

Land deal fails important tests

Doubts surround the State Government's native title deal, say **Len Collard** and **Gerry Georgatos**

Much has been made of the State Government's billion-dollar-plus offer to the Noongar people via the South West Aboriginal Land and Sea Council.

But is it a genuine native title offer or a politicised move to coerce a proposition that native title rights have been settled for all those considered Noongars and that all future rights are extinguished?

Noongar is a generic term and not representative of all the different cultural clans across Perth and southern WA — others include Whadjuk, Yuet, Mineng, Koreng, Ballardong, Bibbelmun and so on.

Legally, these Aboriginal clans and families will maintain connection to country that are exclusive domains and do not overlap one another.

SWALSC had been the entity built up over the years that often supported the native title claims of holders through the courts.

But what will eventuate if the \$1.3 billion time-limited deal is sealed is that SWALSC will no longer support native title holders and claimants through the courts.

If this happens, the majority of the native title holders will be marginalised, with inadequate access to their legal rights.

When the State Government and the SWALSC agreed four years ago to work towards a deal, there were six native title claims in the courts. This deal will do away with these claims and, effectively, any future claims.

Is this right? No.

Before these six claims there were a score of predominately family-based geopolitical land claims. But what is needed are clan-based claims to provide



Final offer: Colin Barnett presents the native title deal to Noongar elders earlier this month. Picture: Simon Santi

culturally specific outcomes.

In 2006, Justice Wilcox found in favour of Noongar rights over the south-west of WA despite the State counting on the "genocide" argument — that the Noongar peoples had been "wiped out" by colonialism and no longer effectively existed as a real cultural people, other than as "removed" descendants or as a broken minority.

Most Noongar clans justifiably celebrated the ruling — it was their victory over a form of arguable "terra nullius".

But such was the politicised nature of the State, it appealed against the Wilcox ruling.

The Wilcox decision was overturned by the Federal Court in 2008 but the Full Bench could not agree with the State's proposition that there are no longer Noongar societies.

Therefore, more claims could ensue but against a defiant Government that refused to cave in to the suite of rights of peoples that, at best, they considered remnants of former clans.

So, they offered SWALSC a heads-of-agreement opportunity to settle native title claims to all Noongar country.

But does SWALSC have this legal authority?

SWALSC's membership is more than 4000 but there are, according to the Australian Bureau of Statistics, 40,000 Noongars.

And the Noongar Tent Embassy claims to have a petition — calling for the \$1.3 billion deal to be torpedoed — with more Noongar signatures than SWALSC members.

The Government and SWALSC are having a dialogue among themselves.

But if they are serious about democracy, they should ensure a postal ballot of all Noongars on whether the deal should be upheld.

The package has a \$600 million component disbursed over 12 years, with future revenue arising from various investment within these monies.

But what happens if these funds do not return a dividend?

They are a simplistic step to address a myriad of cultural, economic, legal and social problems and the intergenerational poverty — acute, abject, endemic and pernicious — imposed on most Noongars.

No native title settlement has provided the capacity to remedy the social problems in Aboriginal communities that are plagued by problems imposed by more than a century of disenfranchisement, neglect and the pain of poor policies.

Native title is so watered down and so easily circumvented by politicisation that those within the native title community argue that settlements are about getting what one can — finite outcomes while dismissing panacea and sustainable systems.

Well, they are wrong. It will be a mistake for Noongars and taxpayers to let this deal go through and allow the argument that all future claims have been extinguished.

The Australian political and

ideological landscape is changing and it may well be that in a couple of decades the Noongar clans will be able to secure what has been denied today — a win-win circumstance.

If the deal goes through, future Noongars will have courts telling them that their ancestors signed their rights away.

The deal should not be signed because there are no questions of sovereignty to solve, only rights issues per se, entitlements and reparations, remedies, customary and traditional ties.

These don't threaten current land use, but are pivotal to generating the type of rights that will raise people out of intergenerational poverty.

In the meantime, if the Government has \$600 million to spend over 12 years, it should do so. And these funds should be spent on remedying the ills that plague far too many clans of Noongar people — whose children are dying at the world's highest suicide rates, who are being incarcerated at among the world's highest imprisonment rates and who are living in overcrowded private and public housing.

More needs to be done for disadvantaged people than a modicum of social employment programs for Aboriginal workers in natural parks in joint ventures with the Department of Environment or 120 extra houses to be built near Perth. This is piecemeal and insulting.

Native title has short-changed Aboriginal people nationwide and it should cease.

But when governments stand so ferociously in the way of a bona fide native title agreement and social, economic, cultural and compensatory rights, what hope is there to get native title right?

The funds that are being offered are the equivalent of a sports stadium or a couple of tall city buildings. Does any right-minded citizen believe this is what native title is about? Native title was supposed to be compensatory, remedial, humane and to bring about reconciliation.

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Offer provides unique chance to settle historic issues

■ Ben Wyatt



The recent offer from the WA Government to settle native title with the Noongar people is indeed historic.

As I have written previously, in WA it is the Noongar people of the South West who bore the brunt of colonisation and the fact that the Noongar people have survived is worthy of great celebration. WA now has a big opportunity to settle an issue that has bedevilled Aboriginal and non-Aboriginal relationships since 1829.

The Government's offer is comprehensive and includes, as expected, offers of land and funding.

Importantly, the offer seeks to embrace the recognition and acknowledgment of the Noongar people in our State. For many Noongar people this will be the most important aspect of the offer. For generations, the Noongar



Culture: The river, Derbarl Yerrigan, is integral to Noongar traditions.

people were subject to Government control, humiliation and force.

For generations the Noongar people, many dislocated from their traditional lands, have found themselves official strangers in a land they have owned for many thousands of years.

For generations, the proud Noongar history was held in disdain. If accepted, legislation will be presented to State

Parliament recognising Noongar people as the traditional owners of the South West.

Ultimately, it will be this recognition that will go the furthest in resolving the devastating impact of the now defunct concept of "terra nullius".

The echoes of Capt. Stirling are heard loudest in our Noongar community and it is a bitter sound.

Parliamentary recognition of

the traditional ownership of the South West will give an official basis to the concept of being "welcomed to country" at events.

The responsibility for considering the offer falls to the current generation of Noongar people, very aware of their ancestral histories and very aware of the decision they make for future generations.

I do not envy them.

But the possibility of resolving the Noongar native title claims fills me with excitement at the opportunity we have as a State to move ourselves into a much deeper understanding and acceptance of our wonderful Aboriginal heritage.

There is so much to gain for every West Australian.

The prospect of an Aboriginal cultural centre on the banks of the Derbarl Yerrigan (Swan River), the passage of the Bill recognising Noongar people coinciding with WA Day in a special parliamentary sitting, entrenched Aboriginal representation in local government — all of these are

grand possibilities that will entrench our Aboriginal history from which are State is based.

Native title now sits comfortably within the broad spectrum of Australian life that highlights that we accept the cultural uniqueness of Aboriginal Australia.

It is time we set ourselves a target to resolve outstanding native title claims to ensure that native title can continue to be used in a productive way, outside of the destructive court process.

The 30th anniversary of the Mabo decision, in 2022, would stand as an ideal aspiration to resolve all native title claims in WA.

This should be our ambition.

Ultimately it is up to the Noongar people to decide the fate of the WA Government's offer.

Every single one of us has a stake in the outcome. It is the responsibility we have inherited from our past and one we must take up for our future.

Ben Wyatt is the WA shadow treasurer and a descendant of the Yamatji people