cultures, to evaluate the comparable effectiveness of the same and different strategies.

This is a water policy study focused upon Native American water rights. The author examines the development of these rights and the resultant legal issues and dispute-managing methods for contemporary water rights conflicts.


This book offers practical, on-the-ground advice relating to justice issues to First Nations communities in North America, both urban and reserve.

This review explores Aboriginal justice from several perspectives. It seeks to create models for a more appropriate Aboriginal justice system and an early warning mechanism to manage conflict between native groups and government. Its cross-disciplinary approach incorporates conflict theory, philosophy of law, human rights debates and practical application of dispute resolution practice.

This book examines how culture, along with many other variables, can impact on negotiations. It focuses on the impact of culture, both in creating unexpected opportunities for dispute settlement and in imposing obstacles to agreement. It examines what different cultural components can make a difference in outcomes, how culture plays a role in the negotiation process, and offers illustrations of culture's contributing role, both to disputes and to how they are handled.


A theoretic and experimental investigation into the nature of conflict, and the search for strategies of conflict regulation and resolution.


This article focuses on race as both an issue and element of disputes. Included is a discussion on the limitations of associating certain conflict management approaches to particular groups. It examines the mediator's role when disputes involve issues of race or ethnicity and recommends the use of multicultural teams of mediators.


This book provides commentary from contributors involved in the case of the Wik People and Thayorre People v Queensland in 1996, which determined some issues left unresolved from the Mabo decision of the High Court in 1992. It identifies what issues the case settled and what issues it still leaves unaddressed in terms of native title rights, particularly rights over land conferred through pastoral leases.


This article discusses theoretical explanations about the over-representation of Aboriginal peoples in criminal justice systems, such as clashes between Aboriginal and western cultures, structural factors which relate to economic and social marginality, and factors to do with colonization and subjugation which concern Aboriginal peoples' rights to control their own destiny, including control over justice processes in Aboriginal communities. Jackson refers to Canadian, American and Australian materials. He identifies parallel themes, such as restorative justice principles, Aboriginal traditions of justice, community, collective rights and responsibilities, and a focus on reintegration rather than on punishment.


The article examines the relation between culture and negotiation styles, and how the term "culture" is understood in different ways. These different notions of culture yield different understandings of the culture-negotiation link. He examines distinct approaches to understanding the impact of culture on negotiation.


The book offers training materials including simulation games; case studies; ice-breaking exercises, values communication and other exercises.

The book consists of chapters discussing the author's fundamental assumptions about balancing power, examining traditional approaches to dealing with the uneven table, and ways in which the table can be reframed. Ascribed and assumed characteristics, including gender and culture, and their impact on power imbalances are presented.

LeBaron, M., McCandless, E., and Garon, S. (1998) Conflict and Culture: A Literature Review and Bibliography, Institute for Conflict Analysis and Resolution, George Mason University, Fairfax, VA.

Connecting the goals of multiculturalism policy in Canada with those of the field of conflict resolution, the review brings together literature from the social sciences, education, and law relevant to conflict resolution and culture, literature covering research, theory and practice in procedural justice, acculturation, intercultural communication, conflict resolution and culture.


This book examines the concept of conflict transformation in the context of providing training in conflict resolution skills in cultures other than one's own. It distinguishes between prescriptive and elicitive models of training. It is dedicated to setting out approaches to developing elicitive training and implementing it. The use of storytelling, role-plays, and trainee involvement in training design are examples of the approach.


This book provides real-life stories, practical reflection, and spiritual insight about constructive interaction with conflict while pursuing reconciliation. It addresses living in a multicultural, diverse, and interdependent world, where differences can lead to division and violence. It offers insights for building relationships that nonviolently deal with conflict and building pathways toward reconciliation.


This book explores the characteristics of deeply divided societies, examining ideas about reconciliation, structure, process, integrated frameworks, resources, coordination, preparing for peacebuilding, and strategic and responsive evaluations.


