

Boorna-Wangkiny

Boorna-Wangkiny (Message Stick) South West Aboriginal Land and Sea Council Newsletter

December 2019

Chairperson's Message

Federal Court Upholds Registrar's Decision to register ILUAs

On 17 October 2018, the Registrar of the National Native Title Tribunal (NNTT) announced that she had decided to register all six Indigenous Land Use Agreements (ILUAs) that make up the South West Native Title Settlement.

This was a significant milestone towards implementing the decision Noongar People made at the six Authorisation Meetings in 2015.

In deciding to register all six ILUAs, the Registrar was satisfied that the ILUAs and the six Authorisation Meetings complied with her understanding of what is required by the Native Title Act.

Under Australian law, administrative decisions such as the decision by the Registrar of the NNTT to register the six ILUAs, are open to judicial review.

In December 2018, some Noongar people made applications to the Federal Court seeking judicial review of the Registrar's decision to register the six Indigenous Land Use Agreements.

Following three days of Court hearings in May and November 2019, the Full Bench of the Federal Court handed down its decision on the 19th of December 2019.

In their unanimous decision, the three judges confirmed that the Registrar was correct in registering all six ILUAs and found no errors in the authorisation of the South West Native Title Settlement.

While we have wait for these legal proceedings to be finalised, SWALSC have remained busy completing the planning work necessary to enable the creation of the Regional Corporations and the Central Services Corporation once the Settlement is implemented.

We have also continued our work to develop and build on other programs, such as the Noongar Ranger Program, that

continues to deliver twelve full-time paid training placements for Noongar people in seven different locations across Noongar Boodja.

This program is helping to build capacity in our community to manage the 320,000 hectares of land that will be returned to our people under the Settlement once it is implemented.

We have also continued to deal with our obligations under the Native Title Act, which remain in place until the Settlement is implemented. These activities are set out in detail in the Legal Services Unit report in our Annual Report which can be downloaded from our web page at www.noongar.org.au. If you do not have the internet, please phone our office and a copy can be posted to you.

The journey has been long, but we honour the contributions of our ancestors, our Elders and our communities as we work towards a strong and positive future for our Noongar community.

A future with better employment, education, health, housing and social services so that we can come together in healing and build a solid future for generations to come.

On behalf of the Board, I would like to thank our CEO Wayne Nannup and all of the staff at SWALSC for the work they do for our community.

I would also like to thank all of our members and their families for their continued patience as we work together to honour the decision our community made in 2015.

There are exciting and challenging times ahead for us all as we work together to build a strong Noongar Nation for all of our People.

Wishing you all a safe and happy Christmas and best wishes for the new year.

Kindest Regards,

Jeanice Krakouer
Chairperson



SWALSC Secures Funding for Second Round of Noongar Boodja Ranger Program

SWALSC was successful in securing \$1.3m in funding from the second round of the State government's five-year \$20m Aboriginal Ranger Program. This funding is in addition to the \$1.1m SWALSC received from the first round of the Program in February 2018.

This additional funding has enabled SWALSC to continue the training partnership with the Department of Biodiversity Conservation and Attractions that is providing 12 Noongar people with full time paid employment while they gain qualifications in conservation and land management and fire management.

The Noongar Ranger Trainees employed under the Noongar Boodja Mentored Employment and Training Partnership are engaging in a wide range of land management activities including prescribed burning and bushfire suppression and control; fauna and flora protection; cultural site management; feral animal and weed management; and construction and maintenance of infrastructure.



Picture: Noongar Boodja Ranger Program Round One Graduate Geoffrey Dean receiving Aboriginal Trainee of the Year award from the Minister for the Environment Hon. Stephen Dawson MLC (left) and Department CEO (right).

Fremantle Wardanji Festival

Over 100 dancers performed traditional Noongar dances as well as original, contemporary pieces at this year's Wardanji Festival. Dance groups including Middar, Wadumbah, Kwarbah Djookian, Kwobidak Yok Kenning, Mungart Yongah, Koolankas Kreate, Djiripin Djindas and Bigirrda Dancers performed to a packed crowd at the Fremantle Arts Centre for an event that grows in size and strength each year.

A highlight of this year's Wardarnji was telling of the Wargyl who weaved through the land to create our waterways in Noongar Boodja performed by a giant Wargyl puppet.



Legal Update

Key Events to date – A Long and Winding Road

Sept 2006: In the case of *Bennell v State of Western Australia*, Justice Wilcox determined that Noongar people had maintained a continuous connection with the land and the customs, traditions and laws of our ancestors. While this was a major precedent for Noongar people, it was not a final Native Title Determination.

April 2008: Appeal by WA Government against parts of the Wilcox decision was upheld in the Federal Court, creating uncertainty.

Dec 2009: SWALSC entered into 'Heads of Agreement' with WA Government to start negotiations for an alternative settlement of Noongar native title claims.

Dec 2011: State made 'in-principle' offer to SWALSC.

July 2013: State made 'full and final' offer to SWALSC.

January - March 2015: SWALSC conducted six Authorisation Meetings to provide Noongar people in each of the six native title claim areas with the opportunity to decide whether or not to accept the negotiated settlement. A majority of people in all six Authorisation Meetings voted to accept the offer.

June 2015: WA Government signed the six Indigenous Land Use Agreements (ILUAs) that make up the negotiated Settlement.

