THE ROLE OF STATE GOVERNMENTS IN NATIVE TITLE NEGOTIATIONS: A TALE OF TWO AGREEMENTS

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I Introduction

A key question in contemporary Australian Aboriginal policy is how to turn wealth derived from resource extraction on Aboriginal land into economic and social prosperity.[1] Large amounts of mineral wealth are being extracted from or near Aboriginal communities,[2] yet Aboriginal people continue to be less educated, live shorter lives and pass on less wealth to their children than their non-Aboriginal counterparts.[3] One method used by Australian Aboriginal people to redress this paradox of 'poverty in the midst of plenty'[4] is agreement-making through negotiation with resource companies. This has been shown to reap great benefits for Aboriginal groups.[5] It has also been demonstrated, however, that traditional owners can encounter significant pitfalls when negotiating agreements with resource companies.[6] This agreement making is largely conducted pursuant to legislation – the *Native Title Act 1993* (Cth) ('*Native Title Act*') and land rights legislation – although it can also occur where there is no legislative imperative.[7]

This article considers the role of state government practice in two *Native Title Act* negotiations for liquefied natural gas ('LNG') facilities, and the impact it had on agreement outcomes. The first of these negotiations resulted in the Browse LNG agreements, signed in June 2011 by the Western Australian state government, Goolarabooloo/Jabirr Jabirr traditional owners, the Kimberley Land Council ('KLC') and Woodside Energy Ltd. These agreements secured the land to build a LNG processing hub on the Kimberley coast at James Price Point, near Broome, Western Australia, to process gas from the offshore Browse Basin.[8]

The second set of negotiations was for four LNG processing plants on Curtis Island, off Gladstone in central Queensland.[9] In Western Australia, the three Browse LNG agreements were estimated to be worth at least $1.5 billion.[10] In central Queensland, evidence suggests that the Curtis Island agreements are worth less than $10 million, and described by traditional owners as 'crumbs off the master's table.'[11] The Browse and Curtis Island agreements were both negotiated pursuant to the 'future act' regime of the *Native Title Act* and both are for land on which major LNG infrastructure was planned. A significant difference between the two developments is that of size: Curtis Island LNG's construction phase, being for four plants, is bigger than Browse LNG would have been, and in the production phase it is estimated that Curtis Island LNG will produce about twice as much LNG as Browse.[12]

II Research Methods

The PhD research on which this article is based used a qualitative, multi-site explanatory case study research design to find out how traditional owners can maximise outcomes from agreement making under the *Native Title Act*. The research found several reasons for the differences between these agreements. These include the impact of history on each set of agreements – including, for example, on the strength of remaining native title rights – the political and organisational strength of traditional owners and the character of respective LNG companies.[13] This article discusses a further reason for this difference: the role of the state governments in the Browse and Curtis Island LNG negotiations, and their impact on the negotiated native title agreements.

Browse LNG and Curtis Island LNG were chosen as case study sites because they resulted in widely disparate agreement outcomes despite the similarities in the LNG developments. This methodological approach is known as 'purposive

sampling'.[14] In total, 53 interviews were conducted, including 41 interviews with 33 people on an on-the-record basis, eight of whom were interviewed twice, and 12 interviews conducted on an off-the-record basis. Interviewees were sourced from traditional owners from the respective claim groups, resource company representatives, state public servants and senior state politicians, land council staff and those in opposition to the developments. Interviewees were either direct participants in the negotiations, or were otherwise heavily involved, and all spoke purely in their personal capacity. Some interviewees have been anonymised at their request. Interviews were semi-structured, and lasted between one and three hours. All interviews were transcribed, and sent to interviewees for checking and approval, in line with university ethics approval. Interviews and other empirical data were then coded and analysed for broad themes and content.

III Native Title Act

The *Native Title Act*'s 'future act' regime governs all proposed activities on land the subject of native title claims or determinations. The regime sets out minimum standards that must be undertaken before the doing of a 'future act', depending on what kind of 'future act' is proposed. For 'future acts' that relate to the exploration, exploitation or extraction of minerals, oil or gas, the Act states that the resource proponent must negotiate with native title holders or registered native title claimants 'with a view to reaching an agreement about the act.'[15] This is known as the 'right to negotiate', and where an agreement is reached it is called a 's 31 agreement'. Negotiations for s 31 agreements must be conducted in good faith[16] and run for a minimum of six months. If no agreement is reached after this period, any party may apply to the National Native Title Tribunal ('the Tribunal') for a determination.[17] When hearing applications, the Tribunal must determine whether or not the act can be done, and if so, whether any conditions should be imposed.[18] The Tribunal has a reputation for rarely refusing to allow 'future acts': as of 3 September 2015, it had refused just three 'future act' applications, while allowing 46 without conditions and a further 39 with certain conditions imposed.[19]

'Good faith' does not require resource companies to fund traditional owners to negotiate.[20] Nor does it oblige negotiations to extend beyond six months, even where negotiations are only in a gestational stage.[21] It also does not require that reasonable offers or concessions are made, although these may be taken into account in the overall assessment of a party's negotiating behaviour.[22]

The *Native Title Act* also sets out more flexible requirements for negotiating Indigenous Land Use Agreements (ILUAs), which are generally considered appropriate for more complex matters. It does not stipulate that negotiations should be conducted in good faith but does set out extensive authorisation and registration requirements.[23]

IV The Role of State Governments

State governments play a large regulatory role in native title agreement making between traditional owners and resource companies. The *Native Title Act* stipulates that they are party to all s 31 agreements[24] and that they must be a party to any ILUA that extinguishes native title.[25] They also play a major role as the regulator of all resource extraction that occurs within their jurisdiction, have the ability to compulsorily acquire land, and are the recipient of resource royalties. In practice, however, state governments are usually entirely absent from future act negotiations, which are almost always private agreements between the community and company.