The author of this article has developed through experience significant cross-cultural mediation training. He raises important questions about the relation between culture and conflict, and about the purpose and practice of mediation training. His approach focuses on the relationship between culture and conflict. He argues that cultural differences cannot be treated superficially, and that there is a need for deeper critical exploration in each case. He advocates a framework for understanding conflict and overcoming incorrect assumptions. He examines whether current models of conflict resolution can be universally applicable, how they could be accommodated by adopting appropriate mediation techniques, so that cross-cultural training is not simply added to an already existing repertoire of skills.


This handbook focuses on how mediation and culture fit together. It discusses the dynamic nature of mediation as a conflict resolution process in which individuals from different cultures can find creative and workable solutions to disputes without giving up their own values and beliefs. The case studies were written primarily for mediators who are faced with intercultural disputes, and those not formally trained as mediators who work in multicultural settings and are interested in using mediation as a mechanism for resolving disputes.
This book provides an overview for addressing ethnic and intercommunity conflict.

This book presents conceptual frameworks for understanding and resolving protracted ethnic conflicts. It outlines the development of a theoretical and applied model of conflict resolution and how its application is put into practice in nations (Jerusalem), organizations (labor-management conflicts) and communities (between and among racial groups and civic society).

This article offers insights about how individual differences in background (such as sex, race, age, status, etc.) and personality (such as cooperativeness, authoritarianism, cognitive complexity, risk-taking propensity, etc.) shape the way each bargainer perceives and reacts to his physical and social environment.

This study is concerned with factors that can reduce intergroup conflict by giving groups overriding, superordinate goals, even though group leaders will continue to see co-operation to solve common problems as a sign of weakness. It discusses how joint problem-solving can be an effective way of reducing conflict between groups and individuals and increasing cohesion within groups.

The proceedings of the gathering includes presentations of over 75 Aboriginal and non-Aboriginal leaders in Canada, the United States, Australia, New Zealand and South Africa. It examines a range of peaceful dispute resolution mechanisms, such as coalition building, direct action, negotiation processes, alternative dispute resolution (ADR), specialized commissions, court actions, and international law remedies. Included are narratives and analyses of past and current failures, successes and progress. The theme is the importance to successful negotiations of greater understanding, recognition and respect for the historical and cultural contexts for disputes involving Aboriginal and Non-Aboriginal people and governments. It emphasis a central problem of power imbalance in negotiations and relationship between Aboriginal and non-Aboriginal people and governments and examines power sharing and sustained political commitments to effective and reciprocal relationships that will last beyond the mandates and ideologies of particular elected governments.

The article describes a number of principles governing negotiation, mediation and legitimacy, in the context of South Africa. The authors argue that following these principles would produce more effective conflict management.

This article relates to how tribal courts receive evidence of Indian tradition and custom under rules of evidence, discusses the definition and nature of tradition and custom in court settings, and their recognition as a legitimate form of law.

This book presents a selection of readings relating to Aboriginal land rights from the perspective of Indigenous Australians.


Similar to Yazzie and Zion (1995).


Similar to Yazzie and Zion (1995)

### 7.1.3 General Texts on Alternative Decision-Making Processes


Examines a transformative approach to mediation, rather than focusing primarily on how to reach agreement between parties in conflict and to find solutions to their problems.


Bond, from the Harvard Program on Nonviolent Sanctions, examines concepts of power, and presents his theory relating to mechanisms of action, individual acts or techniques, and compares them with mechanisms of change, ways in which the mechanisms of action work to bring about change.


This book sets out Boulding’s tripartite theory of power, which describes power as being based on threat, exchange, and integration or "love." He also muses about the causes of violence and nonviolence, the meaning of "justice," and how all these concepts and processes relate to human welfare and peace.