September 2015: ILUA Registration process began.

December 2015: High Court applications made against the Registrar, WA Government and SWALSC to prevent Native Title Registrar from considering four of the six ILUAs on the grounds that not all the registered native title claimants had signed the ILUAs.

February 2016: High Court applications remitted to the Full Federal Court.

July 2016: Full Federal Court hearings for *McGlade v Native Title Registrar*.

February 2017: Judgment handed down in *McGlade v Native Title Registrar* which overturns the *Bygrave* decision and identifies problems with the registration process in the Native Title Act.

June 2017: The Commonwealth Parliament amended Native Title Act to fix problems with the registration process.

August 2017: The six ILUAs resubmitted to the Native Title Registrar for registration.

October 2018: All six ILUAs successfully registered by the National Native Title Tribunal (NNTT).

December 2018: Applications for Judicial Review of the NNTT Registrar's decision lodged in Federal Court.

May 2019: Two days of Court hearings on four grounds of review challenging Registrar's decision.

May 2019: Applicants seek leave to add a fifth ground of review following Quall decision. Leave was granted.

25 November 2019: Final day of hearings before Federal Court were held on fifth ground of review.

19 Dec 2019: The Full Federal Court handed down its decision on judicial review, upholding the Registrar's decision to register the six ILUAs.

Where to from here?

Jan 2020: The Applicants have the right to seek leave to appeal the decision of the Full Federal Court to the High Court of Australia. If no application is made to the High Court, then Conclusive Registration of the South West Native Title Settlement will occur 40 Business Days after the period for seeking leave to appeal has closed.

2020: If an application is made to High Court, then the High Court may choose to hear the case or it may choose not to.

SWALSC Welcomes Federal Court Decision

The South West Aboriginal Land and Sea council (SWALSC) welcomes the Full Federal Court's decision to uphold the registration of all six Indigenous Land Use Agreements (ILUAs) that comprise the South West Native Title Settlement, bringing the negotiated Settlement one step closer to implementation.

The Settlement has been challenged at various stages of the legal process by a small group of Noongar People who are opposed to the decisions made by the majority of Noongar People at the six Authorisation Meetings in 2015.

SWALSC respects the right of people to make these applications to the Australian Courts, but will continue to do everything within our power to act on the instructions of the Noongar people and to implement the decisions made at the six Authorisation meetings.

Speaking on the day the decision was handed down, SWALSC Chairperson Jeanice Krakouer said: "I am excited that today we move one step closer to controlling our own destiny and being able to bring our community together in healing for the benefit of future generations of our Noongar People."

Wayne Nannup, SWALSC CEO added: "I'm pleased that today we have been able to honour and respect the wishes of our Elders who fought so long and hard for this negotiated settlement of our claims for native title. I look forward to working with all Noongar People to implement this Agreement."

Ancestral Remains Returned to Noongar Boodja

In December 2019, the ancestral remains of six Menang Noongar people were returned to Noongar Boodja after having been taken to Germany over 130 years ago.

The Wagyl Kaip Working Party appointed Elder Stuart Hansen and Megan Krakouer to accompany the ancestral remains on their long journey back to Noongar Boodja from Germany.

Stuart, Megan and the remains of the six Menang people were met at the Perth Airport by SWALSC

Chairperson Jeanice Krakouer, and representatives of the Wagyl Kaip Working Party and other Menang Noongar people where a Welcome to Country ceremony was provided by Whadjuk Elder Dr Richard Walley and other Whadjuk Noongar people.

The remains were then transported to safe storage in the Museum awaiting arrangements to be made for their eventual return to permanent rest on Menang Boodja. Equity Trustees and the Commonwealth government provided assistance with the return.

"The repatriation of our Ancestors is about honouring our people and bringing them home to Country to bury them in the right way in accordance with our traditions," Megan Krakouer said. "This will contribute to healing the past trauma that is still felt in our community today."



Commonwealth Minister Rejects Application to protect Munday Swamp

Following WA Minister Ben Wyatt MLA's decision in 2018 to grant approval to disturb registered Aboriginal heritage site Munday Swamp to allow the construction of a third runway at the Perth Airport, the Whadjuk Working Party made an application to the Commonwealth Minister under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cwlth)* to have the site protected.

The Whadjuk Working Party and other Whadjuk Elders and community members met on country to provide oral representations to an independent Barrister, and SWALSC prepared a written submission to the Minister on behalf of the Working Party.

SWALSC called upon the Commonwealth Minister to use her powers under the Act to make a declaration to

preserve and protect the cultural and heritage values of Munday Swamp and to override the decision made by the WA Minister for Aboriginal Affairs.

SWALSC called on the Minister to ensure the well-being of Whadjuk Noongar people and the living cultural, spiritual, familial and social relationships the Whadjuk people have with Munday Swamp.

After reviewing the application, the Commonwealth Minister for the Environment decided not to use her powers to over-ride the decision made by the State Minister for Aboriginal Affairs.

This is a deeply disappointing decision that goes against the advice of the Aboriginal Cultural Material Committee, which assessed Munday Swamp as being highly significant and recommended approval for the airport development should not be granted.

It is clear that both the Commonwealth and WA Aboriginal heritage protection legislation can not work to protect sites of significance like Munday Swamp when Ministers ignore expert advice and the views of Aboriginal People.

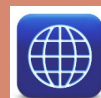


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