A highlight of #IPWEAQ was the session of the Timber Creek native title case. Barrister Josh Creamer, along with Cassie Lang and Kylie Aldridge from Marrawah Law, presented an outline of this case from the Northern Territory which involves the first native title compensation decision, handed down by Justice Mansfield of the High Court of Australia.

The court awarded the Ngaliwurru and Nungali peoples $3.3 million for the loss of their native title rights. That decision is now under appeal but has set a precedent for future claims by Aboriginal and Torres Strait Islander peoples whose rights have been contravened. The Timber Creek compensation was awarded for acts done by the Northern Territory government, including the building of infrastructure and public works that were deemed to extinguish native title rights.

The presentation was divided into three parts representing the three central elements of the case:
- the evidence offered by both parties in pursuing and defending the claim,
- the detail of the original decision, and
- the compensation awarded and how that figure was calculated.

All the details of these three elements are available in video and PowerPoint formats on Knowledge Centre, but a couple of important lessons were repeatedly emphasised throughout.

One is the need for councils and infrastructure providers to undertake a native title assessment at the outset and make it an essential part of the project design process. If the validity in law of any project is not established early, there is every chance that the proponents of the project will become liable down the track if native title rights are contravened or impinged upon. Public works providers need to ensure that they follow a step-by-step process whereby they subject their projects to scrutiny around native title law so that they can proceed, knowing they have asked and answered the right questions.

The other point that was underlined by the moot court presentation was the very real need to document that process. Councils need to keep rigorous records of their native title (and cultural heritage) assessments with comprehensive supporting documentation so that any legal ramifications can be answered. As Cassie Lang made clear, Indigenous bodies intend to undertake audits of all areas where native title has been extinguished to determine if they have valid compensation claims. They and their legal representatives will be asking local councils for records of when public works were built and will require evidence of the exact date and locations of any work undertaken and a clear record of the process that was followed. Lang suggested that if people took one thing away from the presentation it is the need for council to record everything to the best of its ability.

IPWEAQ is developing a NTCH portal to assist councils in achieving these aims.

It is this need that led IPWEAQ to develop a native title and cultural heritage portal demonstrated at #IPWEAQ18 to assist councils is establishing if their projects are valid. More information on the portal can be found on page 51. Full conference presentations can also be found on the Knowledge Centre in the conference collections.

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