The role of state governments is therefore often overlooked in the literature.[26] There are a few notable exceptions. These emphasise the key regulatory role played by governments, and the impact they have on the agreement making process. Catherine Howlett, writing about the role of the Queensland government in the Century Mine negotiations, argues that:

> The Australian state is … a key player in mineral development, and its behaviour has enormous significance for determining the negotiating environment in which mineral development takes place … The state was definitely not a neutral arbiter in this negotiation. It determined the development would proceed and did everything in its power to ensure that it did. Much evidence was found of the state, as a whole, acting to promote development of the mine, and deny the interests of Indigenous people.[27]

Katherine Trebeck also emphasises governments' regulatory power as a key force in agreement making. She argues that, when considered with its role as provider of citizenship services, there is a strong argument for governments playing a larger role in ensuring greater power parity in agreement making.[28] Like Howlett, Trebeck also finds that the opposite occurred in both the Century Mine agreement and the

campaign to prevent uranium mining at Jabiluka: that governments were keen to facilitate mining and 'undermine' Aboriginal land rights.[29]

As described above, however, governments almost never play an active role in negotiations. For example, David Ritter describes the norm of government engagement in negotiations as 'perfunctory'. He argues that government are trying to save the money it would cost to participate in negotiations, while also seeking to prevent the 'open slanging match' that might result should traditional owners and the miner not attempt negotiate an agreement.[30] However, this passive role is deceptive, Ritter says, because state governments are effectively backing resource companies when they allow them to dictate the timetable of negotiations: 'whether the breakneck pace required when the deposit is good and the financial conditions are hot, or the lackadaisical inaction of tenement parking.'[31] The state then signs up to their part of the deal without proper oversight of either the process or the agreement reached, he asserts.[32] Noel Pearson similarly argues that governments have an 'institutional antipathy to Aboriginal people and their rights and interests' which has a negative impact on traditional owners in negotiations.[33]

Ciaran O'Faircheallaigh argues more broadly that the approach of state governments to native title has weakened the beneficial intent of the *Native Title Act* for many traditional owners. In particular, he contends that governments often take an adversarial attitude to native title recognition, sending a message to companies about the lack of importance of native title tenure. He also observes that governments often accuse Aboriginal communities of holding up resource developments but do not fund them properly to negotiate.[34] Santiago Dondo and Joe Fardin point out that given the interests of resource companies and governments are 'relatively aligned ... to whom do indigenous groups turn for a comparable level of backing?'[35] They advocate for 'active government participation' to 'guarantee a minimum standard of practice when engaging with indigenous groups.'[36]

Other scholars discuss the issue of 'substitution' in relation to government behaviour, in which governments fail to provide essential services in areas of resource extraction with the expectation that companies will fill the gap. Marcia Langton and Odette Mazel call this 'rent-seeking' by the state.[37]

This passive role differs from the role envisaged for the states by the *Native Title Act* when it was first enacted. Then legislators intended that state governments would be the principal negotiator of agreements with native title parties because of their ability to extinguish native title.[38] Indeed, the Act's preamble says that governments:

> Should, where appropriate, facilitate negotiation on a regional basis between the parties concerned in relation to ... proposals for the use of such land for economic purposes.[39]

From time to time governments have become a negotiation party when they believed that the nature of the development warranted their involvement by aligning with their strategic interests, for example the Queensland government's involvement in the Western Cape Communities Co-existence Agreement.[40] However this is not the norm.

V Negotiating the Browse and Curtis Island LNG Agreements

A Browse LNG Negotiations

The Browse LNG negotiation effectively began in 2006 when then Western Australian Premier Alan Carpenter announced that the State was looking for a place to build a gas hub to process natural gas from the offshore Browse Basin. Carpenter said that this hub would only go ahead with the support of traditional owners, stating that negotiations would be 'a dialogue, not an imposition or a demand.'[41] The KLC coordinated Kimberley-wide consultations, seeking to gauge support for the project from Kimberley Aboriginal people as a whole, and say that they got this support, including from people who would later object to James Price Point as the chosen site.[42] What followed was an extensive site selection process involving traditional owners, Woodside and the State, which saw the number of potential sites reduced – for both cultural and engineering reasons – to four, including James Price Point, by September 2008. The process was cut short, however, after the 2008 State elections resulted in the Carpenter Government being unexpectedly toppled. New Premier Colin Barnett had been scathing of the previous government's role in gas company Inpex's decision to move a planned processing site from the Kimberley to Darwin, and accused them of similarly 'dithering' on the Browse LNG site selection process.[43] Barnett put an end to the site selection process, announcing James Price Point as preferred site in December 2008, and threatened to compulsorily acquire the land if traditional owners did not agree.

Negotiations commenced soon after between the native title claimants for James Price Point (the Goolarabooloo and Jabirr Jabirr people), Woodside and the State.[44] These negotiations were interrupted by numerous bouts of litigation after a split within the native title group, punctuated by compulsory acquisition threats from Colin Barnett, and made internationally visible by a prominent environmental campaign.

The cost of the site selection process and subsequent negotiation is not entirely clear, however a senior government official told Western Australia's parliament that the cost between 2009 and May 2012 alone was $40.4 million, of which Woodside contributed $16 million, while the KLC was funded by the State and Woodside to the value of approximately $15.6 million between January 2009 and September 2010.[45] This is highly unusual in a field in which native title representative bodies are usually not funded adequately to fulfil their statutory duties, let alone the work they do negotiating with project developers.[46] This funding enabled the KLC to engage LNG industry advisors, business consultants, environmental scientists and lawyers. It also meant that they were able to bring traditional owners together for meetings (the cost of bringing hundreds of people together in the Kimberley, where travel costs are high, is almost prohibitive for all but the best funded groups).

The s 31 agreements were signed in June 2011, and, very unusually, were made public. The package was said to be worth at least $1.5 billion, including for land, health, education and training, with further benefits payable if more companies also processed their gas at the site. It also included unique provisions indicating that benefits would be spread Kimberley-wide; that traditional owners would have some level of control over the gas hub including that they could order the building of a desalination treatment area if groundwater was under threat;[47] that ownership of the port would be transferred to traditional owners at the end of the precinct life; and that the State would not allow other gas processing facilities anywhere else on the Kimberley coast.[48] These outcomes have been described as 'much more positive' than those typically achieved in negotiations between extractive industries and Aboriginal peoples.[49] Then CEO of the KLC, Wayne Bergmann, welcomed it as a chance for Kimberley Aboriginal people to be properly resourced to take control of their lives.[50] Colin Barnett, echoing his predecessor Alan Carpenter, emphasised the positive impact that the agreement would have on the lives of Kimberley Aboriginal people.[51]

B Curtis Island LNG Negotiations

Across the continent in Queensland, investment by the gas industry was described by former Deputy Premier and Treasurer, Andrew Fraser, as 'the only thing that is happening in the Queensland economy at the moment.'[52] The local Aboriginal people claiming ownership of Curtis Island are known as the Port Curtis Coral Coast (PCCC) people, an amalgam of four groups: the Gooreng Gooreng, Gurang, Bailai and Bunda peoples. All four LNG projects have negotiated land access agreements with this group, however none of them are publically available.[53] Nevertheless, information gathered about those agreements for this research is telling. Tony Johnson, a traditional owner involved in the negotiations, stated that:

> I can tell you that the four of them in total do not total $10 million. It's obscene. I couldn't honestly say that we got the best of a bad lot.[54]

Kezia Smith is a PCCC traditional owner who spent ten years working for Rio Tinto in Western Australia and the Northern Territory. She worked in their community affairs and human relations departments, including at the Argyle diamond mine in the East Kimberley. It was her job to know about the agreements that resource companies negotiate with traditional owners, meaning that 'I know when they are pulling wool over your eyes.' She moved back to Gladstone recently. What she learnt when she arrived shocked her:

> I have seen these deals ... and I am disgusted. It's not even a slap in the face. They are going to earn billions, and to pay us a $1.75 million shut up deal is just sickening.[55]

An Aboriginal Engagement and Sustainability manager of a Gladstone LNG company ('GLNG1') said of the Browse Agreements LNG that they are 'very generous'. I ask him whether any of the Curtis Island agreements are in the same ballpark? 'No' he says 'it's a different stratosphere. Different universe'. Why do you think that happened, I ask?

