

National report: native title



NATIONAL NATIVE TITLE TRIBUNAL REPORT: NATIVE TITLE

MARCH 2010

This is the fourth in a continuing series of status reports published by the National Native Title Tribunal on a range of matters relating to Australia's native title system. Each report covers a six month period and briefly compares what happened during those six months with what happened in the previous six months, as well as providing a picture since 1 January 1994.

The previous reports can be found on the Tribunal's website www.nntt.gov.au under the tab 'Native title in Australia.'

1. Native title applications: a status report

The *Native Title Act 1993* (Cwlth) (NTA) provides for the filing of various native title-related applications. As at 31 December 2009 there were 462 current applications comprising:

- 435 native title claimant applications
- 20 native title non-claimant applications
- seven native title compensation applications.

Eight new claimant applications were filed between 1 July and 31 December 2009. This compares with seven claimant applications filed during the period 1 January – 30 June 2009.

During the period 1 July – 31 December 2009, 31 claimant applications were determined, dismissed or otherwise disposed of as follows:

- six applications resolved following determinations of native title
- eight applications were discontinued
- 16 applications were dismissed (two were dismissed under section 190F(6) NTA)
- one application was struck out.

This above data represents a higher disposition rate than that of the period 1 January – 30 June 2009, during which 25 claims were determined, dismissed or otherwise disposed of by the Federal Court.

2. Disposition of native title applications since 1994

2.1 Native title determinations

Between 1 January 1994 (when the NTA came into effect) and 31 December 2009, 129 determinations of native title were registered under the NTA. Those determinations were in respect of a total of 157 applications (127 claimant applications, 29 non-claimant applications and one compensation application).

Of the 129 determinations:

- 92 were determinations that native title exists over the whole or part of the determination area
- 37 were determinations that native title does not exist.

During the 16 years of the NTA's operation, determinations that native title exist have been made in New South Wales, Queensland, South Australia, Victoria, the Northern Territory and Western Australia. Seventy-six (or 83 per cent) of those determinations were made by consent of the parties. Most of the determinations that native title does not exist have been made in New South Wales in non-claimant proceedings.

At 31 December 2009, registered determinations of native title covered some 931,229 sq km or 12.1 per cent of

the land mass of Australia. A further three conditional determinations, all that native title exists, were also in the system. They will increase the area to about 1,007,460 sq km or 13.1 per cent.

At 31 December 2009 there were 401 registered indigenous land use agreements (ILUAs). Registered ILUAs cover some 1,120,286 sq km, consisting of 1,115,776 sq km over land (or 14.5 per cent) of the land mass of Australia and 4,510 sq km over sea (below the high water mark).

Maps showing the locations of native title determinations and ILUAs may be found on the Tribunal's website: www.nntt.gov.au.

2.2. Current rate of disposition

During the 16 years from 1 January 1994 to 31 December 2009:

- 1,821 native title applications were filed (1,498 claims, 289 non-claimant applications, 33 compensation applications, and one revised native title determination application)
- 1,359 (75 per cent) of those applications were determined, dismissed or otherwise disposed of (1,063 claimant applications, 269 non-claimant applications, 26 compensation applications, and one revised native title determination application).

An analysis of the 157 applications the subject of registered determinations between 1 January 1994 and 31 December 2009 shows that:

- the average timeframe for an application to be determined by consent was six years and one month (73 months)
- the average timeframe for an application to be finalised through litigation was six years and eleven months (83 months)
- the average timeframe for an unopposed application to be determined was 12 months.

It appears that the average timeframe within which matters are being finalised by consent is increasing slightly and that the average timeframes for litigated outcomes and unopposed determinations remain unchanged. As at 30 June 2009 the average time taken to determine a claim by consent was 69 months; for a litigated determination, 83 months; and for an unopposed determination, 12 months.

Of the 435 claimant applications which were current at 31 December 2009:

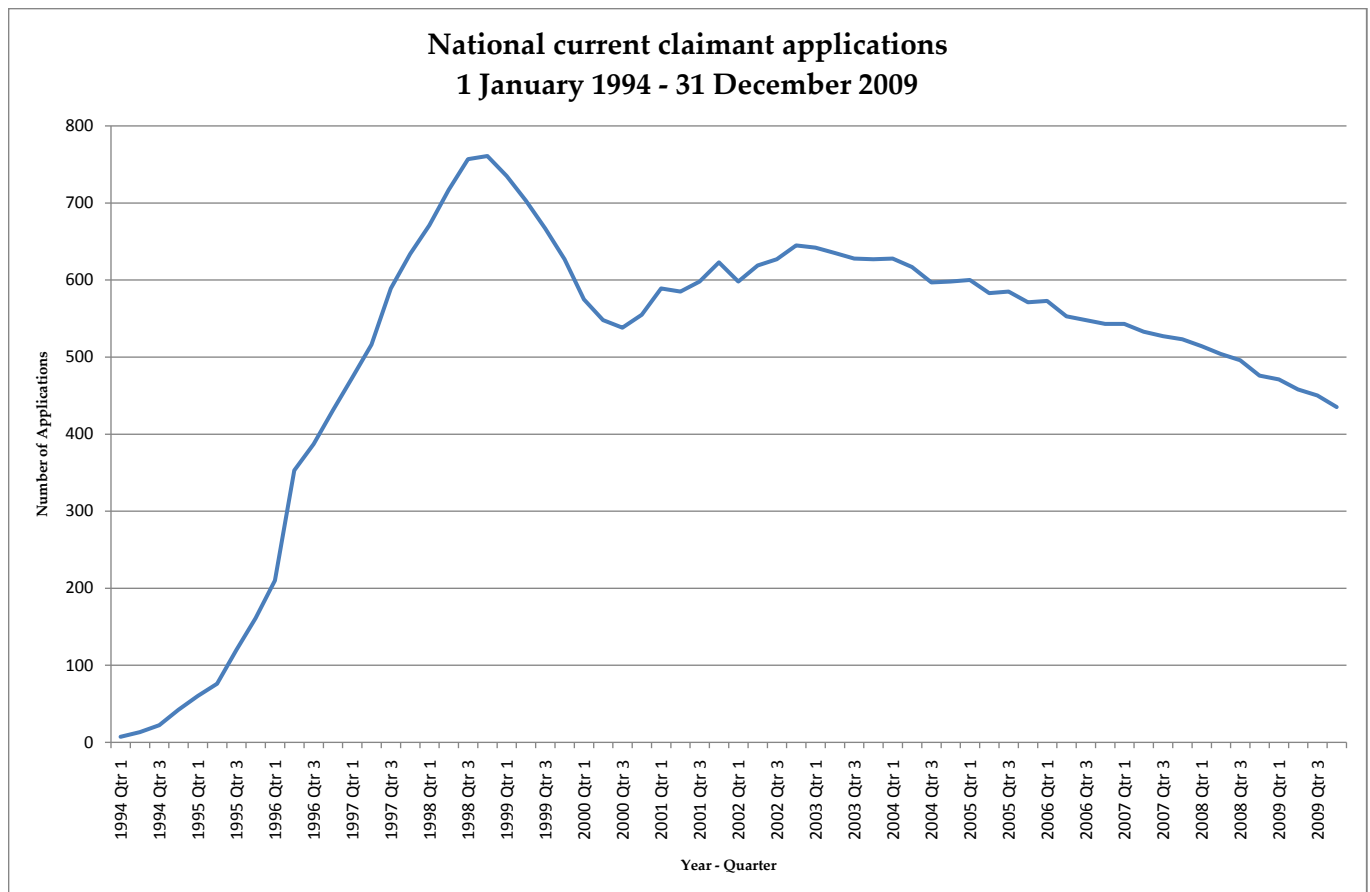
- 84 (or 19 per cent) had been filed in the five-year period 1 January 2005 – 31 December 2009
- 194 (or 45 per cent) had been filed in the five-year period 1 January 2000 – 31 December 2004 (i.e. are 5-10 years old)
- 157 (or 36 per cent) had been filed before 1 January 2000 (i.e. are greater than 10 years old).

As at 30 June 2009 a total of 93 claimant applications had been filed in the previous five years; 221 had been filed in the 5 year period 1 July 1999 – 30 June 2004; and 143 had been filed prior to 1 July 1999. The number and proportion of claims in the category of oldest claims has increased.

The figures noted above do not indicate which claims are being mediated or the length of time that each relevant claim has been in mediation.

The following graph shows that the total number of current claimant applications in the country peaked in 1998 and since then has gradually decreased, despite the fact that new claims are filed each year.

Individual State and Territory jurisdictions have differing rates of disposition. Those rates are identified in section 4 of this report.



3. Settlement of claimant applications through Indigenous Land Use Agreements

The NTA provides for parties to negotiate Indigenous Land Use Agreements (ILUAs) in order to achieve native title and related outcomes. The NTA requires registration of ILUAs by the Tribunal and it is significant that the 400th ILUA was registered in December 2009.

The varied content of ILUAs (i.e. the diversity of matters with which they deal) reflects the many ways in which land and waters are used and managed across Australia.

Many ILUAs comprise 'stand alone' agreements which document the parties' consent to the implementation of a particular project or development.

Other ILUAs address the question of the existence (or otherwise) of native title rights in the area the subject of the ILUA and the co-existence of such rights, if any, with the rights of others. In Queensland, for example, the recent Combined Dulabed and Malanbarra Yidinji peoples' consent determination of native title is conditional upon the registration of four ILUAs. Those ILUAs were negotiated with the assistance of the Tribunal between the applicants, the Queensland Government, the Cairns City Council, the Tablelands Council and Ergon Energy. Those ILUAs (which currently are being assessed for registration by the Tribunal) establish ongoing relationships between, and commitments by, the parties that go beyond a bare determination of native title.

ILUAs may also be entered into following a determination of native title. In March 2007 a consent determination in respect of the claimant application of the Gunditjmarra People of south western Victoria was made. The Gunditjmarra People have recently entered into an ILUA with the State of Victoria which provides that, if public works are built in the area where non-exclusive native title rights have been recognised, their native title rights will not be extinguished. Currently this ILUA agreement is being assessed by the Tribunal for the purpose of registration.

