

Native Title Compensation Claims under the Native Title Act

Native Title Holders are entitled to be compensated for most acts that have affected their native title since the *Racial Discrimination Act* came into effect in 1975.

Acts that can affect native title include things like the grant of a mining lease, a compulsory acquisition of native title to build a school, or the construction of a road. In many cases, where something new is proposed on native title land, Native Title Holders will be able to reach an agreement with the company or government department that wants to do the thing.

However, if there is no agreement about compensation, or if the act happened before the Native Title Holders had a native title claim, a Prescribed Body Corporate (PBC)¹ can bring a claim for compensation.

There have been very few native title compensation claims. Only one has gone all the way to trial, and to the High Court.

It was a claim for compensation for native title extinguished in the town of Timber Creek in the Northern Territory - *NT v Griffiths* [2019] HCA 7. In that case, the High Court found that Native Title Holders are entitled to compensation for their economic loss, as well as their cultural loss. In other words, the compensation claimants were entitled to compensation for the monetary value of their native title that was extinguished, as well as compensation for:

[the non-economic] aspect of the value of land to native title holders which is inherent in the thing that has been lost, diminished, impaired or otherwise affected by the compensable acts².

¹ Note, for simplicity, YMAC uses the term “PBC” in most publications to refer to both Prescribed Bodies Corporate (PBCs) and Registered Native Title Bodies Corporate (RNTBCs). This is in line with terminology that is regularly used in the native title sector.

² *NT v Griffiths* [2019] HCA 7 [154]





As with native title claims, compensation claims can be resolved through trial, or an agreement with the government or other proponents (such as mining companies). It is likely that resolving compensation claims through an agreement will, in most cases, provide a better outcome for native title parties.

An agreed outcome will generally be quicker, less stressful, and be able to provide non-monetary benefits such as returning land that was taken, or stronger protections for Native Title Holders.

YMAC is currently investigating opportunities to lodge compensation claims in our representative regions.

YMAC is well-placed to support groups to explore these options with PBCs and Native Title Holders, and hopes to assist those who would like to work with us.

For example, YMAC can help to identify what acts have taken place that might qualify for inclusion in a compensation claim and provide advice on this to the relevant parties (e.g. the PBC for the area).

Further, given its multidisciplinary nature, YMAC can draw from its extensive in-house expertise to most efficiently and effectively bring compensation claims on behalf of PBCs and Native Title Holders.

Call and ask to speak to someone from YMAC's Legal Team in our Perth office to find out more.

Current at June 2023. Please note, information in this fact sheet is provided by YMAC in good faith on an "as is" basis; it does not constitute any form of legal advice. YMAC believes this information to be accurate and current at the date of publication, however, inadvertent errors can occur and the applicable laws, rules, policies and regulations often change. YMAC will not be liable for any loss or damage whatsoever suffered as a result of reliance upon this information, or through directly or indirectly applying it.

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