> I don't know. It's hard to comprehend that level … its perhaps a different space, a different precedent set. And that project is high profile. We certainly don't compensate

> anybody on that level. Hard to comprehend really. We do compensate relative to the Queensland space. [56]

Tony Johnson said of the comparison with Browse LNG that:

> Over there they spent $50 million on consultation with the potentially affected native title parties … and the sum total we got from four of them [in the agreements] doesn't equal or even come close to that.[57]

He also said that the PCCC were funded for two lawyers for the duration of negotiations and that:

> When we sought funding for environmental scientists and other things to look at the impact of the industry on the harbour and on the foreshore in particular, that was denied. They were doing the EISs [Environmental Impact Statements] ... and the only response that our group did was one that I did. We didn't have professional advice. We didn't have financial or economic advice. We had some advice on taxation, and lawyers, but for us to have a holistic approach we would have needed a range of support that just wasn't forthcoming. What we were facing was already a hurricane, and we didn't have any defences to it.[58]

Unlike in the Kimberley, where discussions between the traditional owners, Woodside and the State occurred over several years, engagement with the PCCC traditional owner group was perfunctory. Tony Johnson describes the process as one of 'indecent haste'.[59] Craig Jones, who worked for two Curtis Island LNG companies, also described a very circumscribed negotiation process:

> [I]t's a five step process and I tell them at the start that the first meeting will be about this, the second that, and at the fifth one we are going to sign.[60]

He was asked whether each meeting lasts a couple of days, to which he replied: 'No, people get too tired. It's not overly complicated'.[61] GLNG1 describes a similar negotiation process comprising five meetings, prior to which his company works out a reasonable 'jump-in' point for compensation. He is asked whether any groups are able to push beyond that initial jump in point? 'They try to', he says. Do they ever succeed?

> No, not really. They have to be reasonable and practical as well. You don't want to set a precedent. And we think we are being very fair with our structure and our compensation process.[62]

Tony Johnson had a similar view:

> On reflection I don't think it mattered what we did … if we had been performing back flips, handstands and acrobatics there would have been no change to the outcomes. It was all predetermined.[63]

In Curtis Island, traditional owners interviewed feel that they have been left with 'crumbs from the master's table'.[64] The day after one deal was signed, a newspaper reported that the State would be receiving $200 million a year in royalties from that company.[65] Several traditional owners travelled down to Brisbane and protested outside the company's headquarters, burning an effigy of a LNG manager in the street. The recipient of this attention said he was unfussed:

> We've had some adverse publicity, but nothing that has gone mainstream, it's been in Indigenous publications. We have had a protest here, people from the PCCC, I had an effigy of myself burnt in the street. It was an interesting day. They were quite irate at the time. Looking for attention.

Did they get it, I asked? 'No', he replied.[66]

VI Why the Difference?

There are many reasons for the disparity between these agreements, which largely reflect the explanations provided in the literature. O'Faircheallaigh, for example, has identified several factors that are also relevant to the Browse and Curtis Island LNG agreements, including: the approach each company takes to native title; the prevailing legislative regime; the economics of the project involved; and the capacity of traditional owners to insist that companies meet their obligations. On this latter point, he says that in three comparable negotiations with the same company, the agreement most beneficial for traditional owners was the one in which the Aboriginal group had the greatest political capacity.[67]

A Political Influence

The Kimberley is an iconic and environmentally important area of Australia, and its Aboriginal owners – people like Wayne Bergmann, Pat Dodson, Peter Yu – have a national

profile, political clout and a strong organisation in the form of the Kimberley Land Council: all key factor identified in the literature as being determinative in agreement-making.[68] Curtis Island traditional owners don't have the same level of political influence. For example, while Wayne Bergmann has a national political profile and was able to call Premier Colin Barnett at several crucial stages during the negotiations,[69] PCCC traditional owners were under no illusions that they could do the same: Kezia Smith, when asked whether the State Premier would take her call, said 'Hell no!'[70] There also appears to be a link between political influence and strength of native title rights. For example, Andrew Fraser drew a distinction between Curtis Island traditional owners, who he acknowledged had little political sway during their LNG negotiations, and the Quandamooka people from around Fraser Island, who could get a Minister or department head on the phone. The latter, he said, were able to gain more political access because their native title rights were greater.[71]

B Native Title Rights

The *Native Title Act* and associated case law makes clear that several factors can diminish or extinguish native title rights, including inconsistent grants of title to land and a loss of connection to traditional country. Around Curtis Island, traditional owners were dispossessed of their land much earlier than in the Kimberley, which means that it is likely that remaining native title rights will be more curtailed. At James Price Point the land has not been the subject of any formal grants of proprietary title, and so it is likely that native title rights will be found to be stronger.

Several Queensland government interviewees pointed to this as a key reason for the difference in agreement outcomes (although it is noteworthy that no government representatives interviewed had seen the contents of the Curtis Island LNG agreements). For example, Andrew Fraser said:

> Curtis Island has been developed for a long time. That might explain, in part, why the TOs [traditional owners] don't have a big part to play, the earth was scorched a long time ago.[72]

Geoff Dickie, the former Queensland Deputy Co-ordinator General (the Office of the Co-ordinator General had bureaucratic oversight of the Gladstone LNG developments), explained:

> It was the level of native title that determined how much was paid. The island was in a perpetual lease and that theoretically extinguished native title. So most of the native title on the island had been extinguished.[73]

Kezia Smith also discussed this as a factor. She said:

> I think that there is some part that has to do with Queensland society, and colonisation. Because a lot of that mob up there [in northern Australia], they are still very traditional, a lot more traditional than we are down here. They haven't had their language, culture and land taken off them. They still own their land and were never taken from it. That's what it is, loss of connection to country. They moved them around to all the missions, why do you think there are so many problems on Palm Island? And then you bring in the Stolen Generation, and intergenerational trauma. What I have found with our TOs here, in comparison with the mob over in WA and NT, they are too afraid to speak.[74]

And yet, as Don Voelte, the former CEO of Woodside told *The Australian* newspaper, the Browse LNG package was not only about paying for the land, but also 'sharing the rewards of the gas development'.[75] Since the demise of the onshore project, he has strongly argued that the agreements benefits should be paid anyway. In an interview for this research, he said:

> It doesn't matter where that plant is at, the commitment was to the Indigenous people of that area. And if that gas ever gets produced, if it gets produced through the moon I don't care, that agreement holds water, and Woodside ought to honour it. And there is no reason that they don't honour it except that, frankly, the only thing I can see is, greed … It was about the mob, it was about the region, it was about the culture and history of the area. And if you tie the gas properly to an onshore area, it's that area, all along the coast.[76]

The Western Australian Valuer General valued the site at $30 million for the purposes of compulsory acquisition, far less than the compensation package offered.[77] Clearly, traditional owners in the Kimberley were being compensated for far more than their claimed land's commercial value.