In the Combined Dulabed and Malanbarra Yidinji and the Gunditjmarra cases, the Tribunal assisted the parties by providing a preliminary assessment of the proposed ILUA for registration purposes. Such assessments help the parties to identify and address any potential problems early, and they reduce the likelihood of delays or issues

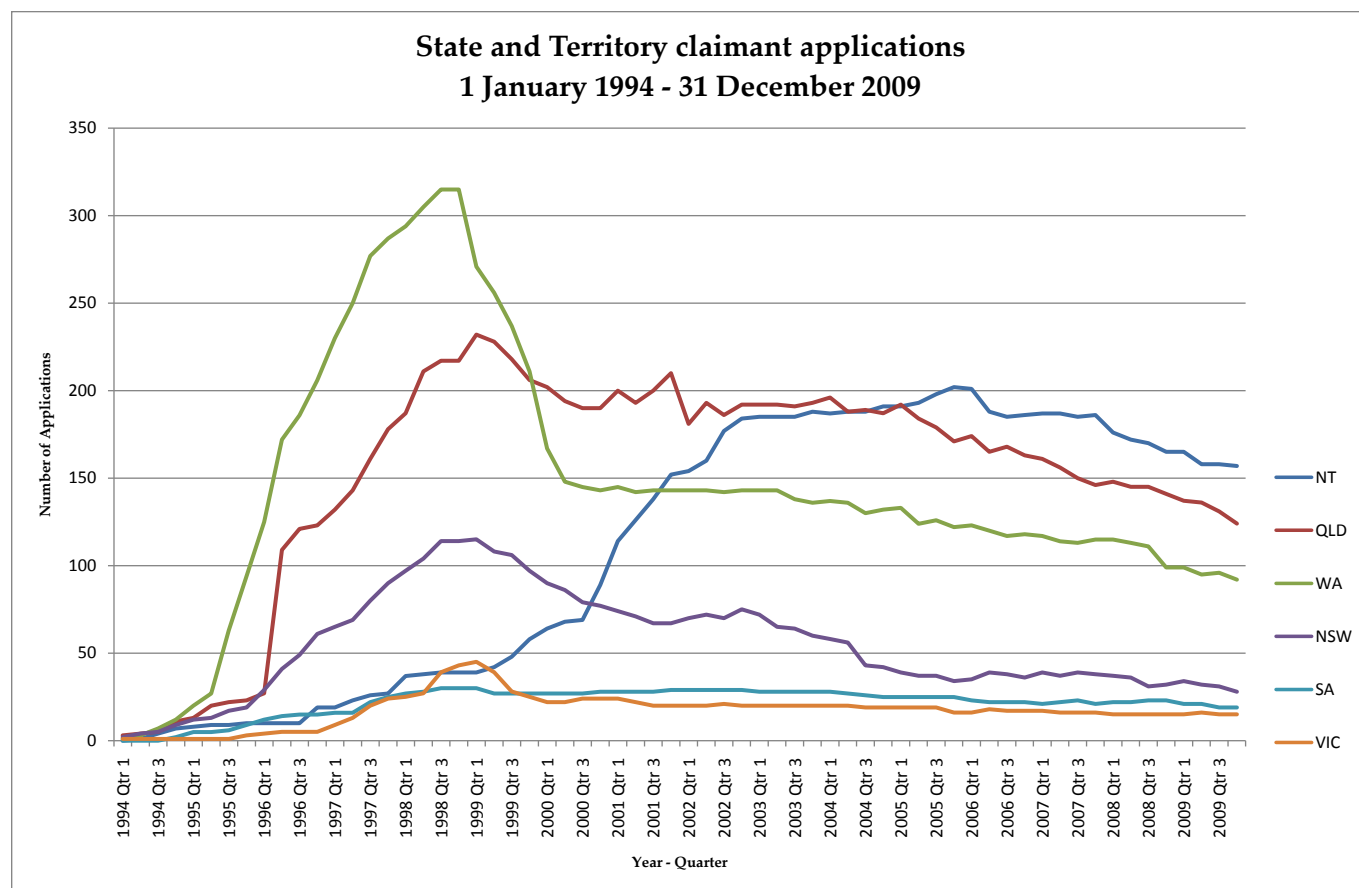
arising once a proposed ILUA is lodged with the Tribunal for registration.

Amendments made in 2009 to sections 87 and 87A of the NTA empower the Federal Court, among other powers, to make determinations which go beyond native title. Those amendments were enacted with a view to parties resolving a range of native title and related issues through agreements.

It is too early to determine to what extent parties to native title proceedings will seek to make use of the new agreement-making provisions. The Tribunal will assist parties to explore whether an ILUA or an order pursuant to section 87 or section 87A of the NTA is the better option for obtaining the particular outcomes which those parties are seeking.

Importantly, the Court's new powers only apply to proceedings which remain within the Court's jurisdiction. So in cases where an application has already been determined, (as with the Gunditjmarra example referred to above), it appears that entry into an ILUA is the only available option. In the future, fewer determinations of native title that are conditional upon the parties' entry into an ILUA might be made should parties prefer to give effect to a broader settlement by seeking an order pursuant to section 87 or section 87A of the NTA.

