

# iMPACT

## **IPWEAQ's Integrated Management Portal for the Assessment of Aboriginal Cultural Heritage and Native Title.**

### **Why the need for an assessment tool?**

IPWEAQ has developed an online portal to assist public works infrastructure providers in addressing their Native Title and Aboriginal Cultural Heritage obligations. On June 3, 1992 the High Court of Australia handed down its decision in *Mabo vs. Queensland (No2)*. The findings of the court were long and complex, but at its centre was the decision that native title rights had pre-existed the annexation by the crown of the Murray Islands in the Torres Strait, and by extension, pre-existed European colonization of the Australian landmass. The court found that those native title rights continue to exist in common law to the present day. The case overturned the long held doctrine of Terra nullius which underpinned the assumption of the colonizers, that the land belonged to no-one. The *Native Title Act 1993* was the statutory response to the High Court decision and became law on January 1st, 1994. In affect that meant that infrastructure projects after that date that were developed on lands where native title had not been deemed to have been extinguished had to be undertaken in strict compliance with the conditions of the act. In an attempt to address the rights of both native title holders and of the peoples who had inhabited the land for two centuries, the act deemed that any pre-existing tenure right, any gazetting of a road, and any construction of a public work before January 1994, had extinguished native title over that area. This was a way of granting the rights that are involved in native title at the same time as protecting the home and landowner rights that had been granted after colonization, and of protecting the nation's transport and infrastructure systems. Outside of those extinguished areas and sites, all other lands became subject to native title claims.

Another far more recent case saw the High Court of Australia award the Ngaliwurru and Nungali native title holders in the Northern Territory 2.5 million dollars in compensation for works that have been done on the land over which they made a successful claim in 2009. In *Griffiths and others vs. the Northern Territory Government*, it was found that 60 public works of various kinds had affected native title rights. The Native Title Act lays down specific processes that must be followed if these

'Future Acts' are to be done validly. A 'future act' is any activity that impacts upon native title. This applies to physical acts such as the laying of a pipeline or the building of a road, or non-physical activity such as the issuing of a lease or permit by council which could impact upon the legal rights of a native title party. A future act must valid if it is to go ahead without being in contravention of native title law and the online portal is designed to allow users to confidently make self-assessments in that regard.

### **How it Works**

Native title and cultural heritage require two separate assessment processes and the portal provides a platform for ensuring compliance with both. The three principles around which the iMPACT tool has been developed are:

1. To provide a path through the complexities of the legislation in a user friendly manner
2. To collate and centralize the various and wide-spread resources required to undertake a thorough NT/CH assessment.
3. To act as a record keeping tool so the councils and other infrastructure providers can show there is a process in place for producing rigorous records of NT/CH assessment.

**1.**The central work of the native title section is to assist councils in establishing if the project being assessed constitutes a 'valid future act'

The cultural heritage section provides detailed assistance in helping councils ensure no harm is done to Aboriginal cultural heritage through the work projects they undertake. Among other things, the portal offers a step-by-step process to:

- Assessing possible levels of harm

- Providing a guide to duty of care obligations
- Developing cultural heritage management plans
- Linking to resources that enable council to identify and negotiate with the relevant indigenous party.

The law around NT and CH is enormously complex. It has proven to be an area of considerable difficulty for councils and other public works sector organizations for a number of reasons. One is that the acts themselves are substantial, comprising about 600 and 100 pages of legislation respectively. Any council officer tasked with establishing whether or not a specific project contravenes the laws contained within those acts, needs to sift through a great deal of information to find what is relevant to their particular purposes.

The portal enables this by compartmentalising the separate sections of the act and simplifying the process at a structural level. There can be no simplification of the content because it is in the complex detail that validation is made possible. It is, however, possible to create a way through the complicated legislation by presenting it in a question and answer format, with the vital resources for each question available on the same page as that question. This is how the portal operates; segmenting the information required so that the user is never overwhelmed by sheer volume at any single point in the assessment.

**2.**The other major stumbling block has been the fact that the resources required to undertake a self-assessment for native title and cultural heritage for any project are contained in a wide variety of sources, all of which need to be accessed at some point along the process. In Queensland for example, any reasonable assessment would need to source materials from, among others, the *National Native Title Tribunal*, the *Department of Natural Resources, Mines and Energy*, the *Department of Aboriginal and Torres Strait Islander Partnerships*, the *Australian Institute of Aboriginal and Torres Strait Islander Studies*. These and a number of other government and non-government organizations hold vital resources to NT/CH assessment, but none contain all the required resources. iMPACT has drawn all these resources together to allow assessments to be done in the one place eliminating the need to sift through the various sources each time an assessment is undertaken.

**3.**The third development principle the underpins iMPACT is to act as a record keeping tool. Those with legal expertise in the area of Native Title emphasize the need for infrastructure providers to have a rigorous record keeping process in place to show that all decisions around NT/CH have considered due process and that there is a documentary record that can be shown in support of those decisions. Accordingly, the final step of any assessment in the portal has the user save all the information that

has been provided throughout and which is saved in PDF form. The assessment tool auto-fills all the detail around the infrastructure project, and offers a file management functions that stores the supporting documentary evidence as the user moves through the assessment. These files are then uploaded into the final PDF that becomes Council's or the contractors record of assessment.

The tool IPWEAQ has developed places emphasis on these three areas. It does the work of identifying the section of the act which is relevant to a particular project, and gathers all the required resources in one place, so assessment can be done without the need to link to any other sites. The portal is designed around a series of consecutive survey-like questions that establish the nature of the project and send the user to the appropriate areas of the law, providing the necessary resources to answer each question accurately along the way. The aim is work through these questions, utilising the resources provided on the same page until you can confidently assess the project as valid.