C Role of State Governments

Another difference between the two negotiations was the attitude of each state government to the negotiations,

particularly the extent of their permissive attitude to resource companies, and whether or not they resourced traditional owners to negotiate. While both are pro-development, the Queensland and Western Australian governments took very different approaches to the negotiations. Western Australia was not only the proponent of the Browse LNG development, it also explicitly and publically linked the proposed development to combatting Aboriginal disadvantage in the Kimberley. In comparison, Queensland was almost totally absent from the Curtis Island LNG negotiations, and a common view amongst interviewees was that the State was uninterested in the agreements traditional owners were making with resource companies. The next section discusses some of the key differences in the stance taken by each state government.

(i) Invisible Regulator – Queensland Government

As discussed, the Queensland government was largely absent from the Curtis Island LNG negotiations. Craig Jones was asked which government department he was dealing with. He says 'Mines, maybe'. Perhaps it was Natural Resources? 'Not sure,' he replies, 'that's how regularly I spoke to them'.[78] This was because, Jones observed, 'the commercial negotiation belongs to the parties.'[79] And yet, Tony Johnson observed that:

> When push came to shove, when we were digging our heels in, on any particular issue, including protecting significant cultural sites, we would always find ourselves in a meeting with the deputy Director Coordinator General and cohorts from State Development. And they would bring out the old compulsory acquisition stick.[80]

Kerry Blackman, a PCCC traditional owner, said of his impression of Queensland's involvement:

> They haven't been around directly with our negotiations, but they have already negotiated their outcomes behind closed doors. In some cases, even to the point where they don't even take their own Environmental Impact Studies seriously. They take the dollar over those things in the end.[81]

GLNG1 expressed a similar view:

> The regulators in Queensland in this space are not overly proactive. With the cultural heritage stuff, if we have an issue they will ask us whether we have a CHMP [Cultural Heritage Management Plan], we say yes, and they say they don't want to know about it, figure it out.[82]

Andrew Fraser described doing battle with LNG companies over the way that they were dealing with non-Aboriginal agricultural land owners:

> That's a view that they [the companies] know from me, I think that they tragically handled their entry into the public consciousness … The companies started out with some pretty sharp practices, and the government stepped in to establish protocols around negotiation, and how to conduct it, but we didn't set a price. I am not a price setter … But after we set the rules of the game we know that prices increased.[83]

He added that Aboriginal land issues had not reached his attention in the same way:

> I don't think that there is a rule of thumb that Queensland Aboriginal interests get buried in the political discourse but I do think that they are susceptible to getting crowded out by the whitefella land use issues.[84]

Asked whether the content of the native title agreements ever came to his attention, he said:

> They did, but I can't remember what was in them. I suppose that the upshot is that a contest about them doesn't stand out in my memory. Of all the things that were being contested, they were not one of them, at least at the level that I was dealing with … It's also fair to say that a lot of the dominant land use contest was about whitefella land use.[85]

Yet, the State was present to some extent in these negotiations. As Tony Johnson observed:

> When they bypass or give special project status, to fast track normal public consultation and use compulsory acquisition powers as their fall-back position, it doesn't give you much room to move.[86]

Similarly, when asked what the main leverage a company has, another Curtis Island LNG manager ('GLNG2') answered by reference to the State's legal ability to requisition land, saying 'there is compulsory acquisition, that's the main one.'[87] That a company representative would make such a statement clearly reflects their confidence that the State will exercise

its regulatory power for their benefit, rather than act in the interests of traditional owners.

Andrew Fraser was asked what role governments should play in these negotiations. He says that they should 'set the rules of the game'.[88] However, added:

> I think that if we are going to have aspirations of what Indigenous communities are capable of achieving, then the idea that government needs to be their agent in a negotiation is paternalistic.[89]

Conflating a more active government role with paternalism is problematic. It is hardly paternalistic, for example, for a government to ensure that companies know that they must treat traditional owners fairly. Nor is it paternalistic to resource traditional owners adequately.

Tony Johnson on being asked why the State would not provide funds so that traditional owners could engage further advisors said:

> The State made clear that they weren't going to pay for anything like that – that would have been the responsibility of the proponents, and they just weren't interested.[90]

It is not just traditional owners who mentioned this. GLNG2 said that:

> The State has a traditional way of not offering any assistance to traditional owners in the negotiation process, even though it's a three party agreement. They don't offer anything.[91]

He was asked whether he thinks that the State should be more actively involved:

> For the benefit of the native title parties it would be nice. The State uses the position that the proponent [company] wants it, the proponent should pay for it.[92]

What these research participant observations highlight is that pervading the Curtis Island LNG negotiations was a view that the State of Queensland was not actively interested in protecting traditional owner interests. This was to the detriment of traditional owners' leverage.

(ii) Active Involvement – Western Australian Government

In contrast to the Queensland government, the Western Australia government was actively involved in the negotiations, a signatory to the agreements, and funded the KLC, as described above.

The state's active involvement in the Browse LNG negotiations was strategic on several fronts: firstly, the nature of the development required government involvement, particularly for the building of infrastructure including a port, an airstrip and roads. Secondly, the State saw Browse LNG as way to address Aboriginal disadvantage in the Kimberley, as well as more broadly developing the Kimberley economically and socially. Finally, Kimberley traditional owners hold considerable sway in the Australian polity for the reasons discussed above, and the State did not want to progress the development without their support.[93]

The State's involvement in Browse LNG can be divided in two stages: firstly, the site selection process commenced by the Gallop/Carpenter Labor government, and secondly, the approach of the Barnett Liberal government. The former stage was characterised by a consultative process that saw the government give traditional owners a large say in the site selection.[94] The latter stage saw the State threaten compulsory acquisition if an agreement was not reached, an approach widely condemned by traditional owners, the KLC and the environment movement. It was described by one traditional owner as akin to a 'gun to our head'.[95] It was also a key reason that some in the environmental movement, who had previously been in a loose accord with the KLC to ensure that there would be only one LNG plant on the Kimberley coastline, started to actively campaign against the gas hub.[96]