This book draws on the authors’ extensive experience in mediating public disputes including such issues as mining regulation, waste disposal and airport expansion to provide managers in business and government with step-by-step guidelines for designing workable conflict management strategies and successfully carrying them through to resolution.


The book reflects on the role of mediation to enhance relationship between individuals and communities, particularly where social attitudes and inequality have limited human potentiality and created distrust.

A useful guide to help conflicting parties identify and confront the issues in conflict, provide favorable circumstances and conditions, remove, blocks and distortions in the communication process, help establish norms for fair interaction, promote positive behaviors rather than destructive behaviors, determine possible solutions, make workable agreements acceptable to other parties, make the agreement prestigious and attractive to the interested audiences.


This book explores the sociological aspects of risk perception and risk assessment.


An essay on the selection of technological and environmental dangers. Offers a cultural theory of risk perception, suggesting that peoples' complaints about hazards should never be taken at face value, but instead to consider what forms of social organization are being defended or attacked.


A systematic approach to negotiating and consensus building by asserting that the first step in negotiation or consensus building is to focus on the problem and not on the positions held by the parties involved. Fisher and Ury offer a method for identifying and framing the problem in a mutually agreed upon way which will be the foundation for further discussion.


This book explores the problems of relationships in negotiations. It focuses on dealing with relationships as well as the nature of differences when attempting to resolve disputes. It promotes how to create the kind of relationships that are needed to achieve solutions.


This book presents the argument that individuals can make important contributions to complex conflicts. It offers tools and guidelines to help individuals respond effectively to conflict.


A paper outlining some conceptual frameworks relating to conflict and its resolution, contributing to more precise broadly acceptable definitions of terms to do with peace, security, violence, and nonviolence.


A book on ADR, its uses and its institutionalization for dealing with public policy disputes, as well as dispute system design. It integrates a number of negotiation exercises and simulations as well as discussion of processes, such as mediation, negotiation, arbitration, adjudication, and other resolution options, and how they can be applied.


This manual offers tools for practical work with groups and organization to help increase participation and collaboration, acknowledge diversity, and make effective, participatory
decisions. It covers the mechanics of group decision making, closure, building realistic agendas, and finding solutions.

A book about negotiating conflict in situations where some participants are at a disadvantage which others do not acknowledge. It offers strategies for the disadvantaged participants, and methods of recognizing uneven negotiation situations for all participants.

An examination of practices for mediators, and their techniques. A contrast of practices with prevailing theories of mediation.


This book is about negotiation and dispute resolution intended for lawyers, labour arbitrators, business executives and others. It uses case studies and specific examples to draw on concepts from decision analysis and game theory to address challenges such as the role of time in negotiations, risk-sharing, multi-party negotiations, the role of coalitions, and the problem of fair division. It offers pragmatic tools and guidelines for maximizing value in complex bargaining situations that combine competitive and collaborative dynamics.

This book presents negotiation styles which build relationships while getting things done, working toward “sustainable workstyles”. The suggested techniques separate the issues from the personalities, which help to produce resolutions which can leave all involved willing to negotiate another day.

This book focuses on designing dispute resolution systems, approaches, assessment and implementation.

### 7.2 **WEB SITES**

#### 7.2.1 **Australian Initiatives Toward Negotiating About Native Title**

Aboriginal Alternative Dispute Resolution Service, Ministry of Justice, Perth, WA.

Aboriginal and Torres Strait Islander Commission
ATSIC Media Release - Queensland Homelands Forum

Aboriginal and Torres Strait Islander Commission
Land Use Agreements in 1997 and 1998
Australian Local Government Association, Justice and Equity for All

Australian Institute for Aboriginal and Torres Strait Islander Studies
Australian Aboriginal and Torres Strait Islander Commission - Regional Agreements Issues Papers

Australian Institute for Aboriginal and Torres Strait Islander Studies
Library Catalogue of Land Management Issues
http://203.0.89.252/uhubin/cgisirs/GHA7Nelib0/11941044/70/LAND+MANAGEMENT/TOPICAL/TOPICAL

