

Day 3 Session 3 Courtney Boag (First Nations Legal & Research Services) *The language of compensation research in south-eastern Australia*

Panel Discussion: Wendy Asche (consultant), Sturt Glacken (QC) and John Morton (who stood in for Mick O’Kane (First Nations Legal & Research Services) who was unavailable on the day).

NB: A video was available on the CNTA website ahead of the conference with this session and presentation extending discussion of issues raised initially in the pre-recording.

Since the High Court’s Timber Creek decision, compensation has become an increasingly important focus area within the native title sector in Australia. However, to date, attention has largely focused on how research for compensation claims is being produced in the more remote and northern parts of the country.

Given the small window of time that an act can be considered ‘compensable’ (between 1975-1993), there is evidently several limitations in this emergent jurisprudence for its applicability in the south-eastern states of Australia where the effects of settlement occurred much earlier than 1975.

Notwithstanding, there is growing momentum in these regions, particularly within Victoria, towards reconciliation and *truth telling initiatives* which surround a broader political agenda to establish the first Aboriginal Treaty in Australia and, subsequently, there is a clear appetite for attention on what opportunities may exist for compensation and, indeed, what methodologies for research may be developed in these more settled regions of the country.

In this panel session, we hear from one of Australia’s leading compensation barristers, Sturt Glacken, together with an anthropological perspective from Wendy Asche who was involved in research for the Timber Creek claim.

Key discussion points included:

- The Timber Creek decision recognises that Native Title does have objective economic worth, and that non-economic losses have resulted from dispossession and damage. The latter - a subjective matter - is termed ‘cultural loss’.
- Loss of social standing, sorrow and shame are the some of the descriptors of cultural loss experienced by Aboriginal people
- Applied anthropologists working on compensation matters are working in a *translation space* and must develop a language to describe damage and loss
- Proving cultural loss needs detailed background evidence including regional ethno-historical analyses
- Compensation must follow loss and damage within Aboriginal systems of law and custom to restore equilibrium
- Experiences will differ across the continent where dispossession has occurred in differing ways
- There are no precedents for how compensation matters will play out in areas such as South Eastern Australia
- Agreement making processes may be valuable in settling compensation but may favour States who have more power in agreement making process