The first phase of the site selection process showed a willingness on the part of the State to balance the needs of traditional owners with those of the resource company. Geoff Gallop, former Premier of Western Australia, said that this stemmed from a clear view as to the role of government:

> If you are a mining company, and you are not imbued with a sense of reconciliation, and you want to get your projects up with a minimum of delay, you can divide and rule, but I think that this approach can actually delay things in the end. One of the challenges for government is to set up a clear process for ensuring that Aboriginal opinions on these matters are properly heard.[97]

Eric Ripper, who was the Cabinet Minister responsible for the Browse LNG in the Gallop and Carpenter governments, said that:

> I think that government does set a tone, and an ethos. Big companies that are keen to preserve their national and international reputations will respond to that tone and ethos.[98]

Similarly, senior public servant Duncan Ord who had a major role in the Browse LNG process, said:

> The state's the honest broker, we just need to make sure that there's a reasonable and fair deal cut between industry and the Aboriginal people and that we look after the environmental and other outcomes to the best possible [standard].[99]

It is not a new view. Frances Flanagan, writing of native title negotiations with the State of Western Australia over the Burrup, found that:

> There can be no doubt, after the Burrup Agreement, that with experienced negotiators, the right resources, strong community relationships and a good measure of political will, it is possible for a State Governments to facilitate resource development in a way that benefits the people whose land and lives who are affected by it most.[100]

The view from traditional owners was damning on the behaviour of the State in the latter phases of the negotiation. Indeed many viewed the State and the resource company as being closely connected when it came to the negotiations, particularly in its latter phases. For example, consultant lawyer to the KLC, Cameron Syme, said:

> Government were prepared to take it on the chin and I think quite often, [be] the nasty guys in the room, at the agitation of the company. There are so many overlaps between the two, and the government were doing the nasty for them.[101]

Traditional owner Frank Parriman who was a member of the 'traditional owner negotiating committee' said:

> Woodside had a strong relationship with the State and it always felt as though the two of them were ganging up on us – the State wanted to make sure that Woodside got everything they wanted, well we didn't.[102]

Clearly it cannot be said that the State of Western Australia had traditional owner interests foremost in their minds throughout the negotiation. Indeed, the use of compulsory acquisition powers indicates the opposite. Nevertheless, throughout both phases of the State's involvement in the development they remained committed to the idea that the Browse development would increase the life chances of Kimberley Aboriginal people. This discourse bolstered traditional owners bargaining power, according Robert Houston, employed as a lawyer for the KLC during the negotiations, and originated from the KLC:

> Once you plant that seed in the minds of the people, the key decision makers, it's going to be very difficult for them to back away from that, particularly when there has been lots of public statements about "this is going to be self-determination like you have never seen before".[103]

The overall approach of Western Australia, therefore, clearly increased traditional owners' leverage in the Browse LNG negotiation.

VII A Possible Explanation

A possible explanation for these different state government approaches is that each state has a distinct attitude and culture towards their role in resource development, despite both having long encouraged resource extraction. This section considers that possibility.

The State of Western Australia has long been characterised as 'developmentalist' in its approach to resource development.[104] Brian Head, for example, argues that the Western Australian State was 'entrepreneurial' almost from its inception, because of several factors including the failure of private enterprise to build railways, a desire to 'catch-up' to other states, and the sudden influx of revenue from the discovery of gold.[105] When Western Australia became self-governing, Head argues, it 'acted as a kind of collective capitalist on behalf of the private sector as a whole ... [T]he state was seen as the only practicable mechanism for "getting things done."'[106] It was:

> A relatively under-developed community with a fear of remaining undeveloped for all time … [I]t was constantly tempting to seek outside capital from any quarter and to offer generous initial terms so that investors might be tempted to stay … Because of the absence of strong

> indigenous capital growth the State has taken the main role in initiating investment and industrial enterprise. The State has intervened as entrepreneur rather more actively than was expected in most other Australian communities …[107]

Western Australia has long showed a willingness to actively support mineral development, including by building infrastructure and occasionally sharing or underwriting project risk.[108] This approach saw Western Australia engage in 'State Agreements': legislative instruments designed to streamline legislative approvals over major resource developments.[109] By the early 1980s, this approach shifted slightly – as a result of social changes including calls for Aboriginal land rights, and increasing actions by environmentalists and trade unionists – to a more 'interventionist' approach in which the State sought to take greater control and receive a greater share of resource development, including by increasing royalties.[110] Nevertheless, the 'WA development model' remains largely intact, according to John Phillimore, characterised by a 'frontier ethos' and 'a belief in the urgent need for development'.[111]

The Browse LNG development saw evidence of this 'developmentalist' approach, primarily in the way that successive governments took an active role in the LNG site (with the State acting as proponent), including Premier Colin Barnett staking his political reputation on its delivery. In addition, the State clearly intended on using Browse LNG to not only improve Aboriginal disadvantage in the Kimberley, but also to develop the broader Kimberley region. Since Woodside Energy's announcement that its preferred option was to process LNG offshore, the company and the State have been in active dispute: the Western Australian government saying that this option would not result in the same levels of employment or development of the region, and refusing to make the requisite regulatory changes to allow it.[112]

There has not been a comparable assessment of the State of Queensland's approach to mineral development. However, the state has certain characteristics that would suggest that it undertakes a more passive 'rentier' approach – that is, a government that collects royalties but does little else to facilitate mineral development.[113]

Queensland has been a highly regionalised state since it was first colonised. Then, it was a large colony with few roads or rivers with which to navigate the interior, whose large pastoral leases were taken up and controlled by southern pastoral families, bypassing control by the capital, Brisbane. This resulted in 'the Queensland phenomenon … [in that] unlike other Australian colonies, economic life did not revolve around the capital.' When infrastructure, like railways, was built, it was because of local agitation and not a 'grand master plan'.[114] This regionalism was further emphasised by the importance of ports to the burgeoning pastoral and mining industries – resulting in towns like Rockhampton and Townsville developing into major towns to rival Brisbane, of which they remained relatively independent.[115] This regionalism resulted in significant separatist agitation prior to Australian Federation in 1901.[116] As a result, Brisbane failed to develop a strong industrial base. This meant that, even as it acquired more political importance in the twentieth century, this did not change 'Queensland's essentially decentralized character'.[117] While by no means conclusive, these characteristics suggest that the Queensland state's approach to resource extraction may be in line with its decentralised character and ad-hoc approach to infrastructure development, and probably more passive than that of Western Australia.

In the Curtis Island LNG negotiations, it is clear that the Queensland state was almost completely absent. As discussed above, this is clearly in line with usual state government practice but could also be indicative of a 'rentier' approach to resource development. Further research, however, is clearly required on this point.

