

**By Celia Winnett**

Our Nissan Patrol hurtles along the perfectly straight, endless road stretching out due east. On either side, the rough bitumen is lined with ants' nests – plump, craggy mounds of all different sizes – which rise from the red dirt like twin lines of pointy sandcastles. The scrub is thick and low. A patchy carpet of green and yellow grasses spreads out for miles; the sun tinges it with pink as it continues to rise through the windscreen in front of us. Apart from the odd roadtrain rumbling its way along, the railway tracks which occasionally cross over the road are the only signs of settlement. That is, until we pass a tiny tin shed that looks like an outside dunny. “That’s the train station,” my colleague says.

The time is 6:30 am and we are on our way to a working group meeting for one of the native title claim groups represented by Yamatji Land and Sea Council (“YLSC”). It’s my fifth week working as a legal intern with the Aurora Project at YLSC’s office in Geraldton, Western Australia. YLSC is a Native Title Representative Body (“NTRB”), a Commonwealth funded statutory body whose functions include representing local Aboriginal groups in native title claims lodged with the Federal Court. The work of NTRB claim lawyers is rich, varied, and unrelenting. Amongst many other tasks, it involves preparing each Aboriginal claim group’s native title application, with the help of anthropologists who conduct comprehensive research on the group’s history and cultural practices; negotiating with the State with a view towards reaching a settlement, or compiling the mountain of documents and evidence necessary for hearing; negotiating with third parties who want to conduct exploration, prospecting or mining activities (‘future acts’) in the claim area; and facilitating decision-making by the claim group in relation to the claim’s progress by convening community and working group meetings.

When I applied for my Aurora Project internship, I knew that the program was designed to combat NTRBs’ huge caseloads and resource shortages by drawing on students as a means of addressing the backlog of work. Since the *Mabo (No 2)* case and the enactment of the *Native Title Act 1993* (Cth), indigenous groups all over Australia have been seeking legal recognition of their native title rights and interests – such as rights to hunt, fish and conduct traditional ceremonies on the land, and protect sacred sites from outside interference. However, only a small fraction of claims have been determined in the Federal Court to date. At 30 June 2008, there were still 504 applications awaiting final resolution.<sup>1</sup> The result for NTRBs, as one YLSC legal officer commented, is that claim lawyers “don’t have time to scratch themselves”.

My expectations were met when, in my second week at YLSC, the senior regional legal officer gave me the task of researching and preparing a highly complex interlocutory application from start to finish. The application was crucial to resolving a stalemate that had been reached in the particular claim group’s case. It also had to be prepared quickly to progress important negotiations concerning a development on the group’s country. My work was then to be presented to the claimants at a working group meeting.

With the help of some “native title for dummies” articles from the Aurora Project, I began the job. During my month at the grindstone, I prepared a lengthy research memo, a summary of instructions from all claimant meetings since 2004, draft submissions, and over 25 affidavits. The task was fascinating, but hard work – so, luckily, there was lots going on at YLSC to break up the time a bit. During NAIDOC Week, staff participated in different events within the Aboriginal community, which gave me a chance to meet local Aboriginal people and put my work in context. One of my favourite memories is of the Family and Community Day

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<sup>1</sup> *Geographic Extent of Claimant Applications as per the Schedule – Federal Court* (2008) National Native Title Tribunal <[http://www.nntt.gov.au/Publications-And-Research/Maps-and-Spatial-Reports/Documents/Quarterly%20Maps/Schedule\\_A4.jpg](http://www.nntt.gov.au/Publications-And-Research/Maps-and-Spatial-Reports/Documents/Quarterly%20Maps/Schedule_A4.jpg)> at 20 July 2008.

held at Bundiyarra Aboriginal Community, Geraldton. From my post at YLSC's information stand, I watched kids running around everywhere, dancing in the orange dust to the music of a local Aboriginal band. Their parents made vibrant pictures on the ground using different coloured sands, and chatted in groups outside the white tent stalls. At lunchtime, there was a feast for everyone – *marlu* (kangaroo) dishes, rice, damper and fruit. It was inspiring to see such a happy and close-knit community celebrating together. I felt privileged to be part of their day.

After a whirlwind five weeks in the office, it was time for the working group meeting. I was eager to meet the Aboriginal families I had read so much about in meeting minutes and court documents during my preparations. Our long drive into the morning sun complete, we arrived at the little town hall and started setting up. Soon, the claimants began to arrive. I watched four older Aboriginal ladies with lilting voices giggle amongst themselves and cluster together on one corner of the U-shaped tables. Two men followed them – one with a thick, bushy beard and an Eagles beanie, another wide-smiling in a sports jacket and Akubra hat. Eventually, the tables were full and the Chairperson welcomed everyone to the country. For the next two days, YLSC lawyers and anthropologists helped the working group to make decisions on a broad range of issues, including an enormous pile of future act applications on the claim group's country.

During my time at YLSC, I became painfully aware of one thing: the supreme difficulty of recognising traditional indigenous law and custom within the strict confines of 'white man's' native title law. At the working group meeting, I watched the legal officers explain to the claimants that a mining company's exploration activities might damage an important site on their country. YLSC could attempt various courses of action under mining and heritage legislation, but none of the options had a strong chance of success. One older man suddenly spoke for the first time. "This place is special to our people," he said in a wavering voice. "Our ancestors did things there. We know that country. It is ours. We need to protect it." All the other claimants had the same concerns, and the lawyers promised to do their best to fight the exploration. But everyone in the room knew that there were no guarantees.

At 8:00 pm on the second day, we are driving back west towards Geraldton. The earth becomes paler, the scrub grows sparser and I can see rows of lights in the distance. I ask the legal officer in the car with me what he thinks should be done to improve the situation. "As well as large-scale legal reforms," he says, "what we need is for people like you to visit us out here, see the system's problems and then come back to help us fix them."

I won't ever forget my internship with YLSC. It challenged me, introduced me to people and families and cultures I'd never engaged with before, and showed me some beautiful country. Most of all, it made me realise how much more lawyers and our legal system must do to empower indigenous traditional owners.

*The Aurora Project Native Title Internship Program places law, anthropology and social sciences students at NTRBs, Native Title Service Providers and Indigenous policy organisations around Australia during the summer and winter university breaks. Celia Winnett was an Aurora Intern during June and July 2008. To apply for the program, visit <http://www.auroraproject.com.au>.*