

PREAMBLE

Pipala ngaanya yaaliku tjuma kangaralpitjanu. Nyalpa pirniku tjuma, ngali kuwarriku tjuma, tjitjipirniku tjuma marla ngaralanyi. Pipila mulartu watjalku, walypala pirnilu pika mirri yuntunu nyalpa pirni, nyarru. kuwarri ngali wiltu ngarala. Palyalku ma kalkamunu wantirri. Ngaanya Tjiwarl Palyakuwa: Tiiwa Kuwarri Yampa Ngula.

*Palunya.*¹

- A. This Preamble sets out the background to, and process of, the negotiation of the Tjiwarl Palyakuwa: Tiiwa Kuwarri Yampa Ngula (**Tjiwarl Palyakuwa (Agreement)**). The words in the title, written in the Ngalia language, represent the foundations of the *palyakuwa* (agreement):
- (a) **Palyakuwa**, means to agree, approve, authorise. In spoken form it would be used in the phrase mularrtu watjalku, speak in truth, watjanu palyakuwa to speak in agreement, to authorise or approve.
 - (b) **Tiiwa**, meaning past, as the Tjiwarl Palyakuwa (Agreement) is the result of the settlement of three claims brought before the Federal Court on behalf of Tjiwarl Applicants and Tjiwarl AC for compensation for things done in the past on Tjiwarl Country. Those things had occurred without the consent of Tjiwarl People on Tjiwarl Country in which they know to hold, and have been determined by the Federal Court to hold, native title. The negotiation of the Tjiwarl Palyakuwa (Agreement) and its content provides an avenue for Tjiwarl People to tell their truth to the State, and to the broader community, about the events of their history, the pride in their culture and the strength in their heritage.
 - (c) **Kuwarri**, meaning present, encapsulates the State's acknowledgement of the past wrongs which have caused immeasurable pain, suffering and cultural loss to Tjiwarl People. *Kuwarri* acknowledges that the Tjiwarl People and the State have come to the table to address the past, but also look to the present and future generations – strengthening culture, providing economic development and managing country in a way which puts Tjiwarl People back in a position to influence decisions made about country.
 - (d) **Yampa**, meaning reciprocation, is central to Tjiwarl and Western Desert Peoples' culture. Through the process of the negotiation of, and the outcomes, objectives and processes

¹ This paper tells the story from our past. It's our old peoples' story; our story today; and the story of our children to come after us to stand strong. The paper tells the truth. The white people came and caused disruption and death to our old people, poor old people. Today we stand strong. We do things to make it right. This Tjiwarl agreement is for the past, for the present and for the future. The end.

contained in the Tjiwarl Palyakuwa (Agreement), the State is compensating the Tjiwarl People for the recognised past wrongs. This compensation is not simply monetary compensation, but also the building of a relationship to achieve a comprehensive settlement of past wrongs. The State owns the past and makes amends for the future by entering into the Tjiwarl Palyakuwa (Agreement) today.

- B. Tjiwarl People are desert people, sharing a common culture, beliefs and spiritual and kinship relationships with other desert peoples, other desert countries and the spirit world. These relationships are supported by cultural and social institutions, including these influential concepts which have informed the development of the Tjiwarl Palyakuwa (Agreement):
- (a) *Tjukurrpa* – Spirituality and Law;
 - (b) *Kunta* – Respect and dignity (i.e. reconciliation, recognition, respecting traditional authority and decision-making processes, alternative processes);
 - (c) *Kulinu nintirringu* - deep listening, comprehension and understanding, awareness;
 - (d) *Ngapatjika* – Accountability and reciprocity (i.e. exchange, compensation);
 - (e) *Nyaamiri* – Relationships; and
 - (f) *Mularr watjalku* – Truth telling.