VIII Recommendation

Compulsory acquisition is both a legal mechanism used by governments to acquire land for public purposes, and a stark reminder of the State's power. Who the State supports with that power is instrumental and telling. In the Curtis Island LNG negotiations, this article has shown evidence that the State was unconcerned whether traditional owners received fair agreement benefits. In the Browse LNG negotiations, the State was committed to the development improving the lives of Kimberley Aboriginal people. In addition, the stated practice of the State – at least in the first stages of the process – was that traditional owner consent was needed for the project, and the KLC and traditional owners were funded accordingly. Not all projects will be high profile enough to receive such attention from a state government, nor should it be necessary to have the level of

state involvement evident in the Browse LNG negotiations to ensure a more level playing field for traditional owners.

One possible way to ensure greater fairness in negotiations would be to make compulsory acquisition conditional on resource companies being able to show evidence of fair and respectful dealings with traditional owners that went far beyond the good faith requirements of the *Native Title Act*, such as demonstrating that consent was genuinely sought and that the company provided proper resourcing to negotiate. Proper resourcing would mean adequate funds for legal and other advice, to a level required by the development in question.

IX Conclusion

This research supports Howlett's and Trebeck's argument that the state is 'a major determinant of the constraints and opportunities faced by the various actors involved in mineral development in Australia'.[118] In contrast to what was seen in Howlett's research, however, this work saw evidence of state government behaviour bolstering the negotiating power of traditional owners. What appears to have been decisive was the stance that government took regarding how traditional owners would be seen in relation to the development: as stakeholders in the development or as people with weak native title rights. This observation is consistent with Howlett's findings that the Queensland government's pro-resource extraction attitude in the Century Mine negotiation largely excluded Aboriginal interests, and therefore had a negative impact on the Aboriginal negotiating position.

This article highlights the positive impact on traditional owner leverage that can result from a government publicly prioritising the interests of Aboriginal people. While the change of government in Western Australia undoubtedly had a deleterious impact on traditional owner power, the commitment of both the Labor and Liberal governments to ensuring the LNG precinct had a positive impact on Kimberley Aboriginal peoples' lives enhanced the negotiating power of traditional owners. The article has suggested a possible explanation for these differences: that the culture of each state differs when it comes to approaches to resource extraction and development.

There is a strong argument that governments should be using their legal power and resources to level the playing field between traditional owners and resource companies. They have a vested interest in doing so, given they are committed to improving health, social and educational outcomes for Aboriginal Australians, and agreement making represents one possible means of achieving this. It is a point that has been made often before, but it bears repeating, particularly because it has been noted to fall on the deaf ears of government officials.[119] Ritter makes the wry point that:

> No Australian Parliamentarian in recent memory has said in effect 'Stuff the Aborigines, the statistics of radical socio-economic disadvantage don't matter', even if some of the policy positions that have been taken have been questionable and contested in practice.[120]

The *Native Title Act* sets up such an uneven playing field for traditional owners that it is incumbent on state governments to send a clear directive to resource companies that they must treat traditional owners fairly. This paper suggests one potential way in which this might be done.

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1 'Aboriginal land' here refers to land that is owned communally by Aboriginal people (including through land rights legislation, land trusts, and native title) or over which they have a registered native title claim which gives native title applicants certain procedural rights.

2 The Minerals Council of Australia estimates that 60% of minerals in Australia neighbour Aboriginal communities, see Minerals Council of Australia, *Minerals Industry: Indigenous Economic Development Strategy* (2011) 4 <http://www.minerals.org.au/file_upload/files/publications/Minerals-Industry-Indigenous-Economic-Development-Strategy-17-10-11-Final-laser(b).pdf>.

3 See Australian Government, *Closing the Gap - The Prime Minister's Report 2015* (2015) <http://www.dpmc.gov.au/pmc-indigenous-affairs/publication/closing-gap-prime-ministers-report-2015>.

4 Marcia Langton and Odette Mazel, 'Poverty in the Midst of Plenty: Aboriginal People, the "Resource Curse" and Australia's Mining

Boom' (2008) 26(1) *Journal of Energy and Natural Resources Law* 31.

5 See generally Marcia Langton et al (eds), *Honour Among Nations? Treaties And Agreements With Indigenous People* (Melbourne University Press, 2004); Marcia Langton et al (eds), *Settling with Indigenous People* (Federation Press, 2006); Ciaran O'Faircheallaigh, 'Native Title and Agreement Making in the Mining Industry: Focusing on Outcomes for Indigenous Peoples' (2004) 2(25) *Land, Rights, Laws: Issues of Native Title, Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies* 1, 2.

6 See, eg, Ciaran O'Faircheallaigh, 'Evaluating Agreements Between Indigenous People and Resource Developers' in Marcia Langton et al (eds), *Honour Among Nations? Treaties And Agreements With Indigenous People* (Melbourne University Press, 2004) 303; Ciaran O'Faircheallaigh, 'Aborigines, Mining Companies and the State in Contemporary Australia: A New Political Economy or "Business as Usual"?' (2006) 41(1) *Australian Journal of Political Science* 1; Ciaran O'Faircheallaigh, 'Native Title and Mining Negotiations: A Seat at the Table But No Guarantee of Success' (2007) 6(26) *Indigenous Law Bulletin* 18.

7 Ciaran O'Fiarcheallaigh and Tony Corbett, 'Indigenous Participation in Environmental Management of Mining Projects: The Role of Negotiated Agreements' (2005) 14(5) (November) *Environmental Politics* 629, 634.

8 Note that Woodside announced in April 2013 that they were pursuing Floating LNG to process gas from the Browse Basin as they deemed the land based option no longer financially viable: Woodside Energy, 'Woodside to Review Alternative Browse Development Concepts' (Australian Stock Exchange Announcement, 12 April 2013).

9 The four projects are joint ventures known as QCLNG (lead joint venturer BG Group), Arrow LNG (Shell and PetroChina), APLNG (Origin Energy) and GLNG (Santos). At the time of writing the Arrow LNG project has been placed on hold. The processing plants being built on Curtis Island are part of broader Gladstone LNG projects to extract coal seam gas from onshore gas deposits. The agreements for Curtis Island are referred to here as 'Curtis Island LNG' to distinguish them from the broader Gladstone LNG projects.

10 Copies of the agreements can be found at Government of Western Australia, Department of State Development, *Browse LNG - Native Title and Heritage* <http://www.dsd.wa.gov.au/state-development-projects/lng-precincts/browse-kimberley/native-title-heritage>.

11 This phrase was used by several Curtis Island traditional owners: Interview with Neola Savage (Rockhampton, 11 September 2013), Interview with Kerry Blackman (Curtis Island, 10 September 2013) and Interview with Tony Johnson (via telephone, 30 August 2013).