4. Snapshots: State and Territory claimant applications



A brief outline of native title-related activity in each State and Territory as at 31 December 2009 is set out below.

4.1 Western Australia

1. Determinations of native title:

Total registered since 1 January 1994	25
Native title exists	24
Native title does not exist	1
Total registered from 1 January 2009 – 31 December 2009	2
Native title exists	2
Native title does not exist	0

Note: an unregistered determination that native title exists (Nurrara, 2007) is awaiting the determination of a Prescribed Body Corporate (PBC).

2. Native title claimant applications determined:

Native title applications determined (in full or part) since 1 January 1994	30
Native title applications determined (in full or in part) 1 January 2009 – 31 December 2009	3

Note: the above figures do not include the unregistered Nurrara determination which, as noted above, is awaiting the determination of a PBC.

3. Total disposition of claimant applications (determination/dismissal/strike-out/discontinuance):

Applications filed since 1 January 1994	497
Dispositions since 1 January 1994	405
Dispositions 1 January 2009 – 31 December 2009	9

4. Current claimant applications:

Current number of applications	92
Average time since filing	111 months
Number currently referred for Tribunal mediation	83

5. Non-claimant applications:

Current number of applications	0
Dispositions since 1 January 1994	6
Dispositions 1 January 2009 – 31 December 2009	0

6. ILUAs:

Number of currently registered ILUAs	13
Number of ILUAs registered 1 January 2009 – 31 December 2009	1

Disposition of claimant applications:

Five applications were finalised in the period July – December 2009 (compared with four in the period January – June 2009), comprising two determinations and three dismissals (two under s. 190F(6)).

Mediation:

Two consent determinations have been made in the Pilbara and Geraldton regions, over large areas of land. The Pilbara area continues to dominate mediation activity, with the resolution of overlaps and settlement of connection reports forecast to peak over the next 6-12 months. In the Pilbara, in response to Tribunal recommendations, the Court has removed an overlap mediation from the Tribunal and referred it to Court Registrars.

State Policy:

Currently delays are being experienced as connection assessments by the State are awaited.

In December 2009, the State of Western Australia and the South West Aboriginal Land and Sea Council executed a Heads of Agreement regarding alternative settlement negotiations in relation to the South West region. The Agreement establishes a two-year timeframe for the negotiation of a settlement package intended to resolve all current and future native title claims in this area. The Agreement also recognises the Noongar People as the traditional owners for the region, and records that the Noongar People will be offered a settlement package that provides full and final settlement of their native title claims.

Future Acts:

In response to a 60 per cent increase in the number of section 29 NTA notices asserting the expedited procedure in the second half of 2009, Western Australia has seen a 26 per cent increase in the lodgement of expedited procedure objections. Increased numbers of objections to the expedited procedure continue to progress to the inquiry stage in shorter timeframes, as the State of Western Australia maintains a robust approach to such objections.

The Tribunal continues to provide assistance to parties who have reached agreement in the right to negotiate process, but who are unable for logistical reasons to finalise a section 31(1)(b) NTA agreement. The number of contested applications for arbitral determinations under section 38 NTA has also increased in Western Australia. Four determinations that the act can be done with conditions have been made involving mining tenure in the Pilbara region, and a further five section 35 NTA inquiries are currently underway.

The number of active future act mediations for the period July – December 2009 was 80, compared with 90 at the end of the preceding six month period. During the same period, 54 referrals for Tribunal mediation assistance were made, representing a slight increase over the January – June 2009 period (41 referrals). With Tribunal assistance, 35 future act agreements were made and a further 16 agreements have been executed and lodged.

4.2 Queensland

1. Determinations of native title:	
Total registered since 1 January 1994	46
Native title exists	44
Native title does not exist	2
Total registered from 1 January 2009 – 31 December 2009	3
Native title exists	3
Native title does not exist	0

Note: there are two additional unregistered determinations that native title exists (Girramay People, 2009; Combined Dulabed and Malanbarra Yidinji Claim, 2009), both of which are awaiting the registration of ILUAs.

2. Native title claimant applications determined:	
Native title applications determined (in full or part) since 1 January 1994	42
Native title applications determined (in full or in part) 1 January 2009 – 31 December 2009	3

Note: the above figures do not include the applications the subject of the two unregistered determinations that native title exists (Girramay People, 2009; Combined Dulabed and Malanbarra Yidinji Claim, 2009), both of which, as noted above, are awaiting the registration of ILUAs.

3. Total disposition of claimant applications (determination/dismissal/strike-out/discontinuance):	
Applications filed since 1 January 1994	455
Dispositions since 1 January 1994	331
Dispositions 1 January 2009 – 31 December 2009	22

4. Current claimant applications:	
Current number of applications	124
Average time since filing	91 months
Number currently referred for Tribunal mediation	94

5. Non-claimant applications:	
Current number of applications	1
Dispositions since 1 January 1994	20
Dispositions 1 January 2009 – 31 December 2009	0

6. ILUAs:	
Number of currently registered ILUAs	213
Number of ILUAs registered 1 January 2009 – 31 December 2009	19

Disposition of claimant applications:

Fifteen applications were finalised in July-December 2009 (compared with seven in January-June 2009). These comprised two determinations, 12 dismissals and one discontinuance.

