

Tjiwarl Native Title holders file compensation case against WA Government

ABC Goldfields / By Rhiannon Stevens and Isabel Moussalli

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The Tjiwarl compensation claim covers 7,800sq km of land in the northern Goldfields, including the town of Leinster. (ABC News: Tom Joyner)

A compensation claim by native title holders in Western Australia's Goldfields region could pave the way for similar claims across the country.

Two claims were filed in the Federal Court on Wednesday on behalf of the Tjiwarl people for damage and loss of access to land as a result of acts by the WA Government and mining companies.

The acts include various mining projects in the northern Goldfields, groundwater licences for mines, the development of the Goldfields Highway and some pastoral leases.

Tjiwarl Aboriginal Corporation chairman Brett Lewis says the native title holders want compensation for the impairment of their rights.

"Many of us are still on country looking after Tjukurrpa [dreaming] sites," he said.

"We can't access all of the area and this causes a lot of shame for our people because we can't meet our cultural responsibilities."

Key points:

- The Tjiwarl Aboriginal Corporation's claim covers a large area in the Goldfields, including the town of Leinster
- The native title holders want compensation for damage and loss of access to land
- The filing coincides with scrutiny of the impacts of mining operations on Indigenous sites

The corporation's chief executive, Greg Ryan-Gadsden, said it was an important case and the first claim of its kind in Australia.

"This case will be about the cultural value, the special value of the country," he said.



Brett Lewis says his people have been prevented from carrying out their cultural responsibilities. *(Supplied: Brett Lewis)*

Loss includes spiritual harm

The case comes one year after the High Court ruled that traditional owners from Timber Creek, in the Northern Territory, would receive \$2.5 million in compensation for the loss of their rights, which included a spiritual connection to the land.

Greg McIntyre SC, who was a lead solicitor in the Mabo case, said he believed the the Tjiwarl claim could be more significant than the Timber Creek case.

"It's quite important because it's dealing with a different type of land, not around a townsite, over a much larger area, and involving a lot of mining type activity," he said.

Mr McIntyre said compensation would not be measured by the value of industry that occurred in the area, or the minerals mined.

"[Compensation] will only be valued on the loss by way of incapacity to control the land and to protect the land ... and the market value of the land," he said.



The Tjiwarl determination area is located in the northern Goldfields, among mine sites and pastoral leases. (Supplied: Tjiwarl Aboriginal Corporation)

Mr McIntyre says that under the Native Title Act, the State Government is solely responsible for any compensation claims.

"But it does have a power under the legislation to pass on any compensation which it may be ordered to pay by the court, to those it has granted titles to," he said.



Greg McIntyre says the Tjiwarl claim could prove to be very significant. (ABC News: Robert Koenig-Luck)

'Unanswered questions'

A WA Government spokesman said while the Timber Creek case settled general principles on how compensation is to be assessed, the case only dealt with certain land grants and public works that wholly extinguished native title.

"The case left a number of important questions unanswered," the spokesman said.

"The Native Title Act provides for compensation to native title holders where their native title rights and interests have been validly affected or extinguished in accordance with the Native Title Act 1993."

While the claim is timely because of the recent attention given to the destruction of Aboriginal sites, it has been a long time in the making.

Mr Ryan-Gadsden said any compensation received would be invested in education, health and cultural projects to improve the lives and opportunities of Tjiwarl people.

"It's really important the young people stay strong in their culture," he said.

"[If] people have strong identities, they tend to do better in life, have better outcomes, get employment, less incarceration rates, better health outcomes."