

# TALKING NATIVE TITLE

## in NSW

NEWS FROM THE SYDNEY REGISTRY

### Native title reduced in the Western Division

Native title claims in the Western Division will be significantly affected as a result of the recent High Court decision in *Wilson v Anderson & Ors* which found that Mr Wilson's perpetual grazing lease extinguished native title.

The Tribunal's NSW State Manager Mr Andrew Solomon said some parties would no longer need to be involved in the process, particularly some miners and graziers. 'It will depend on whether they still have any interests affected by the native title claim,' he said. 'Many of the applications, by the way they are worded, exclude areas where native title has been extinguished and therefore will now exclude areas covered by the High Court decision.'

On 8 August 2002, by a 6 to 1 majority, the High Court of Australia found that the grant of a perpetual grazing lease under the NSW *Western Lands Act 1901* gives exclusive possession and therefore, according to the *Native Title Act 1993*, native title is extinguished over the lease area.

This decision potentially affects 15 of the 20 native title claims in the Western Division as it is likely that it applies to all other perpetual grazing leases. Perpetual grazing leases cover about 94 per cent of the Western Division. The remaining 6 per cent of the Western Division includes areas such as freehold, Crown waterways, vacant Crown land, reserves, permissive occupancies and a small number of non-perpetual leases. Native title claims may still be possible over some of these areas.

Although native title may not be claimable on perpetual grazing leases in the Western Division, Aboriginal people can still negotiate access with leaseholders for the purpose of hunting, fishing or gathering on the lease or adjacent areas traditionally used for that purpose. If necessary, the Local Aboriginal Land Council can apply to the NSW Land and Environment Court for such access.

### Traditional rights of access maintained

NSW Special Minister of State the Hon. Mr John Della Bosca has assured Aboriginal people their traditional rights of access to land in the Western Division remain intact following the successful passage of the *Western Lands Amendment Act* through NSW Parliament in July 2002.

Responding to criticism that some leaseholders may misunderstand the legislation and believe they have a right to refuse access to Aboriginal people, Mr Della Bosca said: 'If it appears that the legislation is operating to the detriment of Aboriginal people and it has the effect of obstructing reasonable Aboriginal access, the Minister for Land and Water Conservation will take appropriate action.' (NSW Legislative Council, 52nd Parliament, 18 June 2002)

In a joint media release, NSW Native Title Services and the NSW Aboriginal Land Council encouraged Aboriginal people in the Western Division to contact their Local Aboriginal Land Council if they have any difficulty accessing traditional lands.

The *Western Lands Amendment Act 2002* received assent on 10 July 2002 and is yet to commence. The Act amends the *Western Lands Act of 1901* to gradually establish a public road network; implement a new system for setting annual rents; set the constitution and functions of a Western Lands Advisory Council to replace the Western Lands Advisory Board; and allow for the upgrade of some tenures where environmental considerations have been met.

### NSW Native Title Services

New South Wales Native Title Services has extended its services from Sydney to newly established regional offices in Coffs Harbour and Dubbo.

NSW NTS is the primary organisation responsible for assisting people who may have native title rights and interests. This role includes activities like the preparation of native title applications, negotiations, litigation, research, and informing Aboriginal people of proposed development or mining activity (future acts). The organisation receives funding from ATSIC (under section 203FE of the Native Title Act) to provide the functions of a Representative Aboriginal and Torres Strait Islander Body in NSW and the ACT.

For more information, contact NSW NTS directly:

**Free call:** 1800 111 844

**Phone:** 02 9310 3188

**Facsimile:** 02 9310 4177

**Address:** Suite 15, 245 Chalmers St, Redfern NSW 2016

## Increasing mediation activity in NSW

With 59 NSW native title applications now in mediation, all participants in the process are striving to achieve results. The past 12 months have seen an increasing level of mediation activity for most applications in the state and there are several applications in the final stages of mediation that should reach agreement before the end of the year.

NSW Native Title Services and the State Government are cooperating closely on four applications which have been identified as a priority. These applications cover areas in the north-east of NSW: the Githabul Peoples (Woodenbong), Bandjalang People #1 (Evan's Head), Yaegl, Bundjalung, Gumbaynggirr People (Clarence River) and Gumbaynggirr People (Bellinger River).

Mediation meetings have been held recently for applications over lands of the Bundjalung, Gundungurra, Muthi Muthi and Kattang Peoples.

The large application over the Northern Tablelands, Nucoorilma Clan of the Gamilarooy Aboriginal People, is about to commence mediation with a series of meetings bringing together parties to the application for the first time.

## NSW Fisheries seeks submissions for the NSW Indigenous Fishing Strategy

The NSW Government is seeking community input into its draft strategy for the future management of Indigenous fisheries in NSW.

The draft NSW Indigenous Fisheries Strategy is aimed at ensuring Aboriginal communities have access to, and input into the management of, the state's fisheries. It has been developed after widespread consultation with Aboriginal communities.

The NSW Government has provided \$1.6 million to implement this strategy over its first two years.

The strategy acknowledges the importance of traditional cultural fishing and encourages greater involvement of Indigenous communities in helping to better manage NSW's valuable fisheries resource.

It also aims to involve Aboriginal communities in new opportunities for commercial ventures, like NSW's growing aquaculture industry.

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NSW Fisheries will carry out the following strategic actions:

- recognise the importance of Indigenous issues in every fishery management strategy;
- closely involve and consult with Aboriginal communities in the selection and management of marine parks;
- promote Indigenous involvement in aquaculture through targeted workshops and training programs;
- support the exemption of traditional cultural Indigenous fishing from the recreational fishing licensing scheme;
- include, as far as practicable, Indigenous members on all fisheries advisory committees and councils;
- maintain an appropriate system to allow traditional access to the fisheries resource for Indigenous community events; and
- encourage employment of Aboriginal staff involved with a range of projects such as law enforcement, research, fisheries policy and marine parks.

The full draft strategy is available at the NSW Fisheries web site [www.fisheries.nsw.gov.au](http://www.fisheries.nsw.gov.au).

*This article was provided by the NSW Fisheries Department*