Australian Institute for Aboriginal and Torres Strait Islander Studies
The Contractual Status of Indigenous Land Use Agreements, Lee Godden and Shaunnagh Dorsett

Australasian Natural Resources Law & Policy Conference “Water, Science, and The Search for Common Ground” by Dr. Peter S. Adler
http://www.conflict-resolution.net/articles/adler.cfm?plain=t

Australian Institute for Aboriginal and Torres Strait Islander Studies
Negotiating Major Project Agreements: The 'Cape York Model' Ciaraan O'Fairchaellaigh

Cape York Heads of Agreement

Cape York Balkanu Development Corporation Web Site

Behrendt, Larissa : “Implementation of Alternative Structures for Dispute Resolution”
Justice as Healing Newsletter, Native Law Centre, University of Saskatchewan
http://www.usask.ca/nativelaw/jah_behrendt.html

Corbett, T., M. Lane and C. Clifford: “Achieving Indigenous Involvement in Management of Protected Areas: Lessons from Recent Australian Experience”

Department for Environment and Heritage, South Australia - Traditional Owners

E Law - Murdoch University Electronic Journal of Law 2(1), April 1995

Meyers, Gary D.: “Governance Structures for Indigenous Australians On and Off Native Title Lands”
E Law - Murdoch University Electronic Journal of Law 6 (1) March 1999


Selway, Bradley, QC, Solicitor-General of South Australia “The Role of Policy in the Development of Native Title”


Tropical Savannas CRC, Northern Territory University: ‘Property rights, biodiversity and the law’

### 7.2.2 Organisations Addressing Conflict in Environmental and Development Issues

- Centre for International Earth Science Information Network
  Environmental Treaties and Resource Indicators

- Center for Technology, Environment, and Development, Clark University Worcester, MA.
  USA
  http://www.clarku.edu/departments/marsh/cented.html

- Coalition for Environmentally Responsible Economies
  http://www.ceres.org/about/index.html

- Corporate Citizenship Research Unit, Deakin University, Victoria
  http://arts.deakin.edu.au/ccr/NEWCORPCITIZEN/RESEAR00.html

- Dr. Peter Sandman and Quest Consulting Group (Dames & Moore)

- The Environmental Technology and Public Policy Program, MIT, USA
  http://web.mit.edu/dusp/etpp/index.htm

- International Association of Impact Assessment, Fargo, ND
  http://www.iaia.org/

- International Study of the Effectiveness of Environmental Assessment, Environment Australia

- Mining and Energy Research Network (MERN)
  http://users.wbs.warwick.ac.uk/ccu/mern/index.htm
The Mining, Minerals and Sustainable Development project (MMSD) managed by the International Institute for Environment and Development
http://www.oneworld.org/iied/mmsd/what_is_mmsd.html

Research Institute for International Technical and Economic Cooperation
http://www.rwth-aachen.de/fiz/Ww/English/Research/Forsch.html

SustainAbility
http://www.sustainability.co.uk/

Warwick Business School, Corporate Citizenship Unit
http://users.wbs.warwick.ac.uk/ccu/about.htm

World Business Council for Sustainable Development
http://www.wbcsd.org/trade1.htm

7.2.3 Government Agency Initiatives for Resolving Environmental Problems

7.2.3.1 AUSTRALIA

Australian Natural Resource Agencies

CSIRO/Australian Minerals and Energy Environment Foundation
Zen and the Art of Stakeholder Involvement: Dr Fiona Solomon

CSIRO Minerals – Sustainable Development

CSIRO, Tropical Agriculture, Integrated Resource Use and Management

Land and Water Resources Research and Development Corporation, Comissioned Programs

Land and Water Resources Research and Development Corporation, Social and Institutional Program