Mediation:

The resolution of applicants' connection to claim areas remains one of the most significant issues affecting the rate of disposition of claimant applications. The Tribunal is providing research assistance to applicants at an early stage, with the aim of ensuring that connection research is focused and relevant. This assistance is also intended to support the resources of applicants and the State of Queensland.

Following the 2009 amendments to the NTA, justices of the Federal Court in Queensland have formed five committees comprising representatives of stakeholders, including the Tribunal. The newly-formed committees are examining a wide range of issues affecting the rate of disposition of native title claimant applications, with a view to identifying ways in which such applications might be dealt with in a more expeditious way.

ILUAs:

ILUA negotiation activity was high throughout Queensland in 2009 and the Tribunal assisted in the negotiation of a number of 'stand alone' proposed ILUAs.

During 2009 officers of the Tribunal took steps to increase parties' awareness of the Tribunal's capacity to assist in the negotiation of ILUAs, including in respect of registration compliance requirements. During the last three months of 2009, 14 ILUAs were lodged for registration. Close and timely coordination between Tribunal registration delegates, Geospatial and the Operations unit officers ensured the timely processing of these applications.

NTRBs:

Much of the work of Native Title Representative Bodies (NTRBs) focuses on completing relevant connection research, prior to commencing negotiations with the State of Queensland. However, Queensland South Native Title Services (QSNTS) has indicated that a significant number of claims in the south-western area are likely go to trial and in fact some matters have already been listed for trial in 2011.

4.3 Northern Territory

1. Determinations of native title:	
Total registered since 1 January 1994	13
Native title exists	12
Native title does not exist	1
Total registered from 1 January 2009 – 31 December 2009	2
Native title exists	2
Native title does not exist	0
2. Native title claimant applications determined:	
Native title applications determined (in full or part) since 1 January 1994	36
Native title applications determined (in full or in part) 1 January 2009 – 31 December 2009	2
3. Total disposition of claimant applications (determination/dismissal/strike-out/discontinuance):	
Applications filed since 1 January 1994	231
Dispositions since 1 January 1994	74
Dispositions 1 January 2009 – 31 December 2009	10
4. Current claimant applications:	
Current number of applications	157
Average time since filing	98 months
Number currently referred for Tribunal mediation	4
5. Non-claimant applications:	
Current number of applications	0
Dispositions since 1 January 1994	4
Dispositions 1 January 2009 – 31 December 2009	0
6. ILUAs:	
Number of currently registered ILUAs	97
Number of ILUAs registered 1 January 2009 – 31 December 2009	9

Disposition of claimant applications:

Two applications were finalised in July-December 2009 (one determination and one dismissal). This compares with eight dispositions in the period January-June 2009.

Mediation:

The Federal Court is managing the mediation of most matters in the Northern Territory and it is convening direction hearings on a regular basis. Consent determinations over the Town of Elliot and Pine Hill Stations were made in July 2009. The determinations were the first consent determination over a town in the Northern Land Council (NLC) area, and the first consent determination over a pastoral lease in the Central Land Council (CLC) area, respectively. The Court has extended the timeframes for preparation of connection materials and certain anthropological work in respect of a number of applications affecting pastoral holdings and towns. The parties have agreed to revisit the connection requirements in one proceeding involving pastoral leasehold land (yet to be identified) where a consent determination is expected. The purpose is to see whether further simplification of the connection requirement is possible.

The Jabiru Township native title claim was settled in-principle in November 2009, a few days prior to the scheduled commencement of trial proceedings. It has been adjourned until May 2010 for parties to finalise administrative steps. It is expected that national parks-related claims in the CLC's region will be withdrawn following the handover of certain national parks by Indigenous Affairs Minister Jenny Macklin. The Tribunal continues to assist parties by providing detailed geospatial analysis, mapping and tenure information.

ILUAs:

ILUA activity over the past six months has been at similar mid-range levels to recent years and that is expected to continue over the next 12 months. There has been an increase on pre-lodgement assistance over the period.

Future Acts:

Significant progress has been made in the discussions between the NLC and the Northern Territory Government relating to a small miners' template agreement, which could be used by all small miners still in the right to negotiate period. An in-principle agreement has been drafted, but further consultation with stakeholders is still to occur. Three matters currently in mediation have reached in-principle agreement and drafting of the agreement is underway. In four others, where mediation was in abeyance due to the grantee party going into liquidation, mediation has been re-activated with the new purchaser of the tenements.

4.4 South Australia

1. Determinations of native title:	
Total registered since 1 January 1994	8
Native title exists	8
Native title does not exist	0
Total registered from 1 January 2009 – 31 December 2009	3
Native title exists	3
Native title does not exist	0
2. Native title claimant applications determined:	
Native title applications determined (in full or part) since 1 January 1994	8
Native title applications determined (in full or in part) 1 January 2009 – 31 December 2009	2
3. Total disposition of claimant applications (determination/dismissal/strike-out/discontinuance):	
Applications filed since 1 January 1994	46
Dispositions since 1 January 1994	27
Dispositions 1 January 2009 – 31 December 2009	5
4. Current claimant applications:	
Current number of applications	19
Average time since filing	127 months
Number currently referred for Tribunal mediation	14

5. Non-claimant applications:	
Current number of applications	0
Dispositions since 1 January 1994	3
Dispositions 1 January 2009 – 31 December 2009	0

6. ILUAs:	
Number of currently registered ILUAs	37
Number of ILUAs registered 1 January 2009 – 31 December 2009	13

Disposition of claimant applications:

Two applications were finalised during the period July-December 2009; one by determination and one by discontinuance. By comparison, three matters were disposed of during the period January-June 2009.

