

The two stages of negotiation of a Traditional Owner Settlement Agreement

Preparation of the Threshold Statement

Traditional owner group: seeks support of NTSV; for Part A - takes part in research, settles decision-making, makes key decisions on group composition and extent of country, seeks agreements with neighbouring groups, prepares a statement of association and endorses Part A statement; for Part B - nominates a group entity (corporation), appoints negotiation team, prepares strategic plan and endorses Part B statement.

Native Title Services Victoria (NTSV): considers applications for assistance, seeks consent for and undertakes research and community outreach, presents research findings to group, supports capacity building, facilitates discussion with neighbours, assists with nomination of group entity and strategic planning and prepares threshold statement.

State agencies: provide process info (DJR), mapping assistance (DJR with NNTT, OAAV and DELWP), agreement-making and capacity building support (RPfC and OAAV) and research cooperation (between DJR, VAHC and NTSV).

STAGE ONE: THRESHOLD NEGOTIATIONS

Evaluation of Part A Threshold Statement (right group and country)

DJR provides a written evaluation of the Part A Threshold Statement against Part 4 of the Threshold Guidelines.

- A1. Statement of intent to negotiate
- A2. Traditional owner group statement of association to country
- A3. Description and basis of traditional owner group
- A4. Description and basis of proposed agreement area
- A5. Research process overview, chronology and findings
- A6. Traditional owner group decision-making

Threshold notification

DJR and the traditional owner group settle the public documents and map.

DJR gives notice to the wider Victorian traditional owner community and invites submissions: Is it the right group for the proposed area? Does it include all the members of that group? Have all members had a reasonable opportunity to participate in the full group decision making?

Notice is given via print media, letters and online at www.justice.vic.gov.au DJR also writes to the VAHC, and to NTSV, if not assisting the group. No confidential submissions will be accepted. The traditional owner group seeking a settlement has a right of reply.

Part A thresholds are met.

DJR advises the traditional owner group.

Threshold conferences

DJR meets with the traditional owner group to provide and discuss the evaluation (Part A and/or Part B).

If outstanding threshold issues (from Part A or B) are identified, the parties will seek to develop strategies to address them, such as: topic-specific conferences, agreement-making assistance under RPfC, mediation, additional research, independent expert advice or reviews and conferences of experts.

If submissions from threshold notification raise outstanding threshold issues, threshold conferences may be convened to discuss and address these.

Thresholds not met

Significantly flawed or vexatious statements are returned to the traditional owner group early on. DJR provides brief reasons for decision not to evaluate further.

OR

DJR considers that, despite best efforts to address outstanding issues, thresholds are not able to be met. DJR provides reasons for decision.

Evaluation of Part B Threshold Statement (negotiation readiness)

DJR provides a written evaluation of the Part B threshold statement against Part 5 of the Threshold Guidelines.

B1. Appointment of traditional owner group entity

B2. Statement of negotiation capacity

B3. Strategic plan

Part B thresholds are met

DJR advises the traditional owner group.

STAGE TWO: SETTLEMENT NEGOTIATIONS

Commitment to proceed to Stage Two negotiations

The government and traditional owner group confirm their mutual commitment to proceed to

Stage 2 settlement negotiations, marked by a milestone event.

Settlement negotiations

Negotiations proceed, including:

- negotiation plan and timetable agreed
- agreement-in-principle sought for each element of settlement package
- agreement documents drafted
- agreements authorised by full group
- agreements endorsed by government.

Signing ceremony

Agreement documents executed by Ministers and traditional owner group at a signing ceremony.

ILUA registration

NTSV certifies the ILUA application for registration and makes application to the NNTT. The NNTT runs a 3 month public notice process, and considers any objections received. NNTT makes a registration decision. (If negative, parties must remedy).

Following a positive decision, the NNTT enters the ILUA on the Register of Indigenous Land Use Agreements.

The traditional owner group discontinues native title or compensation claims in the Federal Court (if any).

Settlement agreements come into force

The traditional owner group and the state celebrate the commencement of the settlement agreements in a public ceremony!!

Implementation commences.

Acronyms

DJR - Department of Justice & Regulation; **DELWP** - Department of Environment, Land, Water and Planning; **ILUA** - indigenous land use agreement; **OAAV** - Office of Aboriginal Affairs Victoria; **NNTT** - National Native Title Tribunal; **NTSV** - Native Title Services Victoria Ltd, the native title service provider for Victoria; **RPfC** - Right People for Country Project; **TOGE** - Traditional Owner Group Entity; **VAHC** - Victorian Aboriginal Heritage Council

**Figure 1:
The two stages
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of a Traditional
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