7.2.3.2 UNITED STATES OF AMERICA

National Centre for Environmental Decision-Making Research administered by the Joint Institute for Energy and Environment, Knoxville, Tennessee.
http://www.ncedr.org/tools/tools/info_analysis.htm

Uniting the Voices: Bibliography

http://www4.law.cornell.edu/uscode/5/561.html

Western Water Policy Review Advisory Commission, USA ‘Seeking Solutions: Exploring the Applicability of ADR for Resolving Water Issues in the West’ by Dr. Gail Bingham, Resolve, Inc.
http://www.den.doi.gov/wwprac/reports/aadr.htm

Western Justice Center, California, ‘Managing Scientific and Technical Information in Environmental Cases, Core Principles and Best Practices for Mediators and Facilitators’: Peter S. Adler, Robert Barrett, Martha C. Bean, Juliana Birkhoff and Emily Rudin
http://www.westernjustice.org/env_info.htm

7.2.4 Organisations Addressing Conflict and Cooperation about Cultural Difference

7.2.4.1 INTERNATIONAL

Annotated Bibliography of Publications Relating to Indigenous Peoples and Traditional Resource Rights
http://users.ox.ac.uk/~wgtrr/bib1.htm

Australian Parliamentary Library: Indigenous Affairs in Australia, New Zealand, Canada, United States of America, Norway and Sweden

INCORE (Initiative on Conflict Resolution and Ethnicity) United Nations University
http://www.incore.ulst.ac.uk/home/about/

Centre for World Indigenous Studies
http://www.cwis.org/

http://www.iaia.org/annual-meeting/iaia98/Indigenous/proceed.htm

International Conference on Conflict Resolution, Peace-building, Sustainable Development and Indigenous Peoples, Tebtebba Foundation, Philippines
http://www.skyinet.net/~tebtebba/index.htm

Fergus MacKay, BA, J.D.: Briefing Paper on the Rights of Indigenous Peoples in International Law

Program on Nonviolent Sanctions and Cultural Survival, Harvard University
http://data.fas.harvard.edu/cfia/pnscs/

United Nations Economic and Social Council Commission on Human Rights
Review of Developments Pertaining to the Promotion and Protection of Human Rights and Fundamental Freedoms of Indigenous People: Environment, Land and Sustainable Development
http://www.suri.ee/doc/saamide.html
UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities
http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/6ffc00509cad96c980256659005047df?OpenDocument

World Futures Studies Federation, Philippines
http://www.worldfutures.org/index.htm

7.2.4.2 NEW ZEALAND

Maori Land Information Base
http://www.maoriland.govt.nz/

Ministry of Maori Development

7.2.4.3 UNITED STATES OF AMERICA

Effective Negotiation by Indigenous Peoples, An Action Guide with Special Reference to North America, Department of Native American Studies University of Lethbridge, USA

Fourth World Center for the Study of Indigenous Law and Politics
http://www.cudenver.edu/public/fwc/index.html

US Department of the Interior, Bureau of Indian Affairs with links to self-governance issues

US Bureau of Indian Affairs : Self Determination

7.2.4.4 CANADA

Aboriginal Businesses, Canada
http://abc.gc.ca/

British Columbia Treaty Commission
http://www.bctreaty.net/

Cultural Survival: Negotiating a Land Claim, The Power of Community Consultation

Indian and Northern Affairs, Canada
http://www.inac.gc.ca/pr/pub/ywtk/index_e.html

Ministry of Aboriginal Affairs, Province of British Columbia, The Six-Stage Negotiation Process
http://www.aaf.gov.bc.ca/aaf/treaty/process/sixstage.htm
National Round Table on the Environment and the Economy: Aboriginal Communities and Non-Renewable Resource Development  
http://www.nrtee-trnee.ca/eng/programs/aboriginal/aboriginal_e.htm

Labrador Métis Nation  
http://www.labmetis.org/landright.htm

Lubicon Settlement Agreement, Lubicon, Alberta, Canada  
http://www.tao.ca/~f1Pages/negp/llsa.htm