Mediation:

Currently all but five South Australian claims are in mediation. Of those which are not in mediation, two involve overlap issues that have not been resolved by mediation; in another, ILUA negotiations are being finalised and another is proceeding to a consent determination pursuant to management by the Court. A number of mediations are being progressed by the Tribunal in conjunction with the Court. The Tribunal is dealing with key ILUAs, connection and overlap issues, and the Federal Court, through case management conferences, is addressing matters relating to extinguishment and compensation.

ILUAs:

ILUA activity is still strong, with five ILUAs lodged in the past six months and 11 proposed agreements being facilitated by the Tribunal. These are wide ranging in content: they include prospective pastoral, local government, fishing, Defence and parks agreements.

The requirement by some parties to claimant applications that certain ILUAs be completed prior to any consent determination being made is affecting the dates for consent determinations in the Federal Court.

4.5 New South Wales

1. Determinations of native title:	
Total registered since 1 January 1994	32
Native title exists	2
Native title does not exist	30
Total registered from 1 January 2009 – 31 December 2009	2
Native title exists	0
Native title does not exist	2

Note: of the 30 determinations that native title does not exist, 27 were made pursuant to non-claimant applications, and 25 of the determinations were unopposed.

2. Native title claimant applications determined:	
Native title applications determined (in full or part) since 1 January 1994	4
Native title applications determined (in full or in part) 1 January 2009 – 31 December 2009	0

3. Total disposition of claimant applications (determination/dismissal/strike-out/discontinuance):	
Applications filed since 1 January 1994	188
Dispositions since 1 January 1994	160
Dispositions 1 January 2009 – 31 December 2009	8

4. Current claimant applications:	
Current number of applications	28
Average time since filing	115 months
Number currently referred for Tribunal mediation	18

5. Non-claimant applications:	
Current number of applications	19
Dispositions since 1994	236
Dispositions 1 January 2009 – 31 December 2009	15

6. ILUAs:	
Number of currently registered ILUAs	8
Number of ILUAs registered 1 January 2009 – 31 December 2009	0

Disposition of claimant applications:

Two applications were finalised in July-December 2009 (compared with two during January-June 2009). These comprised one determination and one dismissal.

Mediation:

During the period July – December 2009, Tribunal mediation was focused on 12 agreed priority claims. In respect of five of those claims, mediation activity has centred on connection evidence and the assessment processes being undertaken by the NSW Government.

The NSW Government's assessment of connection, expected in early-mid 2010, will then determine the options for disposition and the level of further mediation which might be required.

The Federal Court referred three non-claimant applications to the Tribunal for mediation during this period.

The Federal Court also held three native title forums in NSW to review the progress of native title applications and the manner in which they are case managed by the Court.

State Policy:

It appears that there have been no changes to NSW Government policy which might directly affect the progress of claims. However, a number of issues emerging from the Federal Court native title forums and the planning processes of the State and NTSCORP may result in the State considering several policy questions.

ILUAs:

Currently four ILUAs are being developed with the assistance of the Tribunal, which ILUAs are expected to lead to the disposition of related claimant applications.

NTRBs:

The recognised body for NSW (NTSCORP) has commenced planning discussions with the State of NSW regarding the development of voluntary work plans and timetables in respect of each of the priority applications which NTSCORP represents. These discussions respond to the Federal Court's request for more detailed information about the progress of mediation, apparently made in the context of the Court's new powers under the 2009 amendments to the NTA.

4.6 Victoria

1. Determinations of native title:	
Total registered since 1 January 1994	5
Native title exists	2
Native title does not exist	3
Total registered from 1 January 2009 – 31 December 2009	0
Native title exists	0
Native title does not exist	0

2. Native title claimant applications determined	
Native title applications determined (in full or part) since 1 January 1994	6
Native title applications determined (in full or in part) 1 January 2009 – 31 December 2009	0

3. Total disposition of claimant applications (determination/dismissal/strike-out/discontinuance):	
Applications filed since 1 January 1994	71
Dispositions since 1 January 1994	56
Dispositions 1 January 2009 – 31 December 2009	1

4. Current claimant applications:	
Current number of applications	15
Average time since filing	105 months
Number currently referred for Tribunal mediation	9

5. Non-claimant applications:	
Current number of applications	0
Dispositions since 1 January 1994	0
Dispositions 1 January 2009 – 31 December 2009	0

6. ILUAs	
Number of currently registered ILUAs	33
Number of ILUAs registered 1 January 2009 – 31 December 2009	0

Disposition of claimant applications:

One application was struck out in the period July-December 2009. No applications were finalised during the period January to June 2009.

