

ESTIMATES COMMITTEE

Question Taken on Notice

Date: 13/06/2019

Subject: Timber Creek native title claim

From: Mr Gerry Wood

To: Hon Natasha Fyles

Agency: Department of the Attorney-General and Justice

Number: 4-2

Question:

Can you say what role your department played in the Timber Creek native title claim? Can you explain what that native title claim was about? What were the legal costs of that claim? What were the compensation costs the Northern Territory Government will have to pay for that claim? Are there any other claims that will follow from this claim that the Northern Territory may be liable for?

Answer:

What role did SFNT pay in the Timber Creek Native Title Claim?

The SFNT represented the Northern Territory of Australia in the proceedings, under the instructions of the Department of the Chief Minister (DCM). The claim was filed against the Northern Territory of Australia (not any particular Agency) pursuant to the *Native Title Act 1993* (Cth). The SFNT were the instructing solicitors for the claim, from trial before one judge of the Federal Court to the ultimate appeal to the High Court.

What was the Timber Creek Native Title Claim about?

The Timber Creek Native Title Claim was the first native title compensation claim to be litigated in Australia. In essence, it was a claim by native title holders for compensation for the extinguishment of their native title rights by actions undertaken by the Territory Government during the 1970s-1990s. The *Native Title Act 1993* (Cth) provides that those actions were valid and prevailed over native title, but does so in exchange for compensation 'on just terms' for the effect of the actions on native title.

The High Court was called on to determine three appeals concerning aspects of the Full Federal Court's decision in the claim, which in turn had reviewed a decision of the trial decision (Justice Mansfield). The issues were, in summary:

- a) How should courts assess compensation, in one lump sum or divided into economic and non-economic loss (i.e. loss of attachment to country)?
- b) How should economic value be assessed relative to freehold value?
- c) Should pre-judgment interest be awarded on a simple or compounding basis?
- d) How should non-economic loss be assessed?

What was the legal cost of the claim?

For the period 2012 to May 2019, AGD has a record of expenses totalling approximately \$686 000.

What are the compensation costs?

The total amount paid was \$3 024 775.

Are there any other claims that are likely to follow which the Northern Territory Government may be liable for?

Yes.