The Nunavut Final Agreement and Marine Management in the North by Bruce Gillies, Nunavut Tunngavik Inc  
http://www.carc.org/pubs/v23no1/marine4.htm

The Road to Nunavut, A Public Government  

Welcome to Nunavut  
http://www.polarnet.ca/polarnet/nunavut.htm

Welcome To Nunavut Tunngavik Incorporated  
http://www.tunngavik.com/

Selected Bibliography on Nunavut  
http://www.nunanet.com/~jhicks/nunabib.html

McCallum, Andrea Gaye: ‘Dispute Resolution Mechanisms in the Resolution of Comprehensive Aboriginal Claims: Power Imbalance Between Aboriginal Claimants and Governments - Negotiation’  
http://www.murdoch.edu.au/elaw/issues/v2n1/mccallum.txt

Ontario Native Affairs Secretariat: Aboriginal Policy Framework  
http://www.nativeaffairs.jus.gov.on.ca/english/apf.htm

Ontario Native Affairs Secretariat: Web Links Pertaining to Aboriginal Affairs in Canada  
http://www.nativeaffairs.jus.gov.on.ca/english/weblinks.htm

Prince George Treaty Advisory Committee  
http://www.treaty.bc.ca/statement.htm

7.2.4.5 SAAMI PEOPLES

Land Rights, Linguistic Rights, and Cultural Autonomy for the Finnish Sami People by The Finnish Sami Parliament  
http://arcticcircle.uconn.edu/ArcticCircle/SEEJ/sami1.html

The Sami of Norway  
http://odin.dep.no/odin/engelsk/om_odin/p10000971/032005-990463/index-dok000-b-n-a.html

Swedish Policy and Saami Rights, Fae Korsmo  
http://www.yukoncollege.yk.ca/review/korsmo.htm
7.2.4.6 AFRICA

African Journal on Conflict Resolution

Centre for Conflict Resolution, Rondesbosch, South Africa
http://ccrweb.ccr.uct.ac.za/

Contemporary Conflicts in Africa
http://www.synapse.net/~acdi20/welcome.htm

Independent Projects Trust: The cultural dimensions of environmental decision-making
http://www.webpro.co.za/clients/ipt/arcultre.htm

Land and Spirituality in Africa
http://www.wcc-coe.org/wcc/what/jpc/echoes-16-05.html

PEACE Foundation, (Planning Education Agriculture Community Environment) University of Natal
http://www.medimage.co.za/und/peace/peace.htm

van der Merwe, H. W., Facilitation and Mediation in South Africa: Three Case Studies
http://www.gmu.edu/academic/pcs/vander~1.htm

7.2.4.7 LATIN AMERICA

The Center for Human Rights and the Environment, CEDHA, Argentina
http://www.cedha.org.ar/cedha.htm

Amici Curiae and the Inter-American Court on Human Rights
http://www.cedha.org.ar/curiae1.htm

Reframing Citizenship, Indigenous Rights, Local Power and the Peace Process in Guatemala, Rachel Sieder
http://www.c-r.org/acc_guat/sieder.htm

7.2.5 International Organisations–Enhancing Decision-Making Processes

7.2.5.1 UNITED STATES OF AMERICA

Campaign for Forgiveness Research
http://www.forgiving.org/

Centre for Environmental and Public Policy Dispute Resolution, Washington
http://www.resolv.org/About/default.htm

CONCUR, Inc.
http://www.concurinc.com/

Conflict Management Group
(Prof. Roger Fisher, Harvard Program on Negotiation)
http://www.cmgroup.org/about.htm
Convenor - Dispute Resolution Consulting, Madison, WI. USA
http://www.convenor.com/

Florida Conflict Resolution Consortium
http://www.ispa.fsu.edu/consensus.html

Conflict Resolution Consortium, University of Colorado, Boulder

International Online Training Program On Intractable Conflict
http://www.colorado.edu/conflict/peace/