Mediation:

The development of new State Government policy relating to broader land settlements, the Victorian Native Title Settlement Framework, continued to impact on the progress of claimant application mediation during 2009. In many cases timetables for negotiations had to be reworked due to the involvement of key personnel in the development and implementation of the framework, and to allow parties to consider how the elements of the framework could be applied to their particular matters.

State Policy:

By mid-2010, the State Government aims to have six matters largely disposed of under the Victorian Native Title Settlement Framework. The Framework, announced in June 2009, outlines the State's preferred method for settling native title matters, sets out core principles and provides a framework for how agreements will be negotiated. It appears that the timeframes for implementation of the Framework will be subject to Commonwealth funding. The State currently aims to have 90 per cent of claims over Crown land within Victoria disposed of within 10 years.

4.7 Tasmania

1. Determinations of native title:	
Total registered since 1 January 1994	0
Native title exists	0
Native title does not exist	0
Total registered from 1 January 2009 – 31 December 2009	0
Native title exists	0
Native title does not exist	0
2. Native title claimant applications determined:	
Native title applications determined (in full or part) since 1 January 1994	0
Native title applications determined (in full or in part) 1 January 2009 – 31 December 2009	0
3. Total disposition of claimant applications (determination/dismissal/strike-out/discontinuance):	
Applications filed since 1 January 1994	4
Dispositions since 1 January 1994	4
Dispositions 1 January 2009 – 31 December 2009	0
4. Current claimant applications:	
Current number of applications	0
Average time since filing	n/a
Number currently referred for Tribunal mediation	0
5. Non-claimant applications:	
Current number of applications	0
Dispositions since 1 January 1994	0
Dispositions 1 January 2009 – 31 December 2009	0
6. ILUAs:	
Number of currently registered ILUAs	0
Number of ILUAs registered 1 January 2009 – 31 December 2009	0

There is no current activity in Tasmania.

4.8 Australian Capital Territory

1. Determinations of native title:	
Total registered since 1 January 1994	0
Native title exists	0
Native title does not exist	0
Total registered from 1 January 2009 – 31 December 2009	0
Native title exists	0
Native title does not exist	0
2. Native title claimant applications determined:	
Native title applications determined (in full or part) since 1 January 1994	0
Native title applications determined (in full or in part) 1 January 2009 – 31 December 2009	0
3. Total disposition of claimant applications (determination/dismissal/strike-out/discontinuance):	
Applications filed since 1 January 1994	6
Dispositions since 1 January 1994	6
Dispositions 1 January 2009 – 31 December 2009	0

4. Current claimant applications:	
Current number of applications	0
Average time since filing	n/a
Number currently referred for Tribunal mediation	0

5. Non-claimant applications:	
Current number of applications	0
Dispositions since 1 January 1994	0
Dispositions 1 January 2009 – 31 December 2009	0

6. ILUAs:	
Number of currently registered ILUAs	0
Number of ILUAs registered 1 January 2009 – 31 December 2009	0

There is no current activity in the Australian Capital Territory.

4.9 National

1. Determinations of native title:	
Total registered since 1 January 1994	129
Native title exists	92
Native title does not exist	37
Total registered from 1 January 2009 – 31 December 2009	12
Native title exists	10
Native title does not exist	2

Note: of the 37 determinations that native title does not exist, 29 were made in response to non-claimant applications, and 26 of the determinations were unopposed.

2. Native title claimant applications determined:	
Native title applications determined (in full or part) since 1 January 1994	126
Native title applications determined (in full or in part) 1 January 2009 – 31 December 2009	10

3. Total disposition of claimant applications (determination/dismissal/strike-out/discontinuance):	
Applications filed since 1 January 1994	1,498
Dispositions since 1 January 1994	1,063
Dispositions 1 January 2009 – 31 December 2009	56

4. Current claimant applications:	
Current number of applications	435
Average time since filing	101 months
Number currently referred for Tribunal mediation	222

5. Non-claimant applications:	
Current number of applications	20
Dispositions since 1 January 1994	269
Dispositions in the last 12 months	15

6. ILUAs:	
Number of currently registered ILUAs	401
Number of ILUAs registered 1 January 2009 – 31 December 2009	42

5. Future act activities

Before some types of proposed activities that may affect native title (known as 'future acts') can go ahead, notices have to be published and negotiations have to take place under the NTA.

Future act activity remains greatest in the resource-rich states of Western Australia and Queensland. The data set out below, for the two years 1 January 2008 – 31 December 2009, show a reduction in the numbers of future act notices advertised and the number of objection applications lodged by comparison with figures in the previous National Report (September 2009) report. The data may reflect the impact of global economic conditions on resources industries. The finalisation rate of the number of objection applications, and of tenements cleared for grant and tenements finalised in respect of future act determination applications, has increased slightly.

Between 1 January 2008 and 31 December 2009:

- 9,966 future act notices which asserted the expedited procedure under the NTA were advertised
- 1,658 future act notices that did not assert the expedited procedure were advertised.

5.1 Objections to the expedited procedure

Where a tenement is advertised, and the notice states that the expedited procedure applies, notice is given to any native title parties and the relevant NTRB in relation to the land and waters that will be affected by the future act. Where relevant, native title parties may lodge an objection to the expedited procedure applying to the tenement.