Tjiwarl Statement of Truth

- C. The following is the Tjiwarl Statement of Truth:

Tjiwarl People have maintained their rights in the Tjiwarl Determination area despite its history of intensive colonial impacts. Since the late 1890's and early 1900's ancestors of Tjiwarl People suffered massive disruption and upheaval, including the massacre of families, the arrest and exile/deportation to Rottnest Island of key leaders, men who are family of the Tjiwarl People today. They have suffered the occupation of territories by miners, pastoralists and a number of briefly settled towns. After the blunt force trauma of colonisation, Tjiwarl People were only allowed to live on Tjiwarl Country to accommodate pastoral interests. They were subjected to over regulation and policing by Native Welfare laws and other assimilationist policies of the Western Australian Government. Tjiwarl families suffer indelible memories of over policing and regulation, including the fear of children being forcibly removed from family and Tjiwarl Country. The last generation of elders told stories of hiding in fear as police came to shoot all the dogs to discourage their old people from walking and living free, hunting with dogs and gathering sustenance from the lands. The movements of the Old People were

progressively curtailed and restricted as pastoralism and mining expanded and a failing of the Western Australian Government to legislate for an Aboriginal reserve further forced most all Tjiwarl People off Tjiwarl land.

The disruption and suffering caused by these processes were compounded by the entirely destructive impacts of intensive mineral exploration and mining on Tjiwarl land since the late 1960's. Situated in the Western Australian Goldfields region, Tjiwarl land has, and continues to be, subject to an extremely intensive State regime of the successive granting of rights to conduct mineral exploration, prospect and mine myriad mineral types, and rights to take Tjiwarl waters for use in mineral exploitation. Tjiwarl People were thus prevented from exercising their traditionally-held right of access to resources they once owned, and large-scale destruction of the spiritual integrity of the cultural landscapes that once made up Tjiwarl lands was enabled.

The approach taken by Tjiwarl People in the negotiation of the Tjiwarl Palyakuwa (Agreement) has been focused on restitution for impacted rights, with the goal of repositioning the relationship between Tjiwarl People and the State, in accordance with Tjiwarl social relationship management rules known generally 'ngapatjika'. It is the intention of Tjiwarl People that this Tjiwarl Palyakuwa (Agreement) addresses, as broadly as possible, the social and economic impacts suffered by Tjiwarl People as a result of State acts.

State acknowledgement of Tjiwarl Statement of Truth

- D. The State acknowledges that Tjiwarl People have suffered a sense of loss of connection to Tjiwarl Country as a result of the disruption to the spiritual integrity of the cultural landscape caused by things done in the past on Tjiwarl Country.
- E. The State enters into the Tjiwarl Palyakuwa (Agreement) acknowledging its role in that sense of loss of connection suffered by Tjiwarl People.
- F. This Tjiwarl Palyakuwa (Agreement) provides compensation to Tjiwarl People in accordance with the Native Title Act for the effects of things done by the State in the past for which Tjiwarl People have an entitlement to compensation. However, those things have not been considered in isolation. From the State's perspective, important in reaching agreement has been a growing appreciation of the nature and extent of Tjiwarl People's rights and responsibilities under their traditional laws and customs.

- G. The Tjiwarl Palyakuwa (Agreement) reflects the Tjiwarl People's connection to Tjiwarl Country, its spiritual essence and the interconnections between all living entities, elements and forces that comprise it (called 'Ngurrara' in this Tjiwarl Palyakuwa (Agreement)). The commitments made by the State to the Tjiwarl People under this Tjiwarl Palyakuwa (Agreement) go some way toward righting the wrongs of the past. Importantly, those commitments include agreement under recent changes to the Native Title Act to the restoration of native title in conservation areas where native title had been extinguished.
- H. The commitments under this Tjiwarl Palyakuwa (Agreement) are informed by the need for Truth-Telling about the effect of things done on Tjiwarl Country and the impact this has had, and continues to have, on Tjiwarl People. The Parties intend that this Tjiwarl Palyakuwa (Agreement) will strengthen Tjiwarl People's ability to exercise their rights in relation to land and water, and further their social and economic development (including education, business advancement, community and individual wellbeing, and cultural strengthening). This Tjiwarl Palyakuwa (Agreement) also provides a monetary component as part of the compensation payable by the State to Tjiwarl People for the effects of things done in the past. Tjiwarl-directed funding for economic empowerment and research and development is designed to create a pipeline of social and economic improvement opportunities and outcomes for Tjiwarl People and Ngurrara over the short and long term.
- I. The State enters into the Tjiwarl Palyakuywa (Agreement) in a spirit of partnership with the Tjiwarl People and looks to a future where the lives of the Tjiwarl People are enriched by this partnership and the benefits delivered by the Agreement.