12 Interview with Don Voelte (Sydney, 5 June 2014). Don Voelte is the former CEO of Woodside Energy.

13 These reasons are explored in detail in Lily O'Neill, *A Tale of Two Agreements: Negotiating Land Access Agreements in Australia's Natural Gas Industry* (PhD thesis, University of Melbourne, submitted 2016)..

14 This research method closely follows the model recommended by Robert Yin, *Case Study Research: Design and Methods* (Sage Publications, 1984).

15 *Native Title Act 1993* (Cth) s 25.

16 *Native Title Act 1993* (Cth) s 31.

17 *Native Title Act 1993* (Cth) s35.

18 *Native Title Act 1993* (Cth) s38.

19 See National Native Title Tribunal, *Search Register of Indigenous Land Use Agreements*, <http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-Register-of-Indigenous-Land-Use-Agreements.aspx>.

20 *Gulliver Productions Pty Ltd v Western Desert Lands Aboriginal Corporation* (2005) 196 FLR 52.

21 *FMG Pilbara Pty Ltd v Cox* (2009) 175 FCR 141.

22 *Placer (Granny Smith) v Western Australia* (1999) 163 FLR 87, 93-94.

23 *Native Title Act 1993* (Cth) s 24AA-24EC.

24 *Native Title Act 1993* (Cth) s 30A. The other parties are the native title party and the grantee party.

25 *Native Title Act 1993* (Cth) ss 24BD(2), 24CD(5), 24 DE.

26 Santiago J Dondo and Joe Fardin, 'Parties to Mining Agreements with Indigenous Groups: A Proposal for Argentina, Drawing on the Experience in Australia, Peru and Canada' (2013) 32(3) *Australian Resources and Energy Law Journal* (2013) 241, 244.

27 Catherine Howlett, *Indigenous Peoples and Mining Negotiations: The Role of the State* (PhD thesis, Griffith University, 2007) 201.

28 Katherine Trebeck, 'Tools for the Disempowered? Indigenous Leverage Over Mining Companies' (2007) 42(4) *Australian Journal of Political Science* 541, 557-558.

29 Ibid 558.

30 David Ritter, *The Native Title Market* (UWA Press, 2009) 35.

31 Ibid.

32 Ibid.

33 Noel Pearson, 'Governments Should Keep out of Major Developments' *Courier-Mail*, 23 August 1997. Cited in Catherine Howlett, above n 27, 3.

34 Ciaran O'Faircheallaigh, 'Negotiations between Mining Companies and Aboriginal Communities: Process and Structure' (Discussion Paper No 86/1995, Centre for Aboriginal Economic Policy Research, 1995) 10.

35 Dondo and Fardin, above n 26, 244.

36 Ibid 241.
37 Langton and Mazel, above n 4, 35.
38 See Richard Bartlett *Native Title in Australia (Second Edition)* (LexisNexis Butterworth, 2004) 456.
39 See preamble to the *Native Title Act* 1993 (Cth).
40 O'Faircheallaigh 'Aborigines, Mining Companies and the State in Contemporary Australia', above n 6, 9.
41 Western Australia, *Parliamentary Debates,* Legislative Assembly, 21 November 2006, (Alan Carpenter, Premier). Former Deputy Premier Eric Ripper, who was then the lead Minister for the project, explained that this was not akin to strengthening native title rights to include a right of veto but rather 'a pragmatic response to the particular circumstances of the Kimberley where Indigenous people are half the population and native title land is two thirds of the area': interview with Eric Ripper (Perth, 21 June 2013).
42 Ciaran O'Faircheallaigh and Justine Twomey, 'Indigenous Impact Report Volume 2, Traditional Owner Consent and Indigenous Community Consultation: Final Report' (Kimberley Land Council, 3 September 2010).
43 Ibid 33; ABC News, *WA Set to Lose $25 Billion Gas Plant: Barnett* (22 August 2008) <http://www.abc.net.au/news/2008-08-22/wa-set-to-lose-25-billion-gas-plant-barnett/2597034>.
44 The registered native title claim group at the time the agreement was signed was known as the Goolarabooloo/Jabirr Jabirr peoples, Federal Court No WAD 6002/1998; NNTT No WC99/36. The claim group has since split, and in November 2013, the Jabirr Jabirr registered Federal Court No. WAD357/2013, NNTT No. WC2013/007 and in December 2013, the Goolarabooloo People registered Federal Court No. WAD374/2013, NNTT No. WC2013/008.
45 Western Australia, *Parliamentary Debates,* Legislative Assembly, 29 May 2012, p68b-79a (Gail McGowan).
46 O'Faircheallaigh, 'Aborigines, Mining Companies and the State in Contemporary Australia', above n 6, 5.
47 *Browse LNG Precinct Project Agreement* (2011) cl. 8.
48 *Browse (Land) Agreement* (2011) cl. 8.
49 Ciaran O'Faircheallaigh, 'Extractive Industries and Indigenous Peoples: A Changing Dynamic?' (2013) 30 *Journal of Rural Studies* 20, 28.
50 Wayne Bergmann, quoted in Kimberley Land Council 'Traditional Owners Sign James Price Point Agreement' (Media Release June 2011).
51 See, eg, Colin Barnett, 'Consent Agreement Reached for Kimberley LNG Precinct' (Media Release, 6 May 2011).
52 Interview with Andrew Fraser (Brisbane, 5 November 2013). Fraser had Cabinet-level oversight of the Curtis Island LNG developments for a period of time.
53 The confidentiality of the agreements means that the exact legal form that they took cannot be determined. The Tribunal lists one registered ILUA (and provides a brief extract) that could be these agreements (the 'Arrow Energy and Port Curtis Coral Coast People Arrow LNG Project ILUA QI2012/092', registered 24 April 2013). Several interviewees mentioned 'ancillary agreements' which are often associated with s 31 agreements. I therefore assume that the Arrow agreement took the form of an ILUA and that the other three were s 31 agreements. However, given my uncertainty the discussion contained here is of the broad benefits rather than the exact legal mechanisms under which they were negotiated. I note that I did not speak with any lawyers in relation to Curtis Island, and therefore did not think it unusual that interviewees could not be certain about this issue.
54 Interview with Tony Johnson (via telephone, 30 August 2013).
55 Interview with Kezia Smith (Curtis Island, 11 September 2013).
56 Interview with GLNG1, Manager Aboriginal Engagement and Sustainability LNG industry (Brisbane, 17 September 2013).
57 Interview with Tony Johnson (via telephone, 30 August 2013).
58 Interview with Tony Johnson (via telephone, 30 August 2013). Note that Tony Johnson is not an environmental scientist.
59 Interview with Tony Johnson (via telephone, 30 August 2013).
60 Interview with Craig Jones (Brisbane, 17 September 2013).
61 Interview with Craig Jones (Brisbane, 17 September 2013).
62 Interview with GLNG1, Manager Aboriginal Engagement and Sustainability LNG industry (Brisbane, 17 September 2013).
63 Interview with Tony Johnson (via telephone, 30 August 2013).
64 Interview with Neola Savage (Rockhampton, 11 September 2013), Interview with Kerry Blackman (Curtis Island, 10 September 2013) and Interview with Tony Johnson (via telephone, 30 August 2013).
65 Interview with Kerry Blackman (Curtis Island, 10 September 2013).
66 Interview with GLNG1, Manager Aboriginal Engagement and Sustainability LNG industry (Brisbane, 17 September 2013).
67 O'Faircheallaigh, 'Aborigines, Mining Companies and the State in Contemporary Australia', above n 6, 7.
68 Ibid.
69 Interview with Wayne Bergmann (Broome, 20 June 2012).
70 Interview with Kezia Smith (Curtis Island, 11 September 2013).
71 Interview with Andrew Fraser (Brisbane, 5 November 2013).
72 Interview with Andrew Fraser (Brisbane, 5 November 2013).
73 Interview with Geoff Dickie (Brisbane, 6 November 2013).
74 Interview with Kezia Smith (Curtis Island, 11 September 2013).
75 Paul Garvey 'Voelte Changes Tune on Browse FLNG Plan' *The Australian,* 14 September 2013, <http://www.theaustralian.com.au/business/voelte-changes-tune-on-browse-flng-plan/story-e6frg8zx-1226718883391>
76 Interview with Don Voelte (Sydney, 5 June 2014).
77 John Addis, 'James Price Point Land Acquisition Likely', Sydney