A total of 2,778 objections to future acts were lodged in the period between 1 January 2008 and 31 December 2009, and 3,095 objections were finalised. Most objections were made in Western Australia.

5.2 Future act determination applications

Between 1 January 2008 and 31 December 2009, 113 tenements were cleared for grant following Tribunal arbitral decisions that the future act could go ahead. Overall, applications covering 139 tenements were finalised within the period.

6. Tribunal's substantive list

As part of its National Case Flow Management Scheme, the Tribunal periodically reviews all claimant applications. By applying various criteria (see Applications and determinations/[Procedures and guidelines](http://www.nntt.gov.au) at www.nntt.gov.au), the Tribunal allocates each claim to one or more of three priority lists:

- Substantive list (applications that are likely to be resolved or otherwise finalised within the next two years)
- Regional list (applications that require considerable preparation with regard to key features such as connection, tenure and resolution of overlaps before they can move to the substantive list)
- Registrar's list (applications that require registration testing or notification or have not been referred to the Tribunal for mediation).

In the six months to 31 December 2009, nine applications were removed from the substantive list. Three were determined, two were dismissed, two were discontinued and two were moved to the Regional list. The last two applications remain in mediation but have been identified as being at a slower rate of progress.

The substantive list as at 31 December 2009 includes:

NNTT Number	NNTT Name	Date filed/lodged	NCFMS region
NC01/8	Byron Bay Bundjalung People #3	5/12/2001	NSW/ACT
NC95/1	Byron Bay Bundjalung People #1	22/12/1994	NSW/ACT
NC96/41	Gumbaynggirr People	16/12/1996	NSW/ACT
NC97/7	Gundungurra Tribal Council Aboriginal Corporation #6	29/04/1997	NSW/ACT
NC97/8	Darug Tribal Aboriginal Corporation	12/05/1997	NSW/ACT
QC01/14	Combined Dulabed and Malanbarra Yidinji Claim	22/03/2001	North QLD
QC01/42	Torres Strait Regional Sea Claim	23/11/2001	Torres Strait/Cape York
QC02/11	Thanakwithi People #2	15/03/2002	Torres Strait/Cape York
QC02/25	Wuthathi People #2	23/05/2002	Torres Strait/Cape York
QC02/8	Angkamuthi People	14/03/2002	Torres Strait/Cape York
QC03/1	Jirrbal People #1	16/01/2003	North QLD
QC04/3	Jirrbal People #2	18/02/2004	North QLD
QC04/4	Jirrbal People #3 - National Parks, State Forests, Forest Reserves	18/02/2004	North QLD
QC04/5	Gangalidda and Garawa Peoples	25/05/2004	Carpentaria
QC05/3	Gangalidda & Garawa People #2	8/03/2005	Carpentaria
QC96/77	People of Naghir #1	27/06/1996	Torres Strait/Cape York
QC97/32	Girramay People	3/09/1997	North QLD
QC97/9	Kowanyama People	25/03/1997	Torres Strait/Cape York
QC98/30	Wulgurukaba People #1	12/06/1998	North QLD
QC98/31	Wulgurukaba People #2	12/06/1998	North QLD
QC98/43	Tagalaka People	29/09/1998	North QLD
QC99/23	Waanyi Peoples	30/08/1999	Carpentaria
SC06/1	Far West Coast	4/01/2006	South Australia

SC08/2	Dieri No.2 Native Title Claim	26/09/2008	South Australia
SC95/7	Antakirinja Matu-Yankunytjatjara	14/11/1995	South Australia
SC96/3	Eringa	13/03/1996	South Australia
SC97/4	Dieri Native Title Claim	21/08/1997	South Australia
SC97/7	Gawler Ranges Native Title Claim	12/09/1997	South Australia
SC98/2	The Arabunna People's Native Title Claim	16/01/1998	South Australia
SC99/1	Adnyamathanha No.1	15/01/1999	South Australia
SC99/4	Eringa #2	26/05/1999	South Australia
VC00/1	Dja Dja Wurrung Peoples	19/07/2000	VIC/TAS
VC00/4	Yupagalk People	19/07/2000	VIC/TAS
VC00/5	Wamba Wamba, Barapa Barapa and Wadi Wadi Peoples.	19/07/2000	VIC/TAS
VC96/1	Robinvale Aboriginal Community	27/03/1996	VIC/TAS
VC99/2	Dja Dja Wurrung People	27/04/1999	VIC/TAS
VC99/6	Dja Dja Wurrung	21/07/1999	VIC/TAS
VC99/9	Dja Dja Wrung/ Whurung People	2/08/1999	VIC/TAS
WC00/6	Balanggarra #3	3/07/2000	Kimberley
WC05/2	Ngarla #2	7/04/2005	Pilbara
WC96/64	The Esperance Nyungars	6/06/1996	Goldfields
WC98/65	Nyangumarta People	29/09/1998	Pilbara
WC98/68	Birriliburu People	29/09/1998	Central Desert
WC99/35	Uunguu	21/10/1999	Kimberley
WC99/47	Balanggarra (Combination)	30/04/1999	Kimberley
WC99/7	Dambimangari	9/04/1999	Kimberley