

TALKING NATIVE TITLE

in Western Australia

NEWS FROM THE PERTH REGISTRY

Noongar People proceed with single claim

In February 2003, following a series of community meetings chaired by member Tony Lee, the South West Aboriginal Land and Sea Council (SWALSC) received instructions from the Noongar People to file a single application covering the extent of Noongar country. On 17 March 2003 the Tribunal received a draft application for preliminary assessment and is liaising with the SWALSC on the requirements of the registration test. A second round of community meetings is now being convened to discuss the management of the claim. It is anticipated that the single Noongar claim will be filed this month.

Strategy group formed to deliver more efficient native title outcomes

A WA Native Title Strategy Group has been formed to address the need for parties to native title applications and native title claimants to develop new approaches that will result in better and more efficient outcomes. It was formed in early 2003 in response to a resolution passed at the 2002 WA Native Title Forum—a joint initiative of the Tribunal, the Office of Native Title and the Western Australian Aboriginal Native Title Working Group (WAANTWG).

The group, chaired by Tribunal Deputy President Fred Chaney includes representatives of local and state government, native title representative bodies and representatives of the mining, exploration, prospecting, pastoral and fishing industries.

At its first meeting on 11 March 2003 the group:

- reported on progress of a Fishing Interest Group (FIG); this group was a direct outcome of the 2002 WA Native Title Forum and began in early 2003
- established a pastoral working group to progress options for agreement-making and coexistence arrangements
- established a group involving the mining industry and WAANTWG representatives to identify issues and next steps.

The FIG was initiated to seek the best way to recognise the rights of Aboriginal people in fisheries. It is chaired by Tribunal member Tony Lee and brings together key players in Western Australian fisheries, native title representative bodies and the commercial fishing peak body, WA Fishing Industry Council (FIC). A technical advisor from the Department of Fisheries attends and the peak recreational lobby group, Recfishwest, has been invited to attend. They all come together to examine ways in which Aboriginal aspirations for enhanced involvement in the protection and use of WA fisheries resources can best be met. The group looks at native title, state-based initiatives or any other means that might help Aboriginal people develop their rights and interests.

The Fishing Interest Group has made strong progress, including:

- developing a submission in response to the State Government's Integrated Fisheries Management Review

- exploring ways that the WA Aboriginal Fishing Strategy, chaired by Tribunal Deputy President Terry Franklyn, may be used to assist Indigenous communities to consider options and opportunities
- proposing a two-day Indigenous Fisheries Conference ahead of the national Seafood Directions Conference in September 2003; the conference will explore three key areas where fisheries and native title matters intersect—economic development, Indigenous customary fishing and Indigenous participation in management systems.
- development of 'template' memoranda of understanding to be used by native title representative bodies and the WA Fishing Industry Council to progress regional negotiations.

The next meeting of the WA Native Title Strategy Group will be in early July.

Court calls for action on Central Desert, Geraldton and Pilbara claims

The Federal Court held directions hearings for matters in the Geraldton and Pilbara regions on 2 April and the Central Desert and Goldfields regions on 17 April. The court said mediation of these matters needed to be more rigorous. Orders were made requiring represented applicants, the state, overlapping claimants and the Tribunal to agree on negotiating protocols, mediation programs and to clarify issues to be negotiated over the coming 12 months. The orders also required the applicants to develop a plan for preservation evidence.

The next direction hearings are scheduled for 1 August and 1 October.

Current litigation matters

Wongatha trial

The Wongatha trial commenced with opening submissions in Kalgoorlie on 19 and 20 February 2002. Applicants gave evidence on country and in Kalgoorlie throughout 2002. The final parts of the trial, including non-expert evidence from both the applicants and respondents and all expert evidence will be heard over a six-week period commencing in early August 2003.

Bardi Jawi trial

The court heard an application to re-open evidence on 1 May 2003. At that hearing, Beaumont J read his reasons for judgment that allowed the applicants to give further evidence. His Honour ordered that this be provided by way of preservation evidence. The respondents are then to provide submissions as to whether the further evidence should be accepted. His Honour adjourned the matter to a date to be fixed by his associate for further directions—a June date is foreshadowed. Mediation continues concurrently with the next meeting being planned this month.

Court hears preservation evidence for Esperance Nyungars

Preservation evidence for the Esperance Nyungars application was heard before Justice Gyles in and around Esperance in April 2003. His Honour complimented the Goldfields Land and Sea Council, representatives of the claimant group, on the smooth running of the proceedings. It is the first time evidence has been preserved for a Goldfields application.

Perth Metropolitan area trial

The Combined Metropolitan Working Group (WC99/6) and overlapping claim Ballaruks (WC95/86) commenced trial on 4 March 2003. This was despite a submission by SWALSC to adjourn the trial pending filing of a single Noongar claim for the entire South West area. The court is hearing connection evidence at 35 sites along the Swan River and on Rottnest Island. Beaumont J has indicated a decision will be made on connection following the hearing of this evidence.

Wanjina trial

The parties in the Wanjina/Wunggurr/Wilinggin (WC99/11) and Ngarinyin (WC95/23) matters have completed the giving of evidence and are awaiting a determination by Justice Sundberg. The matters have formally remained in mediation throughout the trial process and parties are considering recommending discussions prior to the handing down of a decision.

Member Wade transfers to WA

Mrs Ruth Wade was recently re-appointed as a part-time member of the Tribunal for a further three years. Mrs Wade is the indigenous land use agreement member co-ordinator and is a member of the Strategic Planning Advisory Group within the Tribunal.

She has extensive experience in agribusiness and the pastoral industry, has a business degree and an MBA and maintains an ongoing involvement in sustainable regional and rural development initiatives. She has matters in Queensland, New South Wales and the Northern Territory and has been appointed as lead member for the Goldfields Region.

Mrs Wade relocated from Queensland to WA early this year and will be based in the WA registry.

Tribunal develops a future act mediation protocol

The WA Registry has developed a mediation protocol intended for use in s. 31(3) future act mediations. Major stakeholders in WA have been consulted about the content and form of the mediation protocol which was trialled successfully earlier this year in a s. 31(3) mediation in New South Wales. The protocol will be forwarded to parties prior to the initial mediation meetings (with the notification letters). The protocol will allow for parties to confirm their commitment to the negotiations and agree on ground rules ahead of the mediation. The Tribunal believes the protocol will assist parties to place themselves in the best position to reach an agreement. The protocol will be put into practice in WA and other states where relevant, over forthcoming months.

Future act quick stats

WA future act matters July 2002 – April 2003

	Yamatji	Pilbara	Goldfields	Central Desert	South West	Kimberley	Statewide
Expedited procedure 29 notices issued	401	465	954	213	129	503	2359
Active objection applications	227	165	48	34	63	11	548
Finalised objection applications	184	267	15	34	36	17	553
Active mediation requests	14	6	46	4	26	9	105
Finalised mediation requests	2	1	17	2	4	0	26
Active future act determination applications	0	0	3	0	0	8	11
Finalised future act determination applications	6	9	11	2	1	1	30

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