Conflict Resolution Resource Center  ‘Preventing Conflict through Facilitation’ by Janice M. Fleischer and Zena D. Zumeta  One of Many Articles on this web site.
http://www.conflict-resolution.net/articles/index.cfm

The Consensus-Building Institute Inc. headed by Prof. Lawrence Susskind of Urban and Environmental Planning, MIT and Director, Public Disputes Program, Harvard Law School.
http://www.cbi-web.org/

The Environmental Technology and Public Policy Program
(Prof. Lawrence Susskind)
http://web.mit.edu/dusp/etpp/index.html

Policy Consensus Initiative, national US program to establish and strengthen the use of consensus building and conflict resolution to improve government effectiveness.
http://www.policyconsensus.org/

Program on Negotiation, Harvard University
http://www.pon.harvard.edu/about/index.html

Program on Negotiation, Harvard University
Executive Education Series - Creating and Managing International Business Relationships. New Strategies for Preventing and Resolving Conflicts with Foreign Partners
http://pon.execseminars.com/international/index.html

Transcend Peace and Development Network
http://www.transcend.org/BROCHURE.HTM

Resolve - Center for Environmental and Public Policy Dispute Resolution
http://www.resolv.org/Default.htm

Society for Professionals in Dispute Resolution
http://www.spidr.org/

Transforming Environmental Conflict and Creating Sustainable Communities, Eastern Mennonite University, Harrisonberg, VA.
http://www.emu.edu/ctp/environ.html

U.S. Institute for Environmental Conflict Resolution
http://www.ecr.gov/index.htm
7.2.5.2 CANADA

The Canadian International Institute of Applied Negotiation
http://www.canadr.com/

The InterNeg Group, Carleton University & Concordia University, Ottawa-Montreal, Canada
http://www.business.carleton.ca/interneg/

Making Peace and Sharing Power: A National Gathering on Aboriginal Peoples and Dispute Resolution
http://dispute.resolution.uvic.ca/mpsp.htm

Catherine Morris: Readings in Dispute Resolution: A Selected Bibliography
http://peacemakers.ca/bibliography/bibintro99.html

The Network Interaction for Conflict Resolution
http://www.nicr.ca/

Peacemakers Trust, Canadian non-profit organization dedicated to research, education, and consultation on conflict resolution
http://www.peacemakers.ca/index.html

Canadian Government Peacebuilding Network with links to The Canadian International Development Agency (CIDA)
http://www.dfait-maeci.gc.ca/peacebuilding/index-e.asp

7.2.5.3 AUSTRALIA

Australian Commercial Disputes Centre, Sydney
http://www.austlii.edu.au/au/other/acdc/

The Australian Dispute Resolution web site

The Institute of Cultural Affairs (facilitation specialists)
http://www.icaworld.org/australia/index.html

International Institute for Negotiation and Conflict Management, School of Law, University of Technology, Sydney

Just Accord, Sydney

National Alternative Dispute Resolution Advisory Council, Canberra

Toward Common Ground, a Queensland-based self-help guide for local mediation of native title disputes
http://www.tcgproject.org/

Archie Zariski's Conflict and Dispute Resolution Links
7.2.5.4 NEW ZEALAND
The New Zealand Centre for Conflict Resolution
http://www.vuw.ac.nz/nzccr/Cent.htm

7.2.5.5 EUROPE
Berghof Research Center for Constructive Conflict Management, Germany, promoting procedures and models for dealing with ethno-political conflicts.
http://www.berghof-center.org/english.htm

European Platform for Conflict Prevention and Transformation, Utrecht, The Netherlands
http://www.euconflict.org/

7.2.5.6 UNITED KINGDOM
Centre for Creativity, Strategy and Change, Warwick Business School
incorporating Corporate Citizenship
http://www.wbs.ac.uk/expertise/research_teaching/ccsc.cfm