

**RESERVES (TJUNTJUNTJARA COMMUNITY) BILL 2018**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Stephen Dawson (Minister for Environment)**, read a first time.

*Second Reading*

**HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment)** [5.49 pm]: I move —

That the bill be now read a second time.

The Reserves (Tjuntjuntjara Community) Bill 2018 seeks Parliament's approval to excise an area of 78 578 hectares from Great Victoria Desert Nature Reserve 30490—a class A reserve of approximately 2 495 777 hectares situated within the Shire of Menzies—to enable the grant of registrable tenure for the Tjuntjuntjara Aboriginal community and for related purposes.

The Tjuntjuntjara community has existed on the western extent of the nature reserve since at least 1988, but has never had a registrable land interest over the area it occupies or legal access to it. The Tjuntjuntjara community members are part of a larger group known as the Spinifex people—a proud and dynamic traditional Aboriginal group that was removed from its homelands before the British atomic testing at Maralinga in the 1950s and 1960s, but decided to return in the 1980s. Since that time, the Tjuntjuntjara community has steadily grown, whilst maintaining a focus on traditional cultural cycles of desert life. People from across the Western Desert region with traditional attachment to the Spinifex lands have returned to live at Tjuntjuntjara. Despite isolation and remoteness, the Spinifex people's resilience and determination to live in country and to provide strong local governance makes this a unique community.

The Paupiyala Tjarutja Aboriginal Corporation—PTAC—was established in 1989 as the governing body for the Spinifex people. The not-for-profit corporation was also established so that the Spinifex people could receive and administer funds to develop infrastructure at Tjuntjuntjara. Since then, PTAC has grown and added to the services it provides to the community, such as the health service, the Tjuntjuntjara community store, the women's centre, the Tjuntjuntjara community resource centre and a range of other programs and infrastructure-related projects. PTAC also acts as a local council service provider, taking responsibility for the maintenance of the Tjuntjuntjara community facilities, roads, store and other services.

The nature reserve on which the Tjuntjuntjara community resides was set aside in 1970 for the purpose of conservation of flora and fauna and is formally vested in the Conservation and Parks Commission. In practice, it is managed by the Department of Biodiversity, Conservation and Attractions. The commission cannot grant a lease of the land that is inconsistent with the reserve's purpose. The lack of formal tenure limits the community's ability to seek investment for critically required infrastructure, such as an expansion of the health clinic and the building of houses, whilst it also restricts the community's pursuit of on-ground economic activities.

A determination of the Federal Court of Australia in November 2000 recognised the Spinifex people's non-exclusive native title rights over part of the area of the nature reserve, including that area occupied by the Tjuntjuntjara community. The state has since worked with the registered native title body corporate for the Spinifex people, the Pila Nguru Aboriginal Corporation—PNAC—and PTAC to resolve the issue of appropriate land tenure for the Tjuntjuntjara community. Subject to the enactment of this bill and the registration of a suitable Indigenous land use agreement, the Minister for Lands intends to utilise the powers provided by section 83 of the Land Administration Act 1997 to issue PNAC with a head lease in perpetuity over the lands occupied by the Tjuntjuntjara community. The head lease will allow PNAC, with the consent of the Minister for Lands, to sublease part of the lease area to PTAC for development purposes and further to allow PTAC, also with the consent of the Minister for Lands, to sublease portions of the sublease area.

To secure this outcome, it will be first necessary to excise the lands occupied by the Tjuntjuntjara community—78 578 hectares—from the nature reserve. It is proposed that the community's area be redescribed as lot 9 on deposited plan 220992. The effect of doing this is portrayed graphically within schedule 1 of the bill. The Conservation and Parks Commission, the Ministers for Environment and Mines and Petroleum, and the directors of PNAC and PTAC have all previously consented to this proposed course of action, which will more directly empower the registered native title body corporate to support future economic, social and cultural development of the Tjuntjuntjara community.

Legal access over an existing track will be required by PNAC and members of the Tjuntjuntjara community through the nature reserve to the boundary of lot 9. The Minister for Lands also proposes to grant an easement under section 144 of the Land Administration Act 1997 for this purpose. This access easement will benefit the leasehold interest of PNAC in lot 9. The proposed easement corridor will be 20 metres wide—10 metres on either

side of the centreline of the existing track—and extend some 19.3 kilometres through the Tjuntjuntjara community to the westernmost boundary of the nature reserve. The area of the easement is calculated at about 33.71 hectares and is depicted on deposited plan 403086. The proposed easement area lies over an area of crown land where native title has previously been extinguished, but not within the Spinifex determination area.

Section 44 of the Land Administration Act 1997 would normally require that the Minister for Lands lays the proposed grant of this access easement before both houses of Parliament, and section 43(1) of that act would then apply. Given that Parliament's approval is also required for the proposed excision from the same nature reserve, for administrative efficiency, the requisite authority for the access easement is simultaneously dealt with in this bill.

It is not intended that any of the tenure changes set out above should extinguish or adversely impact the native title rights held by PNAC over the Spinifex native title determination area; hence, the parties to the proposed Indigenous land use agreement have agreed that the non-extinguishment principle will apply to each related grant of tenure made.

Excision of the area occupied by the Tjuntjuntjara community out of the nature reserve and conversion to a perpetual lease issued under section 83 of the Land Administration Act 1997 for any purpose that advances the interests of the native title holders, including Aboriginal cultural, community and commercial purposes, will remove certain protections from mining and petroleum exploration and recovery otherwise applying to the nature reserve under the Mining Act 1978 and the Petroleum and Geothermal Energy Resources Act 1967 respectively. Substitute arrangements have therefore been agreed and are dealt with in this bill. This will ensure that the written consent of the Minister for Mines and Petroleum is required before mining or exploration for petroleum or geothermal energy resources, or operations for the recovery of these resources, may be carried out on or under proposed lot 9. In forming a position on any related proposal, the Minister for Mines and Petroleum will be obliged to consult with and obtain the recommendation of the Minister for Environment and to obtain the recommendation of PNAC as lessee of lot 9. Should lot 9 revert to unallocated crown land at any future point, the Minister for Mines and Petroleum would also be required to obtain the recommendation of the Minister for Lands before consenting to mining, petroleum or geothermal energy activity on or under this land.

This bill will also correct an error in the technical description of the eastern boundary of the nature reserve, which occurred when it was first gazetted in August 1970. The bill is further intended to provide that the head lease of lot 9 to PNAC is not subject to the provisions of the Western Australian Residential Tenancies Act 1987, but it is not otherwise intended to affect the operation of that act in respect of any sub-interests that may be granted by PNAC or any of its sublessees that would ordinarily be regulated by the act. It is proposed that the operative provisions of this bill commence on proclamation, not upon royal assent. This will allow the state flexibility to ensure that the requisite Indigenous land use agreement is formally executed and registered by the National Native Title Tribunal before the operative provisions, such as the excision of lot 9 from the nature reserve, are proclaimed. The State Solicitor's Office has drafted an Indigenous land use agreement in consultation with relevant parties and it is intended that this document be executed as soon as possible.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 2145.]

Debate adjourned, pursuant to standing orders.

*House adjourned at 5.57 pm*

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