Morning Herald, 1 May 2013, <http://www.smh.com.au/business/mining-and-resources/james-price-point-land-acquisition-likely-20130501-2isew.html>.

78 Interview with Craig Jones (Brisbane, 17 September 2013).

79 Interview with Craig Jones (Brisbane, 17 September 2013).

80 Interview with Tony Johnson (via telephone, 30 August 2013).

81 Interview with Kerry Blackman (Gladstone, 10 September 2013).

82 Interview with GLNG1, Manager Aboriginal Engagement and Sustainability LNG industry (Brisbane, 17 September 2013).

83 Interview with Andrew Fraser (Brisbane, 5 November 2013).

84 Interview with Andrew Fraser (Brisbane, 5 November 2013).

85 Interview with Andrew Fraser (Brisbane, 5 November 2013).

86 Interview with Tony Johnson (via telephone, 30 August 2013).

87 Interview with GLNG2, Senior manager LNG industry (Brisbane, 16 September 2013).

88 Interview with Andrew Fraser (Brisbane, 5 November 2013).

89 Interview with Andrew Fraser (Brisbane, 5 November 2013).

90 Interview with Tony Johnson (via telephone, 30 August 2013).

91 Interview with GLNG1, Senior manager LNG industry (Brisbane, 16 September 2013).

92 Interview with GLNG1, Senior manager LNG industry (Brisbane, 16 September 2013).

93 For further information on this point, refer to Lily O'Neill, *A Tale of Two Agreements: Negotiating Land Access Agreements in Australia's Natural Gas Industry* (PhD thesis, University of Melbourne, submitted 2016).

94 Former Deputy Premier Eric Ripper acknowledged that there were differing interpretations as to whether this represented a veto right, saying: 'My view was that I wasn't going to force a project through at a particular site against the wishes of the Traditional Owners', Interview with Eric Ripper (Perth, 21 June 2013).

95 'Gun to the head' was a phrase used by Wayne Barker in Ben Collins 'A Kimberley Lesson in Making Aboriginal Land an Economic Asset' *ABC Online*, 11 October 2013 <http://www.abc.net.au/local/stories/2013/10/11/3867022.htm>. It is worth noting here that several senior public servants said that the difference in approach between the two governments was not necessarily as significant as it appeared to be and may have just related to the stage that the negotiation was at: eg Interview with Duncan Ord (Perth, 21 June 2013).

96 Earlier in the development process, five environmental organisations agreed to a Joint Position Statement with the Kimberley Land Council. The Statement acknowledges the 'significant potential for beneficial outcomes for Kimberley Traditional Owners from LNG', subject to the development being in accordance with best practice and detrimental impacts being limited: see *Joint Position Statement on Kimberley Liquefied Natural Gas Development*, Kimberley Land Council, Australian Conservation Foundation, the Wilderness Society, Environs Kimberley, WWF Australia and the Conservation Council of WA. Glen Klatovsky of the Wilderness Society, among others, said that for 'activists on both sides of the discussion, compulsory acquisition was a major issue': Interview with Glen Klatovsky (Melbourne, 15 April 2014).

97 Interview with Geoff Gallop (Sydney, 18 July 2013).

98 Interview with Eric Ripper (Perth, 21 June 2013).

99 Interview with Duncan Ord (Perth, 21 June 2013).

100 Frances Flanagan, 'The Burrup Agreement: A Case Study in Future Act Negotiation' (Paper presented at the National Native Title Conference, Alice Springs, 3–5 June 2003).

101 Interview with Cameron Syme (Perth, 12 June 2012).

102 Interview with Frank Parriman (Broome, 21 June 2012).

103 Interview with Robert Houston (Broome, 15 June 2012).

104 Brian W Head, 'The State as Entrepreneur: Myth and Reality', in Elizabeth J Harman and Brian W Head (eds), *State, Capital and Resources in the North and West of Australia* (University of Western Australia Press, 1982) 14.

105 Ibid 45.

106 Ibid 46.

107 G.C. Bolton, 'From Cinderella to Charles Court: The Making of a State of Excitement' in Elizabeth J Harman and Brian W Head (eds), *State, Capital and Resources in the North and West of Australia* (University of Western Australia Press, 1982), 27-28.

108 Head, above n 104, 45.

109 John Phillimore, 'The Politics of Resource Development in Western Australia' in Martin Brueckner et al (eds), *Resource Curse or Cure?* (Springer Berlin Heidelberg, 2014) 25, 26.

110 Ibid 28.

111 Ibid 26-31.

112 See, eg, Andrew Burrell and Paul Garvey, 'Barnett Renews Woodside Stoush', *The Australian,* (17 October 2013), < http://www.theaustralian.com.au/business/mining-energy/woodside-renews-barnett-stoush/story-e6frg9df-1226741275809>.

113 'Rentier' is defined in Head, above n 104, 51.

114 Ross Fitzgerald, *A History of Queensland: From the Dreaming to 1915* (University of Queensland Press, 1986) 266.

115 Ibid 286–7.

116 Ibid 288–295.

117 Ibid 295.

118 Trebeck, above n 28. Howlett, above n 27, 201.

119 O'Faircheallaigh, 'Aborigines, Mining Companies and the State in Contemporary Australia', above n 6, 9-10.

120 Ritter, above n 30, 35.