



COMPENSATION FACT SHEET



On 14 March 2019, the High Court decided the Ngaliwurru and Nungali Peoples native title compensation claim (referred to as the Timber Creek decision). It was the first time the High Court has provided guidance on how compensation should be quantified under the Native Title Act 1993 (NTA). It is important to note that the Timber Creek decision was specific to that native title claim, each claim will have different facts and legal issues a court will need to consider.

WHAT IS NATIVE TITLE COMPENSATION?

You can claim compensation where your native title rights have been extinguished or impaired after 30 October 1975. For example, where the government has issued a lease or has undertaken public works.

In the Timber Creek decision, the High Court determined that there were three parts to calculating compensation:

- Economic loss
- Interest payable on economic loss
- Cultural loss

WHAT TO CONSIDER WHEN PREPARING A CLAIM

- What is the evidence showing that you had native title rights in the area at the time native title was extinguished or impaired?
- Has the Federal Court already made a determination that native title exists over the area or neighbouring areas?
- What legal, anthropological or other support do you have access to for preparing the evidence you will need?
- Have you already been compensated for the extinguishment or impairment under an agreement? If yes, you may not be able to receive more.

COMPENSATION FOR ECONOMIC VALUE + INTEREST

Economic loss is calculated based on the freehold value of the land at the time the native title rights were extinguished or impaired.

If you had **exclusive** native title rights, then economic loss is likely to be 100% of the full freehold value of the land.

If you had **non-exclusive** native title rights, then economic loss would be a percentage of the freehold value of the land. In Timber Creek this was 50%.

Interest is to be paid on economic loss from the date the act occurred.

Depending on the evidence, this could be simple or compound interest.



COMPENSATION FOR CULTURAL LOSS

- Recognises the spiritual relationship claim groups have with their Country and the spiritual hurt caused to them when native title rights and interests are extinguished or impaired.
- Should be an amount that society would regard as “appropriate, fair and just” to compensate for the effect on their native title rights and interests.
- Is not related to the freehold value of the land, but reflects the cultural loss to native title holders as a whole, both at the time and into the future.



ALTERNATIVE OPTIONS TO A COMPENSATION CLAIM IN THE FEDERAL COURT

There have been very few native title compensation cases in the courts. Litigation will take years and will be expensive and may not provide the outcome you want.

To direct more money and resources toward compensating native title holders rather than paying for court proceedings, there are other options for you to consider.

One option is negotiating comprehensive settlements with Commonwealth, State and Territory governments. These settlements can provide more flexible options and outcomes than litigation. They can include:

- Compensation for impairment or extinguishment of your native title
- Direct funding and resourcing for your PBC for cultural reasons and economic development
- Land transfers
- Your say in natural resource management on your Country

LEGAL REPRESENTATION: A NOTE FOR CLAIM GROUPS & PBCs

Your NTRB/SP is able to help you with your compensation claim. The advantages of using your NTRB/NTSP are:

- They will act in a reasonable and timely manner
- They will not claim any of your compensation payment as legal fees
- They have extensive regional knowledge and access to research

If you want to use private legal representation, consider:

- The government will not directly fund private legal representation, you will need to apply through your NTRB/SP
- Lawyers working on a “no win no fee” basis will take a significant portion of the compensation payment as fees
- Does the law firm have the right expertise and access to research?